

**METROPOLITAN EXPOSITION-RECREATION COMMISSION**

**RESOLUTION NO. 93-4**

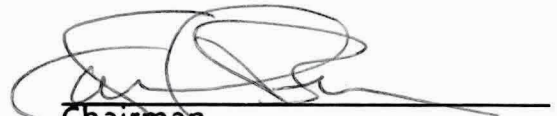
Approving the personal services Agreement for Audio Visual Services with Photo and Sound Company.

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

1. That these specialized services are required by tenants of the Oregon Convention Center;
2. That such services generate income for the Oregon Convention Center;
4. That the Commission has the authority to enter into such service Agreements through a proper RFP process.

**BE IT THEREFORE RESOLVED** that the Metropolitan Exposition-Recreation Commission approve the personal service contract with Photo and Sound Company and authorizes the General Manager to execute an Agreement for services.

Passed by the Commission on August 11, 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: APPROVAL OF AUDIO VISUAL CONTRACT**

Resolution No. \_\_\_\_\_

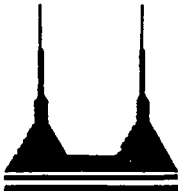
Date: August 11, 1993 Presented By: Jeffrey A. Blosser

**Background and Analysis:** The Commission at its June meeting approved staff recommendations to solicit Requests for Proposals for Audio Visual Services for the Oregon Convention Center. The Convention Center had such an agreement for the last three years to provide special Audio Visual equipment and to supplement our inventory of equipment in the course of servicing our clients. This agreement has been beneficial to the Oregon Convention Center operation and staff upon MERC approval initiated the RFP process and received Three proposals.

**Fiscal Impact:** There is no expense-related impact due to the fact that all rented audio visual equipment is charged back to clients. The Oregon Convention Center received a discount on equipment rented plus \$7,227.00 in income from commissions.

**Discussion with Commission Liaison and/or User Group(s):** Commission approved staffs' request at June meeting to solicit RFP's for Audio Visual Services with the understanding that the process will generate a successful proposer and an agreement for services.

**Recommendation:** Staff recommends that the Metropolitan Exposition-Recreation Commission approve an agreement for Audio Visual Services with Photo and Sound Company and authorize the General Manager to execute the contract.




OREGON  
CONVENTION  
CENTER

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

June 4, 1993

MEMORANDUM

TO: Metropolitan Exposition-Recreation Commission  
FROM: Jeffrey A. Blosser   
SUBJECT: Audio Visual RFP

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Three years ago, an RFP was utilized to solicit proposals for audio visual services for the Oregon Convention Center, Memorial Coliseum and the PCPA. This contract expires June 30, 1993.

With changes in facility management (transfer of Memorial Coliseum to the Oregon Arena Corporation) and no use of services by the PCPA, staff would like to issue an RFP for audio visual services for the Oregon Convention Center and the Civic Stadium.

Proposals will be solicited and a recommendation of contract award will be brought back to the Commission for approval at the July meeting.

The agreement provides compensation to the Center / Civic Stadium by the selected vendor (currently 15% of billed work) and a 20% discount off list price for items we rent for use during events. A copy of the proposed agreement is attached.

JAB/ll  
Attachment

cc: Pat LaCrosse

**REQUEST FOR PROPOSALS**  
**OREGON CONVENTION CENTER**  
**AND CIVIC STADIUM**

**AUDIO-VISUAL SERVICES**

The Metropolitan Exposition-Recreation Commission (MERC) is soliciting proposals to enhance the audio-visual service capabilities of the Oregon Convention Center (OCC) and the Civic Stadium (Stadium). Proposals are due no later than 4:00 p.m. PDT, July 2, 1993, at the Oregon Convention Center Administrative Office, 777 N.E. Martin Luther King Jr. Boulevard, Portland, OR 97232.

**BACKGROUND**

The MERC intends to provide complete audio-visual service capabilities to licensees of the OCC. Limited inventory, storage, service and labor sources of the OCC and Stadium currently restrict fully meeting this intent. Complete service will, therefore, be secured through an audio-visual company which best satisfies this and additional selection criteria.

The OCC and Stadium (MERC Facilities) will staff an audio-visual department with access to certain anticipated equipment. The MERC Facilities audio-visual departments will, to the maximum extent possible, provide a single source contact for audio-visual services required by MERC Facilities licensees. Although services of the audio-visual company will be utilized as necessary, such service is intended to be perceived as transparent to MERC Facilities licensees. The audio-visual company shall, therefore, serve as a contractor to the MERC Facilities with appropriate invoicing payable by the MERC Facilities.

**PROPOSED SCOPE OF WORK**

Throughout the term of a subsequent agreement, the audio-visual company may be asked to perform, as necessary, the following tasks:

- ▶ Audio-visual consulting expertise which meets expectations of the MERC Facilities audio-visual departments and licensees.
- ▶ Delivery, installation, operation and removal of temporary audio equipment to include microphones, amplifiers, mixers, etc.
- ▶ Delivery, installation, operation and removal of temporary visual equipment to include video, projection, monitors, CCTV, etc.
- ▶ Maintenance and repair of temporary audio-visual equipment owned by MERC Facilities will be considered at the expiration of all warranties.

## PROPOSAL CONTENTS

Proposal must provide responses to the following:

- ▶ Current listing of inventory and availability of audio-visual equipment and components.
- ▶ Rental charge to MERC Facilities including delivery/removal and daily/multiple-day usage of audio-visual equipment. (Charges to be effective through June 30, 1994.)
- ▶ Hourly labor charge to MERC Facilities for operation of audio-visual equipment, maintenance and repair of MERC Facilities temporary audio-visual equipment. (Charges to be effective through June 30, 1994.)
- ▶ Discount or commission to MERC for: a) MERC-originated business; b) preferred vendor direct to client for event-related business; and c) preferred vendor direct to client for booth-related events.
- ▶ Method, mechanism and terms, etc., for invoicing MERC.
- ▶ Customer service philosophy and how this philosophy is conveyed to the MERC Facilities and their licensees.
- ▶ Qualifications, licensing and summary experience including equipment utilized for no less than five (5) significant job orders completed within the past twelve (12) months; include name, position and telephone number of job order contact.
- ▶ Qualifications, training and number of service representatives.
- ▶ Mechanism employed to secure requested service.
- ▶ Mechanism and response time for twenty-four (24) hour stand-by emergency service.
- ▶ Onsite requirements needed by your company at the facilities, if any, to provide the requested services.
- ▶ Ability to name, as additional insured, the MERC, its officers, agents and employees for no less than One Million and no/100 Dollars (\$1,000,000.00) combined single limit (C.S.L.) general liability insurance and provide verification of workers' compensation and employer's liability insurance for no less than Five Hundred Thousand and no/100 Dollars (\$500,000.00).

## GENERAL CONDITIONS

1. **Limitation 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 RFP, 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 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 considered 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. **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 recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.
6. **Compliance with DBE / WBE Program Requirements:** The Commission has made a strong commitment 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 selected vendor will be required to meet the requirements of the Metropolitan Exposition-Recreation Commission's Disadvantaged Business Program in contracting activities. This requires maximizing opportunities for minority and women-owned business enterprises (MBE and WBE) in accordance with applicable provisions of the Metro Code.

A subconsultant is any person or firm proposed to work for the Commission or for the contractor directly under this agreement. The Commission does not wish 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.

Failure to comply with all the requirements of the Commission's disadvantaged business and women business program will constitute a non-responsive proposal. Further, 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.

### GENERAL INFORMATION

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

Attached you will find the most recent schedule of events.

### SELECTION CRITERIA

Completeness of the proposal.

Equipment and hourly labor charge billable to MERC.

Depth and availability of equipment inventory and qualified staff.

Service philosophy and company mission statement.

Qualifications of respondent.

### SUBMITTAL INSTRUCTIONS

Submit ten (10) copies of the proposal no later than 4:00 p.m. PDT, July 2, 1993 to:

Metropolitan Exposition-Recreation Commission  
Attention: Jeffrey A. Blosser, Director  
Oregon Convention Center  
777 N.E. Martin Luther King Jr. Boulevard  
Portland, OR 97232

## AUDIO-VISUAL SERVICES AGREEMENT

This agreement is made and entered into on this 1<sup>ST</sup> day of DECEMBER 1993, by and between the Metropolitan Exposition-Recreation Commission ("MERC" / Commission), and PHOTO & SOUND COMPANY, Contractor.

### WITNESSETH:

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. "MERC Facilities" means Metropolitan Exposition-Recreation Commission buildings to include Oregon Convention Center and Civic Stadium.
- b. "Service"
  - 1) Audio-visual consulting expertise which meets expectations of the MERC Facilities audio-visual departments and licensees.
  - 2) Delivery, installation, operation and removal of temporary audio equipment to include microphones, amplifiers, mixers, etc.
  - 3) Delivery, installation, operation and removal of temporary visual equipment to include video, projection, monitors, CCTV, etc.
  - 4) Maintenance and repair of temporary audio-visual equipment owned by MERC Facilities will be considered at the expiration of all warranties.
- c. "Contractor's Employees" means only employees of the Contractor who are engaged exclusively in the management and operation of the audio-visual services and who have no other responsibility on behalf of the Contractor.
- d. "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.
- e. "MERC" shall mean the Metropolitan Exposition-Recreation Commission, a division of 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 service at the MERC Facilities. This engagement is further subject to the relevant terms and conditions of any existing and subsequent use agreements between the Commission and MERC Facilities.

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. The Contractor shall, subject to the terms and provisions of this agreement, have complete and independent control and discretion over the operation of the services contemplated by this agreement.

It is expressly understood that neither Contractor nor the Commission has the right to control, direct or influence the labor relations policies or activities of the other, and that neither shall be considered to be the labor relations agent or representative of the other, and that neither shall be responsible for the acts of the other's agents, employees, or representatives which affect either party's respective employees.

Contractor shall be solely liable for, and shall independently undertake to defend, any and all unfair labor practice charges, grievances, judicial actions, or other employee or union claims, as well as general liability and personal liability, based on conduct alleged to have been committed by its employees, agents or supervisors at any time. However, the Commission and the Contractor will cooperate in good faith in the investigation and defense of any unfair labor practice charge, grievance, judicial action or other employee or union claim which may be filed against any one of them, jointly or separately.

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	93-94	12 months
2	94-95	12 months
3	95-96	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 shall be sufficient to exercise the renewal option.

5. AUDIO-VISUAL SERVICE RIGHTS

Subject to the provisions of this agreement, the Commission shall grant to the Contractor the right to rent equipment and services to the General Manager of the Commission. Such equipment and services shall conform to a fee schedule as determined and approved from time to time by the Commission.

6. DUTIES OF THE CONTRACTOR

For the rights granted in Article 5 and the consideration provided for in Article 9 hereof, the Contractor shall be responsible for providing skillful and commercially effective management and operation of all required audio-visual services requested. 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. Supply audio-visual consulting expertise which meets expectations of the MERC Facilities audio-visual departments and licensees.
- b. Delivery, installation, operation and removal of temporary audio equipment to include microphones, amplifiers, mixers, etc.
- c. Delivery, installation, operation and removal of temporary visual equipment to include video, projection, monitors, CCTV, etc.
- d. Maintenance and repair of temporary audio-visual equipment owned by MERC Facilities will be considered at the expiration of all warranties.
- e. Employ a highly skilled professional who possesses the necessary experience and expertise to provide the overall service capability for quality audio-visual service.
- f. Subject to Commission review and approval, develop and implement all necessary policies and procedures for the conduct of this agreement. Such policies and procedures shall not be subject to Commission review with respect to labor relations.

- g. Employ and train all employees necessary for the successful fulfillment of this agreement.
- h. Order, purchase, receive delivery of, and store all supplies and products necessary for the operation of the audio-visual services.
- i. Provide all products for use by Commission staff or Contractor as U.L. approved and safe condition so as not to cause personal injury or damage to Commission property or Licensee's invitees, exhibitors, employees, etc.
- j. Pay all sales, business and occupational taxes and other similar taxes required by law related to the operation at the Commission facilities.
- k. Provide for the necessary levels of financial reporting and accountability to the Commission as outlined in Article 9 hereof.
- l. Negotiate all collective bargaining agreements relative to the Contractor's employees and maintain effective day-to-day working relationships with appropriate union representatives.
- m. Upon prior written approval of the Commission's General Manager, arrange for advertising, marketing and promotion of audio-visual products and services.
- n. Contractor shall maintain in full force all licenses and permits necessary to legally conduct business in the City of Portland, State of Oregon.
- o. The Contractor will provide a performance bond, in the form attached as Exhibit A, to the Commission in an amount of not less than Five Thousand and no/100 Dollars (\$5,000.00) for operations to assure compliance of the Contractor with all provisions of this Agreement, including those related to the financial obligations of the Contractor. Said performance bond shall be conditioned upon faithful performance of Contractor's payment of moneys due or obligations owing to the Commission and to all suppliers, materialmen and employees of Contractor or its subcontractors.

## **7. RESPONSIBILITIES OF THE COMMISSION**

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

- a. The Commission shall furnish the Contractor statements of event information to adequately plan for all events at the MERC Facilities to assist the Contractor in accomplishing its services and accounting responsibilities.
- b. The Commission shall cooperate with the Contractor in obtaining all necessary licenses and permits.
- c. The Commission shall conduct business with the Contractor in an efficient and professional manner.

## **8. POWERS RESERVED TO THE COMMISSION**

In the event of a dispute between the Contractor and the Commission, the decision of the Commission concerning the operation or management of the audio-visual 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 MERC Facilities audio-visual 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 Contractor for any loss or cost occasioned by any such determination or action by the General Manager of the Contractor 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 audio-visual areas at any time.
- d. 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.
- e. Contractor will employ only competent and orderly employees who will keep themselves neat and clean and accord courteous and competent treatment and service to all patrons. Whenever the Commission notifies the Contractor that any employee is deemed by it to be incompetent, disorderly or unsatisfactory, the Contractor will investigate the matter thoroughly, and if good cause, as determined by the Contractor exists, the Contractor shall not allow such person, provided, however, that such ban is not in violation of any outstanding collective bargaining agreements that may be entered into between the Contractor and a union or any Oregon or federal employment law or regulations.
- f. The Contractor must maintain through the term of the contract participation in the City of Portland's 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 July 31, 1993 for the first year of operation, 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 and Civic Stadium.

- g. The power to terminate this agreement for acts of default by the Contractor in accordance with Article 11 hereof.
- h. 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.

9. PAYMENT METHOD OF COMMISSION TO CONTRACTOR

- a. 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.
- b. 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.

10. 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. The Contractor will not bring any action against the Commission due to the Commission's execution of its right to cancel any event.

Contractor shall provide a General Comprehensive Liability Insurance Policy. Coverages to be provided by the foregoing insurance policy or policies shall include, but not be limited to, coverages commonly referred to by the insurance industry as:

- a. Premises / Operations Liability
- b. Owners and Contractors Protective Liability
- c. Blanket Contractual Liability
- d. Broad Form Bodily Injury and Property Damage Liability, including loss of use.
- e. Personal Injury
- f. Stop Gap or Employer's Contingent Liability
- g. Automobile Liability, including coverage for owner, non-owned, hired or borrowed vehicles
- h. Products / Completed Operations Liability
- i. Fire Legal Liability

The foregoing insurance policy or policies shall:

- a. Name Metro and the Commission as additional insured.
- b. Apply as primary insurance on behalf of Metro and Commission, regardless of what insurance the Commission may maintain.
- c. Provide for not less than sixty (60) days advance written notice to the Commission regarding termination or any material change to the policy.
- d. Include a "cross liability" (severability of interest) clause and a breach of warranty clause.
- e. Include limits of protection as follows:
  - Not less than \$1,000,000.00 for the General Comprehensive Liability Policy written on a per-occurrence basis.

A true and certified copy of the insurance policy or policies, including all of the required coverages and endorsements, shall be provided to the Commission prior to commencement of work under this agreement.

In the event that audio-visual 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 Contractor, its agents, employees or contractors.

Any other insurance deemed necessary by the Contractor to its operations and to protect equipment Contractor shall locate at the MERC Facilities shall be obtained at its own expense.

The terms and requirements of this Article shall be reviewed annually and modified as required in the judgment of the Commission's General Manager.

## 11. TERMINATION OR BREACH BY CONTRACTOR

**Material Breach:** Any actions by the Contractor or any failure by Contractor 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 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 and vacation of facilities as deemed appropriate by the Commission's General Manager.

Termination Accounting: In the event of termination under this Article, each party shall have full access to the other's financial records and accounts which only relate to this agreement in order to facilitate a determination of the financial obligations of each to the other.

## 12. ASSIGNMENT

Both parties fully understand and agree that the highly skilled and professional management and operation of the audio-visual services in 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. Provided, however, in no event will an offering of securities by Contractor be considered a sale, assignment, subletting, transfer or encumbrance. 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.

## 13. BEST EFFORTS

The Contractor and the Commission shall each use their best efforts to obtain the most efficient and high quality operation of audio-visual service as is possible.

14. IMPOSSIBILITY

The Commission and the Contractor 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 Contractor. 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.

15. 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 July 20, 1990. 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

Convention Center Director  
Oregon Convention Center  
P. O. Box 12210  
Portland, OR 97212

With a copy to:

General Counsel  
Metropolitan Service District  
2000 S.W. First Avenue  
Portland, OR 97201



This agreement is made in accordance with the laws of the State of Oregon, which shall be controlling in any dispute which arises under this agreement.

The situs of this agreement is Portland, Multnomah County, Oregon. Subject to the provisions of Section 18 requiring arbitration of all disputes, the parties agree that any litigation respecting this agreement or performance hereunder shall be had at said city and county in the Circuit Court of the State of Oregon or if jurisdiction exists in the Federal District Court, Portland, Oregon.

The underlined titles of the various articles of this agreement are for reference only. No meaning shall be ascribed to them, and they shall not be used in construing this agreement.

The parties agree that this contract has no value. The parties agree that the performance of Contractor has no value except insofar as Contractor's completed performance is entitled to compensation hereunder.

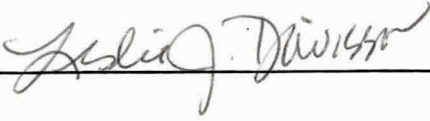
16. DBE / WBE PROGRAM


- a. Contractor will, consistent with its proposal and the terms of this Agreement regarding payment of gross revenues to the Commission subject to the provisions of Section 9 and Section 10, 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 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 Contractor 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 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.

PHOTO & SOUND COMPANY

METROPOLITAN EXPOSITION-  
RECREATION COMMISSION

By 


  
General Manager

Title Executive Vice President

By \_\_\_\_\_

Title \_\_\_\_\_

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

By:   
**Mark B. Williams**  
Senior Assistant Counsel