

METROPOLITAN EXPOSITION-RECREATION COMMISSION

Resolution No. 94-12

Authorizing the Stadium Manager to execute an Exclusive Summer Concert Series at Civic Stadium with Double Tee ~~Productions, Inc.~~
Promotions, (per change at meeting) dp

The Metropolitan Exposition-Recreation Commission finds:

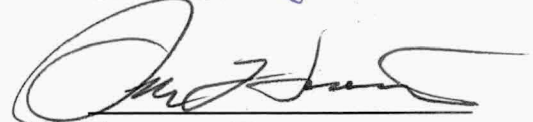
1. That past experience has shown concerts staged at Civic Stadium to produce significant earned revenues for the facility;
2. That presentation of summer concerts is consistent with Civic Stadium's Business Plan;
3. That the presenter has the experience, reputation and financial resources necessary to secure, promote and produce concerts at Civic Stadium;
4. That the Commission has the authority to enter into such an agreement through its Stadium Manager;

BE IT THEREFORE RESOLVED that the Stadium Manager is authorized to negotiate and contract with Double Tee ~~Productions, Inc.~~
Productions, Inc. for a Summer Concert Series Agreement on behalf of the Commission and Civic Stadium.

Passed by the Commission on March 30, 1994.




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: Authorization and approval of a Summer Concert Series Agreement for Civic Stadium

Resolution No. 94-12

Date: March 30, 1994 Presented By: Candy Cavanagh

Background and Analysis: In past years Civic Stadium has had limited opportunities to host concert events. However, when concerts were held at the Stadium each event was financially successful and popular with the public. Facing a serious financial future and limited resources to market the facility to the concert industry, staff recommended and M.E.R.C. directed the issuance of an RFP for a Summer Concert Series at Civic Stadium. The RFP process closed January 28, 1994 with one qualified proposer responding, Double Tee ^{Promotions} Productions, Inc. It is recognized that Double Tee ^{Promotions} Productions, Inc. has the experience, reputation and financial resources to successfully secure, promote and produce concerts at the Stadium. An exclusive contract for one year with two one year options has been negotiated.

Fiscal Impact: The presenter shall pay a minimum guarantee of \$50,000 annually. A \$10,000 down payment is due May 1st with additional payments tied to concert activity throughout the summer with any remaining balance due by September 15th. This guarantee is against facility profits realized from the equal sharing of revenue streams with the presenter. The revenue streams are: facility rental, concession sales, novelty sales, promoter profit, Fastixx commissions/charges, and possible event sponsorship/corporate sales. MERC retains all User Fees and all ticket sale commission from MERC outlet sales.

Discussion with Commission Liaison and/or User Groups: Commissioners Middleton and Foster were sent copies of Double Tee's proposal for review.

Recommendation: Staff recommends that the MERC Commission authorize the Stadium Manager to negotiate and execute the Summer Concert Series Agreement with Double Tee Productions, Inc. for Civic Stadium.

SUMMER CONCERT SERIES AGREEMENT

This Agreement is made and entered into this 22nd day of April, 1994, by and between the Metropolitan Exposition-Recreation Commission ("Commission," "MERC" or "Metro ERC") and Double Tee Promotions, Inc. ("Presenter"), collectively known as, "the Parties."

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WITNESSETH:

RECITALS

- 1. The Commission is a subdivision of Metro, a municipal corporation.
2. Presenter is an Oregon corporation.

3. The Commission issued a Request for Proposals (RFP) for Exclusive Development of a Summer Concert Series at Civic Stadium.
4. Presenter responded to the RFP, and has been selected by the Commission to present the Series.
5. Commission wishes to present quality entertainment to the residents of the Metro region, and wishes to secure successful presentations at Civic Stadium, in order to defray ongoing budget deficits at the Civic Stadium.
6. Presenter represents to Commission that it possesses the necessary capital, experience, skills, contacts, and expertise to present a Summer Concert Series at Civic Stadium that will result in quality entertainment and a desirable financial arrangement for Commission.

NOW, THEREFORE, in consideration of the mutual covenants of the Parties hereto, and upon the express terms and conditions hereinafter set forth, it is agreed by and between them as follows:

1.

DEFINITIONS

The definitions contained within Section I(C) of the RFP and Section 2 of the Civic Stadium Terms and Conditions are incorporated herein, and shall apply unless inconsistent with or superseded by any terms of this Agreement. In addition, the following terms are defined as follows:

a. "Commission," "MERC," or "Metro ERC" shall mean the Metropolitan Exposition-Recreation Commission, a subdivision of Metro, a municipal corporation organized under the 1992 Metro Charter.

b. "Concessions/Catering" shall mean the selling or dispensing of foodstuffs, beverages (alcoholic and non-alcoholic), flowers, tobaccos, or edible products of any kind.

c. "Contract Documents" shall mean the Summer Concert Series Agreement; the RFP, including any attachments thereto; the Civic Stadium Limited License Agreement, including any attachments thereto; Civic Stadium's Terms and Conditions; the Special Events Guidelines (Civic Stadium Special Event Objectives); the Proposal submitted by Presenter; and any other Commission policies or procedures incorporated by reference herein.

d. "Director" or "Stadium Director" or "Facility Manager" shall mean the individual responsible for the overall day-to-day management of Civic Stadium.

e. "General Manager" shall mean the chief executive officer responsible for the overall day-to-day management of the Commission's facilities, as well as any individual to whom the General Manager has delegated any responsibilities.

f. "Civic Stadium" or "the Stadium" or "Facility" shall mean Civic Stadium, in Portland, Oregon.

g. "Presenter" shall mean Double Tee Promotions, Inc., the entity responsible for making all arrangements concerning the promoting of the Summer Concert Series, including assuming any related financial risks.

h. "Request for Proposals" or "RFP" shall mean the Request for Proposals for Exclusive Development for a Summer Concert Series at Civic Stadium, including any attachments thereto or documents incorporated therein.

i. "Season" shall mean the warm months of the year during which Commercial Performances are typically held at Civic Stadium. Typically, "Season" shall mean from May to September, although this may be varied by written agreement of the Parties.

j. "Summer Concert Series" or "the Series" shall mean the Commercial Performances intended to be presented at Civic Stadium pursuant to this Agreement.

k. "Novelties" shall mean the official items sold by the tour to the ticket-buyers at each show. These items include but are not limited to t-shirts, sweatshirts, programs, pins, buttons, hats, etc. "Novelties" does not include "Concessions/Catering."

l. "User Fee" shall mean a charge levied on each ticket sold to spectator seated events located in Civic Stadium. One hundred percent of the User Fee shall be retained by the Commission. In no event shall the User Fee be considered rent paid by the Presenter, Commission profit participation, or net compensation under this Agreement for Commission. The User Fee shall not apply to unsold or complimentary tickets. The User Fee shall be included as part of the total ticket price printed on the ticket. Current Commission Resolutions impose the User Fee on all paid admissions as follows:

Tickets priced \$10.00 and under	\$.50 User Fee
Tickets priced \$10.01 to \$22.00	\$1.00 User Fee
Tickets priced \$22.01 and above	\$1.50 User Fee

m. "Summer Concert Series Agreement" or "this Agreement" shall mean the signed Summer Concert Series Agreement between Commission and Presenter.

2.

ENGAGEMENT/PRECEDENCE OF CONTRACT DOCUMENTS

a. **Engagement.** Subject to the terms of this Agreement and the direction of the Commission's General Manager or such other Commission personnel as he/she may designate, the Presenter shall promote and present a Summer Concert Series at Civic Stadium. This engagement is further subject to the relevant terms and conditions of any existing and subsequent use agreements between the Commission and Licensees, Users, or Permittees authorized to promote, conduct events at, or otherwise use Civic Stadium.

b. **Precedence of Contract Documents.** The Contract Documents together form the agreement between Commission and Presenter. All determination of the precedence of, discrepancy in, or conflicts regarding the Contract Documents shall be made by Commission, but, in general, precedence will be in accordance with the following list with the highest precedence item at the top:

1. Summer Concert Series Agreement.
2. The RFP, including any attachments thereto.
3. The Civic Stadium Limited License Agreement, including any attachments thereto.
4. Civic Stadium's Terms and Conditions.
5. The Special Events Guidelines (Civic Stadium Special Event Objectives).
6. The proposal submitted by Presenter.
7. Any other Commission policies or procedures incorporated by reference herein.

3.

RELATIONSHIP OF THE PARTIES

a. The Commission and the Presenter have entered into this Agreement for the purpose of establishing an independent contractor relationship between the Commission and the Presenter. This Agreement is not, nor should it be construed as, a lease or an agreement in the nature of a lease. In the event that any governmental authority of competent jurisdiction determines that Presenter has a leasehold interest in any of Commission's facilities, Presenter shall be responsible for payment of any property or other taxes which may result. No covenant of quiet enjoyment shall be implied in this Agreement. Any right of use conferred

on Presenter shall not be exclusive. 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 Presenter, its successors or assigns on the other part. It is further agreed that the Presenter will provide its own Workers' Compensation insurance or self-insurance program as required or permitted by Oregon law. The Presenter 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.

b. This Agreement gives Presenter the right and duty to represent the Commission and Civic Stadium, and negotiate on their behalf, with third parties for the presentation of Commercial Performances. In all dealings with third parties in which Presenter represents and/or negotiates on behalf of Commission and Civic Stadium, Presenter shall use its best efforts to secure financial arrangements which benefit Commission and Civic Stadium. Presenter shall, at all times, and in all dealings related to this Agreement or any license agreement entered into pursuant to this Agreement, have a fiduciary duty towards Commission and Civic Stadium, and shall faithfully represent them and/or negotiate on their behalf. Any breach of Presenter's fiduciary duty shall constitute an act of default, entitling Commission to exercise any or all of its rights under Section 16 of this Agreement.

4.

TERM OF THE AGREEMENT

The term of this Agreement shall be for one year, beginning on the date of execution, unless sooner terminated by the mutual agreement of the Parties or as provided for herein. The date of execution shall be the date on which the last signature necessary to execute this Agreement is affixed.

This Agreement may be extended for two additional one year terms, by mutual agreement of the Parties.

5.

PRESENTER PROMOTION RIGHTS AND FINANCIAL ARRANGEMENTS

Subject to the provisions of this Agreement, the Commission shall grant to the Presenter the right to present a Summer Concert Series at Civic Stadium, as follows:

a. Summer Concert Series. Presenter shall contract for, promote, arrange, market, and present a Summer Concert Series at Civic Stadium. The Summer Series shall be known and shall be advertised as "Downtown Nights at the Stadium."

b. Exclusivity. During the term of this Agreement, and any extensions thereof, Presenter shall have the exclusive right to present Commercial Performances, as defined in the RFP, at Civic Stadium. This exclusivity shall not extend to events which do not fit the definition of a Commercial Performance as defined in the RFP, or to local fundraisers, or special events produced by other current or former tenants of the Commission, including but not limited to, college and professional sports tenants. This exclusivity shall also not apply to Commercial Performances which are presented merely as an adjunct to another event at Civic Stadium, including but not limited to concerts presented as an adjunct to a professional sporting event. Facility Manager shall, however, make every reasonable attempt to facilitate the co-promotion of non-exclusive events between current tenants and Presenter.

c. Rent. Presenter shall represent Commission and Civic Stadium and negotiate with acts and potential acts for the Summer Concert Series. Presenter shall negotiate the rental for Civic Stadium for each Commercial Performance presented pursuant to this Agreement on a case-by-case basis, provided that any rental agreements shall be commercially reasonable. The rental paid for each Commercial Performance shall be stated on the Civic Stadium Limited License Agreement applicable to that performance, and shall be split between Commission and Presenter equally.

d. Ticketing. Presenter has selected Oregon Ticket Company, Inc. (Fastixx) as the official ticketing service to be used for the sale of all tickets for all Commercial Performances presented pursuant to this Agreement. Commission's master agreement with Oregon Ticket Company, Inc. (Fastixx) or any successor ticketing agreement shall apply to all ticket sales for events held pursuant to this Agreement, provided, however, that Commission shall receive 50 percent of all ticket commissions, ticket manifesting charges, and printing charges collected by Oregon Ticket Company, Inc. (Fastixx) for the sale of tickets for Commercial Performances conducted pursuant to this Agreement, provided further, however, that the ticket convenience charge paid by the consumer shall be retained, as usual, by the point-of-purchase. Oregon Ticket Company, Inc. (Fastixx) shall be a signator of this Agreement for purposes of evidencing its agreement with the terms of this Section 5(d), but shall have no other rights or standing under this Agreement. All proceeds from ticket sales shall otherwise be handled pursuant to the Commission's standard policies and procedures for ticket sales, which are incorporated herein by reference. Commission shall notify Presenter in writing in the event of any changes in said procedures.

e. Presenter Profit and Commission Profit Participation. (1) Commission's profit participation shall be in addition to any rental or other sums payable to Commission under this Agreement. Presenter's profit shall be established from the act net settlement amount. Presenter and Commission agree that reasonable business and accounting practices shall be utilized in determining Presenter's net profit. Commission may examine and audit Presenter's books and records at any reasonable time, consistent with Article 9 herein. Presenter's profit shall be split equally between Commission and Presenter. Presenter shall supply Commission with a copy of the act contract, act settlement sheet, and all line item

cost documentation submitted to act as event production and promotion expense, along with any other documentation which Commission determines is necessary in order to determine its profit participation pursuant to this Agreement.

(2) Presenter shall bear the sole responsibility for any losses incurred pursuant to this Agreement or any Commercial Performances conducted or supposed to be conducted pursuant to this Agreement. Commission shall bear no responsibility for any losses incurred by Presenter or any third parties.

f. Settlement. Standard Civic Stadium procedures for settlement shall apply. Presenter and Commission shall settle each Commercial Performance presented pursuant to this Agreement within five working days of the event. Commission shall have the right to have a designee present at all settlement meetings, including any settlement meetings between Presenter and the act. Commission shall have the right to approve any settlements or settlement documents.

g. Novelties. Presenter shall manage and control all novelty sales. Point of purchase locations must be pre-approved by Stadium Director or designee. Presenter shall negotiate the novelty rate with the act, but shall not negotiate less than a 70/30 split unless pre-approved in writing by Stadium Director or designee. Presenter's share of all novelty sales shall be split equally with Commission. Commission may have monitors on site to count product in and out, and will pay that monitor labor.

h. Sponsorships/Complimentary Tickets. Presenter shall have the right to enter into commercially reasonable sponsorship agreements which mutually benefit the Parties. Any revenue derived by Presenter from sponsorships, including but not limited to event sponsorship packaging, advertising sales, and any Presenter share of national sponsorship revenue (tour revenue) shall be split 50/50 between Presenter and Commission after agency commissions are applied, provided, that Presenter may not contract with an outside agency for a commission which exceeds 20 percent. Should either of the Parties conduct event sponsorship/advertising sales internally, each may deduct a commission not to exceed 15 percent prior to the split being applied. Presenter may issue complimentary tickets in commercially reasonable numbers in order to mutually benefit the Parties, and shall not issue complimentary tickets with the purpose or effect of reducing Commission's net compensation under this Agreement. Commission shall have the right to disapprove a commercially unreasonable issuance of complimentary tickets.

i. Production Charges. All equipment, services, labor, etc., required to stage the production shall be submitted as presenter costs to the act, and copies of invoices, billings, etc., shall be supplied at the same time to Commission for review. Civic Stadium labor, services and equipment shall be charged at Commission's prevailing rates. Commission shall supply proper documentation to Presenter, and, if required, to the act.

j. Event Promotion Expense. Event advertising (print and electronic) billings shall be submitted to Commission for review and shall include the actual rate paid by Presenter and shall also reflect any internal agency commission rate enjoyed by Presenter.

k. Minimum Guarantee. Notwithstanding any other provisions of this or any other agreement, Presenter irrevocably guarantees to Commission that Commission shall receive net compensation as a result of this Agreement in the minimum amount of \$50,000 per year. "Net compensation" shall not include any User Fee revenue or any Commission pass-through costs paid to Commission, including any overhead charges attached to said costs. No later than May 1 of each year that this Agreement is in effect, Presenter shall make a non-refundable \$10,000 down payment to Commission towards the full yearly guarantee. Presenter shall pay to Commission no less than the remaining \$40,000 of the yearly guarantee by the conclusion of the third concert of that year's Season. In the event that there are less than three concerts in any year's Season, any remaining unpaid guarantee shall be paid to Commission by Presenter on a basis of \$15,000 per concert, with any remaining balance due being settled and fully paid off by September 15th of that year.

6.

DUTIES OF THE PRESENTER

Subject at all times to the terms of this Agreement and the reserved powers of the Commission, the duties of the Presenter shall include the following:

a. Decisions. Presenter shall make all decisions regarding the selection of acts, subject to the definition of Commercial Performance contained in Section I(C)(6) of the RFP, including the Stadium Manager's right to exclude events which may be inappropriate for Civic Stadium.

b. Advertising. All marketing decisions and execution of advertising shall be done by Presenter, unless otherwise agreed by the Parties.

c. Ticket Prices/Scaling the House. All ticket pricing and scaling decisions will be made by Presenter, and executed by Commission.

7.

RESPONSIBILITIES OF THE COMMISSION

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

a. The Commission shall furnish the Presenter all necessary event information to adequately plan for all events at Civic Stadium, to assist the Presenter in accomplishing its services and responsibilities.

b. The Commission shall cooperate with the Presenter in obtaining all necessary licenses and permits.

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

8.

POWERS RESERVED TO THE COMMISSION

In the event of a dispute between the Presenter and the Commission, the decision of the Commission and/or its designee(s) concerning the operation or management of Civic Stadium shall be final and binding on both Parties. By way of illustration and not as a limitation, the reserved powers of the Commission include:

a. The final determination of all policies and procedures relative to the operation and management of Civic Stadium.

b. Sole discretion to cancel, terminate or interrupt any event, and cause the patrons to be dismissed during any event. The Commission shall not be liable to the Presenter or any third parties for any loss or cost occasioned by any such determination or action by the General Manager, the Stadium Director, or their designee(s) taken in good faith for the benefit or protection of the Commission and the public generally or Civic Stadium.

c. The power to have access to any areas of Civic Stadium at any time.

d. The power to terminate or suspend this Agreement for acts of default by the Presenter in accordance with any item of Article 16 herein.

e. The power to change, modify, or increase Commission's User Fee.

f. The Commission must approve in advance and in writing any agreements for subcontracting which may be proposed by the Presenter throughout the life of this Agreement.

g. The Commission may, at its discretion, conduct a performance review and/or audit of Presenter's compliance with this Agreement on an annual basis or more frequently as appears necessary to the Commission or its designee(s).

9.

ACCOUNTING

The Presenter shall, with respect to all business done under this Agreement, keep true and accurate accounting records, books, and data, which shall among other things show all gross revenues derived from any sources, and shall establish and maintain accounting procedures that are acceptable to the Commission or its designee(s). The Commission and its designee(s) shall have the right at all reasonable times during normal business hours to inspect all books of accounts and ledgers of the Presenter related to this Agreement, and the right to make or cause to be made audits of these accounts. Further, the Commission reserves the right, and the Presenter agrees to allow its systems, hardware and programs pertaining to this Agreement or business done pursuant to this Agreement to be inspected by the Commission or its designee(s), at any reasonable time.

10.

INSURANCE, INDEMNIFICATION, AND WAIVER OF SUBROGATION

a. Indemnification. Presenter shall defend, indemnify, and hold the City of Portland, the Metropolitan Exposition-Recreation Commission, Metro, their agents, elected and appointed officials, and employees (the Indemnitees) harmless from any and all claims, demands, damages, actions, losses and expenses, including attorneys' fees and court costs, arising out of or in any way connected with the fact of this Agreement, Presenter's performance of this Agreement, or any event which was presented or which was supposed to be presented pursuant to this Agreement. In the event that Presenter refuses or fails to defend as required herein, the Indemnitees may, at their sole option, settle or defend any claims, and may maintain an action in any court of competent jurisdiction against Presenter for the full costs of any settlement, judgment, or defense, including all expenses and attorneys' fees.

b. Insurance. Presenter shall, at its sole cost and expense, procure and maintain through the term of this Agreement the following insurance requirements:

1. Comprehensive General Liability with the Broad Form Comprehensive General Liability endorsement providing coverage against claims for bodily injury or death and property damage occurring in or upon or resulting from the facilities licensed hereunder, such insurance to offer immediate protection to the limit of not less than \$1,000,000 (\$2,000,000 if attendance is expected to exceed 10,000) and such insurance shall include Blanket Contractual Liability coverage which insures contractual liability under the indemnification of the Commission and Metro by Presenter as set forth below;

2. Any Comprehensive General Liability insurance policy required by this Agreement shall name as additional insured: the City of Portland, Metropolitan Exposition-

Recreation Commission, Metro, and the members, officers, directors, agents and employees of each entity.

3. Presenter shall maintain with respect to each such policy or agreement evidence of such insurance endorsements as may be required by the Commission and shall at all times deliver and maintain with the Commission a certificate with respect to such insurance in a form acceptable to the Commission.

4. Presenter agrees to provide all required certificates of insurance to the Director of Civic Stadium within 30 days of the first performance date of each show presented pursuant to this Agreement. Failure to do so shall constitute immediate breach of this Agreement by Presenter. It is agreed in that event that Commission, at its sole option, may terminate this Agreement. Commission may exercise any or all options available to it pursuant to this Agreement.

5. The Parties agree that the specified coverage of limits of insurance in no way limit the liability of the Presenter. Presenter shall obtain the written agreement on the part of each insurance company to notify Commission at least thirty (30) days prior to cancellation or non-renewal of any such insurance.

6. Should Presenter fail to provide and maintain adequate Liability Insurance by the date required in paragraph b, above, the Commission may, at its option, provide adequate coverage under its Special Events policy and/or invoke any or all of its rights under paragraph 16. Presenter shall be invoiced for the cost of any coverage provided by Commission.

c. Waiver of Subrogation. Each party hereto hereby waives any and every claim which arises or may arise in its favor and against the other party hereto during the terms of this Agreement or any extension or renewal thereof for any loss of or damage to any of its property, which loss or damage is covered by valid and collectible fire and extended coverage insurance policies to the extent that such loss or damage is recovered under said insurance policies. Said waivers shall be in addition to, and not in derogation of, any other waiver or release contained in this Agreement with respect to any loss or damage to property of the Parties hereto. Inasmuch as the waiver will preclude the assignment of any aforesaid claim by way of subrogation (or otherwise) to an insurance company (or any other person), Presenter is advised to give each insurance company written notice of the terms of such waiver, and to have insurance policies properly endorsed, if necessary.

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11.

TAXES AND FEES

Presenter agrees to pay promptly all sales, use, excise and any other taxes required by any governmental authority and shall obtain at its own expense all permits and licenses required by law in connection with its use of Civic Stadium.

12.

DEFACEMENT OF FACILITY

It is understood and agreed that the Commission provides the authorized areas of Civic Stadium to Presenter "as is", and that the Presenter will make, at its own expense, all changes, alterations, installations and decorations therein that are previously agreed to by Commission, and that Presenter will restore, at its own expense, Civic Stadium to the same condition in which it existed prior to any alterations made therein. Presenter shall be responsible for any costs to repair or replace property at Civic Stadium damaged or lost during the term of this Agreement. Ordinary wear and tear is excepted.

13.

NON-DISCRIMINATION

Presenter agrees not to discriminate against any employee or applicant for employment because of race, creed, ancestry, sexual orientation, disability, color, sex, marital status, age, religion or national origin, and further agrees not to discriminate for the same aforementioned reasons against any person or persons in connection with admission, services, or privileges offered to or enjoyed by the general public.

14.

IMPOSSIBILITY

The Commission shall not be liable for failure to perform as agreed 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, casualty, or similar cause beyond the control of the Commission. Commission agrees to notify Presenter promptly upon acquiring knowledge of 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.

15.

USE OF NON-LICENSED AREAS

Commission shall have the right to use or permit the use of any portion of Civic Stadium not granted to Presenter under this Agreement to any person, firm or entity. This right shall be subject to Commission's prudent business judgment.

16.

DEFAULT BY PRESENTER AND COMMISSION REMEDIES

Presenter shall be in default of this Agreement if Presenter fails to pay any amounts due under the Agreement or any other written agreement between Presenter and Commission, breaches any provisions of this Agreement or any other written agreement between Presenter and Commission, including payment of fees and maintenance of required insurance in strict accordance with this Agreement, violates any applicable laws or ordinances during its use of Civic Stadium, violates any Commission rules or policies, or should dissolve or cease doing business as a going concern or become insolvent or bankrupt. Upon such default by Presenter, the Commission may have one or more of the following remedies, in its sole discretion:

- a. Declare the entire amount of the balance due per the terms of the Agreement or any license agreement issued pursuant to this Agreement payable.
- b. Reenter any licensed area(s) without being liable for damage therefore and relet the licensed area(s) or any portion thereof, or operate the same for the balance of the Agreement's term, receive sums due and apply them first to any expenses of making the Commission whole and, second, to any expenses incurred for reentering the premises and reletting any licensed area(s).
- c. Terminate the Agreement by giving the Presenter written notice of such termination, which shall not excuse breaches of the Agreement which have already occurred, and may reenter the licensed area(s) as in b. above.
- d. Pursue any other remedies available to the Commission either at law or equity. No single or partial exercise of a right or remedy shall preclude any other or further exercise of a right or remedy.
- e. Commission shall have the right, without resorting to any legal action, to withhold from any and all sums, receipts or deposits which may be in the possession of the Commission for or on behalf of Presenter, such sums as are necessary, in Commission's sole opinion, to apply to any claims Commission may have against Presenter, or to protect

Commission against any loss, damage, or claim which may result from Presenter's performance or failure to perform under this Agreement.

f. Commission may, at its sole option, also terminate any other contract(s) with Presenter.

17.

ASSIGNMENT

It is agreed and understood between the Parties that Presenter has been chosen by Commission for its unique abilities and services, and therefore Presenter may not assign this Agreement or any interest therein without the prior written approval of the Commission. Any attempted assignment without such written prior approval shall be null and void.

18.

HAZARDOUS SUBSTANCES

Presenter, its officers, employees and agents, and any performers, customers, invitees or other participants in the event(s) covered by the Agreement are prohibited from bringing any hazardous substance into Civic Stadium or onto Commission property and are prohibited from allowing any hazardous substance to be brought into Civic Stadium or onto Commission property. As used in this paragraph, "hazardous substance" has the meaning given that term in ORS 466.540(9). If any governmental authority or other third party demands that a cleanup plan be prepared and that a cleanup be undertaken because of any release of hazardous substances that occurs as a result of Presenter's use of Civic Stadium or entry on Commission property, Presenter shall, at Presenter's expense, prepare and submit the required plan and all related bonds and other financial assurances, and Presenter shall carry out all such cleanup plans. Presenter agrees to indemnify Metro, Metropolitan Exposition-Recreation Commission, the City of Portland and their respective members, officers, directors, agents, elected and appointed officials, and employees against any claims, costs and expenses of any kind, whether direct or indirect, incurred voluntarily or pursuant to any state or federal law, statute, regulation or order, for the clean up, extraction, detoxification or neutralization of any release of any hazardous substance associated with or arising from the Presenter's use of the Authorized Areas or entry on Commission property. As used in this paragraph, "release" has the meaning given that term in ORS 466.540(4). Presenter's obligations under this paragraph survive termination or expiration of the Agreement.

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19.

STANDARD CIVIC STADIUM LIMITED LICENSE AGREEMENT

For each event performed pursuant to this Agreement, Presenter shall execute a standard Civic Stadium Limited License Agreement, a copy of which is attached. Commission reserves the right to make changes in the standard Civic Stadium Limited License Agreement from time to time, as deemed necessary by Commission.

20.

TERMS AND CONDITIONS

Commission's Terms and Conditions are hereby incorporated into this Agreement by reference. Commission reserves the right to change such Terms and Conditions from time to time.

21.

ACTIONS AND LAWSUITS

Any actions or lawsuits by one party to the Agreement against the other arising out of the Agreement or of conduct, acts or activities of the Parties hereunder will be governed by Oregon Law and shall be maintained in the Circuit Court of the State of Oregon, in and for Multnomah County, or if jurisdiction is proper, the United States District Court for the District of Oregon. No such action against the Commission may be maintained except in the State of Oregon. Presenter consents to the maintenance of any such action by the Commission against it in the Circuit Court of the State of Oregon, in and for Multnomah County, or if jurisdiction is proper, the United States District Court for the District of Oregon.

22.

SEVERABILITY

If any provision of this Agreement or the Terms and Conditions, which have been incorporated into the Agreement by reference, shall be declared invalid or unenforceable, the remainder of the provisions shall continue in force and effect to the fullest extent permitted by law.

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23.

WAIVER

The failure by the Commission to insist upon strict and prompt performance of the terms and conditions of this Agreement shall not constitute a waiver of the Commission's right to strictly enforce such terms and conditions thereafter. No waiver by the Commission of any default shall operate as a waiver of any other default on a future occasion or the same default. No delay or omission by the Commission in exercising any right or remedy shall operate as a waiver thereof, and no single or partial exercise of a right or remedy shall preclude any other or further exercise thereof, or the exercise of any other right or remedy.

24.

ATTORNEYS' FEES

In case any lawsuit or action is instituted by either party hereto arising out of this Agreement, the prevailing party in such litigation, including any appeal, shall be entitled, in addition to the costs and disbursements provided by statute, to reasonable attorneys' fees as determined by the court on trial or appeal. In the event that either party hereto employs in-house counsel, or if the Commission employs in-house counsel supplied to it by Metro, said prevailing party shall be entitled to recover the full reasonable fair market value of their counsel's services. The prevailing party shall also be entitled to recover its full reasonable costs of litigation, including the expense of depositions and expert witnesses.

25.

DELIVERY OF NOTICES

Any notice, request, demand, instruction, or any other communications to be given to any party hereunder shall be in writing, sent by registered or certified mail as follows:

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

Copy to: Civic Stadium
Attn: Civic Stadium Director
1844 S.W. Morrison Street
Portland, OR 97205

Copy to: Metro
Attn: General Counsel
600 N.E. Grand Avenue
Portland, OR 97232

To Presenter: Double Tee Promotions, Inc.
Attn: David Leiken, President
10 N.W. Sixth Avenue
Portland, OR 97209

Copy to: Richard G. Helzer
Thompson, Adams, DeBast & Helzer
Hall Street Station
4500 S.W. Hall Boulevard, Suite 1400
Beaverton, OR 97005

26.

MISCELLANEOUS

a. **Presenter's Assumption of Responsibility.** The Presenter expressly assumes full responsibility for all persons connected with Presenter's use of the Facility, including all its employees, agents, members, invitees and contractors.

b. **Time is of the Essence.** Time is of the essence to this Agreement.

c. **Entire Agreement.** Except as specifically provided herein, this document contains the complete and exclusive agreement between the Parties, and is intended to be a final expression of their agreement. No promise, representation or covenant not included in this document has been or is relied upon by any party. No modification or amendment of this Agreement shall be in force or effect unless in writing executed by all Parties hereto.

d. **Headings.** The headings used in this Agreement are inserted only as a matter of convenience and for reference and in no way define, limit or describe the scope of this Agreement nor the extent of any provision thereof.

e. **No Third Party Beneficiaries.** This Agreement is not intended to benefit any individual, corporation, or other legal entity other than Commission, Presenter, and the Indemnitees. This Agreement shall not be deemed to vest any rights in, nor shall it be deemed to be enforceable by, any other parties in any proceeding whatsoever.

f. **Parking.** Parking is not available at Civic Stadium, other than whatever on-street or independent lot garage parking may be available from time to time.

Commission makes absolutely no guarantees or representations as to the availability or continued availability of on-street or independent garage parking.

g. Concessions/Catering. Commission shall retain complete control of all Concessions/Catering sales and service. Commission may delegate Concessions/Catering to a designated agent or agents, if it deems such delegation appropriate. Commission shall share its net Concessions/Catering revenue for events presented pursuant to this Agreement with Presenter on a 50/50 basis, provided, however, that Commission need not share with Presenter any revenues derived from VIP or backstage catering, which shall be retained by Commission. Presenter shall have the right to monitor and audit Concessions/Catering sales in a reasonable manner and at reasonable times.

h. Shuttling, Noise Levels, and Neighborhood Cleanup. Special events guidelines shall apply.

i. Striking and Re-set of Concert Set. Presenter recognizes that Commission shall be renting out Civic Stadium for other uses, including but not limited to sporting events. When it is necessary for the set to be struck, labor and contractor costs associated therewith shall become part of the production cost submitted to the act. Stage decking and chair removal labor by Civic Stadium staff shall be charged at prevailing rates. On-site storage for equipment which has been taken down shall be provided to the best of Civic Stadium's ability while adhering to safety and fire regulations. For smaller events, where Commission determines that the activity can safely take place around the stage and floor seating, the set shall not be struck.

DOUBLE TEE PROMOTIONS, INC.

METROPOLITAN EXPOSITION-
RECREATION COMMISSION

By: David T. Leiken, Pres.
David T. Leiken, President

By: Candy Cavanagh
Candy Cavanagh, Manager
Civic Stadium

Approved as to Form:
Daniel B. Cooper, General Counsel

By: [Signature]
Mark B. Williams
Senior Assistant Counsel

By its signature hereon, Oregon Ticket Company, Inc. agrees to be bound by the provisions of Section 5(d) herein, and that, to the extent necessary, any agreements between Oregon Ticket Company, Inc. and the Commission (including any extensions of those agreements) are amended to include the terms of Section 5(d). Oregon Ticket Company, Inc. shall have no other rights or standing under this Agreement, and shall not otherwise be considered a party hereto.

OREGON TICKET COMPANY, INC.

By: David T. Leiken, Pres.

Print Name: David T. Leiken

Title: President

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