

METROPOLITAN EXPOSITION-RECREATION COMMISSION

RESOLUTION NO. 92

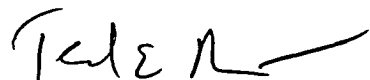
Authorizing the General Manager to execute a Computerized Ticketing Services Agreement with Fastixx wherein Fastixx will provide all necessary computerized ticketing equipment and services for the Oregon Convention Center for the period of October 1, 1990 through June 30, 1991.

The Metropolitan Exposition-Recreation Commission finds:


1. That the Commission authorized staff to solicit proposals to provide computerized ticketing services for the Oregon Convention Center.
2. That such services are necessary to carry out the needs of clients utilizing Oregon Convention Center facilities.
3. That Metropolitan Exposition-Recreation Commission staff has prepared an RFP and the attached service agreement and recommends that Fastixx be selected and the agreement executed by the General Manager on behalf of the Metropolitan Exposition-Recreation Commission.

BE IT FURTHER RESOLVED that the General Manager hereby be authorized on behalf of the Metropolitan Exposition-Recreation Commission to execute the Computerized Ticketing Services Agreement, which is attached to this resolution.

Passed by the Commission on September 19, 1990.




Chairman



Secretary/Treasurer

APPROVED AS TO FORM:



Metro General Counsel

EXHIBIT A

COMPUTERIZED TICKETING SERVICES AGREEMENT

Oregon Convention Center: Three (3) CRT terminals, three (3) ticket printers and one (1) hard copy report printer.

All equipment shall be mounted in a professional manner. The Ticket Agent shall provide the necessary phone signal to the Oregon Convention Center and process it through a matching model and multiplexer. The Ticket Agent shall provide local telephone lines between the Oregon Convention Center and other Commission facilities where automated ticketing equipment is employed.

The quantity of equipment identified in Exhibit A is that quantity anticipated to be necessary to handle the level of business when the system is in full operation. During the term of this agreement, it is possible that a smaller or greater amount of equipment will actually be necessary to adequately serve the public. The General Manager of the Commission shall determine the timing and sequence in which the Ticket Agent will provide the equipment listed in Exhibit A or will provide equipment in addition to that listed in Exhibit A. In making this determination, the General Manager will consider significant increases or decreases in the level of ticket business, quantity of facilities, ticketing functions, etc. If new equipment is to be added, then this determination will take into consideration the increased business, operational changes and new technologies, or all of the above, and quantities of new equipment will be discussed with the Ticket Agent prior to installation.

COMPUTERIZED TICKETING SERVICES AGREEMENT

This agreement is made and entered into on this _____ day of _____, 1990, by and between the Metropolitan Exposition-Recreation Commission ("MERC" / Commission), and _____, Ticket Agent.

WITNESSETH:

RECITALS

1. The Commission is a subdivision of the Metropolitan Service District, a municipal corporation.
2. The Automated Ticket Agent is an Oregon Corporation.
3. The Commission desires to make tickets to events held in the Oregon Convention Center (OCC) as accessible as possible.
4. Providing automated ticket sales to the general public will improve this accessibility and will provide potential for greater revenues for OCC licensees.
5. The Ticket Agent represents that it is able to provide automated ticket sales services for the locations specified.
6. The Ticket Agent represents that it possesses the necessary equipment and systems to provide automated ticket sales, including the computer hardware, software program and system procedures for the purposes of printing, selling, auditing and controlling tickets for events at OCC.

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. "OCC Facilities" means Metropolitan Exposition-Recreation Commission buildings to include the Oregon Convention Center.
- b. "Service"
 - 1) Consulting expertise which meets expectations of the OCC management departments and its licensees.
 - 2) Delivery and installation of fully automated computerized ticketing system for use by September 15, 1990.

- 3) Training of staff to render them fully capable of operating the automated ticketing equipment prior to September 20, 1990.
 - 4) Maintenance and repair of all equipment associated with automated ticketing system, OCC Facilities.
- c. "General Manager" means the chief executive officer responsible for the overall day-to-day management of the Commission's facilities.
 - d. "Accounting Year" means the period commencing July 1 of each year and ending June 30 of the following year.
 - e. "Commission" shall mean the Metropolitan Exposition-Recreation Commission, a subdivision of the Metropolitan Service District (Metro).
 - f. "Ticket Agent" means contractor who will provide all necessary services for the automated ticketing system.

2. ENGAGEMENT

Subject to the terms of this agreement and the direction of the Commission's General Manager or such other Commission personnel as he may designate, the Ticket Agent shall assist in provision of service at the MERC Facilities. This engagement is further subject to the relevant terms and conditions of any existing and subsequent use agreements between the Commission and OCC Licensees.

3. RELATIONSHIP OF THE PARTIES

The Commission and the Ticket Agent have entered into this agreement for the purpose of establishing an independent contractor relationship between the Commission and the Ticket Agent. It is further understood and agreed by and between the parties that nothing herein shall constitute or be construed to be an employment, partnership, joint venture, or joint employer relationship between the Commission, its successors or assigns on the one part, and the Ticket Agent, its successors or assigns on the other part. It is further agreed that the Ticket Agent will provide its own workers compensation insurance or self-insurance program as permitted under Oregon statutes. The Ticket Agent shall, subject to the terms and provisions of this agreement, have complete and independent control and discretion over the operation of the services contemplated by this agreement.

It is expressly understood that neither Ticket Agent nor the Commission has the right to control, direct or influence the labor relations policies or activities of the other, and that neither shall be considered to be the labor relations agent or representative of the other, and that neither shall be responsible for the acts of the other's agents, employees, or representatives which affect either party's respective employees.

The Ticket Agent shall be solely liable for, and shall independently undertake to defend, any and all unfair labor practice charges, grievances, judicial actions, or other employee or union claims, as well as general liability and personal liability, based on conduct alleged to have been committed by its employees, agents or supervisors at any time. However, the Commission and the Ticket Agent will cooperate in good faith in the investigation and defense of any unfair labor practice charge, grievance, judicial action or other employee or union claim which may be filed against any one of them, jointly or separately.

4. TERM OF THE AGREEMENT

The term of this agreement shall be for one (1) year with two (2) one-year options.

<u>Year No.</u>	<u>Fiscal Year</u>	<u>Term</u>
1	90-91	9 months
2	91-92	12 months
3	92-93	12 months

The Commission shall have the option at the end of the first year of this agreement to extend this agreement for two additional one-year terms, based on the same conditions as set out in the original agreement. The Ticket Agent and the Commission may renegotiate compensation and service rates for the option years. Notwithstanding, the Commission shall have the right to renegotiate the terms, with the agreement of the Ticket Agent, of any renewal agreement to accommodate changes in operations, circumstances or industry practice. Sixty (60) days' written notice to the Ticket Agent by the Commission prior to the termination of the original agreement shall be sufficient to exercise the renewal option.

5. TICKET AGENT SERVICE RIGHTS

Subject to the provisions of this agreement, the Commission shall grant to the Ticket Agent the exclusive right to provide all equipment and automated ticketing services to the OCC.

6. DUTIES OF THE TICKET AGENT

- a. The Ticket Agent shall meet the following conditions to the satisfaction of the Commission or its representative (who shall be the sole judge as to compliance) prior to the Commission's granting a written authorization to commence operation under this agreement. If these conditions are not satisfied, the Commission may withhold said authorization until the conditions are met or may terminate this contract after ninety (90) days if the Ticket Agent is unable or unwilling to comply. Ticket Agent will be given written notice of the inception of the ninety (90) day period should the Commission elect to enact this option.

- 1) Ticket Agent shall provide a sample of ticket stock which will be used under this agreement acceptable to the OCC with respect to size, layout, color, makeup, weight, text and clarity.
 - 2) Ticket Agent shall provide acceptable and satisfactory written documentation of safeguards in and associated with the system intended to prevent unauthorized access or manipulation of or to programs, data files, data lines and other components of the system which are necessary for proper operation, control and audit of the full system.
 - 3) Ticket Agent shall provide adequate and satisfactory 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.
 - 4) Ticket Agent shall provide in writing satisfactory documentation of the hardware or software controls that prevent program modification during the on-line operation of the system.
 - 5) Ticket Agent shall provide satisfactory written documentaton of its contingency plan in the event of computer failure or data line failure.
 - 6) Ticket Agent shall be willing to allow a pre-operational audit and system review by the Commission and its independent system's consultant.
- b. The Ticket Agent shall engage in the automated sales of tickets as a consignee for OCC facilities and shall maintain facilities, equipment and systems for such sales during the term of this agreement, which are identical to the facilities, equipment and systems reviewed in the pre-operational inspection. Any modifications to facilities, equipment, systems or services must be approved in writing by the Commission.
- c. The Agent, upon written authorization from the Ticket Center Manager, shall set up on its computer a ticket manifest, including facility seating layout, if applicable, ticket price structure, discounts and ticket format in accordance with directions provided by the Ticket Center Manager. All complimentary tickets, promoter sales and deletions from the manifest must be issued from the Commission Ticket Center. The Agency shall then provide the Ticket Center with a complete manifest for approval by the Commission, prior to tickets going on sale.

The automated ticket company, upon receiving final approval from the Ticket Center, will commence sale.

- d. Sales of tickets will be made at the outlets of the Ticket Agent at the same price as charged at the OCC Ticket Center, with the exception of service charges as described in paragraph f. below.

- e. The Ticket Agent shall place the tickets on sale to the public at the same time they are placed on sale at the Commission Ticket Centers.
- f. The Commission will pay to the Ticket Agent for performing services under this agreement a rate of _____ cents per ticket sold or used by the event permittee. The Ticket Agent may charge a service charge on tickets sold by the Ticket Agent's personnel, to be paid by the ticket purchaser, in accordance with the City Code of the City of Portland, Oregon. This service charge will be no more than Fifty Cents (\$.50) for events charging Five and no/100 Dollars (\$5.00) or less and no more than Seventy-Five Cents (\$.75) for events charging Five and 01/100 Dollars (\$5.01) up to Ten and no/100 Dollars (\$10.00) per ticket for each event. Anything over Ten and no/100 Dollars (\$10.00) will be in accordance with current service charges already utilized by Commission Facilities. The service charge will be printed on the face of the ticket. Nothing in this agreement shall prevent the Commission from collecting and retaining a service charge on tickets sold by the Commission's personnel, and it is agreed that the Commission's personnel shall have the right to sell tickets for all events on the system.
- g. The Ticket Agent shall account to the Commission for the full admission price of each ticket sold, which shall not be reduced by credit card charges, losses due to bad checks or any other losses or deductions incurred in the sale of the tickets. The Ticket Agent shall submit all gross receipts prior to the settlement of such ticketed event as determined by the Ticket Center manager.
- h. The Ticket Agent may sell tickets to events other than those presented at Commission facilities. The Ticket Agent agrees, however, to expend equal or better effort in the selling, advertising and marketing of Commission tickets within its agency.
- i. The Ticket Agent shall maintain consistent hours of operation to facilitate public access, eight hours a day, seven days a week. Any deviation from the schedule shall be approved by OCC's Ticket Center manager.
- j. The Ticket Agent shall provide the equipment, phone signal, ticket stock and service of all equipment specified in Exhibit A, attached hereto and incorporated herein by this reference, at no charge to the Commission.
- k. The Ticket Agent shall also provide at no charge to the Commission a CRT terminal and printer which provides the Ticket Center will transaction-by-transaction reports. This inquiry system shall be acceptable to the Commission and shall provide adequate information to monitor sales and ensure proper auditing of ticket sales.

Ticket settlement and Ticket Agent's compensation shall be paid on the basis of information provided by this report mechanism, subject to audit by representatives of the Commission.

- l. The Ticket Agent shall provide priority of sales to the general public. No tickets shall be held back prior to or during the time of sale.

- m. The Ticket Agent shall engage in across-the-counter sales only, unless otherwise provided for in writing by the General Manager.
- n. The Ticket Agent shall not issue complimentary tickets nor shall it discount the sale price of any ticket without specific written permission of the Ticket Center Manager.
- o. The Ticket Agent shall make refunds and exchanges only as directed and/or approved by the Ticket Center Manager. In the event of an event cancellation, the Ticket Agent will be issued funds equal to the volume of sales from that Agent paid by the Ticket Agent to the Commission for that event for the purpose of refunding. The Ticket Agent shall refund on canceled events at its location(s) and shall maintain accurate records of refunded amounts. Any funds remaining at the close of a refund period shall be returned to the Ticket Center. Refunds shall include service charge and user fees where applicable.
- p. Unless otherwise provided herein, the Ticket Agent shall pay all expenses which are necessary to carry out the terms of this agreement.
- q. The relationship of the Ticket Agent and the Commission is not that of employer and employee, but of an independent contractor and consignor and consignee.
- r. The Ticket Agent's compensation shall be paid by the Commission following the settlement of each licensed event. No funds shall be extracted by the Ticket Agent prior to the settlement for Ticket Agent's compensation. The Commission does not guarantee payment of the Ticket Agent in the event that funds are unavailable for such purpose resulting from the cancellation of the event. The Commission, however, will make every effort to collect amounts owing on behalf of the Ticket Agent. The Ticket Agent may retain service charges authorized under paragraph 6.f. of this agreement independent of ticket receipt.
- s. Tickets may not be consigned by the Ticket Agent for sale to any entity that does not have a current sales agreement with the Commission.
- t. The Commission reserves the right to approve the form, substance and makeup of any automated ticket stock which will be sold by the Ticket Agent for events at Commission facilities.
- u. The Commission also reserves the right to specify information to be printed as a back print on any ticket. The sale of any automated tickets by the Ticket Agent is subject to this provision. The purpose of such back print is for legal notification to patrons of applicable policies, laws and regulations and the Commission will not request any text related to advertising or promotion.
- v. The Ticket Agent agrees that in the event of a ticket sales error on the automated ticket system that the Agent will provide its best effort to sell the pre-printed ticket across the counter.

Any tickets which cannot be sold or which are machine printing errors will be reinstated into inventory. Prior to that ticket being placed back into the inventory by the Ticket Agent, permission must be given by the Ticket Center Manager. The Ticket Agent shall be responsible to provide documentation and justification of any reinstatement to inventory.

Ticket Agent must provide the actual misprinted ticket to the Ticket Center Manager to receive credit against the sale of that ticket.

7. RESPONSIBILITIES OF THE COMMISSION

The Commission shall be responsible for performing the following duties and functions:

- a. The Commission shall furnish the Ticket Agent all necessary event information to adequately plan for all events at the OCC Facilities to assist the Ticket Agent in accomplishing its services and accounting responsibilities.
- b. The Commission shall cooperate with the Ticket Agent in obtaining all necessary licenses and permits.
- c. The Commission shall conduct business with the Ticket Agent in an efficient and professional manner.

8. TELEPHONE SALES

The Commission shall have the exclusive right to implement a telephone sales operation using Commission personnel. This telephone sale operation will be the only one used for the sale of tickets to events at OCC facilities. The Ticket Agent agrees that any telephone sales operation conducted by the Commission shall have access to and the right to sell tickets for all events on the automated ticketing system.

9. ACCOUNTING

The 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 the sales of such tickets, and shall establish and maintain accounting procedures that are acceptable to the authorized representatives of the Commission. The Commission and its agents shall have the right at all reasonable times during normal business hours to inspect all books of accounts and ledgers of the Ticket Agent relating to subject ticket sales, and the right to make or cause to be made audits of these accounts. Further, the Commission reserves the right, and the Agent agrees to allow its systems, hardware and programs to be inspected by agents or representatives of the Commission, at any reasonable time.

The Ticket Agent shall not hold more than Fifty Thousand Dollars (\$50,000) of ticket receipts derived from the sale of Oregon Convention Center events. The

Agent shall deposit any sales receipts in excess of this \$50,000 for sales associated with Oregon Convention Center events to the Commission within a twenty-four (24) hour period after reaching the \$50,000 threshold, unless demanded earlier for purposes of settlement or unless demanded earlier by the event licensee. The procedure for transfer of funds shall be approved in writing by the Commission.

10. BOND

The Ticket Agent at the time of execution of this agreement shall furnish the Commission with a valid surety bond in the minimum sum of One Hundred Thousand Dollars (\$100,000) issued by a surety company qualified to do business in the State of Oregon, acceptable to the Commission. Said surety bond shall be maintained and kept by the Ticket Agent in full force and effect during the entire term of this agreement, and shall be conditioned to ensure the faithful and full performance by the Ticket Agent of all covenants, terms and conditions of this agreement and to stand as security for payment by the Ticket Agent of any valid claim on the part of the Commission or its permittees against the Ticket Agent. The Agent may place an irrevocable letter of credit in lieu of this surety bond or, if the Ticket Agent is already doing business with the Commission, may utilize the current bond in effect by adding an additional sum of Fifty Thousand and no/100 Dollars (\$50,000.00) as described above.

11. POWERS RESERVED TO THE COMMISSION

In the event of a dispute between the Ticket Agent and the Commission, the decision of the Commission concerning the operation or management of the automated ticketing services shall be final and binding on both parties. By way of illustration and not limitation, the reserved powers of the Commission are as follows:

- a. The final determination of all policies and procedures relative to the operation and management of all Commission Facilities automated ticketing services.
- b. Sole discretion to cancel, terminate or interrupt any Commission event, and cause the patrons to be dismissed during any event. The Commission shall not be liable to the Ticket Agent for any loss or cost occasioned by any such determination or action by the General Manager of the Ticket Agent taken in good faith for the benefit or protection of the Commission and the public generally or the Commission's facilities.
- c. The power to have access to any automated ticketing areas at any time.
- d. The power to approve or disapprove the staff provided by the Ticket Agent at any time during the term of this agreement, and to require the Ticket Agent to replace such staff by receipt of written notice by the Commission regarding dissatisfaction with the staff's performance.

- e. The Ticket Agent must maintain through the term of the contract participation in the City of Portland's Affirmative Action/Equal Opportunity employment program. In addition, Ticket Agent shall submit annually for the Commission's approval a program of affirmative action recruitment and training, for minorities and women, as appropriate. Such plan shall be submitted by September 15, 1990 for the first year of operation, and June 1 of each succeeding year. Ticket Agent agrees to participate with and integrate into its affirmative action plan, programs in which the Commission may choose to participate, in programs designed to train and employ disadvantaged members of the local community.

In addition, Ticket Agent shall, consistent with Oregon law and policies adopted by the Commission, pursue a policy of providing first opportunity for available jobs to economically disadvantaged residents living in economically distressed neighborhoods in the immediate vicinity of the OCC and Memorial Coliseum.

- f. The power to terminate this agreement for acts of default by the Ticket Agent in accordance with any item of Article 11 herein.
- g. The Commission must approve in advance and in writing any change in subTicket Agents which may be proposed by the Ticket Agent throughout the life of this agreement.

12. PAYMENT METHOD OF COMMISSION TO Ticket Agent

- a. Ticket Agent shall be compensated _____ per ticket for each event settled by the Commission no more than fourteen (14) days after such settlement of each event.
- b. The Ticket Agent shall not be entitled to any other remuneration from the Commission for the performance of the Ticket Agent's duties, obligations and activities pursuant to this agreement.

13. INSURANCE AND INDEMNIFICATION

It is understood and agreed that, to the fullest extent permitted by law, the Ticket Agent shall indemnify and hold harmless Commission and its agents and employees from and against all claims, damages, losses and expenses, including but not limited to attorneys fees and court costs, arising out of or resulting from any acts or omissions in performance of this agreement by the Ticket Agent, its employees and subcontractors. The Ticket Agent will not bring any action against the Commission due to the Commission's execution of its right to cancel any event.

Ticket Agent shall provide a General Comprehensive Liability Insurance Policy. Coverages to be provided by the foregoing insurance policy or policies shall include, but not be limited to, coverages commonly referred to by the insurance industry as:

- a. Premises / Operations Liability
- b. Owners and Contractors Protective Liability
- c. Blanket Contractual Liability
- d. Broad Form Bodily Injury and Property Damage Liability, including loss of use.
- e. Personal Injury
- f. Stop Gap or Employer's Contingent Liability
- g. Automobile Liability, including coverage for owner, non-owned, hired or borrowed vehicles

- h. Products / Completed Operations Liability
- i. Fire Legal Liability

The foregoing insurance policy or policies shall:

- a. Name Metro and the Commission as additional insured.
- b. Apply as primary insurance on behalf of Metro and Commission, regardless of what insurance the Commission may maintain.
- c. Provide for not less than sixty (60) days advance written notice to the Commission regarding termination or any material change to the policy.
- d. Include a "cross liability" (severability of interest) clause and a breach of warranty clause.
- e. Include limits of protection as follows:
 - Not less than \$1,000,000.00 for the General Comprehensive Liability Policy written on a per-occurrence basis.

A true and certified copy of the insurance policy or policies, including all of the required coverages and endorsements, shall be provided to the Commission prior to commencement of work under this agreement.

In the event that automated ticketing services are destroyed by an act of God, fire, vandalism, etc., to the extent that continued operation thereof is not feasible, the Commission will be under no obligation to replace them.

The Commission shall insure all physical facilities and capital equipment located in the facility and used by the Commission under this agreement. This insurance will not extend to include any personal liability for the Ticket Agent, its agents, employees or contractors.

Any other insurance deemed necessary by the Ticket Agent to its operations and to protect equipment Ticket Agent shall locate at the MERC Facilities shall be obtained at its own expense.

The terms and requirements of this Article shall be reviewed annually and modified as required in the judgment of the Commission's General Manager.

14. TERMINATION OR BREACH BY TICKET AGENT

Material Breach: Any actions by the Ticket Agent or any failure by Ticket Agent to perform any obligation hereunder which directly or indirectly impairs or interferes with the cleanliness, safety, profitability, operational capacity, or favorable public image or reputation of the Commission's facilities shall be a material breach and shall entitle the Commission to terminate this contract. In the event that Ticket Agent shall default in the 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 three (3) days after written notice of said default to the Ticket Agent, thereupon, at Commission's option, this agreement may be terminated upon thirty (30) days' written notice notwithstanding, nothing herein shall preclude the Commission or its agents from taking any immediate necessary action to remedy dangerous or unsafe conditions, regardless of the impact upon the Ticket Agent. The parties agree that the Commission shall retain the right to determine whether any action or failure of Ticket Agent constitutes a material breach hereunder, and any such determination shall be conclusive and shall be binding upon the parties hereto.

Loss of Essential Licenses - Extraordinary Breach: The parties agree that the loss by Ticket Agent of any license or permit necessary to legal performance of its duties and obligations hereunder shall constitute an extraordinary breach of this agreement and shall be grounds for immediate termination by the Commission. This provision shall apply irrespective of the reason for loss or revocation of any necessary license or permit.

Unsatisfactory Performance: The parties agree that the Commission shall retain the right to demand performance which is in all ways satisfactory to it, and that the Commission shall retain the exclusive right to determine whether performance is or is not satisfactory. In the event Ticket Agent's performance hereunder is deemed unsatisfactory, the Commission shall have the right to terminate this agreement and all rights and obligations hereunder. Notice of termination under this section shall provide such time for termination, discontinuance of operations and vacation of facilities as deemed appropriate by the Commission's General Manager.

Termination Accounting: In the event of termination under this Article, each party shall have full access to the other's financial records and accounts which only relate to this agreement in order to facilitate a determination of the financial obligations of each to the other.

15. ASSIGNMENT

Both parties fully understand and agree that the highly skilled and professional management and operation of the audio-visual services in the Commission 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 the Ticket Agent. The 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 at the Commission's sole discretion. Provided, however, in no event will an offering of securities by Ticket Agent be considered a sale, assignment, subletting, transfer or encumbrance. The parties agree, further, that any occurrence, whether within or beyond the control of Ticket Agent, which renders Ticket Agent incapable of performing all duties required hereunder shall constitute a material breach hereunder and shall give the Commission the option of terminating this agreement.

16. BEST EFFORTS

The Ticket Agent and the Commission shall each use their best efforts to obtain the most efficient and high quality operation of automated ticketing service as is possible.

17. IMPOSSIBILITY

The Commission and the Ticket Agent shall not hold each other liable for failure to perform as outlined herein where such performance is rendered impossible or financially impractical 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 the 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 Article. The failure to give prompt notice as herein required shall act as a waiver of any right under this Article.

18. NON-WAIVER PROVISIONS

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

19. ATTORNEY'S FEES

In case suit or action is instituted by either party hereto to enforce compliance with this agreement, the prevailing party in such litigation shall be entitled, in addition to the costs and disbursements provided by statute, to such additional sum of money of the United States as the Court may adjudge reasonable for attorney's fees in the trial of any such suit or action, and in any appeal therefrom.

20. AMENDMENTS

- a. The Commission and the Ticket Agent may amend this agreement at any time only by written amendment executed by the Commission and the Ticket Agent. If authorized by the Commission, the General Manager of the Commission may agree to and execute any other amendment on behalf of the Commission.
- b. Any change in the Scope of the Ticket Agent's services shall be deemed an amendment subject to subsection 20.a.

21. MISCELLANEOUS PROVISIONS

This agreement constitutes the entire agreement and understanding between the Commission and the Ticket Agent. No provision of this agreement may be changed or eliminated unless mutually agreed to in writing by the Commission and the Ticket Agent. This agreement shall be construed to incorporate by reference Ticket Agent's Request for Proposals (RFP), all addendum issued thereto, and Ticket Agent's proposal in response thereto dated _____.

In the event of a conflict between the terms and conditions of this agreement and the documents incorporated by reference, the terms and conditions of this agreement shall take precedence. In the event of a conflict between the documents incorporated by reference, the RFP as modified by any addendum thereto shall take precedence over Ticket Agent's proposal.

The failure of either party to insist upon strict and prompt performance of the terms and conditions of this agreement shall not constitute a waiver of the party's right to strictly enforce such terms and conditions thereafter.

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 the Ticket Agent. Said notices shall be addressed to the following:

Ticket Agent

Commission

Convention Center Manager
Oregon Convention Center
P. O. Box 12210
Portland, OR 97212

With copies to:

General Manager
Metropolitan Exposition-Recreation
Commission
P. O. Box 2746
Portland, OR 97208

General Counsel
Metropolitan Service District
2000 S.W. First Avenue
Portland, OR 97201

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. Subject to the provisions of Section 18 requiring arbitration of all disputes, 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 exists in the Federal District Court, Portland, Oregon.

The underlined titles of 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.

The parties agree that this contract has no value. The parties agree that the performance of Ticket Agent has no value except insofar as Ticket Agent's completed performance is entitled to compensation hereunder.

22. DBE / WBE PROGRAM

- a. Ticket Agent will, consistent with its proposal and the terms of this Agreement regarding payment of gross revenues to the Commission subject to the provisions of the Scope of Work in the Request For Proposals, enter into agreements with those Disadvantaged Business Enterprises and Women-Owned Business Enterprises specified in Ticket Agent's proposal.
- b. The Ticket Agent agrees to follow the policies and rules set out in Commission's Request for Proposals regarding Disadvantaged Business Enterprises and Women-Owned Business Enterprises which by this reference are hereby fully incorporated as if fully set forth herein.
- c. The Ticket Agent shall not replace a Disadvantaged or Women-Owned Business subcontractor with another subcontractor during Agreement performance, so as to reduce its level of DBE/WBE participation below the annual goals then in effect, without prior approval of Commission. In so replacing a Disadvantaged or Women-Owned Business subcontractor, the Ticket Agent shall replace such Disadvantaged or Women-Owned Business subcontractor with another certified Disadvantaged or Women-Owned Business subcontractor or make good faith efforts to do so.
- d. The Ticket Agent shall provide reports on its compliance with the DBE / WBE goals established for this Agreement and with the Disadvantaged Business Program as reasonably requested by Commission.
- e. Commission reserves the right, at all times during the period of this Agreement, to monitor compliance with the terms of the Disadvantaged Business Program and this Agreement, and with any representation made by the

Ticket Agent prior to Agreement award pertaining to Disadvantaged or Women-Owned Business participation in the Agreement, and any representation made by the Ticket Agent regarding replacement of any Disadvantaged or Women-Owned Business subcontractor during the duration of this Agreement.

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

TICKET AGENT:

METROPOLITAN EXPOSITION-
RECREATION COMMISSION

By _____

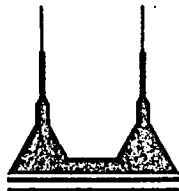
Chair _____

Title _____

Secretary-Treasurer _____

APPROVED AS TO FORM:

Metro General Counsel



OREGON
CONVENTION
CENTER

777 N.E. Martin Luther King Jr. Blvd.
P.O. Box 12210, Portland, Oregon 97212
(503) 235-7575

September 14, 1990

MEMORANDUM

TO: Metropolitan Exposition-Recreation Commission

FROM: Jeffrey A. Blosser *JAB*

SUBJECT: Computerized Ticketing Services
for the Oregon Convention Center

BACKGROUND

The Commission authorized staff to solicit proposals on an RFP basis to provide computerized ticketing services for the Oregon Convention Center. Staff prepared an RFP and advertised the requested services, which resulted in a response by Fastixx and Ticketmaster. Staff reviewed both proposals and has determined that Fastixx responded most completely to the RFP.

Recommendation

Staff recommends that the Commission approve the selection of Fastixx to provide all necessary computerized ticketing services for the Oregon Convention Center and authorize the General Manager to enter into a contract with Fastixx.

JAB/lj

General Manager's Concurrence:

Lee Fehrenkamp
Lee Fehrenkamp

**REQUEST FOR PROPOSALS
OREGON CONVENTION CENTER**

COMPUTERIZED TICKETING SERVICES

The Metropolitan Exposition-Recreation Commission (Commission) is soliciting proposals for a complete computerized ticketing system for the Oregon Convention Center (OCC). Proposals are due no later than 5:00 p.m., PDT, September 4, 1990, at the Oregon Convention Center office, 777 N.E. Martin Luther King Jr. Boulevard, P. O. Box 12210, Portland, Oregon 97212.

BACKGROUND

The Commission intends to provide complete computerized ticketing capabilities to the licensees of the OCC. Space has been provided at the facility to dispense tickets for all events through two enclosed permanent ticket booths located adjacent to the main entrances of OCC on Martin Luther King, Jr. Boulevard and Holladay Street. The OCC staff will not have a full-time box office staff and will rely upon the expertise of current Commission box office personnel to supply operational aspects of ticketed events.

It is anticipated that ninety-five percent (95%) of the tickets sold will be of a general admission nature not requiring an elaborate manifest for seating. Such events will only require general admission tickets. The primary source of OCC ticketing business is expected to be consumer trade shows and a small amount of other public events.

PROPOSED SCOPE OF WORK

Throughout the term of a subsequent agreement, the successful ticket company may be asked to perform, as necessary, the following tasks:

1. Provide three CRT terminals, three ticket printers to successfully operate both ticket booths before and during shows, and one hard-copy report printer.
2. Training of new personnel on the CRT terminals, ticket printer and one hard-copy report printer.
3. Upgrade existing equipment as necessary for new technology in the automated ticketing industry as may be determined by OCC.
4. Provide, at no additional charge, necessary telephone lines to the OCC for complete operation of the computerized ticketing system.
5. To establish a permanent (for the life of the contract) service charge of Fifty Cents (\$.50) for events charging Five and no/100 Dollars (\$5.00) or less and no more than Seventy-Five Cents (\$.75) for events charging Five and 01/100 Dollars

- ▶ Ability to name as additional insured the Commission, its officers, agents and employees for no less than One Million and no/100 Dollars (\$1,000,000.00) combined single limit (C.S.L.) general liability insurance and provide verification of workers' compensation and employer's liability insurance for no less than Five Hundred Thousand and no/100 Dollars (\$500,000.00).

GENERAL CONDITIONS

1. **Limitation and Award:** This RFP does not commit to the award of a contract, nor to pay any costs incurred in the preparation and submission of proposals in anticipation of a contract. The right to accept or reject any or all proposals received as the result of this request, to negotiate with all qualified sources, or to cancel all or part of this RFP, is reserved by the Commission.
2. **Contract Type:** A personal services contract will be executed with the selected firm or individual.
3. **Validity Period and Authority:** The proposal shall be considered valid for a period of at least sixty (60) days and shall contain a statement to that effect. The proposal shall contain the name, title, address and telephone number of an individual or individuals with authority to bind any company contacted during the period in which the proposal will be evaluated.
4. **Equal Employment Opportunity:** The firm will not discriminate against any employee or applicant for employment because of race, color, religion, gender or national origin. The firm will take affirmative action to assure that applicants are hired, and that employees are treated, without any regard to race, color, religion, gender or national origin. Such action shall include, but not be limited to, the following: employment upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.
5. **Compliance with DBE / WBE Program Requirements:** The Commission has made a strong commitment to provide maximum opportunities to State of Oregon certified Disadvantaged Business Enterprises (DBEs) and Women Business Enterprises (WBEs) in contracting activities. In the procurement of any subconsultants and subcontracting required for the requested services, the contractor will reach the Commission's goals of subcontracting 7 percent of the contract amount to Disadvantaged Businesses and 5 percent of the contract amount to Women-Owned Businesses or make a good faith effort, as that term is defined in the Commission's Disadvantaged Business Program as contained in the Commission's purchasing policies.

A subconsultant is any person or firm proposed to work for the Commission or for the contractor directly under this agreement. The Commission does not wish any subconsultant selection to be finalized prior to contract award. For any task or portion of a task to be undertaken by a subconsultant, the prime proposer shall not sign up a subconsultant on an exclusive basis. The producer must assume responsibility for any subconsultant work and be responsible for the day-to-day direction and internal management of the producer's efforts.