

PORTLAND DEVELOPMENT COMMISSION
Portland, Oregon

RESOLUTION NO. 6914

**APPROVING THE INTERGOVERNMENTAL AGREEMENT
BETWEEN PDC AND THE CITY OF PORTLAND FOR THE
VETERANS MEMORIAL COLISEUM RENOVATION IN THE
OREGON CONVENTION CENTER URBAN RENEWAL AREA**

WHEREAS, in 1989 the Oregon Convention Center Urban Renewal Area Plan (the "OCC Plan") was adopted by Portland City Council ("Council") (Ordinance No. 161925);

WHEREAS, on September 10, 2009, the Friends of Memorial Coliseum, a community group were successful in registering the Veterans Memorial Coliseum on the National Register of Historic Places;

WHEREAS, Portland Development Commission ("PDC") staff has worked with the Rose Quarter Stakeholder Advisory Committee ("RQSAC") and the community to confirm the scope of the project to renovate the Veterans Memorial Coliseum as an enhanced spectator facility that aligns with the goals as set forth by the RQSAC (the "Project");

WHEREAS, on November 17, 2010, Council approved Resolution No. 36826 which granted the Office of Management and Finance the authority to delegate tasks to PDC as it deems appropriate to (a) negotiate with Rip City Management LLC doing business as Portland Arena Management ("PAM") to determine the level of public assistance for phase one of the Project; (b) cooperate with PAM to secure other sources of funding including Historic Tax Credits ("HTCs");

WHEREAS, on May 11, 2011, PDC's Board of Commissioners (the "Board") approved Resolution No. 6874 authorizing the 19th Amendment to the OCC Plan to allow investment in a public facility"(the "19th Amendment");

WHEREAS, on August 10, 2011, Council approved Resolution No. 36875 also authorizing the 19th Amendment;

WHEREAS, the purpose of the Intergovernmental Agreement attached hereto as Exhibit A between the City and PDC (the "IGA") is to provide the funding for the City's contribution of a portion of the Project costs to be set forth in a Redevelopment Agreement (the "RDA") currently being negotiated by the City (with the assistance of PDC), PAM and the Portland Winter Hawks, Inc. ("PWH") and expected to come before Council in the first quarter of 2012;

WHEREAS, the parties to the RDA are contributing financial resources and services in kind that are expected to leverage approximately \$4,000,000 from HTCs that are expected to result in a total Project in excess of \$30 million;

WHEREAS, PDC has sufficient budget authority in the amended Oregon Convention Center Urban Renewal Area budget to provide \$23,000,000 in Tax Increment Funding;

WHEREAS, the IGA commits PDC to provide \$23,000,000, it is not intended that PDC will ultimately fund more than \$17.1 million, including PDC's FY 2011-12 disbursements to date, for the Project; and

WHEREAS, the additional \$5.9 million that is necessary to leverage the HTCs and ensure that the work done in advance of the RDA remain on schedule will be reimbursed to PDC in accordance with the IGA.

NOW, THEREFORE, BE IT RESOLVED that the Executive Director is authorized to enter into the IGA substantially in the form attached hereto;

BE IT FURTHER RESOLVED that the Executive Director may approve changes to the IGA if such changes do not materially increase PDC's obligations or risks, as determined by the Executive Director in consultation with PDC's General Counsel; and

BE IT FURTHER RESOLVED that this resolution shall become effective immediately upon its adoption.

Adopted by the Portland Development Commission January 11, 2012.



Tracy A. Brown
Recording Secretary

INTERGOVERNMENTAL AGREEMENT
Between
Portland Development Commission
And
The City of Portland
For the
Veterans Memorial Coliseum Project

This Intergovernmental Agreement (this “Agreement”), dated this ____ day of _____, 2012 (“Effective Date”), is made and entered into by and between the **City of Portland** (the “City”) and the **Portland Development Commission** (“PDC”).

RECITALS

1. PDC, as the duly-designated Urban Renewal agency of the City of Portland, is granted broad powers under ORS 457.170 for the planning and implementation of urban renewal projects.
2. The Office of Management and Finance (“OMF”) is responsible for management of City-owned and operated buildings, including Veterans Memorial Coliseum.
3. Veterans Memorial Coliseum, 300 North Winning Street at the Rose Quarter in Portland, Oregon, is located in the Oregon Convention Center Urban Renewal Area (“OCC URA”). Veterans Memorial Coliseum is currently used as a general purpose indoor events venue suitable for multiple uses, including Portland’s Western Hockey League hockey team, the Portland Winterhawks, concerts, community events, tennis tournaments, and graduation ceremonies.
4. A cooperative partnership between PDC and the City will be beneficial to the implementation of urban renewal plans and the development of other public policies, plans and capital projects.
5. Both parties desire to enter into an agreement that will establish terms and conditions by which PDC will provide funds to the City for the renovation of Veterans Memorial Coliseum.

AGREEMENT

Now therefore, PDC and the City agree as follows:

I. The Project

- A. Background.** In August 2009, Mayor Sam Adams convened a 32 member Rose Quarter Stakeholder Advisory Committee (the “RQSAC”) comprised of members representing a broad range of community interests to advise the City and PDC on the adaptive reuse or renovation of Veterans Memorial Coliseum and on development opportunities in the Rose Quarter area. On April 14, 2010, pursuant to Resolution

No. 36777, Council accepted the recommendations of the RQSAC and directed PDC to act as agent for the City in issuing Request for Proposals for the renovation or adaptive reuse of Veterans Memorial Coliseum. The City, PDC and the RQSAC reviewed the proposals from the three finalists and on August 3, 2010, Mayor Adams released a Draft Enhanced Spectator Facility proposal for Veterans Memorial Coliseum for public review and discussion.

On September 10, 2009, Veterans Memorial Coliseum was listed in the National Register of Historic Places, making Veterans Memorial Coliseum eligible for historic tax credits, which through financial transactions can result in additional financial investment for physical improvements.

On November 17, 2010, pursuant to Resolution No. 36826, Council directed, among other things, that OMF work with PDC in negotiating a Phase 1 improvement project for the Rose Quarter with Portland Arena Management (“PAM”), including the renovation of Veterans Memorial Coliseum.

On May 11, 2011, the PDC Board made public findings that investing urban renewal funds in the renovation and improvement of Veterans Memorial Coliseum was of benefit to the public and to the OCC URA. On August 10, 2011, Council concurred and approved the 19th Amendment to the OCC URA Plan, permitting PDC to use funds for the renovation and improvement of Veterans Memorial Coliseum.

On July 15, 2011, PDC issued a Request for Proposals (“RFP”) for architectural and engineering services for the Veterans Memorial Coliseum renovation project. On August 24, 2011, the PDC Board authorized a multi-phased architectural and engineering (A/E) professional services contract, in an amount not to exceed \$2,760,000, to provide design and construction administration services related to the redevelopment of Veterans Memorial Coliseum. PDC entered into the first phase of the A/E contract with the selected team, Opsis-AECOM to produce schematic designs, including further verification of cost estimates.

The purpose of this Agreement is to provide for the funding of a portion of the renovation costs to be set forth in a Redevelopment Agreement currently being negotiated by the City, PAM and the Portland Winter Hawks, Inc. (the “RDA”). The parties to the RDA are contributing financial resources and services in kind that are expected to leverage proceeds from historic tax credits that are expected to result in a total project in excess of \$30 million. This Agreement will fund the City’s contribution of \$17.1 million in project costs, including PDC FY 2011-12 disbursements to date.

B. Summary of Work and Budget

This Agreement provides for PDC’s funding of the City’s financial contribution to the renovation of Veterans Memorial Coliseum as outlined in the RDA and an accompanying Project Funding Agreement. A description of the preliminary scope of

work is set forth in Exhibit A attached hereto (the “Preliminary Scope of Work” or the “Work”). The parties acknowledge that the scope of work and corresponding budget are not yet finalized, and the parties are working through an iterative scoping process to determine a final scope of work and budget. A preliminary draft Sources and Uses for the Veterans Memorial Coliseum renovation project is attached as Exhibit B to this Agreement.

II. CONTRACT MANAGEMENT

A. PDC shall be referred to herein as the “Funding Agency”.

B. Although the City is not performing the renovation work under the RDA, for purposes of this Agreement, the City shall be referred to herein as the “Performing Agency”.

C. Funding Agency.

1. **Contract Signatory.** The Funding Agency contract signatory shall be the Executive Director of PDC, or such other person as designated in writing by the Executive Director of PDC (the “Funding Agency Contract Signatory”). The Funding Agency Contract Signatory is authorized to give notices and to carry out other actions referred to herein, including termination of this Agreement as provided in Section V.
2. **Contract Manager.** The Funding Agency contract manager shall be Melissa Nelson (the “Funding Agency Contract Manager”). The Funding Agency Contract Manager is responsible for the day-to-day management of this Agreement as provided herein and serves as the first level of conflict resolution.

D. Performing Agency. The Performing Agency Contract Signatory shall be the Chief Administrative Officer of the City (“CAO”), or such other person as designated in writing by the CAO (the “Performing Agency Contract Signatory”). The Performing Agency Contract Signatory is authorized to give notices and to carry out other actions referred to herein, including termination of this Agreement as provided in Section V. The Performing Agency Contract Signatory also serves as the first level of conflict resolution under this Agreement.

E. Management Staffing.

1. A project manager shall be designated by the Performing Agency (the “Performing Agency Project Manager”), and a project manager shall be designated by the Funding Agency (the “Funding Agency Project Manager”) to carry out the responsibilities designated in this Agreement.
 - a) The Funding Agency Project Manager shall be Kevin Brake, or such other person as designated in writing by the Funding Agency Contract Signatory.
 - b) The Performing Agency Project Manager shall be David Logsdon, or such other person as designated in writing by the CAO. The

Performing Agency Contract Manager is responsible for the day-to-day management of this Agreement as provided herein.

2. If either project manager is not performing or is not able to continue performing the responsibilities designated in this Agreement, then the respective contract signatory shall designate a replacement project manager. If a replacement project manager is not available, then upon written agreement of the parties, the other party may take on all project management responsibilities designated in this Agreement.

F. Work Product. The Funding Agency Project Manager will, upon his or her request, receive timely copies of all work products, including drawings, specifications, designs, draft and final copies of technical and consultant analysis and reports, construction progress reports, and key correspondence prepared or received during the course of the Project. PDC acknowledges that the Funding Agency Project Manager is part of a small steering committee that meets on a weekly basis to discuss project scope and budget and related issues. Thus, the parties anticipate that the Funding Agency Project Manager has in his or her possession or has ready access to all work product for the renovation project.

G. Business and Workforce Equity. The RDA will require PAM, as the construction manager, to comply with PDC's Business and Workforce Equity Policy.

III. FUNDING

- A.** The total amount of funding to be committed by the Funding Agency to the project is \$23 million ("Total Available Funds"). The parties acknowledge that funding of amounts in excess of \$17.1 million is necessary to obtain the benefit of historic tax credits ("HTCs") for all project costs. However, it is not intended that the Funding Agency will ultimately fund more than \$17.1 million for the renovation of Veterans Memorial Coliseum. The difference between Total Available Funds and \$17.1 million (\$5.9 million) is referred to in this Agreement as the "Excess Project Funds".
- B.** A portion of the Excess Project Funds shall be (i) used by the Funding Agency to directly fund soft costs related to the renovation project under existing contracts (e.g., design costs prior to the assignment of the Opsis contract to PAM, legal fees and costs, and an environmental building survey, etc.), and (ii) delivered to the Performing Agency to allow the Performing Agency and PAM to accomplish the portions of the Work (the "Pre-RDA Work") that must be funded before the RDA is executed in order to keep the renovation project moving forward and on schedule. The Funding Agency has agreed to deliver a portion of the Excess Project Funds to the Performing Agency in an amount sufficient to allow pre-orders and work necessary for a new ice floor to be installed at Veterans Memorial Coliseum, which funds will be delivered to the Performing Agency within three (3) business days of the Effective Date. All expenditures on Pre-RDA Work must be approved by the CAO. All expenditures on Pre-RDA Work other than the ice floor must also be approved by the Executive Director of PDC before the Excess Project Funds are delivered to the Performing Agency. By their respective approvals of this Agreement, the PDC Board and City Council hereby delegate authority to the Executive Director of PDC and the CAO, respectively, to make such decisions. The

City does not intend to spend Excess Project Funds for the ice floor without a commitment from Portland Winter Hawks, Inc. to continue to use Veterans Memorial Coliseum as its home ice rink beyond June 30, 2013.

- C.** No later than the date of closing under the RDA and subject to PDC's review and approval pursuant to Section III.D below, the Funding Agency shall pay the Performing Agency a sum not to exceed \$17.1 million from the Total Available Funds (the "Project Funds"). The Project Funds shall be delivered to the Performing Agency or directly to the escrow contemplated by the Project Funding Agreement.
- D.** If the RDA is signed and closed, then any and all Excess Project Funds spent by the Funding Agency or delivered to the Performing Agency shall be reimbursed to the Funding Agency through the HTC or project funding structure such that the Funding Agency's total investment in the Veterans Memorial Coliseum renovation project does not exceed \$17.1 million. PDC's Central City Manager and legal counsel shall have the right to approve the final RDA and the agreement that contains the mechanism to reimburse the Excess Project Funds to PDC (the "Reimbursement Agreement") for the limited purpose of ensuring that the RDA and the Reimbursement Agreement contain a mechanism for, and require the reimbursement of, the Excess Project Funds. In addition, PDC shall be a third party beneficiary of Reimbursement Agreement.
- E.** If the RDA is not signed and closed by the termination date set forth in Section V.A.1. of this Agreement, then (a) any and all unspent Project Funds shall be returned to the Funding Agency within thirty (30) days of the Funding Agency's written request therefor and (b) Excess Project Funds spent by the Performing Agency on Pre-RDA Work shall be repaid to the Funding Agency pursuant to the terms of a separate agreement, which agreement shall limit the source of repayment to amounts available in the City's Spectator Fund, shall not impede the ability of the City to service debt and fulfill other administrative obligations of the Spectator Fund, and shall not materially increase risk to the City's General Fund.
- F.** The Project Funds are from the OCC URA.
- G.** The Total Available Funds are authorized in the budget for the current fiscal year.
- H.** The Total Available Funds shall only be expended on Tax Increment Financing eligible uses, for example, planning for improvements, design and engineering for improvements, and construction of improvements. Costs for operations, maintenance, and moving transit stock are not typically eligible for Tax Increment Financing.
- I.** Changes in the Work and contingencies shall be managed as set forth in the RDA.

IV. BILLING AND PAYMENT PROCEDURE

- A.** After an RDA is executed and closed, the Project Funds will be disbursed in accordance with the RDA and the Project Funding Agreement.
- B.** For Pre-RDA Work other than the ice floor, if any, the Performing Agency shall submit to the Funding Agency Project Manager the scope of such Pre-RDA Work and

the estimated cost of such Pre-RDA Work. As set forth in Section III.B above, the Executive Director of PDC and the CAO shall approve or disapprove of such Pre-RDA Work. If such Pre-RDA Work is approved, then the Funding Agency shall deliver to the Performing Agency Excess Project Funds necessary to pay for such Pre-RDA Work.

- C. For all Excess Project Funds delivered to the Performing Agency, copies of bills, invoices or other evidence sufficient to enable the Funding Agency to determine that the work performed was part of the approved Pre-RDA Work shall be delivered to the Funding Agency Project Manager and shall include:
1. a description of the nature and cost of work accomplished;
 2. the names, rates and hours worked of personnel;
 3. disbursements to consultants, contractors and outside vendors for materials and services; and
 4. any other specific detail or documentation as reasonably desired by the Funding Agency Contract Manager, which can be reasonably provided by the Performing Agency.

V. GENERAL

A. Termination.

1. The Termination Date of this Agreement is December 31, 2012.
2. Early Termination of Agreement. This Agreement may be terminated at any time by mutual written consent.

B. Compliance with Laws. In connection with its activities under this Agreement, the parties shall comply with all applicable federal, state and local laws and regulations.

C. Indemnification.

Subject to the limits of the Oregon Tort Claims Act and Oregon Constitution, City agrees to indemnify, hold harmless and defend, PDC, its directors, officers, employees and agents from and against all claims, suits, actions of whatsoever nature, damages or losses, and all expenses and costs incidental to the investigation and defense thereof including reasonable attorneys fees, resulting from or arising out of the activities of City, its officers, employees or agents under this Agreement.

Subject to the limits of the Oregon Tort Claims Act and Oregon Constitution, PDC agrees to indemnify, hold harmless and defend, City, its officers, employees and agents from and against all claims, suits, actions of whatsoever nature, damages or losses, and all expenses and costs incidental to the investigation and defense thereof including reasonable attorneys fees, resulting from or arising out of the activities of PDC, its directors, employees or agents under this Agreement.

D. Ownership of Work Product. Ownership of any and all plan sets, technical data, documents, plans, designs, drawings, technical data reports, specifications, working

papers and other materials produced in connection with this Agreement (the “Work Product”) will be handled as set forth in the assignment of the Opsis design contract from PDC to PAM, the RDA, and other related agreements. Under the design contract with Opsis, PDC owns the Work Product. It is the intention of the parties that following the assignment of the Opsis contract, the City will own the Work Product and will provide PAM with rights to the Work Product sufficient to enable PAM to complete the renovation project.

E. Maintenance of Records. The Performing Agency shall maintain records on a current basis to support Excess Project Funds expended on Pre-RDA Work. The Funding Agency or its authorized representative shall have the authority to inspect, audit and copy, on reasonable notice and from time to time, any records of the Performing Agency regarding the Pre-RDA Work, for a period of three (3) years after completion or termination of this Agreement.

F. Funding Acknowledgement / Signage.

1. Any oral reports made to neighborhood, business, or other civic organizations, as well as to any members of the press should acknowledge work being done is based on a partnership between the City and PDC and, if appropriate, financed with funds from the “*the Oregon Convention Center Urban Renewal Area*”.
2. The City shall request PAM to display a sign near the construction site and readily visible to the public, specifying that the Project is being “*funded in part by the Portland Development Commission’s Oregon Convention Center Urban Renewal Area*”. The City will request that this sign remain in place until construction is complete.

VI. Amendments

This Agreement may only be amended by a written agreement signed by both PDC and the City. The CAO and the Executive Director of PDC and their respective designees are authorized to take all actions necessary to implement the terms of this Agreement and may authorize amendments of this Agreement without further action by City Council and the PDC Board, respectively, so long as the amount of Total Available Funds is not increased.

VII. Merger Clause

Except as specified in Section III.E., this Agreement contains the entire agreement between PDC and the City. It supersedes all prior written or oral discussions or agreements concerning work to be performed by either party.

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IN WITNESS WHEREOF, the City and PDC have executed this Agreement as of the Effective Date.

CITY OF PORTLAND

PORTLAND DEVELOPMENT COMMISSION

Jack Graham, Chief Administrative
Officer

Patrick Quinton, Executive Director

Date

Date

APPROVED AS TO FORM:

APPROVED AS TO FORM:

City Attorney

Legal Counsel

City Auditor

Date

EXHIBIT A

Summary of Anticipated Improvements to VMC

The following is the preliminary contemplated scope of the renovation to VMC, which is subject to change through future design and value engineering activities to be approved by the parties and incorporated into the redevelopment agreement:

Arena Bowl Improvements

Complete seat replacement
Improved ADA seating
New center-hung scoreboard and video replay system
New NHL sized ice rink, dashers and glass

Concourse and Event Level Improvements

Renovation of restrooms (including ADA)
Remodel of concession stands
Accessible counters for concession stands (ADA)
Replace portable concession carts
Remodel Winter Hawks' offices
Remodel Winter Hawks' locker room
Upgrade meeting room finishes
Restore glulam columns
Upgrade concourse lighting
Replace interior doors (ADA compliant)

Memorial Gardens Improvements

Restore hardscape and landscaping
Enhance memorials using 2% for art funding

Building Infrastructure and Systems

Complete roof replacement
Replace hot and cold water pipe systems
Replace main electrical panels and switchgear
Replace and/or recondition building heating and cooling systems

Safety and Code Improvements

Upgrade emergency lighting system
Replace fire sprinkler system at entry pagoda
Add fire sprinkler system under the bowl
Add fire sprinkler system to restrooms and concessions
Install building wide Fire Alarm system
Connect exhaust fans to Fire Alarm system

Exhibit B –
DRAFT VMC Sources and Uses 1-11-2012

| Sources | | Amount |
|----------------|-----------|-------------------|
| PDC TIF | \$ | 17,100,000 |
| PWH \$ | \$ | 10,000,000 |
| HTC | \$ | 4,000,000 |
| ARRA funding | \$ | 300,000 |
| Energy Trust | \$ | 75,000 |
| Total | \$ | 31,475,000 |

| Uses | | Amount |
|------------------------------------|-----------|-------------------|
| Total soft costs | \$ | 3,689,984 |
| Construction \$'s available | \$ | 27,121,755 |
| RACC 2% | \$ | 256,435 |
| Solar 1.5% | \$ | 406,826 |
| Total Project Cost | \$ | 31,475,000 |
| (Gap) / Surplus | \$ | 0 |

PDC

PORTLAND DEVELOPMENT COMMISSION

Resolution Number 6914

Title:

APPROVING THE INTERGOVERNMENTAL AGREEMENT BETWEEN PDC AND THE CITY OF PORTLAND FOR THE VETERANS MEMORIAL COLISEUM RENOVATION IN THE OREGON CONVENTION CENTER URBAN RENEWAL AREA

Adopted by the Portland Development Commission on January 11, 2012.

| PRESENT FOR VOTE | COMMISSIONERS | VOTE | | |
|---|-------------------------------|--|--------------------------|--------------------------|
| | | Yea | Nay | Abstain |
| <input checked="" type="checkbox"/> | Chair Scott Andrews | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| <input type="checkbox"/> | Commissioner Aneshka Dickson | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| <input checked="" type="checkbox"/> | Commissioner John Mohlis | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| <input checked="" type="checkbox"/> | Commissioner Steven Straus | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| <input checked="" type="checkbox"/> | Commissioner Charles Wilhoite | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| <input type="checkbox"/> Consent Agenda | | <input checked="" type="checkbox"/> Regular Agenda | | |

Certification

The undersigned hereby certifies that:

The attached resolution is a true and correct copy of the resolution as finally adopted at a Board Meeting of the Portland Development Commission and duly recorded in the official minutes of the meeting.



Recording Secretary

Date: January 11, 2012