

METROPOLITAN EXPOSITION-RECREATION COMMISSION

RESOLUTION NO. 63

Authorizing the Chair and Secretary/Treasurer to execute Automated Teller Machine Agreements, identified as Exhibits A and B attached, with the First Interstate Bank of Oregon, N. A., and U. S. National Bank, for continued operation of automated teller machines at the Memorial Coliseum.

The Metropolitan Exposition-Recreation Commission finds:

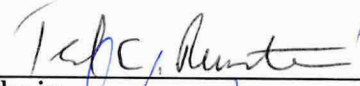
1. That the current lease agreements between the Exposition-Recreation Commission and the First Interstate Bank, and U. S. National Bank, will expire on September 30, 1990.

2. That the current lease incorporates two options to extend the lease for one year each.


3. That the First Interstate Bank and U. S. National Bank have elected to exercise their options to renew the lease for an additional year.

BE IT THEREFORE RESOLVED that the Chair and Secretary/Treasurer are hereby authorized on behalf of the Metropolitan Exposition-Recreation Commission to execute the Automated Teller Machine Agreements, attached, with First Interstate Bank, and U. S. National Bank.

Passed by the Commission on May 9, 1990.

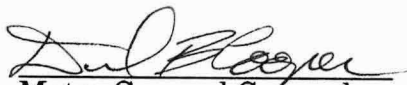


Chair



Secretary/Treasurer

APPROVED AS TO FORM:



Metro General Counsel

AGREEMENT

THIS AGREEMENT, dated this 9th day of May, 1990, is between the Metropolitan Exposition-Recreation Commission, hereinafter referred to as "MERC", whose address is 2000 SW First Avenue, Portland, Oregon 97201-5398, and First Interstate Bank of Oregon, N.A., a national banking association, hereinafter referred to as "First", whose address is PO Box 3131, Portland, Oregon 97208, (together, "the parties").

WITNESSETH:

Whereas, MERC desires to provide continued use of an automated teller machine located in the Memorial Coliseum to serve the banking needs of the MERC staff, visitors and patrons, and

Whereas, First, recognizing that its own interest will be served thereby, represents that it is willing and able and has previously received regulatory approval to install and maintain such a machine in MERC's Memorial Coliseum, and

Whereas, the Exposition-Recreation Commission (ERC) entered into a contract with First for the period beginning October 1, 1985, and ending September 30, 1990, to provide such services and has continued to do so, and has provided written notice to the Commission that they wish to exercise their option for a minimum of one additional year of operation as contained in the current contract, and

Whereas, the ERC has been consolidated into the operation of the MERC, through the Metropolitan Service District as of January 4, 1990, and MERC manages the Memorial Coliseum, and,

Whereas, the parties shall be mutually benefitted by the continued operation of an automated teller machine (ATM) at the Memorial Coliseum;

NOW, THEREFORE, the parties hereby agree that First is granted the right to operate and maintain the ATM under the terms and conditions specified herein.

SECTION 1. TERM.

- 1.1. Term. Subject to earlier termination as provided in this Agreement, the term of this agreement shall commence on October 1, 1990 and continue through October 15, 1995.
- 1.2. Renewal Option. If this Agreement is not in default, MERC shall have the option to renew this Agreement for the term of five (5) years as follows:

- (a) the renewal term shall commence on the day following the date of termination of the preceding term;
 - (b) with the exception of the fee which shall be renegotiated prior to the expiration of the Agreement, the terms and conditions of the Agreement shall be renewed automatically unless MERC delivers written notice to First terminating Agreement. Such notice shall be given not less than ninety (90) days prior to the last day of the expiring term.
- 1.3. Fee. The fee for the said term shall be three hundred dollars (\$300) per month which First agrees to pay to MERC in advance on the fifteenth day of each and every month of said term, commencing October 15, 1990.

SECTION 2. LOCATION AND OWNERSHIP.

- 2.1. Location. The location of the machine will remain at its current site in the glass wall of the Memorial Coliseum near the most northerly front entrance of the building. First will not post or place on the rented premises any signs and/or name plates without prior approval of MERC.
- 2.2 Ownership. First shall retain ownership of the ATM and to all of the components and software necessary to constitute the ATM program, both as it now exists and as it may hereafter be modified. As between MERC and First, the ATM is not to become a fixture and First may remove it from the location upon expiration, cancellation, or termination of this Agreement, during normal business operations of MERC.

SECTION 3. OPERATION, MAINTENANCE AND REPAIR.

- 3.1. First shall be responsible for the servicing of the ATM.
- 3.2. MERC shall be responsible for the cost and provision of sufficient electrical power to operate the ATM.
- 3.3. MERC shall notify First of any malfunction or damage to the ATM or related equipment immediately upon discovery thereof and shall make all reasonable efforts to prevent vandalism of the ATM. MERC shall take all action reasonably necessary to protect the ATM and permanent signs.
- 3.4. MERC shall maintain the exterior of the ATM and its vicinity in a safe, clean, neat and orderly condition and answer customers' questions regarding the ATM.

The standard of care provided by the MERC to customers of the ATM shall be the same as may be required by law, if any, for other customers of the Memorial Coliseum.

- 3.5. First shall be responsible for all maintenance of the ATM. MERC shall allow First, First's agents, authorized employees or other maintenance or service personnel access to First's ATM at all reasonable times for repair and maintenance and to areas from which First's ATM can be repaired and maintained. First's employees and agents shall carry identification while on Memorial Coliseum premises and shall present such identification upon request by MERC personnel. First shall provide MERC with a list of all emergency telephone numbers and contacts. MERC shall provide the names and telephone numbers of personnel who can be contacted or notified after business hours.
- 3.6. MERC shall notify First at least five (5) business days before relocating or intentionally interrupting power or alarm connections to the ATM.
- 3.7. First shall be responsible for all telecommunication expenses resulting from operation of the ATM, including payment of any line fee or charge which may be imposed.
- 3.8. First or its designated agent shall be responsible for complete maintenance and service of the ATM, including:
- (a) regularly scheduled and unscheduled emergency equipment diagnosis, servicing, repair and maintenance, including replacement parts;
 - (b) maintenance of communication lines and communications links to First's computer and to any applicable EFT system;
 - (c) clearing and settlement of transactions;
 - (d) integration with First's ATM alarm system; and
 - (e) providing cash, receipts, ribbons and other supplies as required.
- 3.9. First will use its best efforts to ensure that the ATM is operational and available for use at all times. Unless functions are eliminated due to conditions described under force majeure, the ATM is operational when it is capable of performing
- (a) for First's customers the following transactions:
 - (i) cash withdrawals from checking, savings and money market accounts,
 - (ii) cash advances from credit card accounts,
 - (iii) transfers between checking, savings, money market and credit accounts, and
 - (iv) balance inquiries on checking, savings, money market and credit accounts; and,
 - (b) for customers of other banks belonging to an EFT system to which First is a participant, the functions allowed by those banks.

First will use its best efforts to ensure that the ATM shall be capable of performing the functions described in clauses (a) (i) through (iii) and (b) of this section.

SECTION 4. PROPERTY INSURANCE.

- 4.1. MERC and First shall each bear their own expenses of any insurance insuring their individual property.**
- 4.2. Neither party shall be liable to the other (or to the other's successors or assigns) for any loss or damage caused by fire or any of the risks enumerated in a standard fire insurance policy with extended coverage endorsement, and in the event of insured loss, neither party's insurance company shall have a subrogated claim against the other.**

SECTION 5. ADVERTISING.

- 5.1. First shall provide and install a sign or signs on or above the ATM that identifies it. Appearance must conform with signage requirements of Memorial Coliseum and be approved by the General Manager of the Memorial Coliseum in writing, prior to installation.**
- 5.2. First shall have reasonable access to the ATM for demonstrating the ATM to customers.**
- 5.3. MERC is granted the right to approve or reject use of its name and logo in First's advertisements and promotions, the design of the exterior signs, and the sales material to be placed on the ATM. First is granted the right to approve or reject the use, in MERC advertisements and promotions, of the names and logos of First and any electronic fund transfer system in which First may, from time to time, participate. Approval under this subsection must be obtained prior to use or implementation and shall not be unreasonably withheld.**

SECTION 6. REMOVAL OF ATM.

- 6.1. First shall remove the ATM from the Memorial Coliseum within thirty (30) days after the expiration or termination of this Agreement.**
- 6.2. In the event that the Memorial Coliseum is closed or ceases to be operated, then the ATM may be removed, upon option. Upon closure of the Memorial Coliseum, MERC shall have no further liability hereunder, except for any liabilities accruing prior to closure.**
- 6.3. MERC shall be responsible for the expenses of any remodeling necessitated by removal of the ATM, including moving the ATM from one location at the Memorial Coliseum to another location at the Memorial Coliseum, unless such removal is occasioned by a default under this Agreement by First in which event First shall be responsible for such expenses. First shall be responsible for all other expenses associated with removal of the ATM, unless**

it is occasioned by a default under this Agreement by MERC, in either of which events MERC shall be responsible for all such expenses.

SECTION 7. DEFAULT.

- 7.1.** If the ATM becomes inaccessible to cardholders for fourteen (14) or more consecutive calendar days due to any cause whatsoever, including labor disputes, but not including causes within the sole control of First and causes referred to under force majeure, then First may declare MERC in default with respect to such ATM and remove the ATM.
- 7.2.** If the ATM fails to perform as described in Section 3 of this Agreement, then MERC may declare First in default and request the removal of the ATM.
- 7.3.** An event of default shall occur if either First or MERC fails to comply with any term or condition or fulfill any obligation of the Agreement within thirty (30) calendar days after written notice by the party asserting the default to the defaulting party specifying the nature of the default with reasonable particularity. If the default is of such a nature that it cannot be completely remedied within the thirty (30) day period, this provision shall be complied with if the defaulting party begins correction of the default within the thirty (30) day period and thereafter proceeds with reasonable diligence and in good faith to effect the remedy as soon as practicable.
- 7.4.** In the event of default by either party damages shall be limited to the cost of removing the ATM, which costs shall be the responsibility of the party in default.
- 7.5.** Remedies on default: In the event of a default, this Agreement may be terminated at the option of the non-defaulting party by notice in writing to the defaulting party. In the event of default by either party damages shall be limited to the cost of removing the ATM, which costs shall be the responsibility of the party in default.

SECTION 8. REGULATORY COMPLIANCE AND EFFECT.

- 8.1.** In the event that any legislative, judicial, administrative or other governmental action restricts the use of the ATM so as to make their continued operation unprofitable or undesirable, First may terminate this Agreement and remove the ATM without further liability hereunder, or curtail the operation of the ATM, including the elimination of one or more of the ATM functions listed in subsection 3.8 hereof.
- 8.2.** The parties agree that if any provision of this Agreement is determined to be void by any court of competent jurisdiction, then, if reasonably possible, such

determination will not affect any other provision of this Agreement, all of which provisions remain in effect.

SECTION 9. FORCE MAJEURE.

The parties shall be excused from the performance of any obligation imposed herein for any period and to the extent that a party is prevented from performing such obligations, in whole or in part, as a result of delays caused by the other party or third parties, an Act of God, war, civil disturbance, court order, or other cause beyond its reasonable control, including failures or fluctuations in electrical power, heat, light, air-conditioning, or telecommunications equipment, and such nonperformance shall not be a default hereunder or a ground for termination thereof.

SECTION 10. CONFIDENTIALITY.

MERC shall not disclose the customer transaction or usage volumes of the ATM.

SECTION 11. ASSIGNMENT.

Neither party may assign its rights under this Agreement without the prior written consent of the other party. In the event of an assignment, the assigning party shall remain liable for the performance of all covenants imposed on such party in this Agreement and the assignee shall be subject to all the terms and conditions of this Agreement. Consent to an assignment shall not be unreasonably withheld.

SECTION 12. RIGHTS OF THIRD PARTIES.

By entering into this Agreement the parties hereto do not intend to benefit or confer any right upon any individual or entity not a party hereto. In no event shall anyone other than the parties hereto be entitled to enforce any of the terms of this Agreement.

SECTION 13. RELATIONSHIP OF THE PARTIES.

It is not the intention or purpose of this Agreement to create any type of partnership relation or joint venture. It is understood and acknowledged that First is operating as an independent contractor.

SECTION 14. EMINENT DOMAIN: DAMAGE AND DESTRUCTION.

14.1. If a portion of the premises is condemned or access to the ATM is restricted by condemnation or the threat thereof, then MERC and First shall agree upon a new location at Memorial Coliseum for the ATM. If MERC and First cannot agree upon acceptable relocation premises, First may cancel this Agreement upon ten (10) days written notice to MERC.

- 14.2. If all the buildings at Memorial Coliseum are condemned, this Agreement shall terminate effective as of the date the title vests in the condemning authorities. MERC shall be entitled to all of the proceeds of condemnation other than proceeds attributable to the ATM. First shall be entitled to remove the ATM from the premises at its own expense, but shall have no obligation to restore the premises to their original condition.
- 14.3. If all or any part of the premises, the building in which the premises are located, or the ATM is damaged or destroyed by fire or other casualty, First may elect to cancel this Agreement effective as of the date of the damage.

SECTION 15. LIABILITY.

- 15.1 MERC, to the extent allowable by law, shall hold harmless, defend and indemnify First, its agents, employees, successors, and assigns against all claims, demands, actions and suits, including attorneys' fees and costs, brought against First arising from MERC's negligent performance under this Agreement. MERC's obligation to First hereunder shall be circumscribed by the limitations and exclusions contained in the Oregon Tort Claims Act, ORS 30.260 et seq.
- 15.2. First agrees to indemnify and hold MERC, its agents and employees, harmless from any and all claims, demands, damages, actions, losses and expenses, including attorney's fees, arising out of or in any way connected with its performance of this Agreement, unless such liability, claim, damage or loss is caused by MERC's intentional misconduct or First's negligence, gross negligence or intentional misconduct. First shall obtain and maintain a policy of comprehensive general liability insurance with limits of not less than \$1,000,000 per occurrence which insures MERC against any loss or liability arising from or relating to the presence or operation of the ATM on the premises of the Memorial Coliseum. The policy shall be primary and shall name MERC as an additional insured.
- A certificate evidencing the above insurance shall be provided by First to MERC sixty (60) days prior to installation. Renewal notices shall be sent to Metro upon issuance.
- 15.3. Notwithstanding any statement contained in Section 13.2. to the contrary, First shall have the option to provide MERC with evidence of self insurance which demonstrates First's ability to cover losses of \$1,000,000 for injury to or death of one or more persons in any one accident or occurrence and in an amount of at least \$1,000,000 for property damage liability.

SECTION 16. NOTICES.

Notices permitted or required by this Agreement shall be in writing, sent by certified mail or registered mail, addressed to:

Metropolitan Exposition-Recreation Commission:

Metropolitan Exposition-Recreation Commission
Attn: Tim Fennell
PO Box 2746
Portland, Oregon 97208

First Interstate Bank of Oregon:

First Interstate Bank of Oregon, N.A.
Manager: Consumer Electronic Services
PO Box
Portland, Oregon 972

Metro:

Metro
Daniel B. Cooper, General Counsel
2000 SW First Avenue
Portland, Oregon 97201-5398

Either party may change its address by providing notice of such as provided herein.

SECTION 17. INTERPRETATION.

The law of the state of Oregon shall apply to the interpretation and enforcement of this Agreement.

SECTION 18. BINDING EFFECT.

This Agreement shall be binding upon and inure to the benefit of the successors and assigns of the respective parties hereto; provided however, that this Agreement and all rights hereunder may not be assigned except as specified herein.

SECTION 19. ATTORNEYS' FEES.

If either party institutes any suit or action to enforce any covenant or agreement hereof, the prevailing party shall be entitled to recover such sum of money as the court may adjudge reasonable as attorney's fees in such suit or action, including any appeals taken by either party in such suit or action.

SECTION 20. EXECUTION IN COUNTERPARTS.

This Agreement may be executed in any number of counterparts and by different parties hereto in separate counterparts, each of which when so executed and delivered shall be deemed to be an original and all of which when taken together shall constitute but one and the same instrument.

SECTION 21. WAIVER.

No covenant, agreement or condition of this Agreement shall be deemed waived unless expressly waived in writing. The failure of either party to require strict performance by the other party of any covenant, agreement or condition shall not stop or otherwise affect such party's right to enforce the same, not be a waiver of such party's right to require strict performance in the future.

SECTION 22. ENTIRE AGREEMENT.

This Agreement is the entire agreement between the parties and supersedes any written or oral negotiations or understandings, and any such negotiations or understandings are merged herein. Any modification or amendment of this Agreement must be in writing and signed by an authorized representative of both parties.

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

FIRST INTERSTATE BANK OF OREGON, N.A.

By: _____

Its: _____

METROPOLITAN EXPOSITION-RECREATION COMMISSION

By: TEC _____

Its: CHG _____

By: Stephen L. Oak _____

Its: Secretary / Treasurer _____

AGREEMENT

THIS AGREEMENT, dated this 9th day of May, 1990, is between the Metropolitan Exposition-Recreation Commission, hereinafter referred to as "MERC", whose address is 2000 SW First Avenue, Portland, Oregon 97201-5398, and U.S. National Bank of Oregon, a national banking association, hereinafter referred to as "US", whose address is 111 SW Fifth Avenue, Portland, Oregon 97204, (together, "the parties").

WITNESSETH:

Whereas, MERC desires to provide continued use of an automated teller machine located in the Memorial Coliseum to serve the banking needs of the MERC staff, visitors and patrons, and

Whereas, US, recognizing that its own interest will be served thereby, represents that it is willing and able and has previously received regulatory approval to install and maintain such a machine in MERC's Memorial Coliseum, and

Whereas, the Exposition-Recreation Commission (ERC) entered into a contract with US for the period beginning October 1, 1985, and ending September 30, 1990, to provide such services and has continued to do so, and has provided written notice to the Commission that they wish to exercise their option for a minimum of one additional year of operation as contained in the current contract, and

Whereas, the ERC has been consolidated into the operation of the MERC, through the Metropolitan Service District as of January 4, 1990, and MERC manages the Memorial Coliseum, and,

Whereas, the parties shall be mutually benefitted by the continued operation of an automated teller machine (ATM) at the Memorial Coliseum;

NOW, THEREFORE, the parties hereby agree that US is granted the right to operate and maintain the ATM under the terms and conditions specified herein.

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- 1.1. Term. Subject to earlier termination as provided in this Agreement, the term of this agreement shall commence on October 1, 1990 and continue through October 15, 1995.
- 1.2. Renewal Option. If this Agreement is not in default, MERC shall have the option to renew this Agreement for the term of five (5) years as follows:

- (a) the renewal term shall commence on the day following the date of termination of the preceding term;
 - (b) with the exception of the fee which shall be renegotiated prior to the expiration of the Agreement, the terms and conditions of the Agreement shall be renewed automatically unless MERC delivers written notice to US terminating Agreement. Such notice shall be given not less than ninety (90) days prior to the last day of the expiring term.
- 1.3. Fee. The fee for the said term shall be three hundred dollars (\$300) per month which US agrees to pay to MERC in advance on the fifteenth day of each and every month of said term, commencing October 15, 1990.

SECTION 2. LOCATION AND OWNERSHIP.

- 2.1. Location. The location of the machine will remain at its current site in the glass wall of the Memorial Coliseum near the most southerly front entrance of the building. US will not post or place on the rented premises any signs and/or name plates without prior approval of MERC.
- 2.2 Ownership. US shall retain ownership of the ATM and to all of the components and software necessary to constitute the ATM program, both as it now exists and as it may hereafter be modified. As between MERC and US, the ATM is not to become a fixture and US may remove it from the location upon expiration, cancellation, or termination of this Agreement, during normal business operations of MERC.

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- 3.2. MERC shall be responsible for the cost and provision of sufficient electrical power to operate the ATM.
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The standard of care provided by the MERC to customers of the ATM shall be the same as may be required by law, if any, for other customers of the Memorial Coliseum.

- 3.5. US shall be responsible for all maintenance of the ATM. MERC shall allow US, US's agents, authorized employees or other maintenance or service personnel access to US's ATM at all reasonable times for repair and maintenance and to areas from which US's ATM can be repaired and maintained. US's employees and agents shall carry identification while on Memorial Coliseum premises and shall present such identification upon request by MERC personnel. US shall provide MERC with a list of all emergency telephone numbers and contacts. MERC shall provide the names and telephone numbers of personnel who can be contacted or notified after business hours.
- 3.6. MERC shall notify US at least five (5) business days before relocating or intentionally interrupting power or alarm connections to the ATM.
- 3.7. US shall be responsible for all telecommunication expenses resulting from operation of the ATM, including payment of any line fee or charge which may be imposed.
- 3.8. US or its designated agent shall be responsible for complete maintenance and service of the ATM, including:
- (a) regularly scheduled and unscheduled emergency equipment diagnosis, servicing, repair and maintenance, including replacement parts;
 - (b) maintenance of communication lines and communications links to US's computer and to any applicable EFT system;
 - (c) clearing and settlement of transactions;
 - (d) integration with US's ATM alarm system; and
 - (e) providing cash, receipts, ribbons and other supplies as required.
- 3.9. US will use its best efforts to ensure that the ATM is operational and available for use at all times. Unless functions are eliminated due to conditions described under force majeure, the ATM is operational when it is capable of performing
- (a) for US's customers the following transactions:
 - (i) cash withdrawals from checking, savings and money market accounts,
 - (ii) cash advances from credit card accounts,
 - (iii) transfers between checking, savings, money market and credit accounts, and
 - (iv) balance inquiries on checking, savings, money market and credit accounts; and,
 - (b) for customers of other banks belonging to an EFT system to which US is a participant, the functions allowed by those banks.

US will use its best efforts to ensure that the ATM shall be capable of performing the functions described in clauses (a) (i) through (iii) and (b) of this section.

SECTION 4. PROPERTY INSURANCE.

- 4.1. **MERC and US shall each bear their own expenses of any insurance insuring their individual property.**
- 4.2. **Neither party shall be liable to the other (or to the other's successors or assigns) for any loss or damage caused by fire or any of the risks enumerated in a standard fire insurance policy with extended coverage endorsement, and in the event of insured loss, neither party's insurance company shall have a subrogated claim against the other.**

SECTION 5. ADVERTISING.

- 5.1. **US shall provide and install a sign or signs on or above the ATM that identifies it. Appearance must conform with signage requirements of Memorial Coliseum and be approved by the General Manager of the Memorial Coliseum in writing, prior to installation.**
- 5.2. **US shall have reasonable access to the ATM for demonstrating the ATM to customers.**
- 5.3. **MERC is granted the right to approve or reject use of its name and logo in US's advertisements and promotions, the design of the exterior signs, and the sales material to be placed on the ATM. US is granted the right to approve or reject the use, in MERC advertisements and promotions, of the names and logos of US and any electronic fund transfer system in which US may, from time to time, participate. Approval under this subsection must be obtained prior to use or implementation and shall not be unreasonably withheld.**

SECTION 6. REMOVAL OF ATM.

- 6.1. **US shall remove the ATM from the Memorial Coliseum within thirty (30) days after the expiration or termination of this Agreement.**
- 6.2. **In the event that the Memorial Coliseum is closed or ceases to be operated, then the ATM may be removed, upon option. Upon closure of the Memorial Coliseum, MERC shall have no further liability hereunder, except for any liabilities accruing prior to closure.**
- 6.3. **MERC shall be responsible for the expenses of any remodeling necessitated by removal of the ATM, including moving the ATM from one location at the Memorial Coliseum to another location at the Memorial Coliseum, unless such removal is occasioned by a default under this Agreement by US in which event US shall be responsible for such expenses. US shall be responsible for all other expenses associated with removal of the ATM, unless**

it is occasioned by a default under this Agreement by MERC, in either of which events MERC shall be responsible for all such expenses.

SECTION 7. DEFAULT.

- 7.1. If the ATM becomes inaccessible to cardholders for fourteen (14) or more consecutive calendar days due to any cause whatsoever, including labor disputes, but not including causes within the sole control of US and causes referred to under force majeure, then US may declare MERC in default with respect to such ATM and remove the ATM.
- 7.2. If the ATM fails to perform as described in Section 3 of this Agreement, then MERC may declare US in default and request the removal of the ATM.
- 7.3. An event of default shall occur if either US or MERC fails to comply with any term or condition or fulfill any obligation of the Agreement within thirty (30) calendar days after written notice by the party asserting the default to the defaulting party specifying the nature of the default with reasonable particularity. If the default is of such a nature that it cannot be completely remedied within the thirty (30) day period, this provision shall be complied with if the defaulting party begins correction of the default within the thirty (30) day period and thereafter proceeds with reasonable diligence and in good faith to effect the remedy as soon as practicable.
- 7.4. In the event of default by either party damages shall be limited to the cost of removing the ATM, which costs shall be the responsibility of the party in default.
- 7.5. Remedies on default: In the event of a default, this Agreement may be terminated at the option of the non-defaulting party by notice in writing to the defaulting party. In the event of default by either party damages shall be limited to the cost of removing the ATM, which costs shall be the responsibility of the party in default.

SECTION 8. REGULATORY COMPLIANCE AND EFFECT.

- 8.1. In the event that any legislative, judicial, administrative or other governmental action restricts the use of the ATM so as to make their continued operation unprofitable or undesirable, US may terminate this Agreement and remove the ATM without further liability hereunder, or curtail the operation of the ATM, including the elimination of one or more of the ATM functions listed in subsection 3.8 hereof.
- 8.2. The parties agree that if any provision of this Agreement is determined to be void by any court of competent jurisdiction, then, if reasonably possible, such

determination will not affect any other provision of this Agreement, all of which provisions remain in effect.

SECTION 9. FORCE MAJEURE.

The parties shall be excused from the performance of any obligation imposed herein for any period and to the extent that a party is prevented from performing such obligations, in whole or in part, as a result of delays caused by the other party or third parties, an Act of God, war, civil disturbance, court order, or other cause beyond its reasonable control, including failures or fluctuations in electrical power, heat, light, air-conditioning, or telecommunications equipment, and such nonperformance shall not be a default hereunder or a ground for termination thereof.

SECTION 10. CONFIDENTIALITY.

MERC shall not disclose the customer transaction or usage volumes of the ATM.

SECTION 11. ASSIGNMENT.

Neither party may assign its rights under this Agreement without the prior written consent of the other party. In the event of an assignment, the assigning party shall remain liable for the performance of all covenants imposed on such party in this Agreement and the assignee shall be subject to all the terms and conditions of this Agreement. Consent to an assignment shall not be unreasonably withheld.

SECTION 12. RIGHTS OF THIRD PARTIES.

By entering into this Agreement the parties hereto do not intend to benefit or confer any right upon any individual or entity not a party hereto. In no event shall anyone other than the parties hereto be entitled to enforce any of the terms of this Agreement.

SECTION 13. RELATIONSHIP OF THE PARTIES.

It is not the intention or purpose of this Agreement to create any type of partnership relation or joint venture. It is understood and acknowledged that US is operating as an independent contractor.

SECTION 14. EMINENT DOMAIN: DAMAGE AND DESTRUCTION.

14.1. If a portion of the premises is condemned or access to the ATM is restricted by condemnation or the threat thereof, then MERC and US shall agree upon a new location at Memorial Coliseum for the ATM. If MERC and US cannot agree upon acceptable relocation premises, US may cancel this Agreement upon ten (10) days written notice to MERC.

- 14.2. If all the buildings at Memorial Coliseum are condemned, this Agreement shall terminate effective as of the date the title vests in the condemning authorities. MERC shall be entitled to all of the proceeds of condemnation other than proceeds attributable to the ATM. US shall be entitled to remove the ATM from the premises at its own expense, but shall have no obligation to restore the premises to their original condition.
- 14.3. If all or any part of the premises, the building in which the premises are located, or the ATM is damaged or destroyed by fire or other casualty, US may elect to cancel this Agreement effective as of the date of the damage.

SECTION 15. LIABILITY.

- 15.1 MERC, the extent allowable by law, shall hold harmless, defend and indemnify US, its agents, employees, successors, and assigns against all claims, demands, actions and suits, including attorneys' fees and costs, brought against US arising from MERC's negligent performance under this Agreement. MERC's obligation to US hereunder shall be circumscribed by the limitations and exclusions contained in the Oregon Tort Claims Act, ORS 30.260 et seq.
- 15.2. US agrees to indemnify and hold MERC, its agents and employees, harmless from any and all claims, demands, damages, actions, losses and expenses, including attorney's fees, arising out of or in any way connected with its performance of this Agreement, unless such liability, claim, damage or loss is caused by MERC's intentional misconduct or US's negligence, gross negligence or intentional misconduct. US shall obtain and maintain a policy of comprehensive general liability insurance with limits of not less than \$1,000,000 per occurrence which insures MERC against any loss or liability arising from or relating to the presence or operation of the ATM on the premises of the Memorial Coliseum. The policy shall be primary and shall name MERC as an additional insured.
- A certificate evidencing the above insurance shall be provided by US to MERC sixty (60) days prior to installation. Renewal notices shall be sent to Metro upon issuance.
- 15.3. Notwithstanding any statement contained in Section 13.2. to the contrary, US shall have the option to provide MERC with evidence of self insurance which demonstrates US's ability to cover losses of \$1,000,000 for injury to or death of one or more persons in any one accident or occurrence and in an amount of at least \$1,000,000 for property damage liability.

SECTION 16. NOTICES.

Notices permitted or required by this Agreement shall be in writing, sent by certified mail or registered mail, addressed to:

Metropolitan Exposition-Recreation Commission:

Metropolitan Exposition-Recreation Commission
Attn: Tim Fennell
PO Box 2746
Portland, Oregon 97208

US National Bank of Oregon:

US National Bank of Oregon
Manager: Consumer Electronic Services
111 SW Fifth Ave.
Portland, Oregon 97204

Metro:

Metro
Daniel B. Cooper, General Counsel
2000 SW First Avenue
Portland, Oregon 97201-5398

Either party may change its address by providing notice of such as provided herein.

SECTION 17. INTERPRETATION.

The law of the state of Oregon shall apply to the interpretation and enforcement of this Agreement.

SECTION 18. BINDING EFFECT.

This Agreement shall be binding upon and inure to the benefit of the successors and assigns of the respective parties hereto; provided however, that this Agreement and all rights hereunder may not be assigned except as specified herein.

SECTION 19. ATTORNEYS' FEES.

If either party institutes any suit or action to enforce any covenant or agreement hereof, the prevailing party shall be entitled to recover such sum of money as the court may adjudge reasonable as attorney's fees in such suit or action, including any appeals taken by either party in such suit or action.

SECTION 20. EXECUTION IN COUNTERPARTS.

This Agreement may be executed in any number of counterparts and by different parties hereto in separate counterparts, each of which when so executed and delivered shall be deemed to be an original and all of which when taken together shall constitute but one and the same instrument.

SECTION 21. WAIVER.

No covenant, agreement or condition of this Agreement shall be deemed waived unless expressly waived in writing. The failure of either party to require strict performance by the other party of any covenant, agreement or condition shall not stop or otherwise affect such party's right to enforce the same, not be a waiver of such party's right to require strict performance in the future.

SECTION 22. ENTIRE AGREEMENT.

This Agreement is the entire agreement between the parties and supersedes any written or oral negotiations or understandings, and any such negotiations or understandings are merged herein. Any modification or amendment of this Agreement must be in writing and signed by an authorized representative of both parties.

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

U. S. NATIONAL BANK OF OREGON, N.A.

By: _____

Its: _____

METROPOLITAN EXPOSITION-RECREATION COMMISSION

By: Ted E. Runster

Its: Chair

By: [Signature]

Its: Secretary/Treasurer



Memorial Coliseum Complex

Civic Stadium

May 3, 1990

MEMORANDUM

TO: Metropolitan Exposition-Recreation Commission
FROM: *DB* Dominic Buffetta, Assistant General Manager
SUBJECT: Automated Teller Machines

Background

At the Commission's last meeting, April 11, 1990, staff recommended approval of Resolution No. 63, executing Automated Teller Machine Agreements with First Interstate Bank and U. S. National Bank, for continued operation of automated teller machines at the Memorial Coliseum. These agreements were identical in terms and format with the agreements that the Commission recently put into effect at the Convention Center, except that the term length at the convention center runs through October 15, 1995, and the term length at the Coliseum would have run through September 30, 1995. All the agreements have options that extend the agreements for two additional years.

The Commission tabled this resolution and instructed staff to change the term length to agree with those at the convention center, and to bring the resolution back to the Commission at their next meeting.

Recommendation

The term length of the Automated Teller Machines at the Coliseum has been changed to October 15, 1995, with options that extend the agreements for two additional years, and have been agreed to by the banks. Therefore, staff recommends that the Metro E-R Commission approve Resolution No. 63, attached, authorizing the Chair and Secretary/Treasurer to execute Automated Teller Machine Agreements, attached, with the First Interstate Bank of Oregon and the United States National Bank of Oregon, for continued operation of ATMs at the Memorial Coliseum.

General Manager's Concurrence

attachments