

# Exhibit F

## RESTATED PUBLIC PARKING FACILITIES MANAGEMENT AGREEMENT

between

CITY OF PORTLAND, OREGON,

a municipal corporation of the State of Oregon and

RIP CITY MANAGEMENT LLC,

a Delaware limited liability company

Dated: \_\_\_\_\_, 2024

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## **RESTATED PUBLIC PARKING FACILITIES MANAGEMENT AGREEMENT**

This Restated Public Parking Facilities Management Agreement (this “Agreement”) is made and entered into this \_\_\_ day of \_\_\_\_\_, 2024, by and between the City of Portland, Oregon, (hereinafter referred to as “City”) and Rip City Management LLC (hereinafter referred to as “RCM”).

WHEREAS, the City and RCM’s predecessor, predecessor, Oregon Arena Corporation (“OAC”), entered into a Development Agreement, dated November 4, 1992 (the “Original Development Agreement”), which Original Development Agreement has been replaced by an Amended and Restated Development Agreement of even date herewith (such Amended and Restated Development Agreement, as amended from time to time, the “Development Agreement”), for the construction and operation of the arena currently known as the “Moda Center”, and

WHEREAS, concurrently herewith, the City and RCM have terminated that certain Arena Ground Lease dated as of June 23, 1993 between the City, as landlord, and RCM, as tenant and successor-in-interest to OAC, and have entered into that certain Arena Operating Lease (“Arena Lease”), of even date herewith such that, from and after the date hereof, all references in this Agreement to the “Arena Lease” shall mean and refer to such Arena Operating Lease; and

WHEREAS, in connection with the Original Development Agreement the City and OAC entered into a Parking Facilities Management Agreement, dated June 23, 1993 (as amended from time to time, the “Original Parking Agreement”), under which OAC (and subsequently RCM) provided parking management services for the “East Garage”, “West Garage”, and “Benton Lot” at the Project Site, which Project Site is commonly known as and sometimes referred to herein as the “Rose Quarter”; and

WHEREAS, parties wish to restate the terms of the Original Parking Agreement and for this Agreement to supersede and restate in its entirety the Original Parking Agreement; and

WHEREAS, this Agreement is intended to be a “management contract” pursuant to Department of Treasury Revenue Procedure 2017-13; and

WHEREAS, this Agreement is intended to grant no property interest in the Public Parking Facilities (as defined herein) or Arena Garage to RCM that may result in the taxability of the Public Parking Facilities or Arena Garage; and

WHEREAS, the City Council, on June 4, 1992 adopted Ordinance No. 165510, exempting the agreement for such parking management services from the regular public procurement processes of state law and city ordinance (“Exemption Ordinance”).

NOW THEREFORE,

In consideration of the mutual promises contained herein, the parties do mutually agree as follows:

1. ENGAGEMENT OF RCM

1.1 Engagement Access

1.1.1 The City hereby engages RCM as an independent contractor (and not as an agent of the City) on the terms and conditions contained in this Agreement, and RCM hereby accepts such engagement on those terms and conditions.

1.1.2 Throughout the term, RCM and its contractors shall have a license to come upon and have access to the Public Parking Facilities to the extent necessary or convenient to RCM's performance of its obligations under this Agreement. Subject to Section 4, RCM shall have the right to give access to or deny access to the Public Parking Facilities to other Persons; except the City shall have the right to have access to and to come upon the Public Parking Facilities at any time. The City will use Reasonable Efforts to avoid interfering with RCM's performance of its obligations under this Agreement, whenever City personnel are in the Public Parking Facilities.

2. DEFINITION, GENERAL AUTHORITIES AND RESPONSIBILITIES

Capitalized words and terms not defined herein will have the meaning given such words and terms in the Development Agreement, unless otherwise indicated. When used in this Agreement, "Public Parking Facilities" shall mean all or any of the two City-owned or controlled (by contract or otherwise) parking garages and one surface lot adjacent, but not attached, to the Memorial Coliseum or the Moda Center, and shown on Exhibit A; and includes all entrances, exits, elevators, stairwells, revenue control equipment, all parking levels and all related facilities in the structure, together with landscaping and sidewalks related to the garages and lots, as well as the extension of Flint Street between Northeast Broadway and North Ramsay Way.

RCM, during the term, shall have the exclusive authority and responsibility for the management, administration, operation, use, scheduling, marketing, promotion, security, maintenance, and repair of or at the Public Parking Facilities in accordance with the terms of this Agreement, and subject to the City's reserved rights stated herein. RCM shall use Reasonable Efforts to perform all obligations of this Agreement. "Reasonable Efforts" shall have the same meaning as in the Development Agreement.

Without limitation of the foregoing, throughout the term, RCM agrees to perform the following as more fully described in this Agreement.

2.1 Employ personnel and engage contractors, in accordance with the terms of Section 5 herein, necessary and sufficient to perform RCM's obligations under this Agreement.

2.2 Provide for reasonable public safety, security and traffic control relating to operation of the Public Parking Facilities and events.

2.3 Provide for the maintenance and repair of the Public Parking Facilities in accordance with the terms of Section 5 and, with an affirmative duty of inspection as provided in Section 5.1.10, advise the City promptly in writing of any conditions in the Public Parking Facilities of which RCM's officers or managerial employees become aware which may indicate the need for maintenance, repair or capital improvements.

2.4 In accordance with the budget provided for in Section 5.3, purchase or lease and maintain all materials, tools, machinery, equipment, and supplies necessary for the operation of the Public Parking Facilities and for the performance of RCM's other obligations under this Agreement.

2.5 Collect and distribute funds in accordance with the terms of Section 5.1.3.

### 3. USE

3.1 RCM and the City acknowledge that two parking facilities other than the Public Parking Facilities were built at the Rose Quarter by RCM's predecessor in interest, OAC. One garage is attached to the Arena ("Arena Garage") and another garage was built in the Entertainment Complex ("Entertainment Complex Garage"). The Arena Garage and the Entertainment Complex Garage (together referred to herein as the "Private Parking Facilities") shall be operated by RCM, or its contractor for the term of this Agreement.

3.2 Subject to the limitations in Section 4.1, the Public Parking Facilities shall be used for any lawful public purpose, including general public parking for the Moda Center, Veterans' Memorial Coliseum, and the Rose Quarter. However, the Public Parking Facilities may not be reserved, nor any preferences given, for parking for events in these facilities except as stated in Section 3.3.

3.3 The City may elect to allow other uses, including non-parking uses, in the Public Parking Facilities as follows:

3.3.1 The City will offer to allow parking on substantially the same terms as the current arrangement with the Portland Public School District No. 1 and MERC for the parking of employee vehicles at the Rose Quarter.

3.3.2 The City retains the exclusive right to use the Public Parking Facilities for uses unrelated to events and parking so long as those uses do not, in the reasonable judgment of City, conflict with event parking. The City shall give RCM reasonable notice, in advance, of the nature and time of such uses.

3.3.3 In consultation with RCM, the City may reserve the Public Parking Facilities for parking for public events in the Memorial Coliseum and/or Exhibit Hall. In any case, the City shall reserve no more than one of the two Public Parking Garages for this parking purpose.

3.3.4 The City may make specific portions of the Public Parking Facilities available to RCM for use in conjunction with events in the Arena, Memorial Coliseum, Exhibit Hall or Plaza for operations or storage, on the conditions that RCM will pay to the City the "applicable parking rate" for each of the spaces used for operations and storage as established by the City, and that the City has determined it does not otherwise create an adverse impact.

RCM shall give the City's Parking Project Manager notice of its intent to use such spaces for operations and storage no less than five business days prior to the anticipated use. Unless the City objects to such use within three business days of the receipt of RCM's notice, the use shall be deemed approved.

3.3.5 The Public Parking Facilities may participate in the pre-event sales program developed by RCM, subject to City approval of a detailed proposal for the program, and provided that participation does not adversely impact either the tax exempt status of bonds issued to build the Public Parking Facilities or the exemption of the Public Parking Facilities from ad valorem property taxes.

#### 4. LIMITATIONS ON RCM USE

4.1 Except for any special uses specified in either the City approved Transportation Management Plan, or any provision of this Agreement, RCM shall have no right, without prior written approval of City to use or authorize the use of the Public Parking Facilities for any purposes other than parking.

4.2 The Public Parking Facilities shall be operated on a coordinated basis with the Private Parking Facilities. RCM shall operate systems of coordinated traffic management, public information and promotion. RCM shall not make decisions in managing the Public Parking Facilities in a manner which places it at an economic disadvantage in comparison to the Private Parking Facilities. City shall not direct RCM to manage the Public Parking Facilities in a manner which places the Arena Garage at an economic disadvantage in comparison to the Public Parking Facilities.

4.3 If the City reasonably determines, and notifies RCM in writing, that the Public Parking Facilities are being materially adversely impacted by event patrons parking at the Entertainment Complex Garage, then RCM shall implement within 30 days of such notice any changes to the parking program for the Entertainment Complex Garage (“ECG Parking Program”) it reasonably deems necessary to remedy the problem. RCM and City shall review the revised ECG Parking Program three months after implementation of the changes to evaluate the need for further adjustments to the ECG Parking Program if the originally implemented changes have not mitigated the material adverse impact to the Public Parking Facilities. If, after six months from the date of implementation of the original changes to the ECG Parking Program, the City reasonably concludes the problem still exists, the City may terminate this Agreement effective thirty (30) days from the date of written notice to RCM of such termination.

4.4 RCM shall have no right to close off or restrict access to portions of the Public Parking Facilities without prior written City approval.

4.5 RCM shall not waive or change parking fees without prior written City approval.

4.6 RCM shall not use the Public Parking Facilities for advertising or promotion except upon terms and conditions approved by the City.

#### 5. RCM RESPONSIBILITIES

5.1 As more particularly described in this Section, RCM shall be responsible for all aspects of the management of the Public Parking Facilities. Within the budget provided for in Section 5.3, RCM shall manage the Public Parking Facilities in accordance with then-current industry standards for parking garage management in the City of Portland, and policies and procedures approved by the City. If a provision of the industry standards conflicts with the policies

and procedures approved by the City, RCM shall follow the policies and procedures approved by the City. RCM shall continuously manage and operate the Public Parking Facilities as a first class public parking garage comparable in quality to the quality of the service in the existing downtown City parking garages. RCM's responsibilities include, but are not limited to: providing or contracting for operations, providing or contracting for regular maintenance and security services for the Public Parking Facilities, accounting for all revenues derived from the Public Parking Facilities, paying all expenses incurred in connection with managing the Public Parking Facilities, and any other related or incidental activities necessary to manage the Public Parking Facilities. Management shall include, but is not limited to:

5.1.1 Preparing specifications and entering into contracts for the services of a Public Parking Facilities operator ("Operator"). The selection process shall consider City-approved selection criteria. The Operator shall meet City-approved qualifications. The selection criteria and qualifications are attached hereto as Exhibit B. Notwithstanding anything in this Agreement to the contrary, the selection of the Operator shall comply with all applicable provisions of the Exemption Ordinance. While the parties recognize that the Operator and the Private Parking Facilities Operator may be the same, because of provisions which may apply exclusively to the Public Parking Facilities or the Private Parking Facilities, the parties agree there will be separate agreements. The City shall have the right to review and approve the contract between RCM and the Public Parking Facilities Operator. The City's review of the contract between RCM and the Private Parking Facilities Operator shall be limited to the provisions in Section 16.9.

5.1.2 Supervise all contracts for Public Parking Facilities operations to insure full compliance with the contract specifications and to respond to changing conditions.

5.1.3 (i) Ensure that Operating Income for drive-up parking is deposited directly into the City Account, which Operating Income is not handled by RCM or deposited in any accounts owned or controlled by RCM; and (ii) make payments to the City Account for any approved pre-event sales as Operating Income in accordance with Section 3.3.5 above. Operating Income shall mean all gross revenues, from whatever sources including interest earnings on funds invested each month, collected by RCM as a result of the operation of the Public Parking Facilities.

City Account shall be an interest-bearing account in the name of the City of Portland designated by the City for collection of the Operating Income.

5.1.4 Receive all-reports from the Public Parking Facilities operator(s) that are required to be submitted pursuant to the Public Parking Facilities operator(s) contract(s). Review such reports for accuracy and completeness, and promptly transmit the reports to the City with recommended action.

5.1.5 Prepare and submit to City by the 20<sup>th</sup> of each month for the prior month summaries of parking activity at the Public Parking Facilities in a form and containing information as reasonably determined by the City, with input from RCM, including, at a minimum, cost of services.

5.1.6 Unless security services for the Public Parking Facilities are provided by RCM using its own employees, RCM shall include security services for the Public Parking

Facilities in any contract for security services for the Rose Quarter. Security services for the Public Parking Facilities shall be provided on the same terms and conditions as all other security services under that contract. The City and RCM shall share the cost of any security services reasonably relating to the Public Parking Facilities, excluding RCM general administration, overhead and handling fees, based upon the hourly rate of these RCM employees, if any, or the hourly rate of the contract personnel performing security services for the Public Parking Facilities. RCM or its contractor shall document all hours spent performing such services.

5.1.7 Unless regular maintenance services for the Public Parking Facilities are provided by RCM using its own employees, RCM shall prepare specifications and enter into a contract for all maintenance and repair services for the Public Parking Facilities. Maintenance means all services required to keep the Public Parking Facilities in physical condition comparable to existing downtown public parking garages, and shall include, at minimum, those services listed in Exhibit C, attached hereto and incorporated herein. RCM shall propose selection criteria and qualifications to City at least thirty (30) days prior to the date for commencement of maintenance services. The selection criteria and qualifications are subject to the reasonable approval of the City. The City retains the right to review and approve all contracts between RCM and maintenance service contractors.

5.1.7.1 Notwithstanding any provisions of this section to the contrary, the selection of a contractor shall comply with all applicable provisions of the Exemption Ordinance.

5.1.7.2 In lieu of a separate maintenance service agreement for the Public Parking Facilities, RCM may include Public Parking Facilities maintenance services as a part of, and on the same terms and conditions as, a general maintenance services contract for the Rose Quarter.

5.1.7.3 If RCM provides maintenance services using its own employees, or includes Public Parking Facilities maintenance services in a general maintenance services contract for the Rose Quarter, City and RCM shall share in the reasonable costs of such services (excluding RCM general administration, overhead and handling fees) based upon the hourly rate of these RCM employees or the hourly rate of the contract personnel performing maintenance services for the Public Parking Facilities. RCM or its contractor shall document all hours spent performing such services.

5.1.7.4 In addition, City shall have the right to review and approve the maintenance specifications for the Public Parking Facilities to be used by RCM.

5.1.8 Supervise the regular maintenance services of the Public Parking Facilities in order to obtain full compliance with specifications and/or contract(s) and to respond to changing conditions.

5.1.9 Operate any City Special Programs established by the City, if RCM and the City agree to RCM compensation for operation, and if the special program is not inconsistent with other City requirements in this Agreement. "City Special Programs" may include, but are not limited to: carpool programs, parking validation programs, and other special event parking. In order to initiate a City Special Program, the City shall notify RCM of the requirements of the

program, the proposed date for the beginning of the program, and the proposed RCM compensation for operation of the program. If City and RCM do not agree to the proposed RCM compensation, or if RCM believes the City Special Program is inconsistent with other City requirements under this Agreement, RCM shall have rights to arbitration pursuant to Section 16 of this Agreement. However, RCM shall nonetheless operate the City Special Program at the City's proposed rate of RCM compensation during any arbitration proceeding, and adjustments to such compensation, if any, shall be made retroactively to the date of initiation of the program. RCM shall be entitled to interest on any amount of additional retroactive compensation which the arbitrator may require the City to pay at the rate then applicable to prejudgment interest pursuant to the Oregon Rules of Civil Procedure. If an arbitrator determines that the City Special Program is inconsistent with other City requirements under this Agreement, RCM may immediately terminate operation of the City Special Program.

5.1.10 Inspect the Public Parking Facilities using the reasonable observation skills of parking management personnel at least once per week, and more often if directed by the City, to determine the physical condition, cleanliness, and use of the facilities. Once each calendar quarter, RCM shall arrange for and conduct this inspection with the City's agent for the Arena. Prepare and submit to the City as part of the monthly summary described in Section 5.1.5 hereof, an inspection report for each regular visit giving the time and date of the inspection, findings of the inspection, and recommended actions, if any.

5.1.11 Respond to all customer complaints.

5.1.12 Upon City or RCM request, consult with the City on matters involving the management, operation, use, maintenance, repair or improvement of the Public Parking Facilities.

5.1.13 At the City's request, require that the Operator provide for an annual, and more often if required by the City, independent audit of the records of the Operator in accordance with the terms of the Operator's contract.

5.2 Prepare and submit to the City by May 1<sup>st</sup> of each year, a management plan for the Public Parking Facilities, and a forecast of revenues for the Public Parking Facilities that can be anticipated for the next fiscal year beginning July 1<sup>st</sup>.

5.2.1 The management plan shall include the recommended hours of operation, rate schedule, any special uses, a projected schedule of events, and any changes recommended in the current operating policies and procedures.

5.2.2 The management plan, including hours of operation and rates, shall be subject to reasonable review and approval of the City.

5.2.3 RCM shall perform all of its services according to the management plan and shall be subject to audit by the City's agent for the Arena compliance with that management plan. RCM shall implement the correction of any audit findings in the management plan next submitted.

5.3 Prepare and submit to the City by May 1<sup>st</sup> of each year a line-item budget (in City-approved format) for all revenue and expenses relating to the services and improvements to be

performed under this Agreement for the next fiscal year beginning on July 1<sup>st</sup>. The budget shall include among other things:

5.3.1 The cost of all services provided by RCM using its own employees (excluding general administration, overhead or handling fee associated with providing the services), an explanation of each cost, the number of hours and rates to be charged for RCM employees services and expenses by general category; and

5.3.2 The cost of any and all operator, security and maintenance services as established by the City approved contract(s) or, in the case of services to be performed by RCM employees, the cost of those services based upon a staffing plan showing the personnel positions of RCM to be used and the approximate portion of each such position's time that will be allocated to the Public Parking Facilities.

5.3.3 Those capital improvements to be performed during the budget year according to the Capital Improvement Plan.

5.3.4 A specific amount for unanticipated expenses during the budget year.

This budget shall be subject to approval by the City and total compensation paid to the RCM pursuant to Section 8 of this Agreement shall not exceed the approved budget without the City's approval.

5.4 Prepare and submit a proposed capital improvement plan for the five years following the date of submission of the plan no later than October 1<sup>st</sup> of each year.

5.5 Cooperate with independent annual audit of Public Parking Facilities management program commissioned by the City, and any audit conducted by the City Auditor.

5.6 Maintain separate records of all Public Parking Facilities and Private Parking Facilities costs, revenues and uses, and make all such records related to the Public Parking Facilities available to City at any time during business hours upon reasonable notice. Records for the Private Parking Facilities shall be available to the City only as provided in Section 16.9. All such books and records shall be retained by RCM and made available to the City, as provided above, for a period of five years after such books or records were generated. The City shall be entitled, at any reasonable time, to make copies of the books and records of the Public Parking Facilities and the cost of such copying will be an operating expense to the extent funds are available in the budget. To the extent permitted under applicable law, and provided RCM establishes and keeps in force security, backup and anti-tampering safeguards reasonably acceptable to the City, RCM may maintain records of transactions and inventory on electronic media.

## 6. CITY RESPONSIBILITIES

6.1 City may establish special programs for use of the Public Parking Facilities ("City Special Programs").

6.2 City shall pay for all services under Section 8, pursuant to the approved budget.

6.3 The City will pay for, and RCM will perform, all maintenance, repairs, and capital improvements as the City determines are needed to be performed by RCM at the Public Parking Facilities.

6.4 City will review and approve the RCM recommended hours of operations and rates before the rates are implemented.

6.5 City will pay for all public works assessments levied against the Public Parking Facilities.

6.6 City will comply with the restrictions applicable to the “Benton Lot” as set forth in Section 8.4 below.

## 7. PARKING PROJECT MANAGERS

7.1 The City and RCM shall each establish Parking Project Managers.

7.2 The Parking Project Managers are authorized to approve work as called for under the respective sections of this Agreement.

7.3 Each party shall notify the other in writing of the name of their Parking Project Manager and shall promptly notify the other party of any changes in the Parking Project Manager.

## 8. COMPENSATION

8.1 Except with respect to Section 8.4 below, the amount to be paid for all services provided by RCM will be established based upon the Budget submitted by RCM pursuant to Section 5.3 herein, on or before June 15<sup>th</sup> of each year as part of the City’s annual budget process. In accordance with the Budget, RCM shall only be entitled to reimbursement for its actual out-of-pocket expenses incurred in connection with performing its obligations under this Agreement. RCM shall not be compensated for any general administration, overhead and handling fees associated with the Agreement. RCM will be compensated for direct labor costs of its employees (salary and benefits) and for materials and services at their contract price to RCM. City funds shall not be used by RCM to offset the costs of other RCM programs.

8.2 RCM shall maintain at a bank approved by the City, a parking management checking account (“Parking Management Account”) into which all amounts received from the City for parking management will be deposited and from which all payments for parking management will be paid.

8.3 Prior to commencement of the term of this Agreement, the City has paid to RCM the sum of \$60,000.00 for parking management. RCM previously deposited such sum in the Parking Management Account and shall pay all parking management expenses by check from this account. By the 20<sup>th</sup> of each month for the prior month, RCM shall submit to the City a summary statement of all parking management expenses together with proof of payment and all monthly parking management reports required by this Agreement. Within ten (10) business days following receipt of such statement and reports, the City will pay to RCM an amount sufficient to restore the Parking Management Account to the amount as originally established. Within sixty (60) days after

termination of this Agreement or any extension thereof, RCM shall pay to the City any amount remaining in the Parking Management Account. Any interest earned by the deposit of funds in the Parking Management Account shall offset the amount due from the City under the terms of this Agreement. Any remaining interest shall be paid to the City.

8.4 Notwithstanding the foregoing provisions of this Section 8, the terms of Section 14.3 of that certain Memorial Coliseum Operating Agreement dated April 23, 1993 between RCM, as successor-in-interest to OAC, and the City (as amended from time to time, the “Coliseum Operating Agreement”), as such terms are established by Section 4 of that certain Third Amendment to Coliseum Operating Agreement dated as of November 24, 2014, will be applicable to this Agreement during the term hereof except that all references therein to “PAM” are deemed references to RCM. During the term of this Agreement, and except to the extent RCM and the City further amend the Coliseum Operating Agreement, (i) RCM may keep as its compensation for the administration of Non-Event Parking (as defined in the Coliseum Operating Agreement) twenty-five percent (25%) of any amounts invoiced and collected for Non-Event Parking in the Public Parking Facilities, as more fully set forth in Section 14.3.2 of the Coliseum Operating Agreement; and (ii) the restrictions on development set forth in Section 14.3.3 of the Coliseum Operating Agreement with respect to the Benton Lot (as defined in the Coliseum Operating Agreement) will remain effective. By mutual agreement, and notwithstanding anything to the contrary in Sections 1 and 2 of the Sixth Amendment to Coliseum Operating Agreement dated July 1, 2021 or Sections 1 through 3 of the Seventh Amendment to Coliseum Operating Agreement dated as of April 1, 2022, RCM and the City may review the performance of the software/hardware platform and provider serving the Public Parking Facilities and make any necessary modifications to or replacements of such software/hardware services or providers, provided there is no material financial cost to the City. Provided there is no material financial cost to the City, the City Administrator or its designee is authorized to approve such modifications or replacements.

## 9. INDEMNIFICATION AND INSURANCE

### 9.1 Indemnification

9.1.1 RCM shall defend, indemnify and hold harmless the City and the City’s elected officials, officers, employees, and agents (the “City Related Persons”) from and against any and all liabilities, obligations, penalties, fines, damages, claims, suits, costs, remediation costs, and expenses (including, without limitation, attorneys’ fees) (collectively, “Damages”) (except to the extent such Damages are directly attributable to the negligence or willful misconduct of the City or any of the City Related Persons or are otherwise excluded as set forth below) which may be imposed upon, incurred by, or asserted against the City or any of the City Related Persons arising from any of the matters set forth in Sub-Sections 9.1.2.1 to 9.1.2.5.

9.1.2 RCM shall not be obligated to indemnify, defend, or hold harmless the City and the City Related Persons under the terms of this Section from Damages caused by the design, structural integrity, or construction of the Public Parking Facilities, the presence of Hazardous Substances in, at or beneath the Public Parking Facilities prior to the term of this Agreement, and any breach of this Agreement by the City.

9.1.2.1 Any conduct, act, or omission of RCM or RCM's directors, officers, employees, agents, contractors, subcontractors, licensees, or invitees occurring during the term.

9.1.2.2 Any accident, injury, or damage caused to any Person or to the property of any Person occurring during the term on or about the Public Parking Facilities.

9.1.2.3 Any use, non-use, possession, occupation, operation, scheduling, advertising, marketing, promotion, Maintenance, Repair, licensing, provision of concessions, or management of all or any part of the Public Parking Facilities.

9.1.2.4 Any RCM default of any obligations of RCM under this Agreement, or an RCM default under any agreement affecting any part of the Public Parking Facilities not cured within any applicable cure period provided in such other agreement.

9.1.2.5 The actual or alleged presence, use, treatment, storage, generation, manufacture, transport, release, leak, spill, disposal, or other handling of Hazardous Substances on, from, or about the Public Parking Facilities during the term.

Nothing in the preceding paragraph shall modify RCM's duty to indemnify, defend or hold City harmless as required under the terms of the Development Agreement between City and RCM.

Except for a claim, demand, action or suit resulting from the willful action or negligence of RCM, RCM's obligations under this Section 9.1 are limited to those claims, actions, demands or suits which are based upon insured risks covered by the insurance required under Section 9.2 of this Agreement.

9.1.3 To the extent permitted by Oregon law, the City shall defend, indemnify and hold harmless RCM from any claims, demands, actions, and suits (including attorney fees and costs) caused by the sole negligence of the City, its officers, agents or employees.

## 9.2 Insurance

9.2.1 RCM shall procure and maintain the insurance described in this Section 9 (or the then-available commercial equivalent of such insurance).

9.2.2 RCM shall procure and maintain the following:

9.2.2.1 Commercial General Liability or garage liability insurance providing, without limitation, the following specific coverages as they relate to the Public Parking Facilities or Public Parking Facilities-related operations or activities:

9.2.2.1.1 Bodily Injury, including death, and Property Damage for premises and operations liability including products and completed operations, and blanket contractual;

9.2.2.1.2 RCM's Personal and Advertising Injury Liability;

9.2.2.1.3 Business Auto Coverage or Garage Liability with a Garage Keepers Legal Liability endorsement. Such insurance shall specifically refer to and describe the Public Parking Facility as that term is defined in this Agreement. Such insurance shall provide minimum coverage of \$500,000 per occurrence with respect to any costs or expenses, including attorneys' fees, incurred by the City (or City Related Persons) in connection with any claim or Proceeding. In lieu of RCM maintaining this coverage, RCM may cause its subcontractor to maintain the coverage.

9.2.2.2 Worker's Compensation. RCM and/or its subcontractors shall provide workers' compensation insurance as provided in Section 9.3 of this Agreement.

9.2.2.3 Business Interruption, including extra expense against perils insured under the special "all risk" (1991 ISO edition form as amended) including, but not limited to earthquake, flood, debris removal, pollutant cleanup and removal, sprinkler leakage, building ordinance coverage, demolition and off-premises service interruption. RCM shall procure this insurance in an amount not less than \$1 million for Fiscal Year 1996-97, and thereafter, the sum of the following: net operating income, plus continuing expenses, for the immediately preceding Fiscal Year.

9.2.2.4 Property Insurance. Commercial Property Insurance covering the Public Parking Facilities and the Personal Property of the City used by RCM in operating the Public Parking Facilities providing Special Perils coverage (ISO 1991 edition as amended) (all risk) including endorsements to cover earthquake, flood, debris removal, pollutant clean up and removal, sprinkler leakage, building ordinance coverage, demolition and off premises services due to power failure, in an amount not less than the actual replacement value of the Public Parking Facilities and its improvements and all Personal Property (except for equipment and personal property owned by parties other than the City). Such replacement value shall be determined from time to time by RCM's insurer or, if the city objects to the insurer's valuation and the parties cannot agree upon a valuation within thirty (30) days after such objection, then by a qualified appraiser, selected by the city and paid for as an Operating Expense.

9.2.2.5 The City may at any time during the term of this Agreement elect to obtain coverage for the insurance RCM is required to provide in sections 9.2.2.3 "Business Interruption" and 9.2.2.4 "Property Insurance." RCM shall notify the City of premium prices and coverage terms for renewal policies 30 days in advance of the expiration of the existing policies. The City shall have 10 days to notify RCM of its decision to obtain coverage. If the City elects to obtain coverage, the City shall not be liable for any insurance premiums or other costs for any business interruption or property insurance that RCM may have purchased, other than as previously approved in budget approved in 5.3.

9.2.3 Terms of Insurance. The policies required under Section 9.2. shall:

9.2.3.1 Be written as primary policies not contributing with and not in excess of coverage that the city ay carry.

9.2.3.2 Name the City and the City's elected officials, officers, employees, and agents as additional insured, except for workers' compensation.

9.2.3.3 Expressly provide that the City shall not be required to give notice of accidents or claims and that the City shall have no liability for premiums.

9.2.3.4 Provide that such policies shall not be renewed, canceled, or materially modified without thirty (30) days prior written notice to the City.

9.2.3.5 Be fully paid for and not assessable.

9.2.3.6 Be issued by an insurer of recognized standing rated A-VIII or better as established by Best's Rating Guide or an equivalent rating issued by such other publication of a similar nature as shall be in current use, and licensed to do business in the State of Oregon.

9.2.3.7 Be written on an occurrence basis, rather than on a "claims made" basis, but only if occurrence basis coverage is then available from the insurer. If occurrence basis coverage is not then available from the insurer, RCM and the City shall cooperate in good faith to obtain alternative coverage from an insurer that does make such coverage available.

9.2.3.8 The Commercial General Liability policy required under Section 9.2.2.1 shall not contain an Other Insurance Clause affecting any other insurance policy carried by the City or impacting any self-insurance maintained by the City. In addition, the Commercial General Liability policy required under Section 9.2.2.1 shall protect RCM and the City and its officers, agents and employees from covered claims, demands, actions, and suits for damage to property or personal injury including death, arising from RCM's work under this Agreement. The insurance shall provide coverage for not less than \$200,000 for personal injury to each person; \$500,000 for each occurrence; and \$500,000 for each occurrence involving property damages, or a single limit policy of not less than \$500,000 covering all claims per occurrence.

The insurance shall be without prejudice to coverage otherwise existing and shall name as additional insured the City and its officers, agents, and employees as reasonably requested from time to time. Notwithstanding the naming of additional insureds, the insurance shall protect each insured in the same manner as though a separate policy had been issued to each, but nothing herein shall operate to increase the insurer's liability as set forth elsewhere in the policy beyond the amount or amounts for which the insurer would have been liable if only one person or interest had been named or insured. The coverage must apply as to claims between insureds on the policy. The insurance shall provide that the insurance shall not terminate or be cancelled without thirty (30) days written notice first being given to the City Auditor. If the insurance is canceled or terminated prior to completion of the contract, RCM shall provide a new policy with the same terms. RCM agrees to maintain continuous uninterrupted coverage for the duration of the contract. The insurance shall include coverage for any damage or injuries arising out of the use of automobiles or other motor vehicles by the RCM.

9.2.3.9 All policies must be issued by companies which are equal opportunity employers.

9.2.3.10 Contain deductibles or retainage limits reasonably acceptable to the City.

9.2.3.11 Provide that the insurer waives subrogation as to any rights to recovery resulting from the conduct of the City and the City's Related Persons.

9.2.4 No Effect on Indemnity. Except as otherwise provided in Section 9.1 above, RCM's procurement of the insurance required under this Section 9.2 shall in no manner affect or limit RCM's indemnification obligations pursuant to Section 9.1.

9.2.5 The City's Acquisition of Insurance. If RCM at any time during the term of this Agreement fails to procure or maintain any insurance coverage required under this Section 9.2, or to pay premiums for such insurance, the City shall have the right to procure the same and to pay any and all premiums for such insurance, and any amounts paid by the City in connection with the acquisition of such insurance shall be due and payable to the City upon demand from the Operating Income.

9.2.6 Filing Insurance Certificates. RCM shall maintain on file with the City Auditor certificates of insurance certifying the coverages required under Section 9.2. The adequacy of the insurance shall be subject to the approval of the City's Risk Manager and the City Attorney. Failure to maintain the requisite insurance coverages (if such insurance is available) shall be cause for termination of this Agreement by the City.

### 9.3 Workers' Compensation Insurance

9.3.1 RCM, its subcontractors, if any, and all employers working under this Agreement are subject employers under the Oregon Workers' Compensation Law, and shall comply with ORS 656.017, which requires them to provide workers' compensation coverage for all their subject workers. A certificate of insurance, or copy thereof, shall be submitted to the City's Risk Manager prior to commencement of any activities under this Agreement by the subject employer. RCM further agrees to maintain workers' compensation insurance coverage for the duration of this Agreement.

9.3.2 In the event RCM's workers' compensation insurance coverage is due to expire during the term of this Agreement, RCM agrees to timely renew its insurance, either as a carrier-insured employer or a self-insured employer, as provided by Chapter 656 of the Oregon Revised Statutes, before its expiration, and RCM agrees to provide the City such further certification of workers' compensation insurance as renewals of said insurance occur.

## 10. INDEPENDENT CONTRACTOR STATUS

10.1 RCM is engaged as an independent contractor and will be responsible for any federal, state, and local taxes and fees applicable to the compensation paid by the City to RCM.

10.2 RCM, its subcontractors, and their employees, are not employees of the City and are not eligible for any benefits through the City, including without limitation federal social security, health benefits, workers' compensation, unemployment compensation, and retirement benefits.

11. LIENS

RCM shall not allow or suffer any encumbrance, charge, or other lien against or in any way applicable to all or any part of the Public Parking Facilities, or any of the receipts, income, proceeds, or Operating Income derived or to be derived from the Public Parking Facilities, or any Little Miller Act Claim. If any such lien or claim shall be allowed or suffered to exist through RCM's action or negligence, RCM at its own cost shall cause such lien or claim to be discharged or bonded within fifteen (15) days following the filing or other assertion of such lien. If RCM fails to cause the discharge of such lien or claim to the satisfaction of the City within this • period, the City may (but shall not be obligated to), in addition to any other right or remedy available to it under this Agreement or applicable law, discharge such lien or claim in any manner it determines. Any amount paid by the City to discharge any such lien or claim, as well as all costs and expenses incurred by the City in connection with such discharge, shall be payable to the City by RCM on demand.

12. ASSIGNMENT AND TRANSFER

RCM acknowledges that the City has entered into this Agreement in express reliance on the qualifications and financial condition of RCM. Under no circumstances shall RCM make or suffer to be made a Transfer (as defined in Section 13.1.1 of the Operating Agreement for the Coliseum) of any or all of its right, title, or interest in or to this Agreement, nor shall a Change of Control occur (as defined in Section 13.1.3 of the Coliseum Operating Agreement) without the prior written approval of the City. The City may approve Transfer only to the lessee under the Arena Lease at the time of the Transfer. The City may approve Change of Control only to a person having control of the lessee under the Arena Lease at the time of the Change of Control.

13. SUBCONTRACTING

Except as required by this Contract, or as otherwise acknowledged herein, RCM shall not subcontract its work under this Agreement, in whole or in part, without the written approval of the City. RCM shall require any approved subcontractor to agree, as to the portion subcontracted, to fulfill all obligations of RCM as specified in this Agreement. Notwithstanding City approval of a subcontractor, RCM shall remain obligated for full performance hereunder and the City shall incur no obligation other than its obligation to RCM hereunder. RCM agrees that if subcontractors are employed in the performance of this Agreement, RCM and its subcontractors are subject to the requirements and sanctions of ORS Chapter 656, Workers' Compensation.

14. TERM

The term of this Agreement shall begin on the date hereof and shall continue until the expiration or sooner termination of the Arena Lease.

15. DEFAULT; REMEDIES and TERMINATION

15.1 RCM Default; Remedies. "Default" shall be deemed to have occurred under this Agreement in the event that:

15.1.1.1 RCM fails to pay the City, in full, any undisputed amount due under this Agreement within five (5) Business Days after the effective date of written notice from the City stating that such amount is past due. An “undisputed amount” is any amount not subject to a pending arbitration at the time the amount is due. RCM may withhold disputed amounts during arbitration, but if payment is ordered as a result of such arbitration, RCM shall pay undisputed amounts within five (5) business days of such order;

15.1.1.2 Immediately in the event RCM makes a Transfer of all or part of its interest in this Agreement, or a Change of Control occurs, in violation of Section 12.

15.1.1.3 RCM fails to obtain or maintain any insurance coverage required pursuant to Section 9;

15.1.1.4 RCM fails to perform any material obligation under this Agreement other than those described in Sections 15.1.1.1 through 15.1.1.3 and RCM fails to cure such nonperformance within thirty (30) days after the effective date of written notice from the City describing the nonperformance with reasonable specificity or if such nonperformance cannot be cured solely by the payment of money and cannot be cured within such 30-day period despite the exercise of due diligence, RCM fails to commence curative action within such 30-day period and to continue such action to completion with due diligence;

15.1.1.5 Immediately if any material representation or warranty made by RCM in this Agreement is determined to have been materially false or misleading when made;

15.1.1.6 Immediately if RCM commits: fraud, misrepresentation, breach of fiduciary duty with respect to handling funds, or gross negligence or intentional misconduct, in connection with the transactions contemplated by this Agreement;

15.1.1.7 Immediately if RCM defaults under the Arena Lease, and RCM has not cured such default within the time period, if any, provided in such agreements;

15.1.1.8 Immediately if Development Agreement is terminated pursuant to Section 26.2 of the Development Agreement; or

15.1.1.9 Immediately if RCM commences a voluntary case under the federal bankruptcy laws or under any other federal or state law relating to insolvency or debtor’s relief; such a case is commenced against RCM by any Person and is not dismissed within thirty (30) days; a decree or order for relief is entered against RCM in an involuntary case under the federal bankruptcy laws or under any other applicable federal or state law relating to insolvency or debtor’s relief; there is appointed, or RCM consents to the appointment of, a receiver, trustee, or custodian of any of RCM’s assets; or RCM makes a general assignment for the benefit of creditors.

15.1.2 City’s Remedies. Upon the occurrence of an RCM Event of Default, the City shall be entitled to exercise any or all of the following remedies:

15.1.2.1 Termination. City may terminate this Agreement by notice to RCM given at least ten (10) days prior to the designated date of termination, provided that if any

RCM Event of Default described in Subsections 15.1.1.2, and 15.1.1.5 through 15.1.1.9 inclusive shall occur, this Agreement shall terminate as of the date on which such Event of Default occurred without the requirement of ten (10) days prior notice. The ten (10) day notice period-referred to above is not a cure period.

15.1.2.2 Assumption of RCM Agreements. City shall be entitled, but not obligated, to assume or terminate any or all of the contracts entered into by RCM to perform its obligations under this Agreement.

15.1.2.3 Cure. Without limitation of other cure rights provided in this Agreement, the City shall be permitted to cure the default (s) of RCM and a cure shall not relieve RCM from an Event of Default and to recover from RCM on demand from RCM Funds any reasonable costs or expenses incurred by the City in the course of such cure. RCM shall have no right of action against the City or the City's officials, employees, agents, or contractors arising from any cure undertaken pursuant to this Section 15.1.2.3.

15.1.2.4 Other Remedies. The City may exercise any other right or remedy available to the City, at law, in equity, or under this Agreement.

15.1.3 Interest. Any damages payable by RCM under this Agreement shall bear interest at the Prime Rate plus four percentage points beginning on the date such amount is due and payable to the City pursuant to this Agreement and ending on the date of payment

15.1.4 Cumulative Remedies. To the extent permitted by applicable law, all remedies provided for in this Section 15.1 are cumulative and may be exercised by the City concurrently, independently, or successively, in any order whatsoever.

15.1.5 No Setoff. RCM shall not assert any breach of any obligation, representation, or warranty of the City as, and no such breach shall constitute, a defense, offset, or counterclaim with respect to any obligation of RCM under this Agreement, but RCM may, subject to the other provisions of this Agreement, pursue independent remedies for any such breach by the City.

## 15.2 City Default; Remedies

15.2.1 City Event of Default. A "City Event of Default" shall be deemed to have occurred under this Agreement in the event that:

15.2.1.1 The City fails to perform any obligation under this Agreement and fails to cure such nonperformance within thirty (30) days after the effective date of written notice from RCM describing the nonperformance with reasonable specificity or if such nonperformance cannot be cured solely by the payment of money and cannot be cured within such 30-day period despite the exercise of due diligence, fails to commence curative action within such 30-day period and to continue such action to completion with due diligence;

15.2.1.2 Any representation or warranty made by the City in this Agreement is determined to have been materially false or misleading when made; or

15.2.1.3 The City shall be in default under the Development Agreement, the Arena Lease, or the Entertainment Complex Ground Lease and shall not have cured such default within the time period, if any, provided in such agreements.

15.3 RCM Remedies. Upon the occurrence of a City Event of Default, RCM shall be entitled to pursue or exercise any right or remedy granted to it under this Agreement or available at law or in equity. To the extent permitted by applicable law, all remedies provided for in this Section 15.2 are cumulative and may be exercised by RCM concurrently, independently, or successively, in any order whatsoever. Any damages payable by the City under this Agreement shall bear interest at the Prime Rate plus four percentage points beginning on the date such amount is due and payable to RCM pursuant to this Agreement and ending on the date of payment. Rights and Obligations Upon Termination

Upon termination of this Agreement, the parties shall have the following rights and be subject to the following obligations:

15.3.1 Final Accounting. Within sixty (60) days after the Termination Date (or any Early Termination Date), RCM shall account for and deliver to the City (i) all funds payable to the City under this Agreement and, (ii) all funds contained in the Parking Management Account as of the day of termination, less payment of reasonable expenses owed for services and other items prior to the termination date.

## 16. DISPUTE RESOLUTION

With respect to any disagreement between the parties, any dispute, or any instance where mutual agreement is not reached (a “Dispute”), the parties shall resolve such a situation through dispute resolution pursuant to this Section (“Dispute Resolution”). Except as provided in Section 16.7, Dispute Resolution shall be the exclusive means to resolve Disputes.

### 16.1 Good Faith Negotiations

In the event either party believes a Dispute exists, it shall give notice to the other specifying in reasonable detail the nature of such Dispute. The parties shall seek in good faith to negotiate a settlement of the Dispute, including, without limitation, by agreeing to reasonable requests of the other to hold a meeting to discuss such Dispute.

### 16.2 Designation of Arbitrator

If within fifteen (15) days after the effective date of any notice given pursuant to Section 16.1 the parties have been unable to reach a resolution of the Dispute, the parties shall appoint an arbitrator with at least five (5) years’ experience in connection with the management of parking facilities or, if the parties agree that resolution of the dispute does not require expertise in the management of parking facilities, the parties may choose an arbitrator without this experience. If the parties shall fail to appoint an arbitrator within twenty (20) days after the effective date of the notice given pursuant to Section 16.1, the parties shall each designate, by written notice to the other given not later than twenty-five (25) days after the effective date of the notice given pursuant to Section 16.1, a representative, who need not be neutral. If either party fails to designate a representative within this period, the representative of the party who met the deadline shall act as

arbitrator. If both parties meet the deadline, the two (2) representatives shall, within ten (10) days after the last of the two (2) representatives is designated, select an arbitrator with at least five (5) years' experience in connection with the management of parking facilities. If the representatives cannot agree on an arbitrator, the Presiding Judge of the Circuit Court for Multnomah County, Oregon shall, upon application by either party, select an arbitrator having such qualification. The arbitrator chosen pursuant to this Section 16.2 shall be the sole arbitrator. The fee of the arbitrator shall be shared equally by the City and RCM.

### 16.3 Scope of Arbitration

In connection with any arbitration proceeding, each party shall submit, in writing, the specific requested action or decision it wishes to take, or make, with respect to the Dispute, and the arbitrator shall be obligated to choose one or the other of such specific requested actions or decisions, without being permitted to effectuate any compromise position.

### 16.4 Conduct of Arbitration

Except to the extent provided in this Agreement, or as the parties may otherwise agree in writing, any arbitration proceeding shall be conducted in accordance with the Commercial Arbitration Rules and the Expedited Procedures of the AAA then in force. Although the Commercial Arbitration -Rules of the AAA shall be used to govern the conduct of the arbitration, the arbitrator shall be chosen by the procedure described in Section 16.2 and the arbitration shall not -be conducted through the AAA, unless the parties otherwise agree. For purposes of an arbitration conducted under this Section, whenever the AAA Commercial Arbitration Rules refer to the "tribunal administrator," such reference shall be deemed to be the arbitrator chosen under Section 16.2. The parties expressly agree that any arbitration proceeding may proceed in the absence of any party who, after due notice, fails to be present at such arbitration or to obtain an adjournment, and that, in such event, an award may be made based solely upon the evidence submitted by the party who is present. All arbitration proceedings shall be conducted in Portland, Oregon or in such other location as the parties may agree. In making any determination, the arbitrator shall apply the pertinent provisions of this Agreement without modification or qualification in any respect. The arbitrator shall furnish the parties with a written decision within thirty (30) days after the date of the arbitration proceedings.

### 16.5 Effect on Agreement

Unless otherwise agreed in writing, during the period that any arbitration is pending under this Agreement, the parties shall continue to comply with all terms and provisions of this Agreement which are not the subject of the Dispute.

### 16.6 Effect of Determination

The decision or award rendered by the arbitrator shall be final, nonappealable, and binding upon the parties, and judgment may be entered upon it in accordance with applicable law in a court of competent jurisdiction. Neither the requirement to utilize the procedures set forth in this Section, nor the pendency of any arbitration proceeding, shall in any way invalidate any notices or extend any cure periods provided for in this Agreement.

### 16.7 Equitable Proceedings

In the event a party desires to seek interim judicial relief, whether affirmative or prohibitive, in the form of a temporary restraining order, preliminary injunction, or other interim equitable relief with respect to a Dispute, either before or after the initiation of arbitration proceeding, that party may initiate the proceeding necessary to obtain such relief (“Equitable Proceeding”). Nothing in this Section shall be construed to suspend or terminate the obligation of the parties to comply with the procedures set forth in this Section with respect to the Dispute that is the subject of such Equitable Proceeding during the pendency of any such Equitable Proceeding, including any appeal or review. Any interim or appellate relief granted in such Equitable Proceeding shall remain in effect until, and only until, the procedures set forth in this Section result in a settlement agreement or a determination by an arbitrator with respect to the Dispute. Such settlement agreement or determination shall be the binding and final determination on the merits of the Dispute (including, without limitation, any equitable relief and monetary damages, but excluding any award of attorneys’ fees or costs rendered in the Equitable Proceeding), shall supersede and nullify any decision in the Equitable Proceeding on the merits of the dispute that is the subject of such Equitable Proceeding, and shall preclude any subsequent litigation on such merits, notwithstanding any-determination to the contrary in connection with any Equitable Proceeding granting or denying interim relief.

### 16.8 Further Disputes

The parties agree that any Disputes which arise during the term out of a settlement agreement or arbitrator’s determination shall be resolved exclusively by the procedures set forth in this Section.

### 16.9 Special Pre-Arbitration Discovery Procedure

If the City believes in good faith that RCM has operated the Private Parking Facilities in a manner that places the Public Parking Facilities at an economic disadvantage in comparison to the Arena Garage, the City shall have the right to submit its concerns in writing to an independent reviewer selected by the parties (“Independent Reviewer”). The Independent Reviewer shall be entitled to have access to the books and records of RCM that relate to the Private Parking Facilities, including, but not limited to, any management agreement for the operation of the Private Parking Facilities if that agreement is at issue. The Independent Reviewer cannot provide copies of these documents to the City, but will prepare a response to the city’s written inquiry based upon the documentation. A copy of that report will be provided to RCM. The Independent Reviewer shall be mutually selected by the parties. If the parties cannot agree on an Independent Reviewer, the Presiding Judge of the Circuit Court of Multnomah County, Oregon shall, upon application by either party, select the Independent Reviewer based upon the criteria set forth in Section 16.2 or such other criteria as to which parties mutually agree. Costs related to the Independent Reviewer shall be shared equally by the City and RCM.

17. GENERAL PROVISIONS

17.1 Exhibits

The Exhibits to this Agreement referred to in the text and attached hereto are incorporated by this reference and made an integral part hereof.

17.2 Notices

A notice or communication under this Agreement by a party to another party or parties shall be sufficiently given or delivered upon personal delivery or if dispatched by registered or certified mail, postage prepaid, return receipt requested or by a delivery service or same-day or overnight service that provides a written confirmation of delivery, or sent by email to the party to which such notice is required to be given at the email addresses stated in this Agreement or to such other email address as such party may have specified to the other in writing, and addressed to the party or parties as follows: If to the City:

The Office of the City Administrator  
1120 SW Fifth Avenue, Room 526  
Portland, Oregon 97204  
Email: [spectatorfacilities@portlandoregon.gov](mailto:spectatorfacilities@portlandoregon.gov) and  
[michael.jordan@portlandoregon.gov](mailto:michael.jordan@portlandoregon.gov)

With a copy to:

Office of the City Attorney  
1221 SW Fourth Avenue, Room 430  
Portland, Oregon 97204  
Email: [cityattorneyoffice@portlandoregon.gov](mailto:cityattorneyoffice@portlandoregon.gov) and  
[ken.mcgair@portlandoregon.gov](mailto:ken.mcgair@portlandoregon.gov)

If to RCM:

Rip City Management LLC  
One Center Court, Suite 200  
Portland, Oregon 97227  
Attn: Zandria Conyers, Sr. V.P./General Counsel  
Email: [zandria.conyers@trailblazers.com](mailto:zandria.conyers@trailblazers.com)

With a copy to

Schwabe Williamson & Wyatt  
1211 SW Fifth Avenue  
Suite 1900  
Portland, Oregon 97204  
Attn: Ben Lauritsen

Email: blauritsen@schwabe.com

### 17.3 Time of Essence

Time is of the essence of the parties' respective obligations under this Agreement.

### 17.4 Conflict of Interest

No member, official, or employee of City shall have any personal financial interest, direct or indirect, in this Agreement, nor shall any member, official, or employee participate in any decision relating to this Agreement which affects his/her personal financial interest or the financial interest of any Person in which he/she is, directly or indirectly, interested.

### 17.5 Personal Liability

No member, official, or employee of City shall be personally liable to RCM or any successor in interest to RCM in the event of any default or breach by City or for any amount which may become due to RCM or such successor with respect to any obligations under the terms of this Agreement.

No member, official or employee of RCM shall be personally liable to City or any successor in interest to City in the event of any default or breach by RCM or for any amount which may become due to City or such successor with respect to any obligations under the terms of this Agreement.

### 17.6 Relationship of Parties

No provision of this Agreement shall be construed to create a partnership or joint venture relationship, an employer- employee relationship, a landlord-tenant relationship, a principal- agent relationship, or any other relationship between City and RCM other than that of owner and independent contractor.

### 17.7 Severability

17.7.1 If any term or provision of this Agreement or its application to any party or circumstance shall to any extent be invalid or unenforceable, the remainder of this Agreement and the application of such term or provision to such party or circumstances other than those as to which it is held invalid or unenforceable shall not be affected, and each term or provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

17.7.2 Notwithstanding the other terms of this Section, if the severed term or provision results in this Agreement not being a "management contract" pursuant to Department of Treasury Revenue Procedure 2017-13, then the Agreement shall be amended to preserve its status as a "management contract", or shall terminate within 60 days of the determination of invalidity or unenforceability.

#### 17.8 Construction and Interpretation

To the extent consistent with the context, words in the singular shall include the plural, words in the masculine gender shall include the feminine gender and the neuter, and vice versa. All provisions of this Agreement have been negotiated at arms length, and this Agreement shall not be construed for or against any party by reason of the authorship or alleged authorship of any provision of this Agreement.

#### 17.9 Binding Effect

The provisions of this Agreement shall be binding upon and inure to the benefit of the parties and their respective successors and assigns, subject to the provisions of Section 16.

#### 17.10 Captions

The captions or titles of the sections of this Agreement are intended for ease of reference only and shall have no effect whatsoever on the construction or interpretation of any provision of this Agreement.

#### 17.11 Amendment

This Agreement may not be modified or amended except by the written agreement of the parties. Unless otherwise provided, any amendment that increases the amount of compensation payable to RCM must be approved by ordinance of the City Council. The City Parking Project Manager is authorized to agree to and execute any other amendment on behalf of the City.

#### 17.12 Waiver

Failure of any party at any time to require performance of any provision of this Agreement shall not limit such party's right to enforce such provision, nor shall any waiver of any breach of any provision of this Agreement constitute a waiver of any succeeding breach of such provision or a waiver of such provision itself. Any waiver of any provision of this Agreement shall be effective only if set forth in writing and signed by the party to be bound.

#### 17.13 Survival

All obligations set forth in this Agreement, and all provisions of this Agreement, the full performance of which is not required prior to a termination of this Agreement, shall survive any such termination and be fully enforceable thereafter.

#### 17.14 Attorneys' Fees

If a suit, action, arbitration, or other proceeding of any nature whatsoever (including any proceeding under the U.S. Bankruptcy Code) is instituted in connection with any controversy arising out of this Agreement or to interpret or enforce any rights under this Agreement, the prevailing party shall be entitled to recover from the losing party its attorneys', paralegals', accountants', and other experts' fees and all other fees, costs, and expenses actually incurred and

reasonably necessary in connection with such proceeding, as determined by the arbitrator or the court at trial or on any appeal or review, in addition to all other amounts provided by law.

#### 17.15 Governing Law

This Agreement shall be governed by and construed in accordance with the laws of the State of Oregon.

#### 17.16 Estoppel Certificates

Each party shall at any reasonable time, within 20 days after written request by another party, execute, acknowledge and deliver to the requesting party or to any prospective Lender, assignee or subtenant designated by the requesting party, a certificate stating that (a) this Agreement is in full force and effect and has not been modified, supplemented or amended in any way, and if there have been modifications, the Agreement is in full force and effect as modified, identifying such modification agreement; and if the Agreement is in full force and effect as modified, identifying such modification agreement; and if the Agreement is not in force and effect, the certificate shall so state; (b) the dates on which the term of this Agreement commenced; (c) whether all conditions under the Agreement to be performed by a designated party, to the knowledge of the other party, have been satisfied and, as of the date of such certificate, whether there are any existing defenses or offsets which one party has against the enforcement of the Agreement by another party, or, if such conditions have not been satisfied or if there are any defenses or offsets, the certificates shall so state. The party to whom any such certificate shall be issued may rely on the matters therein set forth and thereafter the party issuing the same shall be estopped from denying the veracity or accuracy of the same. Any certificate required to be made by the City pursuant to this Section may be made on its behalf by the City's Office of Finance and Administration.

#### 17.17 Consents and Approvals

Whenever a party's consent or approval (or the parties' mutual agreement) is required, or whenever a party has the right to approve or give its consent, such approval or consent shall neither be unreasonably withheld nor unreasonably delayed unless a different standard is expressly stated or, with respect to delay, a specific time period is expressly provided in the same provision or Section which gives rise to the right or requirement of a party to approve, consent or agree. As stated here, if a party has the right to approve or consent, it may also disapprove or not consent, and if the parties are to mutually agree, they may also mutually disagree.

[Signature page follows]

IN WITNESS WHEREOF, the parties have executed this Agreement on this \_\_\_\_\_ day of \_\_\_\_\_, 2024.

CITY OF PORTLAND

RIP CITY MANAGEMENT, LLC

By \_\_\_\_\_  
Name: \_\_\_\_\_  
Auditor: \_\_\_\_\_

By \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

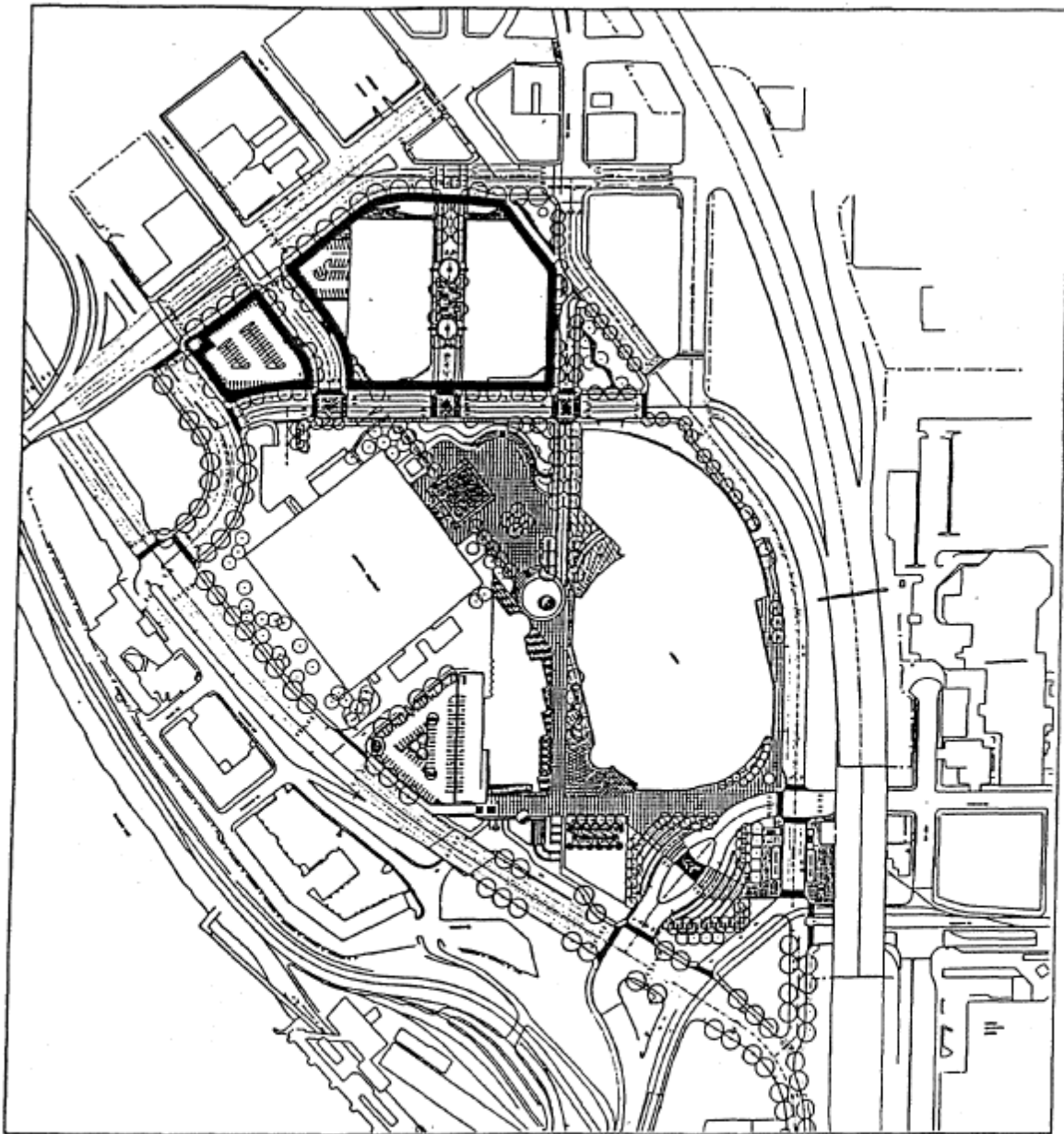
By \_\_\_\_\_  
Name: \_\_\_\_\_  
Mayor: \_\_\_\_\_

Approved as to form:

By \_\_\_\_\_  
Name: \_\_\_\_\_  
City Attorney: \_\_\_\_\_

# EXHIBIT A

## Public Parking Facilities



Public Parking Facilities Boundary



**EXHIBIT B**  
**MINIMUM QUALIFICATIONS AND SELECTION CRITERIA**  
**Public Parking Facilities Operator**

MINIMUM QUALIFICATIONS

A Public Parking Facilities Operator must:

1. Have at least three years of experience as the owner, operator, or principal of a parking business.
2. Have owned, operated, or overseen a business with a budget of at least \$75,000 and gross revenues of \$300,000.
3. Have had primary responsibility for an accounts receivable and collection system with a minimum of 75 accounts.
4. Have experience operating a computerized management information system.
5. Be able to post a performance bond, or provide a Letter of Credit, in the amount of your proposed budget.

SELECTION CRITERIA

Proposals for Public Parking Facilities operator will be evaluated on the following general criteria listed in descending order of importance:

1. The quality and demonstrated level of experience of the proposing firm to show familiarity with the type of operations at the Public Parking Facilities (i.e., short term parking activity with frequent events operations).
2. The financial stability of the firm.
3. The quality of performance that can be expected from the proposer's resident manager, with particular emphasis on his or her background in operating facilities of similar size, complexity, equipment, and volume of parking activity.
4. The proposer's demonstrated commitment to customer relations, including cultural diversity.
5. The quality of the proposer's methods for collecting, controlling, and accounting for revenues and expenses.
6. The proposer's technical ability to structure and manage its contract operations.
7. The nature and quality of the proposer's services to its clients.
8. The amount of the proposed operations budget.

## EXHIBIT C

### MAINTENANCE SERVICES

1. BUILDING MAINTENANCE
  - a. Maintain the exhaust and ventilation fans.
  - b. Periodic repainting of lines and directional arrows.
  - c. Repair and replace signage.
  - d. Repair and replace lighting fixtures and lamps.
  - e. Clean and repair exterior sidewalks and driving surfaces.
  - f. Repair and replace vandalized material and equipment.
  - g. Periodic repainting of painted surfaces.
  - h. Replace broken wheel bumpers.
  - i. Replace broken gate arms.
  - j. Repair and replace doors, gates, and locks.
  - k. Repair and replace plumbing fixtures.
2. SPECIALIZED CONTRACT MAINTENANCE
  - a. Power sweep the parking and driving surfaces.
  - b. Preventive and special maintenance of elevators.
  - c. Replace the top coating or membrane of ramps and heavy traffic areas.
  - d. Preventive and special maintenance for revenue control equipment, if any.
  - e. Preventive and special maintenance for security equipment, if any.
3. JANITORIAL SERVICES
  - a. Clean stairwells.
  - b. Remove graffiti.
  - c. Replace garbage cans.
  - d. Janitorial services for restrooms.

- e. Empty wastebaskets and remove, or provide for removal of garbage.
- f. Special cleanup following severe weather (snow, ice, heavy rain).
- g. Police the area after each use.