

METROPOLITAN EXPOSITION-RECREATION COMMISSION

RESOLUTION NO. 148

Approving an extension to the February 8, 1989 Modified Agreement for Automated Ticket Sales Services with G. I. Joe's, Inc., for ticket services at the Coliseum, Stadium and PCPA, to the May 12, 1989, Modified Agreement for Automated Ticket Sales Services for the Coliseum, Stadium and PCPA and the Oregon Convention Center Agreement of October 1, 1990, with Double Tee Promotions, Inc. / Oregon Ticket Company, Inc., a joint venture, extending all agreements to October 30, 1991.

The Metropolitan Exposition-Recreation Commission finds:

1. That the City Exposition-Recreation Commission signed a Modified Agreement for Automated Ticket Sales Services with G. I. Joe's, Inc., on February 8, 1989, for ticket services at Memorial Coliseum, Civic Stadium and PCPA facilities, and that the term of the agreement was for two years, commencing upon signing of the agreement, or to February 8, 1991.
2. That the City Exposition-Recreation Commission signed a Modified Agreement for Automated Ticket Sales Services with Double Tee Promotions, Inc. / Oregon Ticket Company, Inc., a joint venture, on May 12, 1989, for ticket services at Memorial Coliseum, Civic Stadium and PCPA facilities, and that the term of the agreement was for two years, commencing upon signing of the agreement, or to May 12, 1991.
3. That the Metropolitan Exposition-Recreation Commission signed an Agreement for Automated Ticket Sales Services with Double Tee Promotions, Inc. / Oregon Ticket Company, Inc., for services at the Oregon Convention Center on October 1, 1990, for a period of nine months, or to June 30, 1991.
4. That the Commission by Resolution on December 12, 1990, extended the contracts for the Coliseum, Stadium and PCPA facilities to June 30, 1991, for the purposes of having contract expiration dates contiguous and to allow time to analyze potential modifications to the contracts.
5. That the Commission by Resolution on June 19, 1991, extended the contracts for the Coliseum Stadium and PCPA facilities to September 28, 1991, for the purposes of allowing time to analyze potential modifications to the contracts.
6. That it is the desire of the Metro E-R Commission to extend all agreements for automated ticketing services for a period of thirty-two (32) days beyond the current contract or contract extension periods expiring September 28, 1991, contingent upon interim Commission action that may establish the method and Agency or Agencies of operation, prior to the end of that time period, October 30, 1991.

MERC Resolution No. 148
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7. That both Automated Ticket Sales Services Companies have agreed to this extension based on current Agreement terms and conditions.

BE IT THEREFORE RESOLVED that the Metropolitan Exposition-Recreation Commission is willing to extend the February 8, 1989, G. I. Joe's, Inc. Agreement, and the May 12, 1989, and October 1, 1990, Double Tee Promotions / Oregon Ticket Company, Inc., Agreements for thirty-two (32) days and that the Chairman and Secretary / Treasurer are authorized to execute on behalf of the Metro E-R Commission, these extensions through October 30, 1991, upon signing of this Resolution.

Passed by the Commission on September 11, 1991.

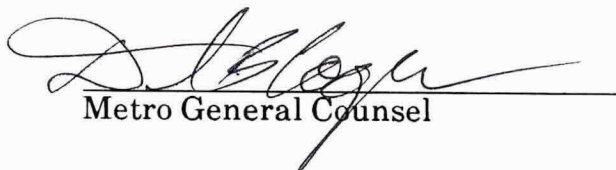


Chairman



Secretary / Treasurer

APPROVED AS TO FORM:



Metro General Counsel

Metropolitan Exposition - Recreation Commission

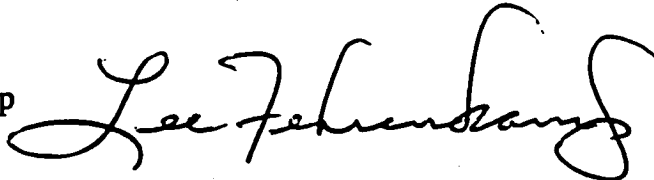
P.O. Box 2746 • Portland, Oregon 97208 • 503/731-7800 • Fax #731-7870 • 777 NE Martin Luther King Jr. Blvd.

September 6, 1991

MEMORANDUM

TO: Richard Ares
Sam Brooks
Ron Kawamoto
Ben Middleton

Ted Runstein
Mitzi Scott
Richard Waker

FROM: Lee Fehrenkamp 

SUBJECT: Draft Automated Ticketing Agreement

I have enclosed a draft of the Automated Ticketing Agreement for your information and review. This document is being delivered to Fastixx and Ticket Master today.

A number of things must take place before we can consider a resolution of a finished agreement:

1. Automated Ticketing Committee must review, comment, recommend change and approve
2. Staff discussion will take place with both Ticket Agents
3. Individual interviews with each Ticket Agent and the Automated Ticketing Committee will be conducted
4. Full commission approval and signed agreement

Considerable staff effort was put into this draft agreement by Jeff Blosser, Dominic Buffetta, Tim Fennell, Betty Curtis, Robert Freedman and Sue Roper. It is my hope that we are now very close to a final document.

cc: staff

DRAFT

**METROPOLITAN EXPOSITION-RECREATION COMMISSION
MODIFIED AGREEMENT FOR AUTOMATED TICKET SALES SERVICES
(Revised July 1991)**

This Agreement is entered into this _____ day of _____, 19____, between the ~~City of Portland, acting by its~~ METROPOLITAN EXPOSITION-RECREATION COMMISSION (Commission), and _____ (Automated Ticket Agent).

WITNESSETH:

RECITALS:

1. The Commission is ~~a department~~ an agency of the Metropolitan Service District ~~City of Portland~~, a municipal corporation.
2. The Automated Ticket Agent is an Oregon Corporation.
3. The Commission desires to make tickets to events held in Commission facilities as accessible as possible.
4. Providing automated ticket sales to the general public will improve this accessibility and will provide better ticket selection at each automated outlet.
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 ticketing sales and service to include outlet sales and telephone sales, including the computer hardware, software program, and system procedures for the purposes of printing, selling, auditing, and controlling tickets for events at Commission facilities.

NOW, THEREFORE, the parties hereto do mutually agree as follows:

I. SCOPE

1. 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.

- A. Ticket Agent shall provide a sample of ticket stock which will be used under this agreement acceptable to the Commission with respect to size, layout, color, makeup, weight, text and clarity.
 - B. 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.
 - C. 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.
 - D. 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.
 - E. Ticket Agent shall provide satisfactory written documentation of its contingency plan in the event of computer failure or data line failure.
 - F. Ticket Agent shall be willing to allow a pre-operational audit and system review by the Commission and its independent systems consultant.
 - G. **Ticket Agent shall establish and maintain a network of service-oriented outlets throughout the metropolitan area (including southwest Washington). Ticket Agent shall continue to build and expand this network of outlets into other areas of the State and region.**
2. The Ticket Agent shall engage in the automated sale of tickets as a consignee for Commission facilities and shall maintain facilities, telephone room, equipment and systems for such sales during the term of this agreement, which are identical to the facilities, telephone room, 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.

3. The Agent, upon written authorization from the ~~Box Office~~ Ticket Services Manager, shall set up on its computer a ticket manifest, including facility seating layout, ticket price structure, discounts and ticket format in accordance with directions provided by the ~~Box Office~~ Ticket Services Manager. All complimentary tickets, promoter sales, and deletions from the manifest must be issued from the Commission ~~Box Office~~ Ticket Centers. The Agency shall then provide the ~~Box Office~~ 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 ~~Coliseum Box Office~~ Ticket Services Manager, will commence sale.

4. Sale of tickets will be made ~~over the telephone and~~ at all Ticket Agent outlets, at the office(s) of the Ticket Agent and by telephone phone room sales at the same price as charged at the Commission Box Office Ticket Centers, with the exception of service ticket convenience charges as described in paragraphs 6 and 14 below.
5. The Ticket Agent shall place the tickets on sale to the public at the same time they are placed on sale at the Commission Box Office Ticket Centers. The Commission shall set all times and dates and outlet locations for tickets to be placed on sale. All outlets must sell all events at Commission facilities if so unless otherwise authorized by the Commission.
6. The Commission will not pay any remuneration to the Ticket Agent for performing services under this agreement. The Ticket Agent may independently establish a commission rate for the sale of all tickets to be paid to the Ticket Agent by the event permittee, but at no time may this commission rate exceed five percent (5%) of the dollar value of the ticket. Additionally the Ticket Agency may, with the concurrence of the General Manager of the Commission, charge to the permittee a setup charge for the manifesting and setup of the ticket inventory on the computer, and a charge for ticket stock. ~~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 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.~~ The Ticket Agent may charge a convenience charge on tickets sold by Ticket Agent personnel, to be paid by the ticket purchaser. This charge will be established by the Facility General Manager or designee at the time of contracting by the permittee / licensee. The Ticket Agent shall pay to the Commission Five Cents (\$.05) of the convenience charge per ticket sold for all outlet sales. Nothing in this Agreement shall prevent the Commission

from collecting and retaining a convenience charge on tickets sold by Commission personnel; and, it is agreed that Commission personnel shall have the right to sell tickets for all events on the system. The Commission will retain one hundred percent (100%) of the convenience charge on tickets sold at MERC ticket centers for events at MERC facilities and will retain fifty percent (50%) of the convenience charge on tickets sold for all other events on the system.

7. The Ticket Agent shall account to the Commission for the full admission price of each ticket sold whether by telephone sales or over-the-counter sales, 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.
8. The Ticket Agency may sell tickets to events other than those presented at Commission facilities. The Ticket Agent agrees however to expend equal or superior effort in the selling, advertising and marketing of Commission tickets ~~within~~ through its agency.
9. The Ticket Agent shall maintain consistent hours of operation in the telephone room and at all outlets, to facilitate public access to purchase tickets, including phone room access, a minimum of eight hours a day, seven days week. Any deviation from the schedule shall be approved by the Commission ~~Box Office~~ Ticket Center Manager as deemed necessary.
10. The Ticket Agent shall provide the equipment, ~~and~~ signal and telephone / data lines specified in Exhibit A, attached hereto and incorporated herein by this reference, at no charge to the Commission.
11. The Ticket Agent shall also provide at no charge to the Commission ~~a~~ CRT terminals and printers which provides each the Box Office Ticket Center with transaction-by-transaction reports. This inquiry system shall be acceptable to the Commission and shall provide ~~adequate~~ ample information to monitor all sales and ensure proper auditing of ticket sales. The Box Office Ticket Services Manager and Ticket Center personnel shall have access to all necessary reports deemed necessary by the Ticket Services Manager as well as the ability to build, set and create seating manifests as necessary.
12. 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 unless authorized by the Commission Ticket Services Manager.

13. The Ticket Agent shall not issue complimentary tickets nor shall it discount the sale price of any ticket without specific written permission of the ~~Box~~ Office Ticket Services Manager.
14. ~~Ticket Agent shall pay Forty Cents (\$.40) per ticket sold through the phone room for all events on the system and Fifty Percent (50%) of will call handling fees charged to the public.~~ Ticket Agent shall pay thirty cents (\$.30) or twelve percent (12 %) of the convenience charge, whichever is greater, per ticket sold through the Ticket Agent's telephone room for all Commission events on the system and fifty cents (\$.50) or twenty-five percent (25%), whichever is greater, of the handling fee for every ticket order sold by telephone. All will-call tickets will be printed at the facility where the event takes place beginning seven (7) days prior to the event. Agent will make every effort to mail telephone order tickets to customers seven (7) days or more prior to the event date.
15. The Ticket Agent shall make refunds and exchanges only as directed and/or approved by the ~~Box Office~~ Ticket Services 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 cancelled events at all its location(s) as well as be responsible for refunding all telephone sales and mail orders generated by Ticket Agent and shall maintain accurate records of refunded amounts. Any funds remaining at the close of a refund period shall be returned to the ~~Box Office~~ Commission. Refunds shall include user's fee and service convenience charge.
16. Unless otherwise provided herein, the 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.
17. 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.
18. ~~Based on the event permittee's preference,~~ The Ticket Agent shall be paid its sales commissions by direct invoice to the event permittee/licensee or at the time of event settlement. No funds shall be extracted by the Ticket Agent prior to the settlement for payment of sales commissions. 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

convenience charges authorized under paragraphs I-6 and 14 of this agreement independent of ticket receipt price.

19. 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.
20. 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.
21. 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.
22. 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 that pre-printed ticket across the counter.

Any tickets which cannot be sold or which are machine printing errors will be turned over to the Ticket Agent's main office for reinstatement into inventory. Prior to that ticket being placed back into the inventory by the main office, written permission must be given by the ~~Box Office~~ Ticket Services 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 ~~Box Office~~ Ticket Services Manager to receive credit against the sale of that ticket.

II. TELEPHONE SALES

~~The Ticket Agent Commission shall have the exclusive right to implement a telephone sales operation for using Commission contracted events personnel. The Ticket Agent agrees that any telephone sales operation conducted by the Commission shall have access to and the right to sell tickets by telephone orders for all events on the automated ticketing system as incidental ticket sales.~~

1. The Commission shall have the exclusive right to implement a telephone sales operation for Commission contracted events. The Ticket Agent will be given assigned the right to handle telephone ticket sales for Commission events and Ticket Agent understands this right may be revoked if the Com-

mission feels it is in the best interest of the overall ticket operation and service to the customer and has the right to take the telephone room ticket sale operation back under Commission control.. The Commission shall have access to and the right to sell tickets by telephone for all events on the Agent's automated ticketing system.

2. The Ticket Agent shall engage in across-the-counter sales and telephone sales for ~~Agent's events~~; Commission events on the Agent's system unless otherwise provided for in writing by the General Manager. The Ticket Agent shall ~~may~~ accept telephone and mail order reservations but the Agent shall report such sales as sold tickets at the time the reservation is made. Telephone and mail orders at Commission offices are intended to be incidental to the Commission's Automated ticketing Agent's business, and charges for such orders must be in accordance with ~~ERC box office~~ MERC Ticket Center policy.
3. Ticket Agent shall not print will-call tickets at Agent's office during this seven (7) day period.
4. The Ticket Agent shall provide on-line credit card authorization systemwide to include telephone sales, outlet sales and all Commission facility locations. Ticket Agent shall also provide a 1-800 number to service the region for all telephone sales activities.
5. Telephone service has to be a positive experience for the customer, which means staffing levels must be available to meet the demand of ticketing activity as well as the dissemination of event information. The Commission may set minimum staffing levels for all telephone room operation if the service does not meet the Commission standard of customer service.

III. OREGON CONVENTION CENTER

1. The Ticket Agent shall sell advance tickets from all outlet locations for all Oregon Convention Center public / consumer trade shows (flat shows) utilizing tickets to gain entry to the event.
2. All tickets sold at the Oregon Convention Center for public consumer trade shows (flat shows) shall be sold onsite by the Oregon Ticket Company dba Fastixx.
3. Events requiring reserved seating configurations such as sporting events, concerts, etc., shall be open to both companies for competitive bidding for such ticket services. The bidding process will result in a Ticket Agent to sell all advance outlet sales and day-of sales , at the facility, for these type of reserved seating events. No more than one (1) Ticket Agent shall sell reserved seating type events.

4. The Commission will pay to the Ticket Agent Ten Cents (\$.10) per ticket for performing services under this Agreement only at the Oregon Convention Center. The Commission will pay to the Ticket Agent for performing services under this agreement a rate of Ten Cents (\$.10) 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.
5. The Commission shall not receive any portion of the convenience charge from tickets sold at Ticket Agent's outlets for public / consumer trade shows held at the Oregon Convention Center.
6. Ticket Agent shall help develop and supply custom ticket stock for all Oregon Convention Center events sold at the facility's Ticket Offices.
7. Ticket Agent shall work towards the goal of having a ticketing system that will provide software capability of multiple tickets for a single event. This type of capability will enhance service for all kinds of events utilizing the Oregon Convention Center.
8. Ticket Agent shall provide state-of-the-art hardware which shall consist of laser printers or thermal printers to reduce the noise in the Oregon Convention Center Ticket Service Centers as well as improve the efficiency of the entire automated ticketing system.

IV. TRAINING AND SERVICE

The Ticket Agent shall provide adequate training for all over-the-counter sales and telephone sales personnel as approved by the Commission. Training is an integral part of customer service and sales with staffing levels to be determined by Ticket Agent and Commission General Manager. Ticket Agent will supply to Commission one-month prior to each contract year staffing levels of all outlets as well as telephone room training and staffing levels. All staffing levels shall be approved subject to review by the Commission for each contract year.

Ticket Agent shall supply twenty-four (24) hour, seven (7) days a week emergency service as necessary for all ticketing operations to insure that sales equipment and software will be effective for Commission events.

Ticket Agent shall pursue software capability to tie into the Commission's computerized ~~current~~ facility ~~automation~~ management system. This would include report capability as well as general information pertaining to event-related sales.

Ticket Agent shall maintain consistency of advertising when events go on sale to provide quality information to the buying public. This information consists of but is not limited to date, time, location of outlets, facility where event is to be held, event information and price of event tickets.

Ticket Agent will provide Commission the ability to capture single-ticket buyer information (name, address, etc.) coded by event and maintained on a mailing list for marketing purposes at the request of the Commission General Manager or his designee.

V. 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.

VI. RESPONSIBILITIES OF THE COMMISSION

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

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

VII. 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:

1. The final determination of all policies and procedures relative to the operation and management of all Commission Facilities automated ticketing services.
2. 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.
3. The power to have access to any automated ticketing areas at any time.
4. 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.
5. 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.

6. The power to terminate this agreement for acts of default by the Ticket Agent in accordance with any item of Article 11 herein.
7. 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.

VIII. 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 over-the-counter and telephone sales of all such tickets sold, 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 One Hundred Thousand Dollars (\$100,000) of ticket receipts derived from the sale of Commission events. The Agent shall deposit any sales receipts in excess of this \$100,000 for sales associated with Commission events to the Commission within a twenty-four (24) hour period after exceeding upon reaching the \$100,000 threshold, unless demanded earlier for purposes of settlement or unless demanded earlier by the event permittee. The procedure for transfer of funds for telephone sales and daily outlet ticket sales shall be by automatic deposit into Commission account for credit card charges transactions as well as

direct deposits from outlet daily ticket sales shall be approved in writing by the Commission.

IX. 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 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.

X. TERM

This agreement shall commence upon signing for a term ending June 30, 1992. and will continue for two years from the signing date. The Commission may extend the agreement at their discretion for two one-year options.

XI. TERMINATION

~~This agreement may be terminated at any time by mutual written consent or by the Commission with or without cause upon giving thirty (30) days' written notice of its intent to do so, or at any time with cause, as stated in XI. BREACH OF AGREEMENT.~~

XI. 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.

XII. 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 \$300,000 ~~\$200,000~~ 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.

~~Should the Automated Ticket Agent desire to sell tickets commonly referred to as "hard tickets", a separate and distinct contract and bonding agreement must be entered into with the Commission. At no time will the Automated Ticket Agency attempt to sell hard tickets without the signing of such contract and meeting the bonding requirements as outlined in the separate contract.~~

XIII. HOLD HARMLESS AGREEMENT

The Ticket Agent does hereby covenant and agrees to indemnify and save harmless the Metropolitan Service District, City of Portland, its Mayor, City Council, the Metropolitan Exposition-Recreation Commission, its officials, officers and employees, individually and collectively, from all claims of whatever nature arising by reason of any and all of its operations hereunder and does hereby agree to and does assume all risks in the operation of its business hereunder and shall solely be responsible and answerable for any and all acts, events or injuries to persons or property. The amount and type of insurance coverage requirements set forth hereunder shall in no way be construed as limiting the scope of indemnity set forth in this paragraph.

The Ticket Agent shall procure and shall maintain during the life of this Agreement, a standard comprehensive liability insurance policy, providing coverage for bodily injury or death in amounts not less than \$200,000 per person, \$500,000 per occurrence, and for property damage in an amount not less than \$50,000.

The Metropolitan Service District, Metro Council ~~City of Portland~~, ~~City Council~~, the Metropolitan Exposition-Recreation Commission and the individual Commission members and their respective officers, employees and agents shall be named on such policy as co-insureds or added thereon by the endorsement as named insureds. Nothing herein shall be construed as limiting the scope of indemnity set forth above.

Prior to commencing work under the terms of this agreement, the Ticket Agent shall provide the Commission with a certificate of insurance in a form acceptable to the Commission, showing that the parties named in the preceding paragraph are named on the Ticket Agent's public liability and property damage policy as named insureds. The certificate shall also provide that should the policy be cancelled by the Ticket Agent or by the underwriter during the life of this agreement, thirty (30) days' written notice prior to the effective date of such cancellation will be given directly to the Commission.

XIV. WORKERS COMPENSATION INSURANCE

The Ticket Agent agrees to obtain workers compensation insurance coverage for all of its workers, employees and subcontractors either as a carrier-insured employer or a self-insured employer, as provided by Chapter 656 of the Oregon Revised Statutes. The Agent shall provide the Commission with a certificate which evidences such coverage.

The Ticket Agent further agrees to maintain workers compensation insurance coverage for the duration of this Agreement. If the Agent's workers compensation insurance coverage should expire during the term of this

Agreement, the Agent shall timely renew such insurance, either as a self-insured or carrier-insured employer as provided by Chapter 656 of the Oregon Revised Statutes, prior to such expiration. Upon obtaining such renewal, the Agent shall provide the Commission with a certificate which evidences that a renewal of such coverage has been obtained.

XV. LAWS AND ORDINANCES

The Ticket Agent shall procure all permits and licenses, and pay all charges and fees necessary and incidental to the lawful conduct of the services. The Agent shall keep fully informed of all existing and future federal, state and local laws, ordinances and regulations which in any manner affect the fulfillment of the agreement and comply with the same.

XVI. ASSIGNMENT

The Ticket Agent shall not assign any rights acquired hereby or hypothecate, sell or mortgage this Agreement without first obtaining the written consent of the MERC Commission, which permission may be withheld for good cause.

XII. BREACH OF AGREEMENT

~~If at any time, in the opinion of the Commission, the Ticket Agent has failed to render services of the highest quality or has failed to perform, keep and observe any of the terms, covenants, or conditions herein contained on the part of the Ticket Agent to be performed, kept and observed, the Commission may give the Ticket Agent written notice to correct such conditions or cure such default, and if any such condition or default shall continue for ten (10) days after written notice the Agreement shall cease.~~

XVII. 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.

XVIII. 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.

XIX. 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.

XX. 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.

XXI. 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 (a).

XXII. 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.

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.

XXIII. DBE / WBE PROGRAM

- 1. 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 Pro-**

posals, enter into agreements with those Disadvantaged Business Enterprises and Women-Owned Business Enterprises specified in Ticket Agent's proposal.

2. 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.
3. 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.
4. 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.
5. 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.

EXECUTED IN QUADRUPLICATE on _____, 19____.

**METROPOLITAN SERVICE
DISTRICT, acting by and through
its METROPOLITAN EXPOSITION-
RECREATION COMMISSION**

TICKET AGENT

By _____
General Manager

By _____

APPROVED AS TO FORM:

Deputy City Attorney