

METROPOLITAN EXPOSITION-RECREATION COMMISSION

RESOLUTION NO. 193

Authorizing the execution of an Intergovernmental Agreement with the City of Portland acting through it's police bureau, wherein the Portland Police Bureau (PPB) will provide police services at certain M.E.R.C. events as requested by M.E.R.C. staff.

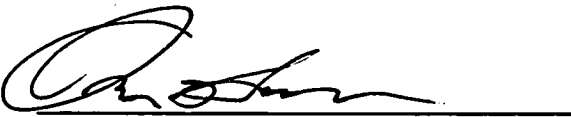
The Metropolitan Exposition-Recreation Commission finds:

- 1) That certain events held at M.E.R.C. facilities may require the presence of police officers in order to facilitate the safety of it's patrons, tenants, employees and property.
- 2) That the Portland Police Bureau is qualified and willing to provide the services needed by M.E.R.C..
- 3) That an intergovernmental agreement is the best format for obtaining the needed services.

BE IT THEREFORE RESOLVED that the Chairman and Secretary/Treasurer are authorized to execute the Intergovernmental Agreement between the Metropolitan Exposition-Recreation Commission and the City of Portland attached as Exhibit "A".

Passed by the Commission on Sept. 9, 1992


Chairman


Secretary/Treasurer

APPROVED AS TO FORM:



Metro General Counsel

INTERGOVERNMENTAL AGREEMENT FOR SERVICES

This agreement for services (Agreement) is between the Bureau of Police, City of Portland, Oregon (City), 1111 SW 2nd Avenue, Portland, Oregon 97204, and Metro, acting by and through its Metropolitan Exposition-Recreation Commission (MERC) 777 NE Martin Luther King Jr. Blvd, Portland, Oregon.

RECITALS:

1. MERC requires visible security services at certain MERC events and facilities.
2. The City's Bureau of Police has experience in providing these services.
3. ORS 190.010 authorizes units of local government to enter into a written agreement to perform any function and activity that a party to the agreement has authority to perform.

AGREEMENT:1. SCOPE OF CITY SERVICES

- a. The City shall provide to MERC those services set out in Exhibit A hereto.

2. SCOPE OF MERC SERVICES

- a. To assist the City in carrying out its obligations hereunder, MERC shall perform the services set out in Exhibit B.

3. COMPENSATION

MERC shall pay the City for work performed under this Agreement after the effective date as set out below. The payment shall be full compensation for work performed, for services rendered, and for all labor, materials, supplies, equipment, and incidentals necessary to perform the work and services. MERC shall pay the City as set out in Exhibit C.

4. BILLING AND PAYMENT PROCEDURE

The City's billing and MERC's payment procedures shall be as set out in Exhibit D hereto.

5. EFFECTIVE AND TERMINATION DATES

This Agreement shall be effective as of Sept. 29, 1992, and shall continue until terminated as provided in paragraph 6.

6. EARLY TERMINATION OF AGREEMENT

- a. MERC and City, by mutual written agreement, may terminate this Agreement at any time. Either party may terminate unilaterally for any reason upon thirty (30) days written notice to the other.
- b. Either MERC or the City, on three (3) days written notice in advance of a scheduled event, may elect not to provide services or receive services under this Agreement for that event for any reason deemed appropriate in its sole discretion, including those specifically discussed in Exhibit A hereto.
- c. Either MERC or the City may terminate this Agreement in the event of a breach of the agreement by the other. Prior to such termination, however, the party seeking the termination shall give to the other party written notice of the breach and of the party's intent to terminate. If the party has not entirely cured the breach within fifteen (15) days of the notice, then the party giving the notice may terminate the agreement at any time thereafter by giving a written notice of termination.

7. PAYMENT ON EARLY TERMINATION

- a. In the event of termination under subsection 6(a) EARLY TERMINATION OF AGREEMENT, hereof, MERC shall pay the City for work performed in accordance with the Agreement prior to the termination date.
- b. In the event of termination under subsection 6(c) EARLY TERMINATION OF AGREEMENT, hereof by the City due to a breach by MERC, then MERC shall pay the City as provided in subsection (a) of this section.
- c. In the event of termination under subsection 6(c) EARLY TERMINATION OF AGREEMENT, hereof by MERC due to a breach by the City, then MERC shall pay the City as provided in subsection (a) of this section, subject to set off of excess costs provided for in Section 8(a), REMEDIES.

8. REMEDIES

- a. On a breach by either party, the other shall be entitled to any other equitable and legal remedies that are available.

9. MERC PROJECT MANAGER

- a. The MERC General Manager shall appoint a Project Manager who shall be Ed Contreras, or such other person as shall be designated in writing by MERC.
- b. The General Manager is authorized, through his or her Project Manager, to approve work and billings hereunder, to give notices referred to herein, to terminate this Agreement as provided herein, and to carry out any other MERC actions referred to herein.

10. COMPLIANCE WITH LAWS

In connection with its activities under this Agreement, the City shall comply with all applicable federal, state, and local laws and regulations.

11. OREGON LAW AND FORUM

- a. This Agreement shall be construed according to the law of the State of Oregon.
- b. Any litigation between MERC and the City arising under this Agreement or out of work performed under this Agreement shall occur, if in the state courts, in the Multnomah County Court having jurisdiction thereof, and if in the federal courts, in the United States Court for the District of Oregon.

12. MAINTENANCE OF RECORDS

The City shall maintain records on a current basis to support its billings to MERC. MERC or its authorized representative shall have the authority to inspect, audit, and copy on reasonable notice and from time to time any records of the City regarding its billings of its work hereunder. The City shall retain these records for inspection, audit, and copying for three years from the date of completion or termination of this Agreement.

13. AUDIT OF PAYMENTS

- a. MERC, either directly or through a designated representative, may audit the records of the City at any time during the three (3) year period established by Section 12, MAINTENANCE OF RECORDS.
- b. If an audit discloses that payments to the City under Section 3 and Exhibit C, CITY'S COMPENSATION, and Section 4 and Exhibit D, BILLING AND PAYMENT PROCEDURE, were in excess of the amount to which the City was entitled, the City shall repay the amount in excess to MERC. If the audit discloses that payments to the City were less than

the amount to which the City was entitled, MERC shall pay the amount owing to the City.

14. WORKERS' COMPENSATION INSURANCE

- a. The City carries workers' compensation insurance coverage for all of its workers, employees and subcontractors as a self-insured employer, as provided by Chapter 656 of the Oregon Revised Statutes. The City agrees to maintain workers' compensation insurance coverage for the duration of this Agreement.

15. ASSIGNMENT

Neither MERC nor the City shall assign this Agreement, in whole or in part, or any right or obligation hereunder, without the prior written approval of the other party.

16. INDEPENDENT CITY STATUS

- a. The City is engaged as an independent contractor and will be responsible for any federal, state, and local taxes and fees applicable to payments hereunder.
- b. The City, its subcontractors, and their employees are not employees of MERC and are not eligible for any benefits through MERC, including without limitation federal social security, health benefits, workers' compensation, and retirement benefits.

17. BREACH OF AGREEMENT

- a. MERC or the City shall breach this Agreement if it fails to perform any substantial obligation under the Agreement, except as provided in subsection (b) of this section.
- b. Neither MERC nor the City shall have breached this Agreement by reason of any failure to perform a substantial obligation under the Agreement if the failure arises out of causes beyond its control and without its fault or negligence. Such causes may include, without limitation, acts of God or the public enemy, acts of the federal, state, or local governments, fires, floods, epidemics, volcanic eruptions, quarantine restrictions, strikes, freight embargoes, and unusually severe weather. Should either MERC or the City fail to perform because of a cause described in this subsection, MERC and the City shall make a mutually acceptable revision in the Scope of Services, Schedule, or Compensation.

18. ARBITRATION

- a. Any dispute under this Agreement which is not settled by mutual agreement of MERC and the City within sixty (60) days of notification in writing by either party shall be submitted to arbitration. The panel shall be composed of three (3) persons, one of whom shall be appointed by the City, one of whom shall be appointed by MERC, and one of whom shall be appointed by the two arbitrators appointed by MERC and the City. In the event the two cannot agree on the third arbitrator, then the third shall be appointed by the Presiding Judge (Civil) of the Circuit Court of the State of Oregon for the County of Multnomah. The arbitrators shall be selected within thirty (30) days of the expiration of the sixty (60) days period. The arbitration shall be conducted in Portland, Oregon, and shall be as speedy as is reasonably possible. MERC and the City shall agree on the rules governing the arbitration (including appropriation of costs), or, if MERC and the City cannot agree on the rules, the arbitrators shall adopt rules consistent with this section. The arbitrators shall render their decision within forty-five (45) days of their first meeting with MERC and the City. Insofar as MERC and the City legally may do so, they shall be bound by the decision of the panel.
- b. Notwithstanding any dispute under this Agreement, whether before or during arbitration, the City shall continue to perform its work pending resolution of the dispute, except as noted in Section 6, (a) through (d), and MERC shall make payments as required by the agreement for undisputed portions of the work.

19. NOTICE

Any notice provided for under this Agreement shall be sufficient if in writing and delivered personally to the following addressee or deposited in the United States Mail, postage prepaid, certified mail, return receipt requested, addressed as follows, or to such other address as the receiving party hereafter shall specify in writing:

If to the City:

Dan Noelle
Bureau of Police
1111 SW Second Avenue, Room 110
Portland, Oregon 97204-3232

If to MERC:

Ed Contreras
PO Box 2746
Portland, Oregon 97208

AND

Lee Fehrenkamp, General Manager

Mark Williams, METRO Senior Assistant
Counsel

20. CITY'S PERSONNEL

The City shall assign the following personnel to do the work in the capacities designated:

<u>Name</u>	<u>Capacity</u>
Captain Noelle, Central Precinct	Personnel Scheduling
Beth Bown, Fiscal Services	Billing

The City shall not change these personnel assignments without the written consent of the Project Manager, which consent shall not be unreasonably withheld.

21. SEVERABILITY

If any provision of this Agreement is found to be illegal or unenforceable, this Agreement nevertheless shall remain in full force and effect and the provision shall be stricken.

22. AMENDMENTS

- a. MERC and the City may amend this Agreement at any time only by written amendment executed by them.
- b. Any change in the Scope of City Services shall be deemed an amendment subject to subsection (a).

23. INTEGRATION

This Agreement contains the entire agreement between MERC and the City and supersedes all prior written or oral discussions or agreements.

24. NON-WAIVER

MERC and the City shall not be deemed to have waived any breach of this Agreement by the other party except by an express waiver in writing. An express written waiver as to one breach shall not be deemed a waiver of any other breach not expressly identified, even though the other breach be of the same nature as that waived.

25. PROHIBITED INTEREST

- a. No MERC officer or employee, during his or her tenure or for one year thereafter, shall have any interest, direct or indirect, in this Agreement or the proceeds thereof.
- b. No MERC officer or employee who participated in the award of this Agreement shall be employed by the City during the period of the agreement.

26. FUNDS

MERC certifies that sufficient funds are available and authorized for expenditure to finance the cost of this contract.

27. COMMENCEMENT OF WORK

City agrees that work being done pursuant to this contract will not be commenced until after:

- a. This Agreement is fully executed by the parties and approved by the City Attorney's Office, City of Portland, Oregon.
- b. The effective date of this Agreement as specified in Section 5, EFFECTIVE AND TERMINATION DATES.

28. LIABILITY AND INDEMNITY

MERC and the City agree that they will each be solely and exclusively liable for the acts or omissions of their respective employees. MERC agrees to defend, indemnify, and hold harmless the City, its agents, officers, and employees, from any claims arising out of or based upon the acts or omissions of any employees of MERC or the Metropolitan Service District, including but not limited to claims for costs and attorney fees. The City agrees to defend, indemnify, and hold harmless MERC, the Metropolitan Service District, their agents, officers, and employees, from any claims arising out of or based upon the acts or omissions of any employees of the City of Portland, including but not limited to claims for costs and attorneys' fees.

METRO, ACTING BY AND THROUGH
ITS METROPOLITAN EXPOSITION-
RECREATION COMMISSION

By: [Signature]

Title: Chairman

Date: 9-9-92

By: [Signature]

Title: Secretary-Treasurer

Date: 9-9-92

APPROVED AS TO FORM:

[Signature]
City Attorney

City Attorney

Date: 5/5/92

CITY OF PORTLAND

By: [Signature]

Name: Tom Potter

Title: Chief of Police

Date: _____

By: [Signature]

Name: J.E. Bud Clark

Title: Mayor

Date: 92.9.24

By: [Signature]

Name: Barbara Clark

Title: Auditor

Date: 9/29/92

APPROVED AS TO FORM:

[Signature]

METRO Senior Assistant Counsel

Date: 9/9/92

METRO ER Commission

By: [Signature]

Name: Lee Fehrenkamp

Title: General Manager

Date: Aug 7, 1992

EXHIBIT A

SCOPE OF CITY SERVICES

1992

A. GENERAL SERVICES

The City shall provide the following general services:

The City will provide commissioned police officers to provide a visible deterrence and/or to execute citations or arrests when necessary and to conduct appropriate processing of violators brought by MERC security personnel to police officers.

B. SPECIFIC SERVICES

All such officers provided by the City shall be officers and sergeants who are off-duty and serving in an overtime capacity in the sense that such officers are not performing their regularly assigned tour of duty with the Portland Police Bureau.

MERC and the City will make every reasonable effort to predetermine and mutually agree upon the need, numbers and scope of involvement of Bureau officers at MERC's events and facilities. MERC will, in order to facilitate operational planning and the availability of City's officers, provide the City with as much advance notice as is reasonably practicable of those events and dates at which the MERC requests City's assistance pursuant to this Agreement.

The parties anticipate that not less than three (3) days prior to any event, mutual agreement will be reached as to the scope of involvement and number of police officers to be utilized and paid for under this Agreement. If such agreement is not reached, MERC may decide not to utilize City's officers to assist in policing the event, and City may decide not to provide any officers under this Agreement for the event. A written notice that police services will not be utilized and paid for by MERC, or supplied under this Agreement by City, shall be delivered not less than three (3) days prior to any event. Nothing herein shall be construed to prevent the parties from agreeing to a provision of police services less than three days prior to event, if they so choose.

City's ultimate authority to determine the nature, extent, and degree of its response to any public safety contingency, including any contingency occurring at a MERC facility, shall in no way be affected by this Agreement, which solely facilitates the pre-arrangement of police services in advance of an event at a MERC facility.

EXHIBIT B

SCOPE OF MERC SERVICES

MERC shall assist the City in carrying out its obligations under the Agreement by providing the following specific services:

MERC security personnel will provide security at the events, facility and grounds and will bring violators to the appropriate facility for processing.

EXHIBIT C

CITY'S COMPENSATION

MERC shall compensate the City on the following basis:

Compensation shall be for actual costs at the applicable hourly overtime payroll rate in effect when the services are provided, plus 15% for the indirect costs of benefits, plus 10% of the total charges for salaries and benefits for general overhead, as provided by Section 5.48.030 of the Code of the City of Portland.

EXHIBIT D

BILLING AND PAYMENT PROCEDURE

MERC agrees to compensate the City within thirty (30) days after receiving an itemized billing of the services provided and their costs.

ORDINANCE No. 165580

*Authorize Intergovernmental Agreement with Metro, Acting by and through its Metropolitan Exposition-Recreation Commission (MERC) for Police Services. (Ordinance)

The City of Portland ordains:

Section 1. The Council finds:

1. MERC requires visible security services at certain MERC events and facilities.
2. The City's Bureau of Police has experience in providing these services.
3. ORS 190.010 authorizes units of local government to enter into a written agreement to perform any function and activity that a party to the agreement has authority to perform.

NOW, THEREFORE, the Council directs:

- a. That the Mayor and City Auditor are authorized to execute an agreement with MERC for police services at certain MERC events and facilities, in substantially the form set out in Ex. A, attached to this Ordinance.

Section 2. The Council declares that an emergency exists because the services are required for events scheduled on an ongoing basis at MERC facilities; therefore, this Ordinance shall be in force and effect from and after its passage by Council.

Passed by the Council, JUL 8 1992

BARBARA CLARK

Auditor of the City of Portland

By



Deputy