

METROPOLITAN EXPOSITION-RECREATION COMMISSION

Resolution No. 122

Approving a request to solicit proposals for an advertising and promotion contract for all Metropolitan Exposition-Recreation Commission facilities.


The Metropolitan Exposition-Recreation Commission finds:

1. That the current advertising and promotion contract will expire June 30, 1991.
2. That it is necessary to engage the services of a competent and qualified advertising agency to develop all national promotional campaigns and programs for the MERC facilities.
3. That this process has been very beneficial in the past and extends MERC's ability to effectively reach the targeted market and audiences.

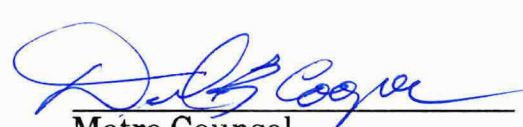
BE IT THEREFORE RESOLVED that the Commission approves a request for proposals for an advertising and promotion contract for all MERC facilities. Recommendation of the successful firm will be by committee selection.

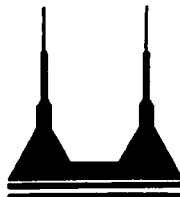
Passed by the Commission on April 10, 1991.


Chairman


Secretary/Treasurer

APPROVED AS TO FORM:


Metro Counsel




**OREGON
CONVENTION
CENTER**

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

April 3, 1991

MEMORANDUM

TO: Metropolitan Exposition-Recreation Commission
FROM: Jeffrey A. Blosser 
SUBJECT: Sales & Marketing Advertising / Promotion RFP

Background

The Commission entered into an advertising and promotion personal services contract with the firm of Borders, Perrin and Norrandner in October of 1988. This contract was extended for the Fiscal Years of 1989-90 and 1990-91. The services provided were and are primarily for the advertising and promotion of the Oregon Convention Center on a national basis.

The Sales and Marketing Team of the Commission has agreed that it is necessary to solicit bids for a new advertising and promotion contract which would encompass all MERC facilities, not only the Oregon Convention Center. This is being requested so the competitive nature of the process and the product can benefit the Metro E-R Commission with a new contract.


The proposed RFP is attached for your review.

Recommendation

Staff recommends that the Metropolitan Exposition-Recreation Commission approve the request to formally solicit through a request for proposal process a new advertising and promotion contract for all MERC facilities.

JAB/ll

General Manager's Concurrence:


Lee Fehrenkamp

Metropolitan Exposition - Recreation Commission
Recycled Paper

METROPOLITAN EXPOSITION-RECREATION COMMISSION

**ADVERTISING AGENCY FOR
METRO E-R COMMISSION FACILITIES**

**Proposals Due 5:00 p.m., May 1
REQUEST FOR PROPOSALS**

The Metropolitan Exposition-Recreation Commission (MERC) is soliciting written proposals to be filed no later than May 1, 1991, 5:00 p.m., PDT. Proposals received after the deadline will not be considered and will be returned unopened. Requirements and procedures for submitting proposals and of the services being sought are described in detail in a formal request for proposals (RFP) available from Lisa Chan, Oregon Convention Center, (503)235-7575, P.O. Box 12210, Portland, Oregon 97212.

Fifteen (15) copies of the proposals must be delivered to the Oregon Convention Center offices located at 777 N.E. Martin Luther King, Jr. Blvd., Portland, Oregon or mailed to P.O. Box 12210, Portland, Oregon 97212 to arrive by May 1, 1991, 5:00 p.m., PDT. All proposers must respond to the requirements of the Metropolitan Exposition-Recreation Commission's Disadvantaged and Women Owners Business Program. This requires meeting goals for this contract for disadvantaged (7%) and women (5%) businesses.

All proposals will be evaluated by the MERC Marketing Committee to include staff from the Oregon Convention Center, Portland Memorial Coliseum and the Portland Center for the Performing Arts. A personal services contract between the Commission and selected proposer is anticipated to result from this selection process. The Commission reserves the right to reject any or all proposals for cause upon a finding that it is in the public interest to do so.

**METROPOLITAN EXPOSITION-RECREATION COMMISSION
METRO E-R COMMISSION FACILITIES**

ADVERTISING AGENCY

The Metropolitan Exposition-Recreation Commission for the Oregon Convention Center, Portland Memorial Coliseum/Civic Stadium and Portland Center for the Performing Arts is soliciting written proposals due no later than May 1, 1991, 5:00 p.m., PDT. Proposals received after the deadline will not be considered and will be returned unopened.

Requirements and procedures for submitting proposals and of the services being sought are described in detail in the attached **Formal Request for Proposals (RFP)**.

An informal orientation meeting is scheduled for Monday, April 22, 1991 at 9 a.m. PDT with interested advertising agencies. This meeting will take place in the Oregon Convention Center's Board Room, located in the "King Offices".

Advertised notices of the RFP will appear in Northwest publications beginning April 15, 1991.

**REQUEST FOR PROPOSALS
METRO E-R COMMISSION FACILITIES
ADVERTISING AGENCY**

The Metropolitan Exposition-Recreation Commission (MERC) is soliciting proposals for advertising agency services for the Oregon Convention Center, Portland Memorial Coliseum/Civic Stadium and the Portland Center for the Performing Arts for a one (1) year period with two (2) one-year options. Proposals are due no later than 5:00 p.m., PDT, May 1, 1991 at the Oregon Convention Center office, 777 N.E. Martin Luther King, Jr. Blvd., Portland, OR 97232.

BACKGROUND

OREGON CONVENTION CENTER (OCC)

The Sales and Marketing Department is responsible for the marketing, promotion, scheduling and contracting of events in the Center's 150,000 square feet of exhibit space; 25,200 square foot ballroom and thirty-two (32) meeting rooms, Skyview Terrace and lobbies. Business is comprised of conventions, tradeshow, consumer/public exhibitions, corporate meetings, special events, banquets, entertainment events, business meetings and other activities.

The Sales and Marketing Department has been in operation and staffed since fall 1987. To complete OCC's mission--the primary objective of serving as a magnet for convention dollars, generated from convention and trade show attendees, to economically benefit the State of Oregon and metropolitan area of Portland--a relationship was initiated with the Portland/Oregon Visitors Association to serve as OCC's national marketing agent.

A new 3 year contract with P/OVA began July 1, 1990. The Sales and Marketing staffs of both entities work in tandem to book the OCC to its optimum and operationally feasible capacity and to increase business for the area's hospitality and tourism community.

The projected FY 1991-1992 OCC Sales & Marketing Department's budget is approximately \$135,000 toward advertising placement, typesetting, reprographics and printing services.

PORTLAND MEMORIAL COLISEUM/CIVIC STADIUM (MC/CS)

The Sales and Marketing Department for the Memorial Coliseum and Civic Stadium markets the Coliseum arena--a 13,000 seat venue appropriate for a variety of commercial entertainment and sporting events--three halls with 100,800 gross square feet of exhibit space aimed at a wide variety of national, regional and local public consumer shows and a 25,000 seat baseball/football stadium with potential to develop into a summer concert/special event facility.

The projected budget for advertising in FY 1991-1992 is \$12,250 for national level advertising dedicated to entertainment/sporting event promotion; this includes creative and media placements.

PORTLAND CENTER FOR THE PERFORMING ARTS (PCPA)

The Marketing and Sales Department is responsible for the marketing and promotion of performances and events in the Center's four theaters--Portland Civic Auditorium, Arlene Schnitzer Concert Hall, Intermediate Theatre and Dolores Winningstad Theatre--as well as lobby spaces for social events in the Schnitzer and New Theatre Building. The Center's clients are comprised of local, non-profit performing arts organizations and commercial promoters who present touring attractions ranging from Broadway musicals to international performing artists, musical artists of all kinds, dance companies, lecturers and meetings.

The projected FY 1991-1992 budget includes \$47,450 for national and local advertising placement and creative/production work.

The current Commission purchasing policies require an advertising agency Request for Proposal at this time.

SCOPE OF WORK

The scope of work for the advertising agency and response to this request for proposals fall within the following parameters:

1. Contractor will provide the following services for the Oregon Convention Center: creation, production, research and placement of national/regional media advertising; creation and production of direct mail pieces; creation and production of collateral materials. This may be: solely for OCC's sales and marketing program of work; a cooperative effort with OCC and POVA's sales and marketing program; or a cooperative effort with one or more of the other facilities managed by the MERC.

2. Contractor will provide the following services for the Portland Memorial Coliseum/Civic Stadium: creative, production and placement of national print advertising with recommendations as to which publications or other media will best reach those show producers wishing to bring commercial concert/sporting/entertainment events into the Portland area. Requirements for creative may include promotion of the PCPA facilities in tandem with other MERC facilities.

3. Contractor will provide the following services for the Portland Center for the Performing Arts: creative, production and placement of national print advertising, possibly in conjunction with other MERC facilities. Additional creative, production and/or placement of local consumer oriented advertising in conjunction with local, non-profit performing arts organizations and/or commercial presenters or other local agencies may be requested.

4. MERC will compensate Contractor for agency services, media and collateral advertising, through media commissions, supplier markups and hourly creative charges.

5. With regards to media, Contractor will make detailed media recommendations, will select and purchase client approved media and check and report media performance.

6. MERC requires an estimate in advance of each project undertaken by Contractor. An approved estimate must be received by the Contractor before commencing with production work involved in the project.

7. If after the date of contract with Contractor, any sub-contractors are retained to be used in the performance of this agreement, Contractor agrees to reach the Commission's goals of subcontracting 7 percent of the contract amount to Disadvantaged Businesses and 5 percent of the contract amount to Women-Owned Businesses. Contractor shall comply with all relevant provisions of MERC's Disadvantaged Business program. In addition, Contractor 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.

8. MERC has the right to modify, revise or cancel any advertising plans, schedules or work. Contractor will take proper steps immediately upon instructions from the MERC to effect such changes.

9. MERC also agrees to assume agency's liability for all commitments for such changes and to reimburse the agency for any losses sustained or expenses incurred due to such changes.

10. Contractor shall bill the MERC monthly. All invoices shall include a contract summary report which shall contain: the initial contract (plus any amendments if applicable); a breakdown of each prior billing; current contract balance; and the amount presently billed. MERC shall pay contractor within thirty (30) days of receipt of the approved invoice.

PROPOSAL CONTENTS

Proposal must provide responses to the following:

FIRM OWNERSHIP AND KEY EMPLOYEES

1. When was your firm founded?

2. Who controls the management of your firm? Please give names of those who own 5% or more of your stock. What percentage of stock is held by women or minorities?

3. Identify your firm's key executives, provide a description of each of their careers and tell exactly what they do in your firm. Please include the assigned account executive(s) and their relationship with departments within the agency.

FIRM ORGANIZATION AND SERVICE

1. Provide a functional organizational chart for your firm. It is not necessary to indicate names.

2. Describe how your firm provides service to a typical client. Provide a functional account organization chart indicating contact points between agency and client.

3. Describe your creative department. What are its strengths? Under what circumstances does your creative department have direct client contact?

4. Provide samples, if any, of advertisements appropriate for placement in related national media.

5. Describe your media department. What are its strengths? Under what circumstances does your media department have direct client contact? What experience does the media department have with researching and buying media within the convention, tradeshow, tourism, sports, entertainment and performing arts industries?

TOP MANAGEMENT PARTICIPATION IN ACCOUNT SERVICE

1. How does your top level management maintain client contact?

2. With what frequency is this the case?

ACCOUNT GAIN/LOSS HISTORY

1. What accounts has your agency gained in the last two years? Why was your firm chosen to represent these new accounts?

2. What accounts has your agency lost in the last two years? Why were they lost?

3. Please provide a current client list, including your length of service to these accounts.

FIRM FINANCIAL STANDING AND POLICIES

1. We are interested in any comments you might care to make concerning the financial stability of your firm. Please provide a copy of your most recent fiscal year financial statement.

2. Is your compensation schedule based on a fee or commission? Do you have reduced rates for nonprofit organizations?

3. Describe your client billing system and internal time-cost accounting controls.

4. Describe your media and vendor payment policies.

VIEWS ON EFFECTIVE MARKETING COMMUNICATION

1. Describe effective marketing communication, and your firm's practices that lead to the consistent production of effective advertising.

EXPERIENCE

1. With what kinds of accounts do you have special strengths?

2. What experience does your firm have that is directly related to the convention, tradeshow, tourism, performing arts, sports and entertainment industries?

3. What experience does your firm have that might be related to your ability to effectively handle our account?

4. The Portland/Oregon Visitors Association's (P/OVA) advertising agency of record is Borders, Perrin and Norrander, Inc. (BP&N). What previous or current relationship does your agency have with BP&N?

REFERENCES

1. List a minimum of at least three current accounts that we may contact for a reference.

GENERAL CONDITIONS

1. **Limitations and Award:** This RFP does not commit to the award of a contract, nor to pay any costs incurred in the preparation and submission of proposals in anticipation of a contract. The right to accept or reject any or all proposals received as the result of this request, to negotiate with all qualified sources, or to cancel all or part of this RFP, is reserved by the Commission.

2. **Contract Type:** A personal services contract will be executed with the selected firm or individual.

3. **Billing Procedures:** Proposers are informed that the billing procedures and content of the selected firm will be subject to the review and prior approval before reimbursement of services can occur. A monthly billing, if consistent with the proposed method of compensation, will be prepared by the contractor for review and approval.

4. **Validity Period and Authority:** The proposal shall be con-

sidered valid for a period of at least sixty (60) days and shall contain a statement to that effect. The proposal shall contain the name, title, address and telephone number of an individual or individuals with authority to bind any company contacted during the period in which the proposal will be evaluated.

5. **Product Ownership:** The products of all work performed by Contractor, including all design elements, layout and computer documents, will be the property of the corresponding MERC facility(s) during and upon completion of the contract work.

6. **Equal Employment Opportunity:** The firm will not discriminate against any employee or applicant for employment because of race, color, religion, gender or national origin. The firm will take affirmative action to assure that applicants are hired, and that employees are treated, without any regard to race, color, religion, gender or national origin. Such action shall include, but not be limited to, the following: employment upgrading, demotion or transfer; recruitment or compensation; and selection for training, including apprenticeship.

7. **Compliance with DBE/WBE Program Requirements:** The Commission is committed to provide maximum opportunities to State of Oregon certified Disadvantaged Business Enterprises (DBEs) and Women Business Enterprises (WBEs) in contracting activities. In the procurement of any subconsultants and subcontracting required for the requested services, the proposer must either meet or exceed the specific goal for the DBE and WBE participation, or prove they have made good faith efforts to meet the goal prior to the time proposals are due. The Commission's goals for this contract are: subcontracting 7 percent of the contract amount to Disadvantaged Businesses and 5 percent of the contract amount to Women-Owned Businesses, as that term is defined in the Commission's Disadvantaged Business Program as contained in the Commission's purchasing policies.

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

The Commission reserves the right, at all times during the period of this agreement, to monitor compliance with the terms of this

paragraph and the Commission's Disadvantaged Business Program.

A proposer's failure to comply with all the requirements of the Commission's disadvantaged and woman owned business program will constitute a nonresponsive proposal and will not be considered. Failure on the part of the successful proposer to carry out the applicable provisions of the program shall constitute a breach of contract, and, after notification by the Commission, may result in termination or such other remedy as the Commission deems appropriate.

In addition, Contractor 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 Oregon Convention Center and Memorial Coliseum.

GENERAL INFORMATION

A services contract, one (1) year with two (2) one-year options, will be executed with the selected company. See enclosed sample services agreement.

Attached you will find the most recent schedule of events and the MERC facilities marketing plans.

SELECTION CRITERIA

1. Completeness of the proposal and conformance to the proposal contents instructions.
2. Proposals will be reviewed by a selection committee and oral presentations will be required of finalists in the selection process.
3. Substantiated evidence of the firm's successful, previous experience with national convention, tradeshow, tourism, performing arts, sports and/or entertainment accounts.
4. Product creativity displayed by agency. Costs related to creativity, product and services.
5. Qualifications of respondent.

SUBMITTAL INSTRUCTIONS

Submit 15 copies of the proposal no later than 5:00 p.m., PDT, May 1, 1991 to:

1. Mailing address of:
Metropolitan Exposition-Recreation Commission
Attention: Debra Jeffery
Oregon Convention Center
P.O. Box 12210
Portland, OR 97212

2. Location of:
Metropolitan Exposition-Recreation Commission
Attention: Debra Jeffery
Oregon Convention Center - King Offices
777 N.E. Martin Luther King, Jr. Blvd.
Portland, OR 97232

Questions related to the RFP should be directed to Debra Jeffery at the address noted above.

ADVERTISING AGENCY SERVICES AGREEMENT

This agreement is made and entered into on this _____ day of _____, 1991, by and between the Metropolitan Exposition - Recreation Commission ("MERC"/Commission), and _____, Contractor.

W I T N E S S E T H :

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. "Convention Center" means the Oregon Convention Center (OCC) located at 777 N.E. Martin Luther King, Jr. Blvd., Portland, Oregon.

b. "Coliseum" means the Portland Memorial Coliseum (MC) at 1401 N. Wheeler, Portland, Oregon. "Stadium" means Civic Stadium (CS) at 1844 S.W. Morrison, Portland, Oregon.

c. "Performing Arts Center" means the Portland Center for the Performing Arts (PCPA), and its related facilities, located at 1111 S.W. Broadway, Portland, Oregon.

d. "Contractor" shall mean the _____, located at _____, Oregon.

e. "Service"

1) the advertising agency expertise which meets the expectations of the requesting MERC facility(s).

2) creation, production, delivery, placement or mailing of media advertising, direct mail pieces, collateral materials.

f. "Accounting Year" means the period commencing July 1 of each year and ending June 30 of the following year. The Commission will provide and accounting period calendar for each year of the agreement.

g. "Commission" shall mean the Metropolitan Exposition - Recreation Commission, a subdivision of the Metropolitan Service District (Metro).

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 Contractor shall assist in provision of services described herein for all Commission facilities including the Convention Center, Coliseum, Stadium and Performing Arts Center.

3. RELATIONSHIP OF THE PARTIES

The Commission and the Contractor have entered into this agreement for the purpose of establishing an independent contractor relationship between the Commission and the Contractor. 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, it successors or assigns on the one part, and the Contractor, it successors or assigns on the other part. It is further agreed that the Contractor will provide its own workers compensation insurance or self-insurance program as permitted under Oregon statutes.

4. TERM OF THE AGREEMENT

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

<u>Year No.</u>	<u>Fiscal Year</u>	<u>Term</u>
1	91-92	12 months
2	92-93	12 months
3	93-94	12 months

The Commission shall have the right at the end of the 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. Notwithstanding, the Commission shall have the right to renegotiate the terms, with the agreement of Contractor, of any renewal agreement to accommodate changes in operations, circumstances or industry practice. Sixty (60) days' written notice to the Contractor by the Commission prior to the termination of the original agreement, or at renewal term, shall be sufficient to exercise the renewal option.

5. DUTIES OF THE CONTRACTOR

For the consideration provided for in Article 8 hereof, the Contractor shall be responsible for performing satisfactorily all functions, duties and activities outlined in this agreement and any incidental activities required to successfully accomplish said functions and duties.

The Contractor shall be responsible for performing but shall not be limited to the following duties and functions:

a. To perform the services and deliver to the Commission the materials described in the Scope of Work attached hereto;

b. To provide all services and materials in a competent and professional manner in accordance with the Scope of Work;

c. To comply with all applicable provisions of ORS Chapter 279, and all other terms and conditions necessary to be inserted into public contracts in the state of Oregon, as if such provisions were a part of this Agreement;

d. To maintain records relating to the Scope of Work in a generally recognized accounting basis and to make said records available to the Commission at mutually convenient times;

e. To indemnify and hold the Commission, its agents and employees harmless from any and all claims, demands, damages, actions, losses and expenses, including attorney's fees, arising out of or in any way connected with its performance of this Agreement, with any patent infringement arising out of the use of Contractor's designs or other materials by the Commission and for any claims or disputes involving subcontractors.

6. RESPONSIBILITIES OF THE COMMISSION

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

a. The Commission shall furnish the Contractor full information regarding its requirements for the Scope of Work to assist the Contractor in accomplishing its services and accounting responsibilities.

b. To pay Contractor for services performed and materials delivered in an amount not to exceed:

- 1) \$135,000 for the Oregon Convention Center
- 2) \$ 12,250 for the Memorial Coliseum/Civic Stadium
- 3) \$ 47,450 for the Portland Center for the Performing Arts

and in the manner, and at the rates specified and time designated in the Scope of Work.

c. The Commission shall conduct business with the Contractor in an efficient and professional manner.

7. POWERS RESERVED TO THE COMMISSION

In the event of a dispute between the Contractor and the Commission, the decision of the Commission concerning the advertising agency 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 power to approve or disapprove the staff provided by the Contractor at any time during the term of this agreement, and to require the Contractor to replace such staff by receipt of written notice by the Commission regarding dissatisfaction with the Staff's performance.

b. The Contractor must maintain through the term of the contract an Affirmative Action/Equal Opportunity employment program. In addition, Contractor 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 June 1, for the first year of services, and June 1 of each succeeding year. Contractor 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, Contractor 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, Memorial Coliseum and Civic Stadium.

c. The power to terminate this agreement for acts of default by the Contractor in accordance with Article 9 hereof.

d. The Commission must approve in advance and in writing any change in subcontractors which may be proposed by the Contractor throughout the life of this agreement.

8. PAYMENT METHOD OF COMMISSION TO CONTRACTOR AND CONTRACTOR TO COMMISSION

a. For provision of advertising agency services for the Commission, all invoices shall be submitted on a monthly basis for work rendered in that billing period. Invoices shall be approved by the Commission prior to submission for payment. All billing subject to thirty (30) day net billing cycle.

a.1. The Contractor shall not be entitled to any other remuneration from the Commission for the performance of the Contractor's duties, obligations and activities pursuant to this agreement.

9. INSURANCE AND INDEMNIFICATION

It is understood and agreed that, to the fullest extent permitted by law, the Contractor 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 Contractor, its employees and subcontractors.

Contractor shall provide a General Comprehensive Liability Insurance Policy in the aggregate amount of \$500,000 or a per occurrence basis.

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 thirty (30) days advance written notice to the Commission regarding termination or any material change to the policy.

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.

10. TERMINATION OR BREACH BY CONTRACTOR

Material Breach: In the event that Contractor 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 Contractor, 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 Contractor. The parties agree that the Commission shall retain the right to determine whether any action or failure of Contractor 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 Contractor 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 Contractor'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 as deemed appropriate by the Commission's General Manager.

11. ASSIGNMENT

Both parties fully understand and agree that the professional advertising services for the Commission facilities are of paramount importance and that this agreement would not be entered into by the Commission except for its confidence in, and assurances provided for, the character, management abilities and financial stability of the Contractor. The Contractor, 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 Contractor, which renders Contractor incapable of performing all duties required hereunder shall constitute a material breach hereunder and shall give the Commission the option of terminating this agreement.

12. BEST EFFORTS

The Contractor and the Commission shall each use their best efforts to obtain the most professional and creative advertising service as is possible.

13. MISCELLANEOUS PROVISIONS

This agreement constitutes the entire agreement and understanding between the Commission and the Contractor. No provision of this agreement may be changed or eliminated unless mutually agreed to in writing by the Commission and the Contractor. This agreement shall be construed to incorporate by reference Contractor's Request for Proposals (RFP), all addendum issued thereto, and Contractor's proposal in response thereto dated _____ . In the event of a conflict between the terms and conditions of this agreement and the documents incorporated by reference, the terms and conditions of this agreement shall take precedence. In the event of a conflict between the documents incorporated by reference, the RFP as modified by any addendum thereto shall take precedence over Contractor's proposal.

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

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

Contractor

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

With a copy to:

General Counsel
Metropolitan Service District
2000 SW 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.

14. DBE/WBE PROGRAM

a. Contractor will, consistent with its proposal enter into agreements with those Disadvantaged Business Enterprises and Women-Owned Business Enterprises specified in Contractor's proposal.

b. The Contractor 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 Contractor shall not replace a Disadvantaged or Women-Owned Business subcontractor with another subcontractor during Agreement performance, so as to reduce its level of DEB/WBE participation below the annual goals then in effect, without prior approval of Commission. In so replacing a 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 Contractor 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 Contractor prior to Agreement award pertaining to Disadvantaged or Women-Owned Business participation in the Agreement, and any representation made by the Contractor regarding replacement of any Disadvantaged or Women-Owned Business subcontractor during the duration of this Agreement.

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

CONTRACTOR:

METROPOLITAN EXPOSITION-
RECREATION. COMMISSION

By _____
Title _____

Chair

Secretary-Treasurer

APPROVED AS TO FORM:

Metro General Counsel