

METROPOLITAN EXPOSITION-RECREATION COMMISSION

RESOLUTION NO. 95-8

Authorizing the Chairman and the Secretary/Treasurer to execute an Automated Ticketing Services Agreement with Ticketmaster and a second one with Fastixx, wherein the two ticket agents will provide automated ticketing services for the Portland Center for the Performing Arts and the Civic Stadium for the period April 1, 1995 to December 31, 1997.

The Metropolitan Exposition-Recreation Commission finds:


- 1. That the Commission and two automated Ticket Agents, Ticketmaster and Oregon Ticket Company (Fastixx), entered into Automated Ticketing Services Agreements in December of 1991;**
- 2. That the contracts with these two companies will expire on March 31, 1995;**
- 3. That MERC appointed a committee comprised of Commissioners Scott, Foster, and Norris to work with staff and to recommend a method for handling computerized ticketing after expiration of these contracts;**
- 4. That the MERC committee conducted an extensive review of ticket operations including several public meetings; surveys of vendors, users and customers; and, financial analysis;**
- 5. That the review of ticket operations revealed no major problems nor were major changes requested by user groups or the public;**
- 6. That the review did establish that approximately \$150,000 of MERC ticket service costs are not covered by revenues;**
- 7. That the current contract is complex and difficult to understand;**
- 8. That MERC resolved via Resolution 94-66 to extend the non-exclusive agreements with Ticketmaster and Fastixx for the PCPA and the Stadium;**
- 9. That MERC further resolved in Resolution 94-66 to simplify the agreements and to relate fees to MERC ticket services cost recovery;**
- 10. That the parties have held several meetings to develop a simplified contract which relates fees to cost recovery;**

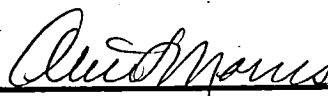
11. That the parties wish to enter into revised Automated Ticket Services Agreements extending until December 31, 1997;

12. That the MERC staff has prepared the attached Automated Ticketing Services Agreement and recommends that it be executed on behalf of the Metropolitan Exposition-Recreation Commission for the period March 1, 1995 to December 31, 1997.


BE IT THEREFORE RESOLVED that the Chairman and Secretary/Treasurer are hereby authorized on behalf of the Metropolitan Exposition-Recreation Commission to execute the Automated Ticketing Services Agreement attached to this resolution with Ticketmaster and an identical one with Fastixx.

Passed by the Commission on February 8, 1995


Chairman


Secretary-Treasurer

Approved As To Form:
Daniel B. Cooper, General Counsel

By: 
Mark B. Williams
Senior Assistant Counsel

Fastix

STAFF REPORT

CONSIDERATION OF RESOLUTION NO. 95-8, AUTHORIZING THE CHAIRMAN AND THE SECRETARY/TREASURER TO EXECUTE AUTOMATED TICKETING SERVICES AGREEMENTS WITH TICKETMASTER AND FASTIXX TO PROVIDE AUTOMATED TICKETING SERVICES FOR THE PORTLAND CENTER FOR THE PERFORMING ARTS AND THE CIVIC STADIUM.

Date: February 8, 1995

Presented by: Pat LaCrosse

BACKGROUND: In December 1991, MERC entered into agreements with two ticket agents, Ticketmaster and Fastixx, to provide automated ticketing services. Several months prior to expiration of those agreements, MERC appointed a committee made up of Commissioners Norris, Scott and Foster, to review the MERC ticketing services and determine how they were to be delivered after expiration of the two contracts.

An extensive review of ticketing operations ensued. Several public meetings were held, customer surveys were done at several events, and opinions were solicited from all interested parties. Finally, a financial analysis of our ticket service costs and revenue was developed.

On October 19, 1994, an Interim Report was presented to the MERC. One of the recommendations was to revise the current non-exclusive ticket agreements with Ticketmaster and Fastixx and extend them for the PCPA and Stadium. Ticket services for OCC and Expo would be the subject of a separate agreement. The reason for extending the agreements for PCPA and the Stadium is that the review of ticket services revealed no major problems. User groups expressed satisfaction with current operations and no major changes were requested. However, our financial analysis determined that our expenses for ticket services are approximately \$150,000 beyond revenues. It was also determined that the current contract was difficult to read and understand. Therefore, it was recommended that the revised contract be a simplified version of the previous one and that attempts be made to set a fee structure that would recover more of the ticket service costs.

By Resolution 94-66, MERC agreed to enter into extended agreements with Fastixx and Ticketmaster with revisions that would both simplify the agreements and relate the fee structure to cost recovery.

Over the past months, the parties have met several times to develop the revised agreement presented as part of Resolution 95-8. Highlights of that agreement are:

1. The term is approximately 3 years (March 1, 1995 to December 31, 1997) with one two-year extension. This keeps us in the cycle begun in December 1991 whereby we may extend contracts for no more than 10 years.

2. Ticket agents are required to have at least 15 outlets, must continue to expand the outlets and provide service to customers outside of the Portland area.

3. A standard set of facilities and equipment are established in Exhibit A. Additions or subtractions from this standard is expected, based on the level of business and will be authorized by the General Manager or his/her designee.

4. The ticket sale operation was extensively reviewed and updated to correspond to current operations. Will call tickets will either be delivered by the ticket agent or the agent may reach an agreement to have them printed out at the facility and pay the facility \$.75 per will call order to reimburse staff costs. This will permit some flexibility in our system which will help accommodate two different ticket systems.

5. MERC reserves the right to sell advertising on the ticket backs and envelopes, but will provide adequate notice if this right is to be exercised. Currently, the ticket agents sell advertising and we do not. This simply allows us to do it if desirable. We would need to provide substantial notice since the agents print large volumes of tickets with advertising on the backs.

6. Financial arrangements were simplified. MERC will now be compensated at the rate of \$.25 per ticket instead of \$.05 per ticket, \$.30 per phone ticket and \$.50 per phone order. This rate of \$.25 is calculated to increase the total revenue by the amount of inflation.

7. Substantial changes were made regarding "convenience fees." First the term was changed to "ticket charges" and defined to include any charge levied on a ticket or order other than the user fee. Because both our box office and all outlets charge "convenience fees" there doesn't seem to be any real "convenience." Ticket agents are permitted to charge ticket fees, but they must be no higher than allowed in Exhibit B. The fee structure in Exhibit B was revised with two objectives: to keep ticket prices reasonable at the low end particularly because the low end prices are often children's performances and to make the fees closer to market prices. Therefore, the first three tiers were not changed, but the rest were increased. A final change was a decision to charge the same fees at our box offices as are charged at the outlets. We have operated a "least cost" box office. The previous contract had a \$2.00 limit on fees. Frequently, the ticket agent would request a higher fee that is consistent with market practices for higher end ticket prices. When permission was given for the higher fee, our box offices continued to charge only \$2.00. It is our intent to discontinue this practice due to the fact that we simply do not have sufficient revenue to cover our costs.

8. A provision was established for MERC to conduct an annual performance review of the contracts and for the parties to review the financial arrangements and renegotiate them, if needed.

9. Boilerplate sections were reviewed, revised and updated by our attorney, Mark Williams.

10. The agreement was reorganized and much of the language simplified for understanding. An outline of the agreement provisions is provided.

FISCAL IMPACT: The impact on the Civic Stadium is estimated at a break-even level. At the PCPA, there will continue to be a gap between costs and revenue. The current estimate is \$55,000. (See attached PCPA Fee Proposal.) This is an improvement over the former gap of \$150,000. The improvement is achieved by gaining \$6,299 in ticket commissions at \$.25 per ticket; by gaining an additional \$45,633 in ticket charges at our own box office. The increase in ticket charge revenue will be achieved by raising the upper limit to approach the market level and by eliminating the special \$1.00 ticket charge for customers of resident companies. All customers will now pay the same fees at our box offices and at all outlets. Finally, a new fee will be proposed at a future MERC meeting. It will be a box office set-up fee of \$125 per event. It is expected to generate \$37,500.

RECOMMENDATION: Staff believes that the agreement in Resolution 95-8 meets the objectives set by the Commission in Resolution 94-66. It is simplified and will achieve greater cost recovery. It is, therefore, recommended that Resolution 95-8 be approved.

PCPA FEE PROPOSAL

<u>Revenue Source</u>	<u>Current</u>	<u>Proposed</u>	<u>Increase</u>
1. Ticket Commissions (simplify per ticket fees to \$.25 per ticket for all tickets sold other than PCPA)	\$52,322	\$58,621	\$ 6,299
2. Ticket Charges			
A. Computerized (average fee estimated to increase from \$1.26 to \$2.00)	\$77,535	\$123,168	\$45,633
B. Hard/Roll (no change expected)	\$ 4,245	\$ 4,245	-----
C. Other Venues*	\$ 2,482	\$ 2,482*	-----*
3. New setup fee (\$125 per event; 300 events est.)	\$ -0-	\$37,500	\$37,500
4. Other Rev. (changes not expected)	\$18,400	\$18,400	\$ -0-
Total	\$154,984	\$224,416	\$89,432
REMAINING GAP (unreimbursed costs \$300,000-\$244,416)			\$55,584

*yet to be negotiated

AUTOMATED TICKETING SERVICE AGREEMENT

INDEX

Recitals

- 1. Definitions**
- 2. Purpose of the Contract**
- 3. Term of Agreement**
- 4. Duties of Ticket Agent**
 - A. Outlets and Telephone Sales**
 - B. Facilities and Equipment**
 - C. System Safeguards**
 - D. Ticket Sale Operation**
 - E. Ticket Content and Advertising**
 - F. Compensation/Financial Arrangements**
 - G. Accounting**
 - H. Service Standards**
- 5. Responsibilities of the Commission**
- 6. Powers Reserved to the Commission**
- 7. Insurance and Indemnification**
- 8. Termination for Breach by Ticket Agent**
- 9. Bond**
- 10. Assignment**
- 11. Impossibility**
- 12. Non-Waiver Provision**
- 13. Attorney's Fees**
- 14. Amendments**
- 15. Miscellaneous Provision**
- 16. Minority Business Enterprises/Women-Owned Enterprises Program/Equal Opportunity Hiring**

17. Time is of the Essence

18. Obey All Laws

19. No Third Party Beneficiaries

Exhibit A - Equipment

Exhibit B - Service Standards

Exhibit C - Maximum Charges

AUTOMATED TICKETING SERVICES AGREEMENT

This agreement is made and entered into on this 8th day of February, 1995, by and between the Metropolitan Exposition-Recreation Commission ("MERC"/ Commission), and Oregon Ticket Company, Inc./ Metro, Ticket Agent.

WITNESSETH:

RECITALS

1. The Commission is a subdivision of Metro, a municipal corporation.
2. The Automated Ticket Agent is an Oregon Corporation.
3. The Commission desires to make tickets to events held in Commission Facilities as accessible as possible.
4. Providing automated ticket sales to the general public will improve this accessibility and will provide potential for greater revenues for Commission licensees.
5. The Ticket Agent represents that it is able to provide automated ticket sales services for the locations specified.
6. The Ticket Agent represents that it possesses the necessary equipment and systems to provide automated ticketing sales and service, inclusive of outlet sales and telephone sales, including the computer hardware, software program and system procedures for the purposes of printing, selling, auditing and controlling tickets for events at Commission Facilities.

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 following terms are defined as follows:

- a. "Commission Facilities" means facilities operated or managed by the Metropolitan Exposition-Recreation Commission to include the Civic Stadium and the Portland Center for the Performing Arts (PCPA).
- b. "General Manager" means the chief executive officer responsible for the overall day-to-day management of the Commission's facilities or his designee.
- c. "Accounting Year" means the period commencing July 1 of each year and ending June 30 of the following year.
- d. "Commission" shall mean the Metropolitan Exposition-Recreation Commission, a subdivision of Metro.
- e. "Ticket Agent" means contractor who will provide all necessary services for the automated ticketing system.
- f. "Ticket Charge" identifies any charge levied on tickets or orders for tickets sold through Commission Facilities' Ticket Centers and Commission-contracted automated ticket agents and telephone centers, to be paid by the ticket purchaser. This includes, but is not limited to, convenience fees, service charges, handling fees, and distance fees. It does not include user fees as defined in this Agreement. The ticket charge is added to the base ticket price and is not a portion of the base price.
- g. "User Fee" identifies a charge levied on each ticket sold to spectator seated events located in the following Commission Facilities: Portland Center for the Performing Arts and Civic Stadium. The User Fee shall be retained by the Commission. The User Fee shall be included as part of the total ticket price printed on the ticket. User Fees shall be imposed on all paid admissions and administered in accordance with Commission User Fee Policies.
- h. "Ticket Outlet" means the Ticket Agent's contracted and authorized location for ticket sales as well as all Commission Facilities' Ticket Centers.

2. PURPOSE OF THE CONTRACT

The purpose of this contract is to engage Ticket Agent as an independent contractor to sell tickets for events at Commission Facilities. Nothing in the contract shall be construed to be an employment, partnership, joint venture, or joint employer relationship between the Commission and the Ticket Agent. Subject to the provisions of this contract, the Ticket Agent has independent control over operations of the services contemplated in this agreement.

The Ticket Agent is granted the non-exclusive right to conduct automated ticket sales at Ticket Agent's outlets and by telephone. The Commission has the right to sell tickets at its own Ticket Centers and by telephone using ticket Agent's system.

3. TERM OF THE AGREEMENT

The term of this Agreement shall be from April 1, 1995 until December 31, 1997, unless sooner terminated by the mutual agreement of the parties or as provided for herein.

The Commission shall have the option at the end of the initial term of this agreement to extend this agreement for an additional two year term, based on the same conditions as set out in the original agreement. Sixty (60) days written notice to the Ticket Agent by the Commission prior to the termination of the original agreement or renewal term shall be sufficient to exercise the renewal option. Compensation shall be negotiated for the optional extension.

4. DUTIES OF THE TICKET AGENT

During this agreement, Ticket Agent shall be subject to the following terms and conditions.

A. Outlets and Telephone Sales

1) Ticket Agent shall establish and maintain a network of at least fifteen (15) outlets throughout the metropolitan area including southwest Washington. Ticket Agent shall continue to build and expand this network of outlets into other areas of the State and region. Ticket Agent shall make efforts to provide information to those outside the metropolitan area about ticket sales.

2) The Ticket Agent shall maintain consistent hours of operation in the telephone room and at all outlets, to facilitate public access to purchase tickets. A schedule of hours for each outlet shall be provided to the Commission upon execution

of this contract for review and approval. Any significant changes to the initial schedule must also be submitted to the Commission.

B. Facilities and Equipment

1) The Ticket Agent shall provide a minimum level of equipment, facilities and systems for ticket sales as provided in Exhibit A. Additional equipment shall be provided when needed to meet additional demand for sales. In no case, shall the minimum level of equipment be reduced unless approved by the Box Office Manager.

2) The Ticket Agent shall provide all equipment listed in Exhibit A to Commission at no charge to Commission and shall maintain all equipment, facilities, and systems necessary for Ticket Agent's automated sales also at no charge to Commission.

3) The Ticket Agent shall also provide at no charge to the Commission CRT terminals and printers which provide each Ticket Center with transaction-by-transaction reports. This inquiry system shall be acceptable to the Commission and shall provide sufficient information to monitor all sales and ensure proper auditing of ticket sales.

C. System Safeguards

All system safeguards shall be maintained in a form and manner which Commission, in its sole discretion, finds to be acceptable and satisfactory. Such safeguards shall include but are not necessarily limited to the following:

1) Written documentation of safeguards in and associated with the system intended to prevent unauthorized access or manipulation of or to programs, data files, data lines and other components of the system which are necessary for proper operation, control and audit of the full system.

2) Written documentation of security procedures, measures, equipment and facilities to assure protection of the system, its hardware, software and data files including its off-site backup storage facilities for programs and data files.

3) Written documentation of the hardware or software controls that prevent program modification during the on-line operation of the system.

4) Written documentation of its contingency plan in the event of computer failure or data line failure.

Ticket Agent shall allow operational audits and system review by the Commission and its independent system's consultant at the Commission's request. Ticket Agent shall produce all documentation referenced herein upon Commission request.

D. Ticket Sale Operation

Ticket Agent agrees to operate sales as specified herein:

1) Prior to sale, the Box Office Manager will fax or send written authorization for Agent to set up its computer ticket manifest. This authorization will include instructions concerning facility seating layout, ticket price structure, discounts and ticket format. All complimentary tickets and deletions from the manifest must be issued by the Commission Ticket Centers unless otherwise approved by the Facility Director.

2) Ticket Agent shall provide the Commission with a complete manifest for approval by the Commission prior to tickets going on sale.

3) Upon receiving final approval from the Box Office Manager, Ticket Agent will commence sale.

4) The Commission shall set all times and dates for tickets to be placed on sale. All outlets must sell all events at Commission facilities unless otherwise authorized by the Commission's General Manager or his designee.

5) Sale of tickets will be made at all Ticket Agent outlets and by telephone sales at the same price as charged at the Commission Ticket Centers, with the exception of Ticket Charges as described in Section F.

6) No tickets shall be held back prior to or during the time of sale unless authorized by the Box Office Manager.

7) If an event should cancel, Ticket Agent shall refund at all location(s), including all telephone sales generated by the Ticket Agent. All refunds shall include user's fee and convenience charge. Ticket Agent shall maintain accurate records of refunded amounts. Any funds, including telephone sales remaining sixty (60) days after the scheduled event shall be returned to the Commission. All remaining tickets after the sixty (60) day period will be refunded through MERC. Exceptions may be approved by Box Office Manager.

8) Costs of duplicate tickets issued through contractor error will be paid by

contractor.

9) Tickets may not be consigned by the Ticket Agent for sale to any entity that does not have a current sales agreement with the Commission.

10) All tickets purchased beginning six (6) days prior to the event will be printed as will-call tickets at the facility where the event takes place. Agent will make every effort to mail telephone order tickets to customers when purchased, for all orders processed seven (7) days or more prior to the event date. Ticket Agent shall deliver any will-call tickets to Commission's Ticket Center where event is scheduled at least two (2) hours prior to the start of the event unless a shorter time frame is authorized by the Box Office Manager. Ticket Agent may enter into an agreement with Commission General Manager, or his designee, to have will-call tickets printed out at the facility where the event takes place provided that MERC will be reimbursed for staff costs at the rate of seventy-five cents (\$.75) per order.

11) Any tickets which cannot be sold or which are machine printing errors will be reinstated into inventory. The Ticket Agent shall be responsible to provide documentation and justification of any reinstatement to inventory. All reinstatements to inventory shall be subject to procedures approved by Commission, and documentation consistent with such procedures shall be maintained and be subject to audit by Commission and its representatives.

E. Ticket Content and Advertising

1) Ticket Agent shall provide ticket stock which will be used under this agreement acceptable to the Commission with respect to size, layout, color, makeup, weight, text and clarity.

2) The Commission reserves the right to approve the form, substance and makeup of any automated ticket stock, which may include custom ticket stock, which will be sold by the Ticket Agent for events at Commission Facilities.

3) The Commission also reserves the right to specify information to be printed as a back print on any ticket. The sale of any automated tickets by the Ticket Agent is subject to this provision. The purpose of such back print is for legal notification to patrons of applicable policies, laws and regulars.

4) The Commission reserves the right to sale of advertising on tickets and ticket envelopes. Prior to exercising this right, Commission will give reasonable notice.

F. Compensation / Financial Arrangements

1) The Commission will not pay any remuneration to the Ticket Agent for performing services under this agreement except as expressly provided for herein. The Ticket Agent may independently establish a commission rate for the sale of all tickets to be paid to the Ticket Agent by the event permittee, but at no time may this commission rate exceed five percent (5%) of the dollar value of the ticket. Additionally, the Ticket Agency may charge to the permittee a setup charge for the manifesting and setup of the ticket inventory on the computer and a charge for ticket stock. The Ticket Agent may assess ticket charges on tickets sold by Ticket Agent personnel, to be paid by the ticket purchaser. All ticket charges will be established by the General Manager or designee at the time of contracting with the permittee/licensee, provided however, that the charge shall be no more than permitted by Exhibit B. Any charges outside of this range must be approved, in advance, by the permittee/licensee, Ticket Agent and Commission's General Manager. In order to partially reimburse Commission's expenses associated with ticketing and administering this Agreement, the Ticket Agent shall pay to the Commission Twenty-Five Cents (\$.25) of the ticket charges per ticket sold for all outlet sales including telephone sales. Nothing in this agreement shall prevent the Commission from collecting and retaining ticket charges on tickets sold by Commission personnel; and, it is agreed that Commission personnel shall have the right to sell tickets for all events on the system. The Commission will retain one hundred percent (100%) of the ticket charges on tickets sold at Commission Ticket Centers for events at Commission Facilities. Notwithstanding any other provisions in this agreement, in no event shall the Ticket Agent assess ticket charges in a manner or amount that violates any law. Ticket Agent's duties of defense and indemnification pursuant to Article 7 shall apply to any and all claims that the manner or amount of any ticket charges violates any law.

2) Unless otherwise provided herein, the Ticket Agent shall pay all expenses which are necessary to carry out the terms of this agreement at no expense to the Commission unless authorized by the General Manager or his designee.

3) The Ticket Agent shall be paid its sales commissions by direct invoice to the event permittee/licensee or at the time of event settlement. No funds shall be extracted by the Ticket Agent prior to the settlement for payment of sales commissions. The Commission does not guarantee payment of the Ticket Agent in the event that funds are unavailable for such purpose. The Commission however, will make every reasonable effort to collect amounts owing on behalf of the Ticket Agent. The Ticket Agent may retain ticket charges authorized under paragraph 4F of this agreement (independent of ticket price).

G. Accounting

1) The Ticket Agent 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 receipts derived from over-the-counter and telephone sales of all such tickets sold, and shall establish and maintain accounting procedures that are acceptable to the authorized representative of the Commission. The Ticket Agent shall account to the Commission for the full admission price of each ticket sold whether by telephone sales or over-the-counter sales, which shall not be reduced by credit card charges, losses due to bad checks or any other losses or deductions incurred in the sale of the tickets. The Commission and its agents shall have the right at all reasonable times during normal business hours to inspect all books of accounts and ledgers of the Ticket Agent relating to subject ticket sales, and the right to make or cause to be made audits of these accounts. Further, the Commission reserves the right, and the Agent agrees to allow its systems, hardware and programs to be inspected by agents or representatives of the Commission at any reasonable time.

2) The Ticket Agent shall deposit all receipts (except Ticket Agent's allowable ticket charges) from telephone sales and over-the-counter sales into a deposit-only account or a third-party account which directly relates to the Ticket Agent's outlet sales contractual obligations or agreement. These funds shall not be obligated for any Ticket Agent business but shall remain in this account until weekly settlement or event settlement occurs, whichever comes first. Ticket Agent shall deposit receipts from ticket sales and all sales commission due to the Commission in any of these situations: a) immediately upon event settlement; b) immediately upon weekly settlement; and/or c) whenever ticket sales exceed \$50,000 as provided in paragraph G.3. All necessary documentation will accompany receipts so that all ticket sales information and ticket charge information can be reconciled and settled for the previous week's sales on all Commission events on sale. The procedure for the transfer of funds shall be in accordance with Commission-approved policies.

3) The Ticket Agent shall notify the Commission when ticket sales for the week have reached the \$50,000 threshold. Ticket Agent shall make every attempt to deposit all receipts or excess funds over \$50,000 at the earliest convenience, but in no case shall it exceed three (3) calendar days. All funds to settle Commission events will be available at the time of settlement for such events. Ticket Agent is responsible for ensuring such funds are available to Commission for settlement purposes regardless of the date the weekly settlement is due. If such funds are not available for Commission event settlement, then the commission may declare Ticket Agent in default of this agreement and take the necessary steps outlined in paragraph 8.

4) Commissions for ticket sales due to MERC shall be settled and remitted to MERC at time of settlement.

H. Service Standards

1) Training and Service

The following provisions apply to both the operation of ticket outlets and telephone sales.

- a. Ticket Agent shall meet or exceed the minimum standards for training, staffing and telephone response set forth in the attached Exhibit C.
- b. Ticket Agent shall supply twenty-four (24) hour, seven (7) days a week emergency service as necessary for all ticketing operations to insure that equipment and software will be effective for Commission events.
- c. Ticket Agent shall pursue software capability to tie into the Commission's computerized facility management system. This would include report capability as well as general information pertaining to event-related sales. Commission shall pay all expenses associated with software linkage and hardware necessary to integrate the two systems.
- d. Ticket Agent shall maintain consistency of advertising when events go on sale to provide quality information to the buying public. This information consists of but is not limited to date, time, location of outlets and Commission ticket centers, telephone number for sales, facility where event is to be held, event information and disclaimer stating "all tickets subject to service charges."
- e. Ticket Agent will provide Commission the ability to capture single ticket buyer information (name, address, etc.) coded by event and maintained on a mailing list for marketing purposes at the request of the Commission General Manager or his designee.

5. RESPONSIBILITIES OF THE COMMISSION

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

- a. The Commission shall furnish the Ticket Agent all necessary event

information to adequately plan for all events at Commission Facilities to assist the Ticket Agent in accomplishing its services and accounting responsibilities.

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

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

d. The Commission may conduct an annual review of this contract. Such review will include compliance with system security measures, service standards, ticket charges and other contract provisions. The parties mutually agree to review the fees, charges and other financial arrangements annually and may renegotiate these provisions.

6. POWERS RESERVED TO THE COMMISSION

In the event of a dispute between the Ticket Agent and the Commission, the decision of the Commission concerning the operation or management of the automated ticketing 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 Commission Facilities' automated ticketing 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 Ticket Agent for any loss or cost occasioned by any such determination or action by the General Manager, or his designee, 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 automated ticketing areas at any time.

d. The power to terminate or suspend this agreement for acts of default by the Ticket Agent in accordance with Article 8 herein.

e. The Commission must approve in advance and in writing, any agreements for subcontracted Ticket Outlets which may be proposed by the Ticket Agent throughout the life of this agreement.

f. The Commission may, at its discretion, conduct a performance review and/or

audit of Ticket Agent's compliance under this agreement on an annual basis or more frequently as appears necessary.

7. INSURANCE AND INDEMNIFICATION

It is understood and agreed that, to the fullest extent permitted by law, the Ticket Agent shall indemnify and hold harmless Commission, Metro, the City of Portland and their officers, 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 this agreement or any acts or omissions in performance of this agreement by the Ticket Agent, its employees and subcontractors. The Ticket Agent will not bring any action against the Commission due to the Commission's execution of its right to cancel any event.

Ticket Agent shall provide a General Comprehensive Liability Insurance Policy. Coverage to be provided by the foregoing insurance policy or policies shall include, but not be limited to, coverage 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, City of Portland, Commission and their officers, agents and employees 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 coverage and endorsements, shall be provided to the Commission prior to commencement of work under this agreement.

In the event that automated ticketing 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 Ticket Agent, its agents, employees or contractors.

Any other insurance deemed necessary by the Ticket Agent to its operations and to protect equipment Ticket Agent shall locate at Commission 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 judgements of the Commission's General Manager or his designee.

8. TERMINATION FOR BREACH BY TICKET AGENT

Material Breach: Any actions by the Ticket Agent or any failure by Ticket Agent 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 Ticket Agent 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 Ticket Agent, 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 Ticket Agent. The parties agree that the Commission shall retain the right to determine whether any action or failure of Ticket Agent constitutes a material breach hereunder, and any such determination shall be conclusive and shall be binding upon the parties hereto. In lieu of terminating this agreement for such breach, Commission may suspend Ticket

Agent's right to engage in ticket sales for up to six (6) months.

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.

9. BOND

The Ticket Agent at the time of execution of this agreement shall furnish the Commission with a valid surety bond in the minimum sum of \$100,000 issued by a surety company qualified to do business in the State of Oregon, acceptable to the Commission. Said surety bond shall be maintained and kept by the Ticket Agent in full force and effect during the entire term of this agreement, and shall be conditioned to ensure the faithful and full performance by the Ticket Agent of all covenants, terms and conditions of this agreement and to stand as security for payment by the Ticket Agent of any valid claim on the part of the Commission or its permittees against the Ticket Agent. The Agent may place an irrevocable letter of credit in lieu of this surety bond.

10. ASSIGNMENT

Both parties fully understand and agree that the highly skilled and professional management and operation of the automated ticket services for 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 Ticket Agent. The Ticket Agent, 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 Ticket Agent, which renders Ticket Agent incapable of performing all duties required hereunder shall constitute a material breach hereunder and shall give the Commission the option of terminating this agreement.

11. IMPOSSIBILITY

The Commission and the Ticket Agent 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 Ticket Agent. 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.

12. NON-WAIVER PROVISION

No waiver by the commission of default in any of the terms, covenants or conditions hereof to be performed, kept or observed by the Ticket Agent shall be construed to be or act as a waiver of any subsequent default of any of the terms, covenants and conditions herein contained.

13. ATTORNEY'S FEES

In case suit or action is instituted by either party hereto to enforce compliance with this agreement, the prevailing party in such litigation shall be entitled, in addition to the costs and disbursements provided by statute, to such additional sum of money of the United States as the Court may adjudge reasonable for attorney's fees in the trial of any such suit or action, and in any appeal therefrom.

14. AMENDMENTS

The Commission and the Ticket Agent may amend this agreement at any time only by written amendment executed by the Commission and the Ticket Agent.

15. MISCELLANEOUS PROVISION

This agreement constitutes the entire agreement and understanding between the Commission and the Ticket Agent. No provision of this agreement may be changed or eliminated unless mutually agreed to in writing by the Commission and the Ticket Agent.

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 Ticket Agent. Said notices shall be addressed to the following:

Ticket Agent

Commission
General Manager
Metropolitan Exposition-Recreation
Commission
PO Box 2746
Portland, Oregon 97208

With copies to:
Commission Facility Directors
c/o MERC
PO Box 2746
Portland, Oregon 97208

General Counsel
Metro
600 NE Grand Ave.
Portland, Oregon 97232-2736

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. 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 Ticket Agent has no value except insofar as Ticket Agents completed performance is entitled to compensation hereunder.

16. MINORITY BUSINESS ENTERPRISES / WOMEN-OWNED BUSINESS ENTERPRISES PROGRAM / EQUAL OPPORTUNITY HIRING

a. Ticket Agent will comply with all requirements of Commission's MBE/WBE Program.

b. The Ticket Agent agrees to follow the policies and rules set out in Commission's Minority Business Enterprises and Women-Owned Business Enterprises Programs which by this reference are hereby fully incorporated as it fully set forth herein.

c. In replacing a Minority or Women-Owned Business subcontractor, the Ticket Agent shall follow the policies and rules set out in Commission's Minority Business Enterprises and Women-Owned Enterprises Programs.

d. The Ticket Agent shall provide reports on its compliance with the MBE / WBE goals established for this Agreement and with the Minority 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 Minority Business Program and this agreement, and with any representation made by the Ticket Agent prior to agreement award pertaining to Minority or Women-Owned Business participation in the agreement, and any representation made by the Ticket Agent regarding replacement of any Minority or Women-Owned Business subcontractor during the duration of this Agreement.

f. To the maximum extent permitted by law, the Ticket Agent must maintain through the term of the contract participation in the Commissioner's Affirmative Action/Equal Opportunity employment program. In addition, Ticket Agent 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 of each year. Ticket Agent 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 minority and/or women members of the local community.

17. Time is of the Essence

Time is of the essence in this Agreement.

18. Obey All Laws



In performing this agreement, Ticket Agent shall obey all state, federal, local, and regional laws. Ticket Agent's duties of defense and indemnification pursuant to Article 7 shall apply to any and all claims that Ticket Agent has violated any law.

19. No Third Party Beneficiaries


It is the intent of the parties that there shall be no third party beneficiaries of this agreement.

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


TICKET AGENT

By 
Title: 

Approved as to Form
Daniel B. Cooper, General Counsel

By: 
Mark B. Williams
Senior Assistant Counsel

**METROPOLITAN EXPOSITION-
RECREATION COMMISSION**


Chair


Secretary-Treasurer

EXHIBIT A

AUTOMATED TICKETING SERVICES AGREEMENT

Standard Required Equipment

A. CIVIC STADIUM:

Two (2) CRT terminals; Two (2) ticket printers and one (1) hardcopy report printer.

B. NEW THEATER BUILDING BOX OFFICE

Seven (7) CRT terminals; five (5) ticket printers and two (2) hardcopy report printers.

C. CIVIC AUDITORIUM

Two (2) CRT terminals; two (2) ticket printers and one (1) hardcopy report printers.

D. ARLENE SCHNITZER CONCERT HALL

One (1) CRT terminal and one (1) ticket printer

The ticket Agent(s) shall provide the necessary equipment and signal to each MERC Facility (Civic Stadium, New Theater Building Box Office, Civic Auditorium and Arlene Schnitzer Concert Hall) to operate the automated ticket system. The Ticket Agent(s) shall pay for ALL phone line charges on a monthly basis, including back-up lines, to operate the automated ticket system.

The amount of equipment identified in Exhibit A is the amount anticipated to be necessary to handle the standard level of business. During the term of this Agreement, it is possible that a smaller or greater amount of equipment will actually be necessary to adequately serve the public. The General Manager of the Commission shall determine the timing and sequence in which the Ticket Agent(s) will provide the equipment listed in Exhibit A or will provide equipment in addition to that listed in Exhibit A. In making this determination, the General Manager will consider significant increases or decreases in the level of ticket business, quality of facilities, ticketing functions, etc.

EXHIBIT B
AUTOMATED TICKETING SERVICES AGREEMENT

Maximum Allowable Per Ticket Charge

<u>Ticket Price</u>	<u>Outlet</u>	<u>Phone</u>
\$ 0 - \$10	\$1.00	\$1.75
\$10.01 to \$15	\$1.50	\$2.50
\$15.01 to 20	\$2.00	\$3.00
\$20.01 to 30	\$2.50	\$3.50
\$30.01 to \$40	\$3.00	\$4.00
\$40.01 to \$50	\$3.50	\$4.50
\$50.01 to \$60	\$4.00	\$5.00
\$60.01 +	\$4.50	\$5.50

EXHIBIT C

AUTOMATED TICKETING SERVICES AGREEMENT

A. TRAINING

1. All sales personnel shall be trained so they are thoroughly knowledgeable of the system and all Commission facility seating manifests for major events. Training shall include telephone etiquette and customer service. Ticket Agent shall supply a copy of training program upon request.

2. All sales personnel will regularly receive information about Commission events and be required to provide such information to patrons when needed. Information will be provided in a helpful manner to enable the patron to purchase the seat which best meets his/her needs.

B. SERVICE

1. Ticket Agent may purchase and engage a telephone call sequencing device to monitor incoming phone calls and correctly handle the calls waiting for service (held and answered in order received).

2. Personnel requirements will be maintained so Commission patrons have no longer than a three-(3) minute wait prior to commencing of service for ticket information, event information or actual sale for a particular event. If such time constraints are not met, the Commission may set minimum staffing levels for sales operation and may require a minimum number of incoming telephone lines.

3. A supervisor(s) must be on duty to handle questions and difficult patrons when large events begin selling or multiple events are on sale. The primary duty of the supervisor is to help sales clerks as well as answer consumer questions and complaints.

4. Ticket Agent will respond promptly to all complaints. Agent shall maintain a log of such complaints which includes information on how the complaint was resolved. The complaint log shall be available to Commission upon request.