

METROPOLITAN EXPOSITION-RECREATION COMMISSION

RESOLUTION NO. 151

Authorizing the General Manager, on behalf of the Metropolitan Exposition-Recreation Commission, to execute an Automated Ticketing Agreement (as attached) for the Memorial Coliseum Complex, Civic Stadium, Portland Center for the Performing Arts and the Oregon Convention Center.

**The Metropolitan Exposition-Recreation Commission finds:**

1. That the Commission has the authority to adopt this Agreement and enter into a contractual arrangement for providing Automated Ticketing Services for all facilities;
2. That these services are necessary for the operation of all facilities as well as to provide the best possible convenience and service to all patrons utilizing the Commission facilities; and
3. That both currently contracted automated ticket sales services companies have reviewed, discussed and commented with regard to the proposed Agreement in conjunction with the MERC Automated Ticketing Committee and staff.

BE IT THEREFORE RESOLVED that the Metropolitan Exposition-Recreation Commission approves the Automated Ticketing Agreement and authorizes the General Manager to execute on behalf of the Metropolitan Exposition-Recreation Commission this Agreement with the currently contracted ticket agencies.

Passed by the Commission on December 17, 1991.



Chairman



Secretary / Treasurer

APPROVED AS TO FORM:



Metro General Counsel

## AUTOMATED TICKETING SERVICES AGREEMENT

1991 This agreement is made and entered into on this 18 day of DECEMBER, by and between the Metropolitan Exposition-Recreation Commission ("MERC" / Commission), and GI JOE'S TICKETMASTER, 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 Commission Facilities 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 Commission 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 ticketing sales and service, inclusive of 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, 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. "Commission Facilities" means facilities operated or managed by the Metropolitan Exposition-Recreation Commission to include but not limited to the Oregon Convention Center, the Memorial Coliseum, the Civic Stadium and the Portland Center for the Performing Arts (PCPA).
- 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.
- g. "Convenience Charge" identifies a charge levied on all tickets sold through Commission facilities Ticket Centers and Commission-contracted automated ticket agents and telephone centers, to be paid by the ticket purchaser.
- h. "User Fee" identifies a charge levied on each ticket sold to spectator seated events located in the following Commission facilities: Memorial Coliseum, Portland Center for the Performing Arts and Civic Stadium. The User Fee shall be retained by the Commission. The User Fee shall not apply to unsold or complimentary tickets. The User Fee shall be included as part of the total ticket price printed on the ticket. User Fees shall be imposed on all paid admissions as follows:
 

Tickets priced \$10.00 and under	\$ .50 User Fee
Tickets priced \$10.01 to \$22.00	\$1.00 User Fee
Tickets priced \$22.01 and above	\$1.50 User Fee
- i. "Handling Charge" identifies a fee added to each telephone and / or mail order over and above the Convenience Charge.
- j. "Ticket Outlet" means the Ticket Agent's contracted and authorized location for ticket sales as well as all Commission facilities Ticket Centers.
- k. "Subcontracted Ticket Outlet" means special event (consumer trade show / flat show) ticket outlets authorized to sell tickets only with advance written approval from the Commission; not a contracted Ticket Agent's outlet.

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 provide ticketing services for events at Commission Facilities. This engagement is further subject to the relevant terms and conditions of any existing and subsequent use agreements between the Commission and Licensees authorized to promote, conduct events at, or otherwise use Commission Facilities.

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.

4. TERM OF THE AGREEMENT

The term of this agreement shall be from the date of execution hereof until June 30, 1994 unless sooner terminated by the mutual agreement of the parties or as provided for herein.

The Commission shall have the option at the end of the initial term 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. Sixty (60) days' written notice to the Ticket Agent by the Commission prior to the termination of the original agreement or renewal term shall be sufficient to exercise either renewal option. Compensation shall be negotiated for any option year extension or extensions.

5. TICKET AGENT SERVICE RIGHTS

Subject to the provisions of this agreement, the Commission shall grant to the Ticket Agent the non-exclusive right to provide all equipment and automated ticketing services for events conducted at Commission Facilities.

6. DUTIES OF THE TICKET AGENT

The general operation and ticket outlet operations of Ticket Agent shall be subject to the following terms and conditions:

- a) The Ticket Agent shall during the term of this agreement initially and continuously meet the following conditions:
  - 1) Ticket Agent shall provide ticket stock which will be used under this agreement acceptable to the Commission with respect to size, layout, color, makeup, weight, text and clarity.

- 2) Ticket Agent shall provide and maintain 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 and maintain 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 and maintain 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 and maintain satisfactory written documentation of its contingency plan in the event of computer failure or data line failure.
  - 6) Ticket Agent shall allow operational audits and system review by the Commission and its independent system's consultant at the Commission's request.
  - 7) 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.
- b) 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 materially identical to the facilities, telephone room, equipment and systems reviewed by Commission prior to execution of this agreement. Any material modifications to facilities, equipment, systems or services must be approved in writing by the Commission.
  - c) Prior to engaging in ticket sales for any event to be held in a Commission Facility, the Agent, upon written authorization from the 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 Ticket Services Manager. All complimentary tickets, promoter sales, and deletions from the manifest must be issued from the Commission Ticket Centers. The Agency shall then provide the Commission 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 Services Manager, will commence sale.

- d) Sale of tickets will be made at all Ticket Agent outlets, and by telephone sales at the same price as charged at the Commission Ticket Centers, with the exception of Convenience Charges as described in paragraphs 6, 7 and 8 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. The Commission shall set all times and dates for tickets to be placed on sale. All outlets must sell all events at Commission facilities unless otherwise authorized by the Commission's General Manager. Failure of the outlets to sell could result in the loss of the event for the Ticket Agent.
- f) The Commission will not pay any remuneration to the Ticket Agent for performing services under this agreement except as expressly provided for herein. 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 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 Convenience Charge on tickets sold by Ticket Agent personnel, to be paid by the ticket purchaser. This charge will be established by the General Manager or designee at the time of contracting with the permittee/licensee, provided however that the charge shall be within a range as per Exhibit C. Any charges outside of this range must be approved by the permittee/licensee, Ticket Agent and Commission's General Manager. The Ticket Agent shall pay to the Commission Five Cents (\$.05) of the convenience charge per ticket sold for all outlet sales exclusive of telephone 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 Commission ticket centers for events at Commission facilities and will retain twenty-five percent (25%) of the convenience charge on tickets sold for all other events on the system.
- g) 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.
- h) 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 through its agency.
- i) The Ticket Agent shall maintain consistent hours of operation in the telephone room and at all outlets, to facilitate public access to purchase tickets, a minimum of eight hours a day, seven days a week. Any deviation from

the schedule shall be approved by the Commission Ticket Center Manager as deemed necessary.

- j) The Ticket Agent shall provide the equipment, signal and telephone / data lines 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 CRT terminals and printers which provide each Ticket Center with transaction-by-transaction reports. This inquiry system shall be acceptable to the Commission and shall provide ample information to monitor all sales and ensure proper auditing of ticket sales. The Ticket Services Manager and Ticket Center personnel shall have access to all reports deemed necessary by the Ticket Services Manager as well as the ability to build, set and create seating manifests as necessary.
- 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 unless authorized by the Commission Ticket Services Manager.
- m) 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 Services Manager.
- n) The Ticket Agent shall make refunds and exchanges only as directed and/or approved by the 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 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 Commission. Refunds shall include user's fee and convenience charge.
- o) 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.
- p) 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 convenience charges authorized under paragraphs 6(f) and 7(e) of this agreement independent of ticket price.

- q) 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.
- r) The Commission reserves the right to approve the form, substance and makeup of any automated ticket stock, which may include custom ticket stock, which will be sold by the Ticket Agent for events at Commission facilities.
- s) 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 for outlet sales ticket stock.
- t) Any tickets which cannot be sold or which are machine printing errors will be reinstated into inventory. The Ticket Agent shall be responsible to provide documentation and justification of any reinstatement to inventory. All reinstatements to inventory shall be subject to procedures approved by Commission, and documentation consistent with such procedures shall be maintained and be subject to audit by Commission and its representatives.

## 7. TELEPHONE SALES

- a. Contractor recognizes that Commission has the exclusive right to implement a telephone sales operation for Commission contracted events. Ticket Agent is hereby assigned the non-exclusive right to handle telephone ticket sales for Commission events as specified herein. Ticket Agent's right to conduct telephone ticket sales may be revoked if the Commission determines that Contractor has failed to comply with the requirements of this agreement or if this agreement is otherwise terminated. The Commission shall have access to and the right to sell tickets by telephone for all events on the Agent's automated ticketing system.
- b. The Ticket Agent shall engage in across-the-counter sales and telephone sales for Commission events on the Agent's system unless otherwise provided for in writing by the General Manager. The Ticket Agent shall accept telephone order reservations but the Agent shall report such sales as sold tickets at the time the reservation is made. Telephone orders at Commission offices are intended to be incidental to the Commission's ticketing business.
- c. Ticket Agent shall deliver any will-call tickets to Commission's Ticket Center where event is scheduled at least four (4) hours prior to the start of the event unless a shorter time frame is authorized by the Ticket Services Manager.



- d. Ticket Agent shall pay twenty cents (\$.20) during the first year of this agreement, twenty-five cents (\$.25) during the second year and thirty cents (\$.30) during the third year of the convenience charge per ticket sold through the Ticket Agent's telephone sales operation for all Commission events on the system and fifty cents (\$.50) of the handling fee for every ticket order sold by telephone. All tickets purchased beginning six (6) days prior to the event will be printed as will-call tickets at the facility where the event takes place. Agent will make every effort to mail telephone order tickets to customers when purchased, for all orders processed seven (7) days or more prior to the event date.

## 8. OREGON CONVENTION CENTER

- a. 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.
- b. All tickets sold onsite at the Oregon Convention Center for public consumer trade shows (flat shows) shall be sold by the Oregon Ticket Company dba Fastixx.
- c. No more than one (1) Ticket Agent shall sell for contracted events, other than as outlined in paragraph a above, at the Oregon Convention Center.
- d. The Commission will pay to the Ticket Agent, for performing services as outlined in paragraphs a and b, a rate of Ten Cents (\$.10) per ticket sold or used by the event permittee/licensee. The Ticket Agent may charge a convenience charge on tickets sold by the Ticket Agent's personnel, to be paid by the ticket purchaser. This convenience 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 convenience charges already utilized by Commission Facilities. The convenience charge will be printed on the face of the ticket. Nothing in this agreement shall prevent the Commission from collecting and retaining a convenience charge on tickets sold by the Commission's personnel.
- e. 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.
- f. Ticket Agent shall work with facilities to develop custom ticket stock for all Oregon Convention Center events sold at the facility's Ticket Offices.
- g. Ticket Agent shall provide 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.

- h. 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 Centers as well as improve the efficiency of the entire automated ticketing system.
- i. Ticket Agent shall work with Oregon Convention Center staff to develop promotional activity related to Oregon Convention Center events which pertain to transportation and advertising opportunities on the automated ticketing system.

9. TRAINING AND SERVICE

The following provisions apply to both the operation of ticket outlets and telephone sales.

- a. Ticket Agent shall meet or exceed the minimum standards for training, staffing and telephone response set forth in the attached exhibit B.
- b. Ticket Agent shall supply twenty-four (24) hour, seven (7) days a week emergency service as necessary for all ticketing operations to insure that equipment and software will be effective for Commission events.
- c. Ticket Agent shall pursue software capability to tie into the Commission's computerized facility management system. This would include report capability as well as general information pertaining to event-related sales. Commission shall pay all expenses associated with software linkage and hardware necessary to integrate the two systems.
- d. 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 and Commission ticket centers, telephone number for sales, facility where event is to be held, event information and price of tickets.
- e. 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.

10. 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 Commission 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.
- d. The Commission or designee shall review annually all convenience charges to analyze its competitive structure within the marketplace.

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 terminate or suspend this agreement for acts of default by the Ticket Agent in accordance with any item of Article 11 herein.
- e. The Commission must approve in advance and in writing any agreements for subcontracted Ticket Outlets which may be proposed by the Ticket Agent throughout the life of this agreement.
- f. The Commission may, at its discretion, conduct a performance review and/or audit of Ticket Agent's compliance under this Agreement on an annual basis or more frequently as appears necessary.

12. ACCOUNTING

- a. 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 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.
- b. The Ticket Agent shall deposit all receipts (except Ticket Agent's allowable convenience charges) from telephone sales and over-the-counter sales into a deposit-only account or a third-party account which directly relates to the Ticket Agent's outlet sales contractual obligations or agreement. These funds shall not be obligated for any Ticket Agent business but shall remain in this account until weekly settlement or event settlement occurs, whichever comes first. Ticket Agent shall deposit receipts from ticket sales and all sales commission due to the Commission weekly. All necessary documentation will accompany receipts so that all ticket sales information and convenience charge information can be reconciled and settled for the previous week's sales on all Commission events on sale. The procedure for the transfer of funds shall be in accordance with Commission-approved policies.
- c. The Ticket Agent shall notify the Commission when ticket sales for the week have reached the \$200,000 threshold. Ticket Agent shall make every attempt to deposit all receipts or excess funds over \$200,000 at the earliest convenience. All funds to settle Commission events will be available at the time of settlement for such events. Ticket Agent is responsible for ensuring such funds are available to Commission for settlement purposes regardless of the date the weekly settlement is due. If such funds are not available for Commission event settlement, then the Commission may declare Ticket Agent in default of this agreement and take the necessary steps outlined in paragraph 14.

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, Metropolitan Service District, the City of Portland and their officers, 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 this agreement or 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, City of Portland, Commission and their officers, agents and employees 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 Commission 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 FOR 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. In lieu of terminating this agreement for such breach, Commission may suspend Ticket Agent's right to engage in telephone sales for up to six (6) months if Ticket Agent's breach arises out of the operation of Ticket Agent's telephone sales.

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. 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 \$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.

16. ASSIGNMENT

Both parties fully understand and agree that the highly skilled and professional management and operation of the automated ticket services for 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. 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.

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

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.

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.

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

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

With copies to:

Commission Facility Directors  
c/o MERC  
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. 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 / EQUAL OPPORTUNITY HIRING

- 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.

- f. 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 30, 1991 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 as defined in the Commission's Personnel Policies.


23 . COMPLIANCE


Ticket Agent shall be in full compliance with all provisions of this agreement within ninety (90) days of execution.

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

TICKET AGENT:

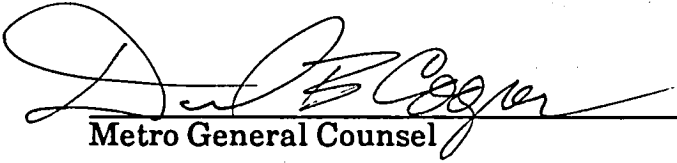
METROPOLITAN EXPOSITION-  
RECREATION COMMISSION

By   
Title GENERAL MANAGER

  
Chair

  
Secretary-Treasurer

APPROVED AS TO FORM:

  
Metro General Counsel

**EXHIBIT A**  
to  
**AUTOMATED TICKETING SERVICES AGREEMENT**

- A. **MEMORIAL COLISEUM:**  
Six (6) CRT terminals, six (6) ticket printers and one (1) hardcopy report printer.
- B. **CIVIC STADIUM:**  
Three (3) CRT terminals, three (3) ticket printers and one (1) hardcopy report printer.
- C. **PERFORMING ARTS CENTER:**  
Eight (8) CRT terminals, eight (8) ticket printers and two (2) hardcopy report printers.
- D. **CIVIC AUDITORIUM:**  
Two (2) CRT terminals, two (2) ticket printers and one (1) hardcopy report printer.
- E. **OREGON CONVENTION CENTER:**  
Four (4) CRT terminals, four (4) laser ticket printers and one (1) hardcopy report printer.

The Ticket Agent(s) shall provide the necessary equipment and signal to each MERC Facility (Memorial Coliseum, Civic Stadium, Performing Arts Center, Civic Auditorium and Oregon Convention Center), to operate the automated ticket system. The Ticket Agent(s) shall pay for ALL phone line charges on a monthly basis, including back-up lines, to operate the automated ticket system.

The amount of equipment identified in Exhibit A is the amount 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(s) 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.

**EXHIBIT B**  
to  
**AUTOMATED TICKETING SERVICES AGREEMENT**

**A. TRAINING**

1. Telephone sales operational procedures shall be submitted for review by the Commission. Telephone sales personnel shall have a minimum of one week's training on the system, one week's training to learn all Commission facility seating manifests for major events and one week's training pertaining to telephone etiquette and customer service.
2. All telephone sales personnel will be evaluated every six months with a copy of the evaluations submitted to the Ticket Services Manager. All telephone sales personnel shall receive continued training for at least one week per year for every year said personnel are selling Commissioner events over the telephone.
3. All personnel selling event tickets over-the-counter at all Ticket Agent outlet locations shall also have a minimum of one week's training on the equipment and customer service procedures plus one week's training on Commission facility manifests.

**B. SERVICE**

1. Ticket Agent may purchase and engage a telephone call sequencing device to monitor incoming phone calls and correctly handle the calls waiting for service (held and answered in order received).
2. Personnel requirements for the telephone room will be maintained so Commission patrons have no longer than a three- (3-) minute wait prior to commencing of service for ticket information, event information or actual sale for a particular event. If such time constraints are not met, the Commission may set minimum staffing levels for the telephone sales operation and may require a minimum number of incoming telephone lines.
3. A supervisor(s) must be on duty to handle questions and difficult patrons when large events begin selling or multiple events are on sale. The primary duty of the supervisor is to help telephone sales clerks as well as answer consumer questions and complaints. This supervisor is in addition to the minimum number of telephone sales personnel necessary to staff the telephone room.

**EXHIBIT C**  
**to**  
**AUTOMATED TICKETING SERVICES AGREEMENT**

<u>TICKET PRICE</u>	<u>OUTLET</u>	<u>PHONE Promoter Pays Credit Card Charges</u>	<u>PHONE Promoter Does Not Pay Credit Card Charges</u>
\$0 to \$10	\$1.00	\$1.50	\$1.75
\$10.01 to \$15	\$1.50	\$2.00	\$2.50
\$15+	\$2.00	\$2.50	\$3.00
\$20+	\$2.00	\$2.50	\$3.25
\$30+	\$2.00	\$2.50	\$3.50

## AUTOMATED TICKETING SERVICES AGREEMENT

TEL  
Lina  
1991 This agreement is made and entered into on this 31st day of December,  
~~1990~~, by and between the Metropolitan Exposition-Recreation Commission ("MERC"  
/ Commission), and Oregon Ticket Company, Inc., 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 Commission Facilities 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 Commission 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 ticketing sales and service, inclusive of 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, 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. "Commission Facilities" means facilities operated or managed by the Metropolitan Exposition-Recreation Commission to include but not limited to the Oregon Convention Center, the Memorial Coliseum, the Civic Stadium and the Portland Center for the Performing Arts (PCPA).
- 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.
- g. "Convenience Charge" identifies a charge levied on all tickets sold through Commission facilities Ticket Centers and Commission-contracted automated ticket agents and telephone centers, to be paid by the ticket purchaser.
- h. "User Fee" identifies a charge levied on each ticket sold to spectator seated events located in the following Commission facilities: Memorial Coliseum, Portland Center for the Performing Arts and Civic Stadium. The User Fee shall be retained by the Commission. The User Fee shall not apply to unsold or complimentary tickets. The User Fee shall be included as part of the total ticket price printed on the ticket. User Fees shall be imposed on all paid admissions as follows:
 

Tickets priced \$10.00 and under	\$ .50 User Fee
Tickets priced \$10.01 to \$22.00	\$1.00 User Fee
Tickets priced \$22.01 and above	\$1.50 User Fee
- i. "Handling Charge" identifies a fee added to each telephone and / or mail order over and above the Convenience Charge.
- j. "Ticket Outlet" means the Ticket Agent's contracted and authorized location for ticket sales as well as all Commission facilities Ticket Centers.
- k. "Subcontracted Ticket Outlet" means special event (consumer trade show / flat show) ticket outlets authorized to sell tickets only with advance written approval from the Commission; not a contracted Ticket Agent's outlet.

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 provide ticketing services for events at Commission Facilities. This engagement is further subject to the relevant terms and conditions of any existing and subsequent use agreements between the Commission and Licensees authorized to promote, conduct events at, or otherwise use Commission Facilities.



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.

4. TERM OF THE AGREEMENT

The term of this agreement shall be from the date of execution hereof until June 30, 1994 unless sooner terminated by the mutual agreement of the parties or as provided for herein.

The Commission shall have the option at the end of the initial term 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. Sixty (60) days' written notice to the Ticket Agent by the Commission prior to the termination of the original agreement or renewal term shall be sufficient to exercise either renewal option. Compensation shall be negotiated for any option year extension or extensions.

5. TICKET AGENT SERVICE RIGHTS

Subject to the provisions of this agreement, the Commission shall grant to the Ticket Agent the non-exclusive right to provide all equipment and automated ticketing services for events conducted at Commission Facilities.

6. DUTIES OF THE TICKET AGENT

The general operation and ticket outlet operations of Ticket Agent shall be subject to the following terms and conditions:

- a) The Ticket Agent shall during the term of this agreement initially and continuously meet the following conditions:
  - 1) Ticket Agent shall provide ticket stock which will be used under this agreement acceptable to the Commission with respect to size, layout, color, makeup, weight, text and clarity.

- 2) Ticket Agent shall provide and maintain 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 and maintain 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 and maintain 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 and maintain satisfactory written documentation of its contingency plan in the event of computer failure or data line failure.
  - 6) Ticket Agent shall allow operational audits and system review by the Commission and its independent system's consultant at the Commission's request.
  - 7) 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.
- b) 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 materially identical to the facilities, telephone room, equipment and systems reviewed by Commission prior to execution of this agreement. Any material modifications to facilities, equipment, systems or services must be approved in writing by the Commission.
  - c) Prior to engaging in ticket sales for any event to be held in a Commission Facility, the Agent, upon written authorization from the 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 Ticket Services Manager. All complimentary tickets, promoter sales, and deletions from the manifest must be issued from the Commission Ticket Centers. The Agency shall then provide the Commission 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 Services Manager, will commence sale.

- d) Sale of tickets will be made at all Ticket Agent outlets, and by telephone sales at the same price as charged at the Commission Ticket Centers, with the exception of Convenience Charges as described in paragraphs 6, 7 and 8 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. The Commission shall set all times and dates for tickets to be placed on sale. All outlets must sell all events at Commission facilities unless otherwise authorized by the Commission's General Manager. Failure of the outlets to sell could result in the loss of the event for the Ticket Agent.
- f) The Commission will not pay any remuneration to the Ticket Agent for performing services under this agreement except as expressly provided for herein. 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 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 Convenience Charge on tickets sold by Ticket Agent personnel, to be paid by the ticket purchaser. This charge will be established by the General Manager or designee at the time of contracting with the permittee/licensee, provided however that the charge shall be within a range as per Exhibit C. Any charges outside of this range must be approved by the permittee/licensee, Ticket Agent and Commission's General Manager. The Ticket Agent shall pay to the Commission Five Cents (\$.05) of the convenience charge per ticket sold for all outlet sales exclusive of telephone 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 Commission ticket centers for events at Commission facilities and will retain twenty-five percent (25%) of the convenience charge on tickets sold for all other events on the system.
- g) 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.
- h) 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 through its agency.
- i) The Ticket Agent shall maintain consistent hours of operation in the telephone room and at all outlets, to facilitate public access to purchase tickets, a minimum of eight hours a day, seven days a week. Any deviation from

the schedule shall be approved by the Commission Ticket Center Manager as deemed necessary.

- j) The Ticket Agent shall provide the equipment, signal and telephone / data lines 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 CRT terminals and printers which provide each Ticket Center with transaction-by-transaction reports. This inquiry system shall be acceptable to the Commission and shall provide ample information to monitor all sales and ensure proper auditing of ticket sales. The Ticket Services Manager and Ticket Center personnel shall have access to all reports deemed necessary by the Ticket Services Manager as well as the ability to build, set and create seating manifests as necessary.
- 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 unless authorized by the Commission Ticket Services Manager.
- m) 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 Services Manager.
- n) The Ticket Agent shall make refunds and exchanges only as directed and/or approved by the 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 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 Commission. Refunds shall include user's fee and convenience charge.
- o) 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.
- p) 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 convenience charges authorized under paragraphs 6(f) and 7(e) of this agreement independent of ticket price.

- q) 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.
- r) The Commission reserves the right to approve the form, substance and makeup of any automated ticket stock, which may include custom ticket stock, which will be sold by the Ticket Agent for events at Commission facilities.
- s) 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 for outlet sales ticket stock.
- t) Any tickets which cannot be sold or which are machine printing errors will be reinstated into inventory. The Ticket Agent shall be responsible to provide documentation and justification of any reinstatement to inventory. All reinstatements to inventory shall be subject to procedures approved by Commission, and documentation consistent with such procedures shall be maintained and be subject to audit by Commission and its representatives.

## 7. TELEPHONE SALES

- a. Contractor recognizes that Commission has the exclusive right to implement a telephone sales operation for Commission contracted events. Ticket Agent is hereby assigned the non-exclusive right to handle telephone ticket sales for Commission events as specified herein. Ticket Agent's right to conduct telephone ticket sales may be revoked if the Commission determines that Contractor has failed to comply with the requirements of this agreement or if this agreement is otherwise terminated. The Commission shall have access to and the right to sell tickets by telephone for all events on the Agent's automated ticketing system.
- b. The Ticket Agent shall engage in across-the-counter sales and telephone sales for Commission events on the Agent's system unless otherwise provided for in writing by the General Manager. The Ticket Agent shall accept telephone order reservations but the Agent shall report such sales as sold tickets at the time the reservation is made. Telephone orders at Commission offices are intended to be incidental to the Commission's ticketing business.
- c. Ticket Agent shall deliver any will-call tickets to Commission's Ticket Center where event is scheduled at least four (4) hours prior to the start of the event unless a shorter time frame is authorized by the Ticket Services Manager.

- d. Ticket Agent shall pay twenty cents (\$.20) during the first year of this agreement, twenty-five cents (\$.25) during the second year and thirty cents (\$.30) during the third year of the convenience charge per ticket sold through the Ticket Agent's telephone sales operation for all Commission events on the system and fifty cents (\$.50) of the handling fee for every ticket order sold by telephone. All tickets purchased beginning six (6) days prior to the event will be printed as will-call tickets at the facility where the event takes place. Agent will make every effort to mail telephone order tickets to customers when purchased, for all orders processed seven (7) days or more prior to the event date.

## 8. OREGON CONVENTION CENTER

- a. 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.
- b. All tickets sold onsite at the Oregon Convention Center for public consumer trade shows (flat shows) shall be sold by the Oregon Ticket Company dba Fastixx.
- c. No more than one (1) Ticket Agent shall sell for contracted events, other than as outlined in paragraph a above, at the Oregon Convention Center.
- d. The Commission will pay to the Ticket Agent, for performing services as outlined in paragraphs a and b, a rate of Ten Cents (\$.10) per ticket sold or used by the event permittee/licensee. The Ticket Agent may charge a convenience charge on tickets sold by the Ticket Agent's personnel, to be paid by the ticket purchaser. This convenience 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 convenience charges already utilized by Commission Facilities. The convenience charge will be printed on the face of the ticket. Nothing in this agreement shall prevent the Commission from collecting and retaining a convenience charge on tickets sold by the Commission's personnel.
- e. 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.
- f. Ticket Agent shall work with facilities to develop custom ticket stock for all Oregon Convention Center events sold at the facility's Ticket Offices.
- g. Ticket Agent shall provide 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.
- h. 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 Centers as well as improve the efficiency of the entire automated ticketing system.
  - i. Ticket Agent shall work with Oregon Convention Center staff to develop promotional activity related to Oregon Convention Center events which pertain to transportation and advertising opportunities on the automated ticketing system.

9. TRAINING AND SERVICE

The following provisions apply to both the operation of ticket outlets and telephone sales.

- a. Ticket Agent shall meet or exceed the minimum standards for training, staffing and telephone response set forth in the attached exhibit B.
- b. Ticket Agent shall supply twenty-four (24) hour, seven (7) days a week emergency service as necessary for all ticketing operations to insure that equipment and software will be effective for Commission events.
- c. Ticket Agent shall pursue software capability to tie into the Commission's computerized facility management system. This would include report capability as well as general information pertaining to event-related sales. Commission shall pay all expenses associated with software linkage and hardware necessary to integrate the two systems.
- d. 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 and Commission ticket centers, telephone number for sales, facility where event is to be held, event information and price of tickets.
- e. 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.

10. 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 Commission 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.
- d. The Commission or designee shall review annually all convenience charges to analyze its competitive structure within the marketplace.

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 terminate or suspend this agreement for acts of default by the Ticket Agent in accordance with any item of Article 11 herein.
- e. The Commission must approve in advance and in writing any agreements for subcontracted Ticket Outlets which may be proposed by the Ticket Agent throughout the life of this agreement.
- f. The Commission may, at its discretion, conduct a performance review and/or audit of Ticket Agent's compliance under this Agreement on an annual basis or more frequently as appears necessary.



12. ACCOUNTING

- a. 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 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.
- b. The Ticket Agent shall deposit all receipts (except Ticket Agent's allowable convenience charges) from telephone sales and over-the-counter sales into a deposit-only account or a third-party account which directly relates to the Ticket Agent's outlet sales contractual obligations or agreement. These funds shall not be obligated for any Ticket Agent business but shall remain in this account until weekly settlement or event settlement occurs, whichever comes first. Ticket Agent shall deposit receipts from ticket sales and all sales commission due to the Commission weekly. All necessary documentation will accompany receipts so that all ticket sales information and convenience charge information can be reconciled and settled for the previous week's sales on all Commission events on sale. The procedure for the transfer of funds shall be in accordance with Commission-approved policies.
- c. The Ticket Agent shall notify the Commission when ticket sales for the week have reached the \$200,000 threshold. Ticket Agent shall make every attempt to deposit all receipts or excess funds over \$200,000 at the earliest convenience. All funds to settle Commission events will be available at the time of settlement for such events. Ticket Agent is responsible for ensuring such funds are available to Commission for settlement purposes regardless of the date the weekly settlement is due. If such funds are not available for Commission event settlement, then the Commission may declare Ticket Agent in default of this agreement and take the necessary steps outlined in paragraph 14.

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, Metropolitan Service District, the City of Portland and their officers, 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 this agreement or 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, City of Portland, Commission and their officers, agents and employees 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 Commission 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 FOR 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. In lieu of terminating this agreement for such breach, Commission may suspend Ticket Agent's right to engage in telephone sales for up to six (6) months if Ticket Agent's breach arises out of the operation of Ticket Agent's telephone sales.

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. 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 \$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.

16. ASSIGNMENT

Both parties fully understand and agree that the highly skilled and professional management and operation of the automated ticket services for 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. 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.

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

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.

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.

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

Oregon Ticket Company  
Managing Partner  
3903 SW Kelly  
Suite 201  
Portland, OR 97201

With Copies to:

Mr. Richard Helzer  
4500 SW Hall Blvd.  
Beaverton, OR 97005

Commission

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

With copies to:

Commission Facility Directors  
c/o MERC  
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. 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 / EQUAL OPPORTUNITY HIRING

- 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.

- f. 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 30, 1991 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 as defined in the Commission's Personnel Policies.

23 . COMPLIANCE

Ticket Agent shall be in full compliance with all provisions of this agreement within ninety (90) days of execution.

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

TICKET AGENT:

Oregon Ticket Company

By Tom Keenan Vice President

Title Vice President

*Signed under protest  
Tom Keenan*

METROPOLITAN EXPOSITION-  
RECREATION COMMISSION


Ted S. R.

Chair

[Signature]

Secretary-Treasurer

APPROVED AS TO FORM:

  
Metro General Counsel

*[Faint handwritten notes or signatures]*



**EXHIBIT A**  
to  
**AUTOMATED TICKETING SERVICES AGREEMENT**

- A. **MEMORIAL COLISEUM:**  
Six (6) CRT terminals, six (6) ticket printers and one (1) hardcopy report printer.
- B. **CIVIC STADIUM:**  
Three (3) CRT terminals, three (3) ticket printers and one (1) hardcopy report printer.
- C. **PERFORMING ARTS CENTER:**  
Eight (8) CRT terminals, eight (8) ticket printers and two (2) hardcopy report printers.
- D. **CIVIC AUDITORIUM:**  
Two (2) CRT terminals, two (2) ticket printers and one (1) hardcopy report printer.
- E. **OREGON CONVENTION CENTER:**  
Four (4) CRT terminals, four (4) laser ticket printers and one (1) hardcopy report printer.

The Ticket Agent(s) shall provide the necessary equipment and signal to each MERC Facility (Memorial Coliseum, Civic Stadium, Performing Arts Center, Civic Auditorium and Oregon Convention Center), to operate the automated ticket system. The Ticket Agent(s) shall pay for ALL phone line charges on a monthly basis, including back-up lines, to operate the automated ticket system.

The amount of equipment identified in Exhibit A is the amount 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(s) 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.

**EXHIBIT B**  
to  
**AUTOMATED TICKETING SERVICES AGREEMENT**

**A. TRAINING**

1. Telephone sales operational procedures shall be submitted for review by the Commission. Telephone sales personnel shall have a minimum of one week's training on the system, one week's training to learn all Commission facility seating manifests for major events and one week's training pertaining to telephone etiquette and customer service.
2. All telephone sales personnel will be evaluated every six months with a copy of the evaluations submitted to the Ticket Services Manager. All telephone sales personnel shall receive continued training for at least one week per year for every year said personnel are selling Commissioner events over the telephone.
3. All personnel selling event tickets over-the-counter at all Ticket Agent outlet locations shall also have a minimum of one week's training on the equipment and customer service procedures plus one week's training on Commission facility manifests.

**B. SERVICE**

1. Ticket Agent may purchase and engage a telephone call sequencing device to monitor incoming phone calls and correctly handle the calls waiting for service (held and answered in order received).
2. Personnel requirements for the telephone room will be maintained so Commission patrons have no longer than a three- (3-) minute wait prior to commencing of service for ticket information, event information or actual sale for a particular event. If such time constraints are not met, the Commission may set minimum staffing levels for the telephone sales operation and may require a minimum number of incoming telephone lines.
3. A supervisor(s) must be on duty to handle questions and difficult patrons when large events begin selling or multiple events are on sale. The primary duty of the supervisor is to help telephone sales clerks as well as answer consumer questions and complaints. This supervisor is in addition to the minimum number of telephone sales personnel necessary to staff the telephone room.

**EXHIBIT C**  
**to**  
**AUTOMATED TICKETING SERVICES AGREEMENT**

<u>TICKET PRICE</u>	<u>OUTLET</u>	<u>PHONE Promoter Pays Credit Card Charges</u>	<u>PHONE Promoter Does Not Pay Credit Card Charges</u>
\$0 to \$10	\$1.00	\$1.50	\$1.75
\$10.01 to \$15	\$1.50	\$2.00	\$2.50
\$15+	\$2.00	\$2.50	\$3.00
\$20+	\$2.00	\$2.50	\$3.25
\$30+	\$2.00	\$2.50	\$3.50