

METROPOLITAN EXPOSITION RECREATION COMMISSION

RESOLUTION NO. 12-03

For the Purpose of Approving The Selection of TicketsWest.com, Inc. and New Era Tickets (New Era Tickets) For Automated Ticketing Services For Events At The Portland Center For The Performing Arts (PCPA) And Authorizing The General Manager of Visitor Venues To Execute The Contract With New Era Tickets.

WHEREAS, PCPA staff issued a Request for Proposals in order to select a new ticketing contractor for PCPA venues; and

WHEREAS, New Era Tickets was the highest ranked proposer in response to the Request for Proposals; and

WHEREAS, PCPA staff recommends that the Metropolitan Exposition Recreation Commission (MERC) select New Era Tickets as the new ticketing contractor and authorize the General Manager of Visitor Venues to execute the contract on MERC's behalf.

BE IT THEREFORE RESOLVED the Metropolitan Exposition Recreation Commission hereby:


1. Approves the selection of New Era Tickets as the provider of automated ticketing services for events at PCPA; and
2. Authorizes the General Manager of Visitor Venues to execute the contract, in substantially the same form as the attached Exhibit "A," with New Era Tickets.

Passed by the Commission on January 4, 2012.



Chair

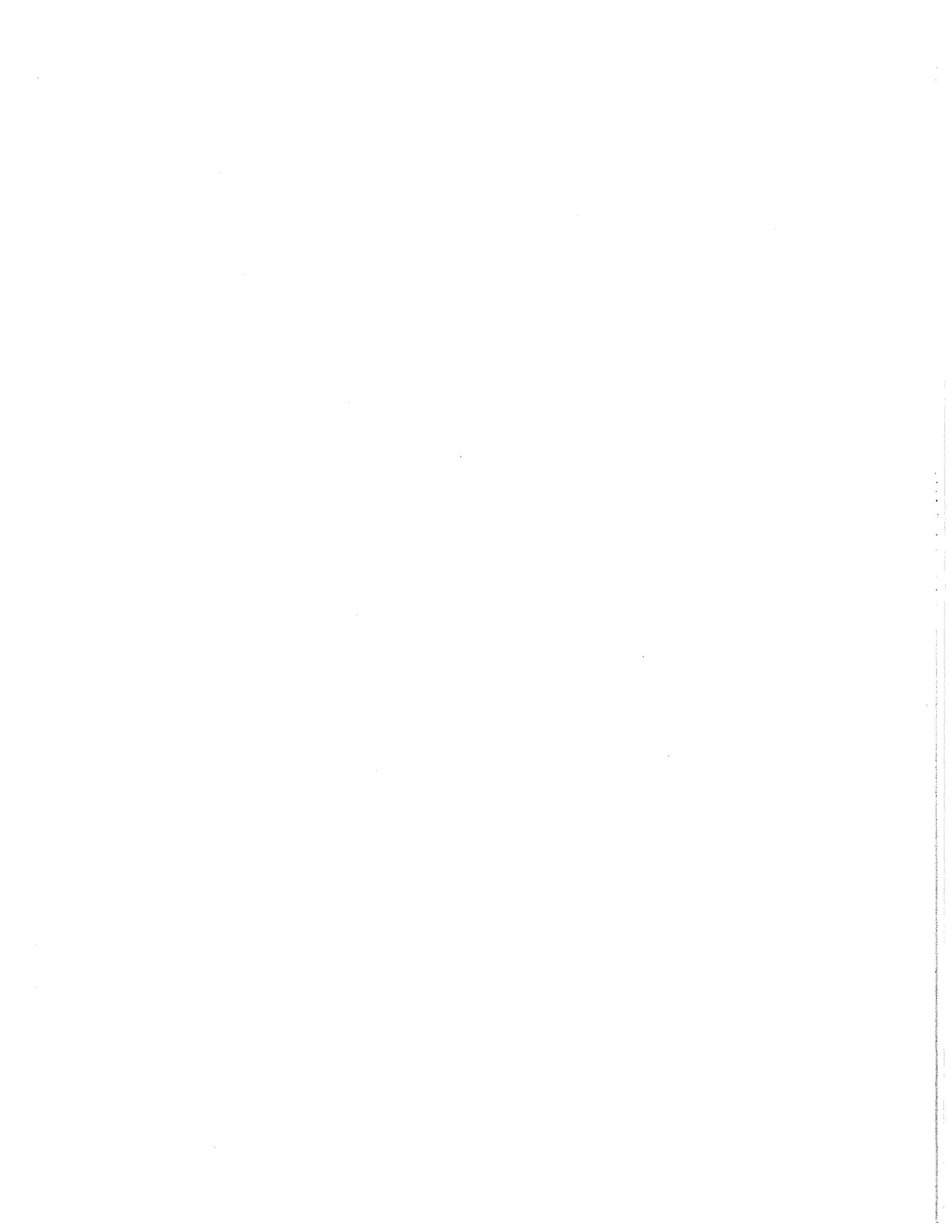
Approved As to Form:
Dan Cooper, Metro Attorney

By: 

Nathan A. Schwartz Sykes
Senior Attorney



Secretary/Treasurer



**AUTOMATED TICKETING SERVICES AGREEMENT FOR
TICKETING AT PORTLAND CENTER FOR THE PERFORMING ARTS FACILITIES**

This Automated Ticketing Services Agreement (the "Agreement") is made and entered into on this 4th day of January, 2012 (the "Effective Date"), by and between the Metropolitan Exposition Recreation Commission ("Commission"), an appointed commission of Metro that oversees the Portland Center for the Performing Arts ("PCPA"), and TicketsWest.com, Inc. and Patron Solutions, L.P. d/b/a New Era Tickets (collectively, "Ticket Agent").

RECITALS

1. The Commission is an appointed commission of Metro, a municipal corporation.
2. The Commission desires to make tickets to events held at the PCPA Facilities widely available to the public and issued a request for proposals for ticketing services at the PCPA Facilities.
3. Ticket Agent had the highest ranked proposal and represents that it is able to provide automated ticket sales services for the PCPA Facilities specified.
4. Ticket Agent further represents that it possesses the necessary equipment and systems to provide automated ticketing sales and service, inclusive of outlet sales and telephone and internet sales, including the computer hardware, software program and system procedures for the purpose of printing, selling, auditing and controlling tickets for events at the PCPA Facilities all as set forth herein.

NOW, THEREFORE, in consideration of the mutual covenants of the parties hereto, and upon the express terms and conditions hereinafter set forth, it is agreed by and between them as follows:

1. DEFINITIONS

The following terms are defined as follows:

- a. "Access Control" shall mean the ability to monitor attendance and validate Tickets in order to control admission to a PCPA Facility by reading bar coded Tickets with electronic scanners.
- b. "Accounting Year" means each 12 month period during the Term (as defined in Section 3), commencing July 1 and ending June 30 (except for the first Accounting Year which will commence on the Effective Date and end on June 30, 2013).
- c. "Attraction" shall mean a theatrical production, leisure or educational activity, concert, motion picture, sporting event, permanent or temporary exhibit or any other activity for which Tickets are sold, and as to which the Commission or Client has the right to sell

such Tickets. An Attraction may only be one Event, if only one Event is presented, or may encompass a series of Events. An Attraction does not include a consumer show or exhibition so long as no other computerized ticketing company or system is used.

- d. "Call Center" shall mean the call center operated by Ticket Agent for the purpose of receiving calls from Ticket Buyers.
- e. "Client" shall mean an organization that presents an Event at a PCPA Facility.
- f. "Combo" shall mean a collection of Tickets for multiple Events or a series of Events (for example, Season Tickets) that are packaged together and sold as a single item. For Settlement purposes, sales of Combos are coded as "C" in the System.
- g. "Commercial Event" shall mean an Event presented or promoted by an organization (including, without limitation, any presenter, promoter or Client) who is not a Local Non-Profit Organization.
- h. "Complimentary Tickets" shall mean Tickets processed and printed at the PCPA Ticket Centers by the Commission or Client which are accounted for in the Settlement at no dollar value.
- i. "Convenience Fees" shall mean additional money charged by Commission or Client to Ticket Buyers in excess of the established Ticket price. The Convenience Fees shall be set by Commission in its sole discretion. Except as otherwise expressly set forth herein, Commission shall be entitled to retain 100% of the Convenience Fees. Notwithstanding anything contained herein to the contrary, Commission shall pay to Ticket Agent any and all fees due to Ticket Agent hereunder regardless of the Convenience Fees charged by Commission or Client.
- j. "Electronic Ticket Delivery" shall mean the delivery of a Ticket to a Ticket Buyer by any electronic method. Examples of Electronic Ticket Delivery include delivery of Tickets via email (Print-at-Home) or SMS, encrypted or unencrypted XML files delivered to a personal digital assistance ("PDA") such as a mobile telephone or digital music player.
- k. "Event" shall mean an individual presentation of an Attraction.
- l. "e.Venue" shall mean the Software programs provided by Ticket Agent which enable Commission to sell and support the sale and/or resale of Tickets, Miscellaneous Items, and/or Combos, print Tickets from home and send communications via the Internet.
- m. "Facility Ticket Services Manager" shall mean the PCPA employee in charge of ticketing services for the PCPA Facilities.
- n. "FOTA" shall mean Metro's First Opportunity Target Area program, established in 1989 to ensure that economically disadvantaged residents within a defined geographical area proximate to the Oregon Convention Center be offered first opportunity to apply for employment at the PCPA Facilities.

- o. "Fulfillment" shall mean the printing and delivery of Tickets to the Ticket Buyers.
- p. "General Manager for Visitor Venues" means the chief executive officer responsible for the overall day-to-day management of the Commission's facilities.
- q. "Gift Cards" shall mean cards for purchase by patrons in any dollar amount for use to purchase Tickets in the same methods as credit cards on the System.
- r. "Go Live Date" shall mean the first date that Tickets go on sale to the general public.
- s. "Group Sales" means sales of Tickets to one person, on behalf of a group of at least ten (10) people to attend an Event at a PCPA Facility as a group, and not to attend individually or to purchase Tickets with the intent to resell such Tickets.
- t. "Hardware" shall mean the equipment provided to the Commission by Ticket Agent as set forth in Exhibit A.
- u. "Local Non-Profit Organizations" shall mean organizations designated as a 501(c)(3) non-profit, and located in the Portland metropolitan and Clark County, Washington, areas.
- v. "Miscellaneous Item" shall mean any unit of merchandise, added value put on a Ticket, product, property, parking pass, or other service sold by or on behalf of Commission or Client through the System. Miscellaneous Items are processed as an add-on to a Ticket sale. For Settlement purposes, sales of Miscellaneous Items are coded as "M" in the System.
- w. "MWESB" shall mean Metro's minority, women and emerging small business program designed to increase access, remove barriers to participation and improve contracting policies, and seek opportunities to do business with minority-owned, women-owned and emerging small businesses.
- x. "Open Seats" shall mean seats for an Event which are available for sale on the System.
- y. "Outlet" shall mean Ticket Agent's contracted and authorized locations for Ticket sales.
- z. "PCPA Facilities" means the Portland Center for the Performing Arts facilities operated or managed by Commission including Keller Auditorium, the Arlene Schnitzer Concert Hall, the Antoinette Hatfield Hall, and any other facilities that become part of the Portland Center for the Performing Arts during the term of this Agreement.
- aa. "PCPA Ticket Centers" shall mean those box offices operated by Commission and located at or operated by the PCPA Facilities.
- bb. "Primary Auction" shall mean any bidding process for Tickets and/or Miscellaneous Items conducted by Commission or any Client in which Tickets are offered for sale for

the first time (as opposed to being resold via a Secondary Auction or Ticket Marketplace).

- cc. "Remote" shall mean any method of Ticket sale where the sale originates anywhere other than in person at the PCPA Ticket Centers and Tickets are authorized for sale for Events. A Remote can include a computer terminal location away from the PCPA Ticket Centers (i.e., an Outlet), the Call Center, an Internet website, an interactive television channel, a self-service kiosk, a personal digital assistant, a cell phone or any other means or methods, whether now existing or hereinafter developed, to transact Ticket sales or distribute Tickets from anywhere other than in person at the PCPA Ticket Centers.
- dd. "Settlement" shall mean the time at which Ticket Agent makes all money received from sales managed by Ticket Agent for the Commission, less amounts due Ticket Agent, available to the Commission by ACH Transfer. Settlement shall occur Friday of each week for all sales that occurred the Monday through Sunday of the preceding week.
- ee. "Secondary Auction and/or Ticket Marketplace" shall mean a secondary market service, established either by Commission or Client, where a Ticket Buyer can re-sell Tickets and/or Miscellaneous Items to another individual.
- ff. "Site" shall mean the Commission-branded Internet site hosted and created by Ticket Agent at a URL to be designated by Ticket Agent.
- gg. "Software" shall mean those computer programs provided by Ticket Agent to Commission or Client used to conduct Ticket sales.
- hh. "System" shall mean the Hardware, Software, personnel and procedures established and maintained by Ticket Agent for the purpose of selling, auditing and maintaining control of Tickets for Events.
- ii. "Ticket" shall mean any form of evidence of the right to occupy space, or obtain entry to an Event, that has been issued and accounted for by the System and/or authorized as valid by the System. For Settlement purposes, sales of Tickets are coded as "S" in the System.
- jj. "Ticket Agent Ticket" shall mean a ticket which Commission sells through the System to an event other than an Event.
- kk. "Ticket Buyer" shall mean those persons that buy Tickets for Events by means of the System.
- ll. "Ticket Forwarding" shall mean the ability to enable one individual to transfer Ticket(s) to another individual by means of the System.
- mm. "Updated Services" shall mean subsequent releases and updates of the Software that Ticket Agent generally makes available to its current customers for such Software.

Updated Services shall not include any release, option or future product that Ticket Agent licenses separately.

- mn. "User Fee" identifies a charge levied on each Ticket sold for an Event. The User Fee shall be retained by the Commission. The User Fee shall be included as part of the total price printed on the Ticket. User Fees shall be imposed on all paid admissions and administered in accordance with Commission User Fee Policies.

2. PURPOSE OF THE AGREEMENT; AUTHORIZATION

A. Purpose

The purpose of this Agreement is to engage Ticket Agent as an independent contractor to sell Tickets for Events for any Attraction held at the PCPA Facilities. Nothing in the Agreement shall be construed to be an employment, partnership, joint venture, or joint employer relationship between the Commission and Ticket Agent. Subject to the provisions of this Agreement, Ticket Agent has independent control over operations of the services contemplated in this Agreement. Ticket Agent and the Commission will each fulfill such obligations as set forth in this Agreement and in Exhibit A, which shall be incorporated herein in its entirety.

B. Exclusivity

The Commission hereby grants to Ticket Agent the exclusive right to sell, on behalf of the Commission, Tickets through the System for all Commercial Events for any Attractions held at the Keller Auditorium and the Arlene Schnitzer Concert Hall. Except as set forth herein, the Commission agrees that it will not use any other method of sale or any secondary market service during the Term of this Agreement. The Commission further agrees that the exclusive rights granted to Ticket Agent hereunder extend to any and all future ticketing technologies, mean and/or methods developed for ticket sales or distribution. Notwithstanding the foregoing, the parties hereto acknowledge and agree that (i) Local Non-Profit Organizations presenting or promoting Events at any PCPA Facilities shall not be required to use the System and (ii) "The Jersey Boys" will continue to be sold on Ticketmaster through August 12, 2012, as well as any Attractions contracted and put on sale on Ticketmaster prior to the Go Live Date.

3. TERM OF THE AGREEMENT

The initial term of this Agreement shall be from the Effective Date until June 30, 2015, unless terminated sooner by the mutual agreement of the parties or as provided herein. The Commission shall have the option at the end of the initial term of this Agreement to extend this Agreement for an additional two-year term (the "renewal term") based upon the same conditions as set out in this Agreement. The Commission shall provide at least one hundred eighty (180) days written notice prior to expiration of the initial term for the

exercise of the renewal term. The initial term and the renewal term, if any, shall be referred to collectively as the "Term." Except as expressly set forth in Section 2, all Attractions that go on sale during the Term of this Agreement will be governed by this Agreement.

4. DUTIES OF TICKET AGENT AND COMMISSION

During the Term of this Agreement, Ticket Agent and the Commission shall be subject to the following terms and conditions.

A. Outlet, Telephone and Internet Sales

- 1) Ticket Agent shall establish and maintain a network of at least ten (10) Outlets throughout the Portland metropolitan area including Salem and southwest Washington. A plan stating the location of the Outlets must be approved by the General Manager for Visitor Venues or his or her designee prior to any contract for any Outlet being entered into by Ticket Agent. These Outlets shall be established and operating no later than 30 days after the execution of this Agreement. The Commission shall have the right to add temporary or permanent Outlets at its discretion. Ticket Agent shall use its commercially reasonable efforts to continue to build and expand this network of Outlets into other areas of the State and region. Ticket Agent shall ensure that these Outlets have adequate signage stating that Tickets for Events taking place at the PCPA Facilities are available for purchase.
- 2) Ticket Agent shall maintain regular commercially reasonable hours of operation at all Outlets to facilitate public access to purchase Tickets. A schedule of hours for each Outlet shall be provided to the Commission upon execution of this Agreement for review and approval. Any significant changes to the initial schedule are subject to the approval of the General Manager for Visitor Venues, or his or her designee (such approval not to be unreasonably withheld).
- 3) The Call Center will maintain such hours as set forth in Exhibit A. Such Call Center shall be adequately staffed during those hours to perform ongoing licensed user assistance with respect to Ticket and Miscellaneous Item sales. Ticket Agent shall provide a dedicated phone number to the Call Center for Ticket sales for Events.
- 4) Ticket Agent shall provide real time Internet Ticket sales including the ability to offer deep link or nesting capabilities. Subject to Ticket Agent receiving the applicable accurate information from the Commission, Event information shall be kept current and maintained daily. Ticket Agent shall be responsible to provide Updated Services throughout the Term.

- 5) Ticket Agent shall create and maintain the Site. The Site will provide to Commission the functions reasonably required for Commission to transact to the public its Tickets, Miscellaneous Items, payments, subscription orders and other items of value directly from the Site using e.Venue. Ticket Agent will take the commercially reasonable steps to ensure that the Site is secure, functional, and continually available to Commission and the public (subject to network interruptions, reasonable downtime for maintenance, upgrades and repairs and any other events beyond Ticket Agent's reasonable control). As part of a private label offering for Commission employing the System, Ticket Agent shall, at its sole cost and expense, among other matters to be undertaken, brand the graphical user interface to the Site with Commission's logo and trademarks and service marks, so that the Site and any other products or services visible to the Commission's patrons shall have the "look and feel" of the Commission. Ticket Agent may subcontract any portion of the Site contemplated herein, provided that Ticket Agent shall be responsible for the conduct and performance of each subcontractor as if Ticket Agent had performed all of the subcontracted services. The Commission shall have the right to approve or reject all website content.
- 6) Ticket Agent shall create a "view from seat" option on the Commission-branded internet site's seating maps for Keller Auditorium and Arlene Schnitzer Concert Hall, allowing Ticket Buyers to choose the seat(s) for Tickets being purchased, at no charge to the Commission.
- 7) Ticket Agent shall provide VPN access for the Facility Ticket Services Manager and Assistant Facility Ticket Services Manager, allowing them to access the System from their home computers.
- 8) Ticket Agent shall designate one Ticket Agent staff person to work on-site at the PCPA Ticket Services office one day per week to provide support services.
- 9) Ticket Agent shall provide the Software and services as set forth in Exhibit A. Ticket Agent's Software shall include the capacity to sell Gift Cards once this ability is available through the System. The Commission acknowledges that Ticket Agent cannot guarantee a particular date on which the System will be able to process Gift Cards. The Commission further acknowledges that there will be additional fees and costs associated with Gift Card services, which the parties shall mutually agree upon at such time that the System is able to process Gift Cards.

B. Facilities and Equipment

- 1) At no charge, for the Term of the Agreement, Ticket Agent shall provide to the Commission (i) the Hardware and Software for the System as set

forth in Exhibit A and (ii) such additional Hardware and Software as the Commission and Ticket Agent may otherwise mutually deem necessary to meet the demand for Tickets sales. Ticket Agent shall also provide hard copy report printers, which provide each PCPA Ticket Center with transaction-by-transaction reports. This reporting system shall be acceptable to the Commission and shall provide sufficient information to monitor all Ticket sales and ensure proper auditing of Ticket sales. In no case shall the level of equipment in any PCPA Facility be reduced unless approved by the Facility Ticket Services Manager. Ticket Agent shall provide maintenance and repair at no charge to Commission provided it is not necessitated by the negligence or willful misconduct of the Commission, its employees, agents or representatives. The equipment shall remain the exclusive property of Ticket Agent, and Commission shall have no right to such equipment herein.

- 2) Ticket Agent shall maintain, at its sole expense, a central computer facility at such location or locations as Ticket Agent deems necessary for the operation of the System. The central computer facility will be in operation during Ticket Agent's normal business hours and will be adequately staffed during such hours to perform all ongoing licensed user assistance, maintenance and repair services required to be performed by Ticket Agent under this Agreement.
- 3) Notwithstanding anything contained herein to the contrary, the Commission, at its expense, is responsible for: (a) preparing the site so that all facilities including, without limitation, space, electrical power, air conditioning, cabling, and telephone circuits are in accordance with installation specifications provided by Ticket Agent; (b) installing all cabling for Access Control; and (c) expanding the Commission-owned PC network, internet and/or telephone system as may be required by Ticket Agent after consultation and approval by the Commission. Furthermore, the Commission is responsible for the installation and monthly costs of all communication line connections between the PCPA Facilities and the Ticket Agent's central computer facility.

C. System Safeguards

All System security safeguards shall be maintained in a form and manner which is consistent with industry standards. Such safeguards shall include but are not necessarily limited to the following:

- 1) Written documentation of safeguards in and associated with the System intended to prevent unauthorized access or manipulation of programs, data files, data lines and other components of the System necessary for proper operation, control and audit of the System.

- 2) Written documentation of security procedures, measures, equipment, and facilities to assure protection of the System, its Hardware, Software and data files including its off-site backup storage facilities for programs and data files.
- 3) Written documentation of the Hardware or Software controls that prevent program modification during the on-line operation of the System.
- 4) Written documentation of its contingency plan in the event of computer failure or data line failure.
- 5) Written documentation of credit card number protection systems for Call Center and internet sales.
- 6) Written documentation of Ticket Agent's systems being PCI compliant.

No more than once per quarter per Accounting Year, upon a dispute between the parties in regard to any financial issues under this Agreement or upon request of the Metro Auditor, Ticket Agent shall allow operational audits and System review by the Commission and its independent systems consultant (provided that the independent systems consultant signs a confidentiality agreement satisfactory to Ticket Agent) relating solely to Ticket Agent's performance under this Agreement. The Commission shall provide reasonable notice prior to commencing any operational audit and/or System review. Ticket Agent shall produce all documentation referenced herein upon the Commission's request.

D. Ticket Sale Operation

- 1) The responsibilities of the Ticket Agent shall be as follows:
 - i) Prior to each on-sale date, the Facility Ticket Services Manager will email, fax or send written authorization for Ticket Agent to set up its computer Ticket manifest. This authorization will include instructions concerning PCPA Facility seating layout, Ticket price structure, discounts and Ticket format. All Complimentary Tickets and deletions from the manifest must be issued by the PCPA Ticket Centers unless otherwise approved by the PCPA Executive Director. The Facility Ticket Services Manager has the option to create Ticket manifests directly in the System, but must first notify Ticket Agent at least five (5) business days before the on-sale date if it intends to do so.
 - ii) Ticket Agent shall provide the Facility Ticket Services Manager with a complete seating manifest prior to Tickets going on sale.

- iii) Upon receiving final approval from the Facility Ticket Services Manager, Ticket Agent will commence sale. Ticket Agent shall not commence any sales without Commission's prior approval.
- iv) The Commission shall set all times and dates for Tickets to be placed on sale. All Outlets in the Portland metropolitan area including Salem and southwest Washington must sell Tickets to all Events on the System unless otherwise authorized by the Commission's General Manager for Visitor Venues or his or her designee.
- v) Sale of Tickets will be made at all Outlets in the Portland metropolitan area including Salem and southwest Washington, by telephone and internet sales at the same Ticket price as charged at the PCPA Ticket Centers (but not necessarily at the same Convenience Fees or other charges, if any).
- vi) Ticket Agent shall provide Commission with the ability to process payment for all sales at the PCPA Ticket Centers with Visa, MasterCard, Discover, and American Express credit cards. Processing fees charged to Commission by Ticket Agent are set forth in Exhibit A and are subject to automatic increase due to increases imposed on Ticket Agent by its merchant bank. Commission also agrees to pay all credit card fees relative to the total purchase price of such sales, any additional User Fees or Convenience Fees that the Commission may add to the sale, taxes or other charges added to the price and all fees imposed by the merchant bank or any credit card network or association for refunds that the Commission may make or authorize Ticket Agent to make. Ticket Agent will make every reasonable effort to document the fraudulent credit card use, charge-backs or disputes, and any other fees associated therewith (individually and collectively "Charge-Backs") with its merchant bank and to rectify the Charge-Backs with Ticket Buyers. Any unresolved Charge-Backs will be documented to the Commission and deducted at Settlement. The Commission acknowledges that due to banking regulations, Charge-Backs which occur under this Agreement may occur up to eighteen (18) months from the date in which a Ticket Buyer has conducted a transaction through the System. Charge-Backs which are a result of fraud have no timeframe limitation on the Ticket Buyer's and/or card holder's ability to recover such charges. The Commission will remain responsible for any Charge Backs that occur within six (6) months of the termination of this Agreement. Ticket Buyer will invoice the Commission for the amount of such Charge Backs and the Commission will pay such invoice(s) within thirty (30) days of receipt .

- vii) No Tickets shall be held back prior to or during the time of sale unless authorized by the Facility Ticket Services Manager, in writing.
 - viii) Costs associated with duplicate Tickets issued through Ticket Agent or any Outlets will be paid by Ticket Agent unless due to the negligence or willful misconduct of Commission.
 - ix) Any Tickets which cannot be sold or which are machine printing errors will be reinstated into inventory. Ticket Agent shall be responsible to provide documentation and justification of any reinstatement to inventory. All reinstatements to inventory shall be subject to procedures approved by Commission, and documentation consistent with such procedures shall be maintained and be subject to audit by Commission and its representatives.
 - x) Ticket Agent's sales practices and policies shall comply with the Americans With Disabilities Act and ORS 659A.100 et seq., as applicable.
 - xi) Notwithstanding anything contained herein to the contrary, interruptions which are consistent with comparable industry interruptions and/or which are beyond the reasonable control of Ticket Agent shall not be cause for any liability or claim against Ticket Agent hereunder, nor shall any such interruption render Ticket Agent in default under this Agreement.
- 2) The responsibilities of the Commission shall be as follows:
- i) Paying Ticket Agent all compensation and fees as outlined in Exhibit A. Ticket Agent's compensation and fees will be invoiced to Commission or withheld from Settlement. Ticket Agent's compensation and fees are due and payable for all sales processed or considered processed through the System, including Combo and Ticket sales for cancelled Events.
 - ii) Assume responsibility for the input and accuracy of all data necessary for creation of the Ticket manifest and Event setup.
 - iii) Except as expressly set forth in Section 2, exclusively use the System to issue Tickets for Commercial Events at the Arlene Schnitzer Concert Hall and the Keller Auditorium and honoring or causing to be honored all Tickets properly issued for all Events.

- iv) Paying any and all amusement, sales, admission, or other taxes based on this Agreement on all sales, if any. The Commission is not responsible for any taxes based on the net income of Ticket Agent.
- v) To print all will-call Tickets.
- vi) Allow the sale of all Open Seats for each Event at all Remotes unless otherwise noted in this Agreement, excepting those requiring Ticket Buyer identification. The availability and selection of seats shall be the same for all Remotes engaged in Ticket transactions for each Event, excluding those special pre-sales for fan clubs.
- vii) Unless otherwise noted in this Agreement, pay for the costs of all supplies which it uses for the operation of the System, including printer paper, toner and ribbons.
- viii) Inform Ticket Agent of all major on-sale dates and/or advertising campaigns.
- ix) Pay a reasonable fee to Ticket Agent to procure services, equipment and supplies needed to meet Commission requests for System changes. Ticket Agent shall obtain the approval of Commission before incurring any fees. Commission understands that System changes may require services, supplies or equipment from third parties, and they may not be readily available to Ticket Agent; however, Ticket Agent will use commercially reasonable efforts to obtain such services, supplies or equipment upon request of Commission. Ticket Agent shall make commercially reasonable efforts to obtain services, supplies and equipment from FOTA and/or MWESB suppliers.
- x) Staff the PCPA Ticket Centers at the PCPA Facilities, or other location(s) that it designates for the sale of Tickets and Miscellaneous Items, with either its employees or the employees of a Client, which employees shall be responsible for the proper operation of the System.
- xi) At its own expense, provide and maintain at all times during the Term hereof insurance or a program of self-insurance in an amount equal to the replacement cost of the Hardware as determined by Ticket Agent and documented to the Commission by Ticket Agent to protect Ticket Agent against the loss or damage of the Hardware located at the PCPA Facilities as a result of fire, vandalism, malicious mischief, theft or any other cause. Should the Commission become unable to provide or maintain the required insurance coverage or a program of self-insurance, the Commission shall promptly notify Ticket Agent in writing prior to the expiration

of any such coverage or a cessation of such self-insurance program and, thereafter, Ticket Agent shall have the right, but shall not be obligated, to provide insurance coverage for the occurrences specified above and charge the Commission the costs of such insurance coverage.

- xii) The Commission hereby acknowledges that its rights to the System are as a licensee, and that no rights in the System, including, but not limited to, the Software, shall vest in Commission, other than the Hardware to the extent conveyed upon termination at the end of the Term in accordance with the terms hereof. The license granted herein shall automatically terminate upon notice from Ticket Agent to Commission upon any default by Commission hereunder, subject to the notice and cure provisions of Section 8.
- xiii) The Commission's sales practices and policies shall comply with the Americans With Disabilities Act and ORS 659A.100 et seq., as applicable.

E. Ticket Content, Advertising and Sponsorship

- 1) Ticket Agent shall pay for all ticket stock for Tickets printed or sold at the PCPA Ticket Centers. The Commission shall have the right to sell advertising on ticket stock for Tickets printed or sold at the PCPA Ticket Centers and the Call Center and by internet. Ticket Agent shall have the right to sell advertising on ticket stock or envelopes with respect to ticket stock for Tickets sold at the Outlets. Ticket Agent and Commission shall separately receive and retain all income derived from advertising.
- 2) Ticket Agent shall pay for customized ticket stock printed or sold at the PCPA Ticket Centers.
- 3) Subject to the Commission and Ticket Agent entering into a mutually acceptable agreement, Commission has the option to contract with Ticket Agent to assist with the sale of sponsorship opportunities associated with ticketing. This includes identifying applicable inventory, developing proposals, sales materials and presentations for potential sponsors, and securing sponsorships.

F. Compensation/Financial Arrangements

- 1) Notwithstanding any other provisions in this Agreement, in no event shall the Commission assess User Fees or Convenience Fees in a manner or amount that violates any law.
- 2) Unless otherwise provided herein, Ticket Agent shall pay all expenses which are necessary to carry out the terms of this Agreement at no

expense to the Commission unless authorized by the General Manager for Visitor Venues or his or her designee

- 3) Within thirty (30) days of the Go Live Date, Ticket Agent will pay Commission a signing bonus (the "Signing Bonus") in the amount of \$75,000. Within thirty (30) days of the commencement of each Accounting Year thereafter, Ticket Agent will pay Commission the amount of \$20,000, (the "Annual Payment"). With respect to the Signing Bonus and the Annual Payment, if this Agreement terminates for any reason prior to the end of an Accounting Year, Ticket Agent's obligation to pay the Signing Bonus or any further Annual Payments will cease as of the date of the termination. If the Agreement terminates either because of a default or breach by the Commission or by mutual agreement, the Signing Bonus or the Annual Payment, as applicable, for that Accounting Year will be pro-rated up to and including the date of termination of this Agreement and any difference will be refunded to Ticket Agent within 60 days of such termination. If the Agreement terminates because of a default or breach by Ticket Agent, the Signing Bonus or the Annual Payment, as applicable, for that Accounting Year will be non-refundable.

G. Accounting

- 1) Ticket Agent shall, with respect to all business done under this Agreement, keep true and accurate accounting records, books, and data, which shall among other things show all gross receipts derived from sales of all such Tickets sold by Ticket Agent through the System and shall establish and maintain generally accepted accounting procedures. Ticket Agent shall account to the Commission for the full admission price of each Ticket sold by Ticket Agent through the System. The reported Settlement amount shall not be reduced by losses due to bad checks. No more than once per quarter per Accounting Year and for two (2) years after the expiration or termination of the Agreement, upon a dispute between the parties in regard to any financial issues under this Agreement or upon request of the Metro Auditor, the Commission directly or through an independent certified public accounting firm (provided that the certified public accounting firm signs a confidentiality agreement satisfactory to Ticket Agent) shall have the right at all reasonable times during normal business hours to inspect all books of account and ledgers of Ticket Agent relating solely to Ticket sales, and the right to make or cause to be made audits of these accounts. The Commission shall provide reasonable notice prior to commencing any inspection. Further, the Commission reserves the right, and Ticket Agent agrees, that once per quarter per Accounting Year, upon a dispute between the parties in regard to any financial issues under this Agreement or upon request of the Metro Auditor, to allow its System, Hardware and programs related to the sale of Tickets to PCPA

Facilities to be inspected by the Commission at reasonable times with prior notice to Ticket Agent.

- 2) Ticket Agent shall collect all money received from sales managed by Ticket Agent for Commission and hold all monies, including applicable taxes, less amounts due Ticket Agent, for the benefit of Commission and, when applicable, Event promoters and Clients. Ticket Agent will make such funds available to Commission at Settlement. Notification of the dispersal of funds to the Commission shall be accompanied by an electronic system report and sent via email to the Accounts Receivable department and each PCPA Ticket Center. System reports will form the basis for determining the gross receipts and deductions for Commission sales and shall be conclusive as to all amounts contained therein.
- 3) The Commission acknowledges and agrees that in the case of any cancellation of an Event for which Ticket Agent processes payment via credit card, Ticket Agent is obligated to make refunds to those Ticket Buyers that paid for Tickets via credit card, within two (2) business days of the time of the Commission's announcement of the cancellation of the Event. The Commission authorizes Ticket Agent to refund the Commission established Ticket price and User Fees and Convenience Fees and shall (i) promptly and effectively advertise to the general public its policy and procedures on refunds to Ticket Buyers and, (ii) within two (2) business days of Commission's announcement of the cancelled Event, provide Ticket Agent with sufficient funds, based on the System reports, to make such refunds. Notwithstanding the cancellation of any Event, Ticket Agent shall be entitled to all fees as stated in Exhibit A with respect to the sale of Tickets to the cancelled Event, in addition to all credit card fees. As a condition to any termination of this Agreement by Commission, whether upon expiration of the Term or otherwise, Commission shall be required to remit to Ticket Agent funds equal to the Ticket price and User Fees and Convenience Fees for all Tickets sold via credit card for Events scheduled to occur after the date of termination (each a "Post Termination Event"), which Ticket Agent shall deposit in an interest bearing segregated account and from which Ticket Agent shall be entitled to pay refunds on account of any Post Termination Event which is cancelled. Upon the occurrence of any Post Termination Event, Ticket Agent shall remit to Commission by the night of such Post Termination Event, an amount equal to the Ticket Price and User Fees and Convenience Fees sold via credit card for such Post Termination Event held in the Ticket Agent segregated account, together with interest earned thereon, less any amounts due Ticket Agent from Commission.
- 4) Ticket Agent shall provide a minimum of up to four (4) custom reports for each Accounting Year of this Agreement.

H. Training and Service Standards

- 1) Ticket Agent shall be responsible for supplying training consistent with industry standards for the Facility Ticket Services Manager and other full and part-time ticket services staff on the System. System training shall be scheduled and provided so as to be offered on several weekdays, weekday evenings and weekends, in order to be accessible to all ticket services staff. Ticket Agent agrees to provide additional training to other employees of the Commission to the extent such training is necessary as a consequence of changes in, or a modification of, the System or Ticket Agent's method of operation. To the extent of any change in personnel by Commission in connection with PCPA Ticket Centers' staff, or staff at another location designated by Commission, requiring additional training beyond that initially contemplated hereunder, it will be provided by Ticket Agent.
- 2) Ticket Agent shall be responsible for supplying adequate training for Ticket Agent's Call Center staff, enabling these sales staff to provide informed customer service to Ticket Buyers purchasing by phone. Ticket Agent sales staff shall be informed on Commission's theatre spaces, seating configurations, Events on sale and location of ADA seats .
- 3) Ticket Agent shall be responsible for supplying adequate training for Outlet ticket sales staff, enabling these sales staff to provide informed customer service to Ticket Buyers purchasing Tickets at Outlets. Ticket Agent sales staff at Outlets shall be informed on Commission's theatre spaces, seating configurations, Events on sale and location of ADA seats.

5. RESPONSIBILITIES OF THE COMMISSION

In addition to those other obligations set forth herein, the Commission shall be responsible for the following duties and functions:

- A. The Commission shall furnish Ticket Agent all necessary Event information for all Events at PCPA Facilities to assist Ticket Agent in accomplishing its services and accounting responsibilities.
- B. The Commission shall cooperate with Ticket Agent in obtaining all necessary licenses and permits.
- C. The Commission shall conduct business with Ticket Agent in an efficient and professional manner.
- D. The Commission may conduct once per quarter per Accounting Year, upon a dispute between the parties in regard to any financial issues under this Agreement or upon request of the Metro Auditor, a review of this Agreement. Such review

will include compliance with system security measures, service standards, fees and other contract provisions. The Commission shall provide reasonable notice prior to commencing any review.

- E. As set forth in more detail in Section 4B, the Commission shall supply necessary electricity, wiring and space in its facilities for the installation and operation of the System.
- F. At the PCPA Ticket Centers, the Commission shall serve as a Ticket Agent Ticket outlet and use the System for the sale of Ticket Agent Tickets for events other than the Events in accordance with the terms and conditions set forth in this Section 5F.
 - 1) Each PCPA Ticket Center shall make Ticket Agent Tickets readily and easily accessible for sale to the general public during the normal business hours (Monday through Saturday, 10:00 a.m. to 5:00 p.m.) and accept cash, MasterCard, Visa, American Express and Discover (no credit cards other than stated) as payment for Ticket Agent Tickets via the System.
 - 2) All sales of Ticket Agent Tickets shall be made at the PCPA Ticket Centers to the general public only.
 - 3) The Commission or any employee, agent, independent contractor or representative of the Commission shall not sell any Ticket Agent Tickets for an event in excess of the stated Ticket Agent Ticket limit for such event, engage in, participate in, or assist the practice known as scalping or brokering Ticket Agent Tickets, provide Ticket Agent Tickets through preferential sale, or provide inside information concerning Ticket Agent Ticket attractions. This Section does not apply to the sale of Tickets for Events.
 - 4) The PCPA Ticket Centers shall comply with all policies and procedures promulgated by Ticket Agent in relation to sales of Ticket Agent Tickets provided such policies and procedures are provided to the Commission in advance of any Ticket Agent Ticket sales.
 - 5) All receipts and proceeds from the sale of Ticket Agent Tickets shall remain the property of Ticket Agent, shall be segregated from the PCPA Ticket Centers' other assets and shall be held in trust by the Commission on behalf of Ticket Agent. The Commission shall have no right, title or interest in or to the ticket proceeds or receipts from the sale of Ticket Agent Tickets. The Commission shall deposit all proceeds once per week in an account to be designated by Ticket Agent. The Commission shall not use any receipts or proceeds from the sale of Ticket Agent Tickets as its own property, or in the form of loans to itself, or as collateral for loans from third parties to itself or otherwise, and such funds shall not be subject to assignment or alienation by the Commission or to the claims of

creditors of the Commission. This Section does not apply to the sale of Tickets for Events.

- 6) For those sales of Ticket Agent Tickets by the Commission using the System, Ticket Agent will pay the Commission those fees set forth in Exhibit B.
- 7) The Commission shall, as Ticket Agent's sales agent, charge each Ticket Agent Ticket purchaser the face value of the Ticket Agent Ticket plus a convenience charge, as specified by Ticket Agent. Ticket Agent may change the amount of the convenience charge from time to time by giving the Commission notice thereof in writing or via the System, whereupon the Commission shall charge each Ticket Agent Ticket purchaser such adjusted convenience charge immediately upon such effective date. The Commission may not otherwise change the amount of the convenience charge and may not assess any other charge against a Ticket Agent Ticket purchaser.
- 8) The Commission acknowledges and agrees that its obligations to remit and pay Ticket Agent all receipts or monies due from sold or unaccounted Ticket Agent Tickets, less the commission, and the rights of Ticket Agent in and to such remittance and payment shall be absolute and unconditional and shall not be subject to abatement, reduction, setoff, defense, counterclaim or recoupment due or alleged to be due, or by reason of, any past, or present or future claims which the Commission may have against Ticket Agent or against any person for any reason whatsoever.
- 9) The Commission's breach of any term, covenant or condition set forth in this Section shall, at Ticket Agent's option, give Ticket Agent the right to terminate the Commission's right to be a Ticket Agent Ticket outlet.

6. POWERS RESERVED TO THE COMMISSION

The Commission reserves the following powers:

- A. The final determination of all policies and procedures related to the operation and management of all PCPA Facilities' automated ticketing services (but in no event does such determination extend to the operation and the management of the System).
- B. Sole discretion to cancel, terminate or interrupt any Event, and cause the patrons to be dismissed during any Event. The Commission shall not be liable to Ticket Agent for any loss or cost occasioned by any such determination or action by the General Manager for Visitor Venues, or his or her designee, taken in good faith for the benefit or protection of the Commission and the public generally or the PCPA Facilities.

- C. The power to access PCPA Ticket Center areas at any time.
- D. Once per quarter per Accounting Year, upon a dispute between the parties in regard to any financial issues under this Agreement or upon request of the Metro Auditor, the Commission may, at its discretion, conduct a performance review and/or audit of Ticket Agent's compliance under this Agreement. The Commission shall provide reasonable notice prior to commencing any performance review and/or audit.

7. **INSURANCE AND INDEMNIFICATION**

A. **Obligations of Ticket Agent**

- 1. **Indemnity.** It is understood and agreed that, to the fullest extent permitted by law, Ticket Agent shall indemnify and hold harmless Commission, Metro, the City of Portland and their officers, agents and employees from and against all claims, damages, losses and expenses, including but not limited to attorney's fees and court costs (collectively, "Claims"), arising out of or resulting from a material breach of the terms set forth in this Agreement or any acts or omissions in performance of this Agreement by Ticket Agent, its employees, and subcontractors. In no event will Ticket Agent be responsible for or have any duty to indemnify the Commission for any Claims arising out of the sole negligence or willful misconduct of the Commission.
- 2. **Insurance.** Ticket Agent shall provide a Comprehensive General Liability Insurance Policy, Automobile Liability Policy, and Workers Compensation Policy. Coverage to be provided by the foregoing insurance policies shall include, but not be limited to, coverage commonly referred to by the insurance industry as follows:
 - a. Premises/Operations Liability
 - b. Blanket Contractual Liability
 - c. Broad Form Bodily Injury and Property Damage Liability, including loss of use
 - d. Personal Injury
 - e. Products/Completed Operations Liability
 - f. Fire Legal Liability

Automobile Liability: Automobile Liability, including coverage for owner, non-owned, hired or borrowed vehicles.

Workers Compensation: Stop Gap or Employer's Contingent Liability

The Comprehensive General Liability policy shall:

- a. Name, Metro, The City of Portland, Commission officers, agents and employees as additional insured.
- b. Provide for not less than thirty (30) days advance written notice to the Commission regarding termination or any material change to the policy.
- c. Include a "cross liability" (severability of interest) clause and a breach of warranty clause.
- d. Include limits of protection as follows:

Not less than \$1,000,000.00 for the Comprehensive General Liability Policy written on a per-occurrence basis.

In the event that PCPA Ticket Facilities are destroyed by an act of God, fire, vandalism, terrorism, or similar events, so that continued operation thereof is not feasible, the Commission will be under no obligation to replace them.

Workers' Compensation Insurance: Ticket Agent, its subcontractors, if any, and all employers working under this Agreement that are subject employers under the Oregon Workers' Compensation Law shall comply with ORS 656.017, which requires them to provide Workers' Compensation coverage for all their subject workers. Contractor shall provide Commission with certification of Workers' Compensation insurance including employer's liability. If Ticket Agent has no employees and will perform the work without the assistance of others, a certificate to that effect may be attached, as an Exhibit in lieu of the certificate showing current Workers' Compensation.

B. Obligations of the Commission

Subject to the limitations of the Oregon Tort Claims Act, the Commission shall indemnify and save harmless Ticket Agent and its affiliates against and from all Claims resulting from or in connection with (i) its negligent operation of the System or (ii) the operation of the Facility including, without limitation, security measures or precautions (or lack thereof) in connection with any Event at the Facility for which Tickets are sold.

C. Limitation of Liability

NEITHER PARTY HEREUNDER NOR ANY MANUFACTURER OR SOFTWARE PROVIDER FOR THIS SYSTEM SHALL IN ANY EVENT BE LIABLE FOR SPECIAL, INDIRECT, INCIDENTAL, PUNITIVE OR CONSEQUENTIAL DAMAGES, INCLUDING, BUT NOT LIMITED TO LOST INCOME, LOST REVENUE, OR LOST PROFIT, WHETHER SUCH DAMAGES WERE FORESEEABLE OR NOT AT THE TIME THAT THIS AGREEMENT WAS ENTERED INTO AND WHETHER OR NOT SUCH DAMAGES ARISE OUT OF BREACH OF WARRANTY, A BREACH OF THIS AGREEMENT, NEGLIGENCE, STRICT LIABILITY OR ANY OTHER THEORY OF LIABILITY. FURTHERMORE, EXCEPT AS EXPRESSLY STATED HEREIN, THERE ARE NO WARRANTIES, CONDITIONS, GUARANTIES OR REPRESENTATIONS AS TO MERCHANTABILITY, FITNESS FOR A PURPOSE OR OTHER WARRANTIES, CONDITIONS, GUARANTIES OR REPRESENTATIONS, WHETHER EXPRESS OR IMPLIED, IN LAW OR IN FACT, ORAL OR IN WRITING.

8. CONFIDENTIALITY

To the extent allowed under Oregon public records laws, each party will preserve as confidential the proprietary information of the other party, including business practices, products, technology (including, without limitation, any information, design specifications programs and any other supporting or related materials or information whatsoever relating to the System, the Hardware and the Software), Commission lists, know-how, and any other information that is treated as confidential and is of value to the other party; provided, however, that the foregoing shall not apply to any information which becomes a matter of general knowledge within the public domain or if the recipient of such information is obligated to disclose the same by reason of any court order. Commission retains the exclusive rights to all Ticket Buyer information with respect to those persons who purchase Tickets for Events, including name, mailing address, email address, and telephone number.

9. TERMINATION FOR BREACH

In the event that either party shall default in the material obligations or conditions set forth in this and other paragraphs of this Agreement, and such default shall continue unremedied and no action taken to correct for ten (10) business days after the non-breaching party's written notice of said material default to the breaching party, thereupon, at the other party's option, this Agreement may be terminated upon thirty (30) days written notice by the non-breaching party. Notwithstanding the foregoing, nothing herein shall preclude the Commission or its agents from taking any immediate necessary action to remedy dangerous or unsafe condition. Upon termination of this Agreement, Ticket Agent may remove its Hardware from the PCPA Ticket Centers upon reasonable notice to the Commission.

10. ASSIGNMENT

Both parties fully understand and agree that the highly skilled and professional management and operation of the automated ticket services for PCPA Facilities are of paramount importance and that this Agreement would not be entered into by the Commission except for its confidence in, and assurances provided for, the character, management abilities and financial stability of Ticket Agent. Ticket Agent, therefore, shall not sell, assign, sublet, transfer or in any manner encumber the rights and privileges granted herein, nor allow such assignment, subletting, transfer or any other encumbrance to occur by operation of law or otherwise without the prior consent of the Commission which consent shall not be unreasonably withheld.

11. IMPOSSIBILITY

The Commission and Ticket Agent shall not hold each other liable for failure to perform as outlined herein (except with respect to financial obligations) where such performance is rendered impossible due to labor strikes, walkouts, acts of God, inability to obtain necessary materials, products and services, civil commotion, fire, unavoidable casualty, or similar causes beyond the control of the Commission or Ticket Agent. Each party agrees to notify the other promptly upon the occurrence of an event or condition which will, or which is likely to, give rise to the likelihood that performance will be rendered impossible or impracticable under this Section. The failure to give prompt notice as herein required shall act as a waiver of any right under this Section.

12. NON-WAIVER PROVISION

No waiver by either party of default in any of the terms, covenants or conditions hereof to be performed, kept or observed by the other party shall be construed to be or act as a waiver of any subsequent default of any of the terms, covenants and conditions herein contained.

13. AMENDMENTS

The Commission and Ticket Agent may amend this Agreement at any time only by written amendment executed by the General Manager of Visitor Venues and Ticket Agent.

14. MISCELLANEOUS PROVISION

This Agreement constitutes the entire agreement and understanding between the Commission and Ticket Agent. No provision of this Agreement may be changed or eliminated unless mutually agreed to in writing by the Commission and Ticket Agent.

All notices relative to this Agreement shall be in writing and shall be mailed by certified mail or delivered in person to the Commission or Ticket Agent. Said notices shall be addressed to the following:

Ticket Agent

New Era Tickets
ATTN: President
930 East Lincoln Highway, Suite 200
Exton, PA 19341

Commission

General Manager of Visitor Venues
MERC
P.O. Box 2746
Portland, Oregon 97208-2746

TicketsWest.com, Inc.
ATTN: President
201 West North River Drive, Suite 180
Spokane, WA 99201
With copies to:

PCPA Executive Director
Portland Center for the Performing Arts
1111 SW Broadway
Portland, Oregon 97205-2913

Metro Attorney
Office of Metro Attorney
600 NE Grand Avenue
Portland, Oregon 97232-2736

This Agreement is made in accordance with the laws of the State of Oregon, which shall be controlling in any dispute which arises under this Agreement.

The situs of this Agreement is Portland, Multnomah County, Oregon. The parties agree that any litigation respecting this Agreement or performance hereunder shall be had at said City and County in the Circuit Court of the State of Oregon or, if jurisdiction is proper, in the Federal District Court, Portland, Oregon.

The underlined titles for the various articles of this Agreement are for reference only. No meaning shall be ascribed to them, and they shall not be used in construing this Agreement.

15. MINORITY BUSINESS ENTERPRISES/WOMEN OWNED BUSINESS ENTERPRISES & EMERGING SMALL BUSINESS PROGRAM/EQUAL FIRST OPPORTUNITY TARGET AREA HIRING

- A. Ticket Agent will use its commercially reasonable efforts to obtain services, supplies and equipment from FOTA and/or MWESB companies and hire from within FOTA. Ticket Agent will give priority to qualified applicants within the FOTA for hiring at Call Centers.

- B. Ticket Agent will locate an Outlet within a small business or community center within the FOTA after consultation with MERC provided it meets certain conditions and criteria necessary for the operation of a successful Outlet.
- C. Ticket Agent will provide annual reports of its contracts with MWESB and FOTA firms as well as hires from the FOTA area.

16. OBEY ALL LAWS

In performing this Agreement, each party shall obey all state, federal, local, and regional laws including all laws regarding discrimination and protection of those with disabilities. Ticket Agent's duties of defense and indemnification pursuant to Article 7 shall apply to any and all claims that Ticket Agent has violated any law.

17. CONFLICT OF TERMS

In the event of any conflict between the terms of the Automated Ticketing Services Agreement and Exhibit A, the terms of Exhibit A shall control.

18. NO THIRD PARTY BENEFICIARIES

It is the intent of the parties that there shall be no third party beneficiaries of this Agreement.

[THIS SPACE IS INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the parties hereto have executed this document as of the day and year first above written.

PATRON SOLUTIONS, LP

**METROPOLITAN EXPOSITION-
RECREATION COMMISSION**

d/b/a NEW ERA TICKETS

By: _____

By: _____

Title: _____

Title: _____

Date: _____

Date: _____

TICKETSWEST.COM, INC.

By: _____

Title: _____

Date: _____

M:\attorney\confidential\05 MERC02 Contracts\04 Ticketing\07 New Era Tickets Automatic Ticketing Services Agreement (PCPA)\Final\Automated Ticketing Services Agreement Final 122911.docx

EXHIBIT A

Organization Name:	Metropolitan Exposition Recreation Commission	(hereinafter referred to as "Commission")
Mailing Address:	600 NE Grand Ave. Portland, OR 97232-2736	
Installation Address:	Portland Center for the Performing Arts 1111 SW Broadway Portland, OR 97205-2999	

hereby contracts for, and agrees to accept, and Patron Solutions, L.P., d/b/a New Era Tickets, a Pennsylvania limited partnership, and TicketsWest.com, Inc. (collectively "Ticket Agent") by its acceptance, as evidenced by its execution of this Service and Usage Agreement (the "Agreement"), agrees to provide, subject to the attached terms and conditions, the Hardware, Software, and services listed below, at the below listed fees.

1. Hardware, Software and/or supplies provided by Ticket Agent:

Qty.	Description	Qty.	Description
As Needed	Ticket Stock and Ticket Envelopes		
10	PC Workstation(s)	4	Report Printer(s)
10	Credit Card Swipe(s)	1	Access Control Server(s)
10	Ticket Printer(s)	27	Access Control Reader(s)
2	Concurrent Report Writer Users	25	Concurrent PCPA Ticket Center Users

All equipment shipping costs during the Term of the Agreement are included in this Agreement.
 All Hardware maintenance during the term of the agreement is included in this Agreement.
 All costs for Software implementation and training are included in this Agreement.

Price includes software for:

- Single Ticket sales
- Season Ticket sales
- Telephone, Outlet and Internet Sales (including true shopping cart functionality)
- Access Control
- Print-at-home Ticketing
- Ticket Forwarding
- E-mail communication
- Internet based season account management
- Internet based Group Sales
- Ticket auctions

2. Schedule of Fees Payable to Ticket Agent by Commission:

A. Enhanced Ticketing Services

Print-at-home/Electronic Ticket Delivery:	No Charge
Online Combo sales and renewals (season tickets):	The greater of 50% of the fees established by Commission for Online Combo sales and renewals or \$5.00 per order.
Primary Auction:	Standard fee for Tickets sold via the Internet, as outlined herein, plus 10% of the gross amount over the established

	Ticket price and any Convenience Fees built into the starting bid price.
Secondary Auction or Ticket Marketplace:	The greater of 10% of the gross amount over the starting bid value or \$5.00 per order.
Ticket Forwarding:	No Charge

B. Primary Ticket Sales (PCPA Ticket Center, Phone, Internet)

Method of Sale	Year 1	Year 2	Year 3	Year 4	Year 5
Tickets sold or issued via the internet (per Ticket):	\$3.65	\$3.65	\$4.10	\$4.10	\$4.60
Tickets sold or issued at the Call Center (per Ticket):	\$3.85	\$3.85	\$4.35	\$4.35	\$4.85
Telephone and/or Internet Fulfillment fee (per Ticket):	\$0.85	\$0.85	\$0.95	\$0.95	\$1.05
Tickets sold or issued via an Outlet (per Ticket):	\$4.15	\$4.15	\$4.65	\$4.65	\$5.15
Sold at PCPA Ticket Center (per Ticket):	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Season ticket sales (per ticket at the PCPA Ticket Center):	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Complimentary Tickets issued at the PCPA Ticket Center (per Ticket):	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00

C. General Services

Event setup (Per Event):	No Charge
Processing fee for all sales paid via credit card:	2.7%

D. Miscellaneous Item Sales

Method of Sale	Year 1	Year 2	Year 3	Year 4	Year 5
Sold at PCPA Ticket Center (per Miscellaneous Item):	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Sold via the Internet (per Miscellaneous Item):	\$1.50	\$1.50	\$1.75	\$1.75	\$2.00
Sold at Ticket Agent Outlets (per Miscellaneous Item):	\$2.50	\$2.50	\$2.75	\$2.75	\$3.00
Sold at the Call Center (per Miscellaneous Item):	\$1.50	\$1.50	\$1.75	\$1.75	\$2.00

Note – Fulfillment and express shipping fees quoted separately for Miscellaneous Item sales

E. Non-Profit Ticket Fees

The above fees for Tickets sold via the internet or at Ticket Agent Outlets or the Call Center for Local

Non-Profit Organizations will be reduced by \$1.25 per Ticket.

F. Volume Discount

The above fees for Tickets sold via the internet or at Ticket Agent Outlets or the Call Center will be reduced by \$0.50 per Ticket for the remainder of the Accounting Year once more than 140,000 total phone, internet and Outlet Tickets are sold for that Accounting Year.

3. Hours of Operation

		Weekdays	Saturday	Sunday	Holidays
A	Administrative Office	9 am – 5 pm EST	Closed	Closed	Closed (See note for holiday schedule**)
B	Client Support	9 am – 11 pm EST	9 am – 5 pm EST	Closed	Closed (See note for holiday schedule**)
C	Technical Support (Emergency)	All event days/nights	All event days/nights	All event days/nights	All event days/nights
D	Phone Reservation Center	Branded 8:00 am – 10:00 pm PST unbranded 24/7	Branded 8:00 am – 10:00 pm PST unbranded 24/7	Branded 8:00 am – 10:00 pm PST unbranded 24/7	Closed (See note for holiday schedule**)
E	Internet Ticket Sales	24/7	24/7	24/7	24/7
F	Access to the System	24/7	24/7	24/7	24/7

A	Administrative Office available for sales, marketing, operations and accounting inquiries
B	Client Support includes non-emergency advice, maintenance and other technical inquiries
C	Technical support includes emergency only advice on days and nights of Events. Non-emergency inquiries subject to additional fees.
E	Internet Ticket sales subject to occasional downtime due to maintenance and network interruptions. To the extent possible, routine maintenance and System upgrades are scheduled during low-peak periods to minimize Ticket Buyer interruption.
F	Access to the System (for Ticket sales and report generation) subject to occasional downtime due to maintenance and network interruptions. To the extent possible, routine maintenance and System upgrades are scheduled during low-peak periods to minimize interruption to the Commission.
**	Holidays Schedule: New Year’s Eve, New Year’s Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, Day after Thanksgiving, Christmas Eve and Christmas Day.

Any material change to these hours must be approved by Commission (such approval not to be unreasonably withheld).

3. Database Marketing Software and Services – Terms and Conditions

A. DEFINITIONS. As used throughout these terms and conditions:

Contact RECORD shall mean all personally identifiable information representing a legal entity or natural person present in the Marketing Database.

Marketing Database shall mean the integration of Ticket Buyer Data and Contact Records in the Platform Application.

Platform Application shall mean the software provided to Commission by Ticket Agent delivered in the form of a hosted service, and its applications (including any update, changes, upgrades or enhancements, or any version release, revision, modification, refinement, fix, work around or improvement) and all the associated documents including in particular the user manuals.

Ticket Buyer Data shall mean any personally identifiable information about the Ticket Buyer that is stored in the Software.

Ticketing Feed shall mean the automatic transfer of Ticket Buyer Data from the Software to the Marketing Database.

B. DATABASE SOFTWARE. Ticket Agent shall provide Commission with one Marketing Database and access to the Platform Application that is solely dedicated and used by Commission.

1. Functionality includes: (i) internet-based, database marketing solution that allows Commission to send targeted, personalized email promotional messages to fans, patrons, and visitors; (ii) dynamic registration interface which includes landing pages with customizable text and graphics and registration page with customizable newsletter signup, topics, and demographical questions; (iii) outbound email transmission to targeted segments of the Marketing Database; (iv) deduplication of email addresses; and (v) activity-based email customization.

2. Ticket Buyer Data will be automatically fed into the Platform Application, via the Ticketing Feed, on a nightly basis.

C. DATA. Commission retains all right, title and interest in and to its Ticket Buyer Data and Contact Records. Ticket Agent shall not access a Commission's account, including Ticket Buyer Data and Contact Records, except to respond to service or technical problems, or at the Commission's request.

D. SUPPORT and APPLICATION SETUP.

- (1) Ticket Agent supports Commission in their use of the Platform Application Monday through Friday, 9:00AM to 5:00PM Eastern Standard Time.

- (2) Ticket Agent will set up Commission's Platform Application to include the following: (i) Two (2) email templates; (ii) two (2) user logins; (iii) Files provided to Ticket Agent with Contact Records will be uploaded to the Marketing Database, including opt outs from previous email marketing system, cyber club/VIP club sign up lists, enter to win lists, etc.; (iv) Logos for confirmation pages loaded into Platform Application; (v) Headers and Footers for emails.

E. TRAINING. Ticket Agent will train up to two (2) users on the Platform Application using a series of online web based training classes (WBT). Ticket Agent will train Commission on how to create and deploy email campaigns. Ticket Agent will provide additional WBT as needed or requested by Commission. If Commission wishes to have advanced training on site Commission will be billed one hundred fifty dollars (\$150.00) per hour for travel and training time plus Ticket Agent travel, meal, and lodging expenses.

- F. PROGRAM AUTOMATION.** Part of the Platform Application is a robust engine that automates communications. Ticket Agent will work with Commission and create one (1) program which will include working with Commission to create the program flow, logic, and emails to be inserted into the program. Ticket Agent will create reports to measure the success of the program.
- G. EMAIL TESTING.** Ticket Agent will provide one (1) email testing review. Commission will pick one email that they wish to improve, such as an e-newsletter, and Ticket Agent will conduct a thorough analysis, to include testing frequency of email sends, layout of email, placement of links, list segmentation, and overall message content.
- H. MARKETING DATABASE.** Ticket Agent shall supply Database Marketing Software and Services as outlined above. Commission agrees the number of Contact Records in the Marketing Database shall not exceed 225,000 contacts per year. If Marketing Database exceeds this limit, Commission will be charged an incremental monthly fee of twenty-seven dollars (\$27.00) per month per thousand contact records.
- I. EMAIL DELIVER CAPACITY.** Email delivery shall not exceed fifty-two (52) emails per contact record per year. Additional emails will be billed annually, in arrears, at eleven dollars (\$11.00) per thousand messages sent.
- J. LAWFUL CONDUCT.** Both parties shall comply with all local, state, federal or foreign law, treaty, regulation or convention applicable to Commission and Ticket Agent in connection with the use of the Platform Application, which may include, without limitation: (i) the CAN-SPAM Act of 2003 (U.S.A.), and similar federal or state legislation in the USA enacted from time to time; (ii) the Personal Information Protection and Electronic Documents Act (PIPEDA) (Canada) and similar provincial legislation in Canada enacted from time to time; and (iii) the European Union (EU) Data Protection Directive and other laws applicable to the Commission and Ticket Agent related to privacy, publicity, data protection, electronic communications and anti-spamming laws. Commission is responsible for the collection, accuracy, currency, quality, legality, completeness and use of its Marketing Database and Contact Records that are stored on the Platform Application, disclosed to or used by Ticket Agent, or other authorized service providers in connection with the Platform Application.

EXHIBIT B
Per Ticket Commission for selling Ticket Agent Tickets at the PCPA Ticket Centers

Ticket Price	Outlet Ticket Buyer Convenience Charge	Outlet Commission Payable to the Commission
\$0.00 to \$10.00	\$2.25	\$0.05
\$10.01 to \$14.99	\$3.25	\$0.80
\$15.00 to \$19.99	\$4.00	\$0.99
\$20.00 to \$24.99	\$4.25	\$1.05
\$25.00 to \$29.99	\$5.00	\$1.24
\$30.00 to \$34.99	\$5.25	\$1.30
\$35.00 to \$39.99	\$5.75	\$1.43
\$40.00 to \$44.99	\$6.25	\$1.55
\$50.00 to \$59.99	\$6.75	\$1.68
\$60.00 to \$69.99	\$7.25	\$1.80
\$70.00 to \$79.99	\$7.75	\$1.93
\$80.00 to \$89.99	\$8.25	\$2.05
\$90.00 to \$99.99	\$8.75	\$2.18
\$100.00 to Over	Mutually agreed upon by both parties	Mutually agreed upon by both parties

Staff Report

Agenda Item/Issue: For the Purpose of Approving The Selection of New Era Tickets For Automated Ticketing Services For Events At The Portland Center For The Performing Arts (PCPA) And Authorizing The General Manager of Visitor Venues To Execute The Contract With New Era Tickets/TicketsWest.

Resolution No.: 12-03

Presented By: Robyn Williams

Date: January 4th 2012

Background and Analysis:

In 2004, PCPA entered into a ticketing agreement with Ticketmaster for exclusive ticketing for shows at Schnitzer Concert Hall and Keller Auditorium. Several options to renew were exercised as allowed over the course of the contract. The current contract expires July 1, 2012.

During the past few years, arts organizations using these larger halls expressed an interest in selecting a ticketing system that best fit their organization, subscribers, audiences and donors and not be dependent on whatever system PCPA was using. Changing ticketing systems every few years would present a financial hardship for these arts organizations who can not afford to change systems. Their need to track donors and donations via the ticketing system would create operational and logistical challenges if they had to change ticketing systems on a regular basis. PCPA, as a public venue, has a legal responsibility to periodically go through a competitive process to insure its ticketing company is offering the best service, the most up to date ticket selling and marketing capabilities and the best access to tickets at the highest rate of financial return to PCPA. PCPA depends heavily on the revenue generated by ticketing in order to help subsidize the use of the Schnitzer and the Keller by local non-profits. Allowing the non-profits who desired to move off PCPA's ticketing system was discussed with them in 2010 before the RFP process began and there was common agreement that this would be a good move for all.

In March, 2011 a competitive process was begun and a Request for Proposal for Automated Ticketing Services was issued for commercial shows only at Schnitzer Concert Hall and Keller Auditorium. There were no ticketing companies located in the FOTA area that we were able to identify, nor could we find any certified MWESB companies. Twelve responses were received. Five companies were eliminated as they did not meet the requirement of providing call centers and outlets for ticket sales. While the majority of ticket sales occur over the internet, PCPA feels that as a public agency it has an inherent responsibility to insure strong public access to tickets. At present almost 15% of PCPA's sales are from phone and outlets.

An evaluation committee consisting of representatives from PCPA's box office and marketing staff, Metro's finance department and a former employee of the Oregon Symphony reviewed the proposals and scored the companies according to a scoresheet provided by Metro purchasing with the following criteria: Diversity, understanding of the business requirements, outlet and phone capabilities, system capabilities and ease of use, industry experience, client references, staffing and support and projected cost/revenue opportunities for PCPA.

As the result of this process it was determined that four companies had the best capabilities to meet the ticketing needs of PCPA. These companies were invited to make presentations to the committee. At that time, PCPA contracted with a ticketing consultant to review the RFP and proposals submitted by the four finalists, attend the presentations and assist the committee in evaluating the companies. References on all four companies were checked and at the end of this process, the committee again ranked these companies according to the evaluation criteria that had been established and the highest ranking company-New Era/TicketsWest-was selected and contract negotiations began.

New Era/TicketsWest ranked high in financial return to PCPA. Included is a signing bonus of \$75,000 in year one and \$20,000 each year in the remaining years. PCPA will establish ticket commission fees and pay the Ticket Agent a flat per ticket fee. This allows a greater financial return to PCPA while keeping commission fees lower than is possible under the current ticketing system. After 140,000 tickets are sold the fee to the Ticket Agent is reduced by \$0.50. Based on estimated volume this will increase revenues to PCPA by \$12, 500 a year. Ticket Agent is also providing an investment of approximately \$350,000 worth of ticket selling and bar code scanning equipment.

New Era's parent company is Comcast Spectacor. PCPA will be able to market some of its events through web postings and email communication to their vast database. The Portland Trail Blazers and Rose Garden Arena are also clients of New Era/TicketsWest. This will enable PCPA to maximize ticket sales through cross promotional efforts.

The ticketing website will be exclusively PCPA's brand. No mention of the ticket agent is visible on the website. This allows PCPA to leverage its brand to create a personal ticket buying experience for the customer and establish a stronger relationship with each individual. There are more opportunities for upselling, creating packages, selling sponsorships and linking directly to Facebook and other social media. There are considerably more opportunities to sell sponsorships on the the ticketing website. New Era will be able to access Front Row Marketing-a member of the Comcast parent company-to assist PCPA in selling sponsorships.

PCPA's primary call center is located in down town Portland. PCPA will have a dedicated number so the center employees know the patron is calling about PCPA tickets. As the result of this contract the Ticket Agent will be expanding the number of jobs at this center. Customer service should be excellent at this call center as the workers live and work locally. This is important because 80% of the calls a call center receives are informational. Call center workers will be able to tour our venues, hear presentations about the shows from our clients and better answer questions like where to eat, where to stay, where to park because they work in the area. The local call center is backed up by another call center located in the Pacific Northwest and, if call volume warrants it, can be backed up by other call centers in the East. This network of call centers allows 24/7 access.

New Era/TicketsWest has demonstrated a strong desire to support MERC's FOTA program. They have agreed to give priority consideration to all local call center applicants from FOTA. There are currently 3 outlets at Safeway stores in the FOTA, however Ticket Agent has offered to establish an additional outlet in a small business or community/arts center in the FOTA and desires to work with interested members of the commission in identifying this location. Ticket Agent has a demonstrated interest in bringing in small businesses as outlet providers. Currently they have outlets in small businesses such as Music Millennium, Rudy's Barbershops, the Ace Hotel and the non-profit Travel Lane County which sells tickets at their visitor center's location on I-5

between Eugene and Portland. As PCPA's business on the new system grows we anticipate adding even more small businesses in a variety of communities in the region.

Fiscal Impact:

Assuming an average of 165,000 commercial tickets per year, it is anticipated that revenues will increase by \$240,000. This number does not reflect additional revenue that may come from local non-profits who opt to use this system nor does it include revenues from sponsorships.

Recommendation: Staff recommends that the Metropolitan Exposition-Recreation Commission adopt Resolution12-03, For the Purpose of Approving The Selection of New Era Tickets For Automated Ticketing Services For Events At The Portland Center For The Performing Arts (PCPA) And Authorizing The General Manager of Visitor Venues To Execute The Contract With New Era Tickets/TicketsWest.

