

METROPOLITAN EXPOSITION-RECREATION COMMISSION

RESOLUTION NO. 221

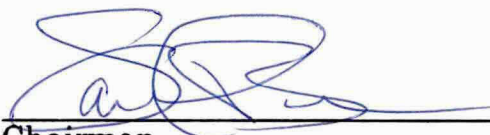
Authorizing the Chairman and Secretary-Treasurer to execute on behalf of the Metropolitan Exposition-Recreation Commission an extension of the Agreement with Borders, Perrin and Norrande, Inc. for the advertising and promotion of Commission facilities.

The Metropolitan Exposition-Recreation Commission finds:

1. That the promotion and marketing budgets to advertise and market Commission properties for all MERC facilities are approved by the Commission;
2. That professional services are required to carry out the advertising and marketing efforts related to the specific facility budget;
3. That the current contractor has performed satisfactorily in the course of providing these necessary services during the previous year; and
4. That the Metropolitan Exposition-Recreation Commission has the authority to extend this Agreement for another year as provided by the attached contract.

BE IT THEREFORE RESOLVED that the Chairman and Secretary / Treasurer are hereby authorized on behalf of the Commission to execute an extension of the Advertising Agency Services Agreement between the Commission and Borders Perrin and Norrande, Inc. for the advertising and promotion of Commission facilities.

Passed by the Commission on April 14, 1993.


Chairman


Secretary-Treasurer

APPROVED AS TO FORM:
Daniel B. Cooper, General Counsel

By: 
Mark B. Williams
Senior Assistant Counsel

MERC STAFF REPORT

Agenda Item / Issue: RENEWAL OF ADVERTISING AGENCY SERVICES AGREEMENT

Resolution No. 221

Date: April 14, 1993 Presented By: Jeffrey A. Blosser

Background and Analysis: The Oregon Convention Center has utilized an advertising agency to provide professional services for its national marketing and promotion. Last year staff solicited responses for advertising and promotional services and selected Borders, Perrin and Norrande as the successful vendor. Borders, Perrin and Norrande has provided excellent service for the Oregon Convention Center's marketing campaign throughout the year.

Fiscal Impact: This amount is approved annually by the MERC Commission. The proposed budget amount is \$180,000 for advertising and printing for the 1993-94 fiscal year. The Advertising Services Agreement encompasses approximately \$135,000 - \$140,000 of this amount.

Discussion with Commission Liaison and/or User Group(s): Staff discussed the contract renewal and performance of Borders, Perrin and Norrande with the OCC Liaison Commissioners.

Recommendation: Staff recommends the Metropolitan Exposition-Recreation Commission approve the extension of Borders, Perrin and Norrande for the Fiscal Year 1993-94 as provided for in the current agreement.

ADVERTISING AGENCY SERVICES AGREEMENT

This agreement is made and entered into on this 19th day of June, 1991, by and between the Metropolitan Exposition - Recreation Commission ("MERC"/Commission), and Borders, Perrin and Messander, 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 Borders, Perrin and Messander, located at 222 S.W. Yamhill, Astoria, Oregon, 97103, 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 an 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, its successors or assigns on the one part, and the Contractor, its 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.

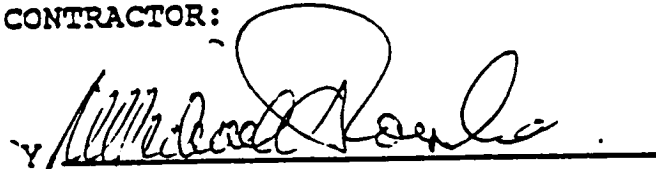
c. The Contractor shall not replace a Disadvantaged or Women-Owned Business subcontractor with another subcontractor during Agreement performance, so as to reduce its level of DEB/WBE participation below the annual goals then in effect, without prior approval of Commission. In so replacing a Disadvantaged 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.

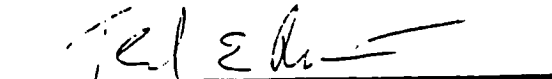
e. Commission reserves the right, at all times during the period of this Agreement, to monitor compliance with the terms of the Disadvantaged Business Program and this Agreement, and with any representation made by the Contractor prior to Agreement award pertaining to Disadvantaged or Women-Owned Business 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.

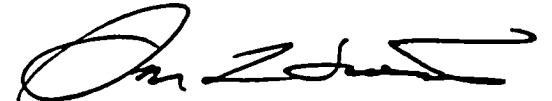
IN WITNESS WHEREOF, the parties hereto have executed this document as of the day and year first above written.

CONTRACTOR:

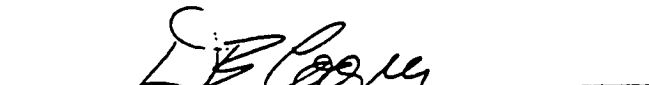

Title Gen. Mgr.

METROPOLITAN EXPOSITION-
RECREATION COMMISSION


Chair


Secretary-Treasurer

APPROVED AS TO FORM:


Metro General Counsel