

**METROPOLITAN EXPOSITION-RECREATION COMMISSION**

**RESOLUTION NO. 95 - 37**

Approving the selection of Metro Auto Park/Ace Parking Management, Inc., a Joint Venture, as the exclusive contractor to provide parking lot operation and management services for the Portland Metropolitan Exposition Center; and, authorize the MERC Chair and Secretary Treasurer to execute an agreement with Metro Auto Park/Ace Parking Management, Inc., a Joint Venture, for such services commencing July 1, 1995 and ending June 30, 1998.

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

1. That professional operation and management services are needed at the Portland Metropolitan Exposition Center to provide necessary operation and management functions of the Expo parking lot.

2. That such services cannot be provided by in-house staff and the Commission solicited responses for these services through an approved Request for Proposal process.

3. That the Metropolitan Exposition-Recreation Commission has the authority to contract such services in the best interest of the facilities managed by the Commission.

4. That a selection process provided a contractor who met all of the qualifications of the RFP and was recommended to the Commission by the Expo/OCC Parking Contractor Selection Committee as requested by the Metropolitan Exposition-Recreation Commission.

**BE IT THEREFORE RESOLVED** that the Metropolitan Exposition-Recreation Commission approve the Selection Committee's recommendation and select Metro Auto Park/Ace Parking Management, Inc., a Joint Venture, as the contractor to provide exclusive parking lot operation and management services at the Portland Metropolitan Exposition Center; and authorize the MERC Chair and Secretary/Treasurer to execute an agreement to provide such services.

Passed by the Commission on June 21, 1995.

APPROVED AS TO FORM:

Daniel B. Cooper, General Counsel



By: Mark B. Williams, Sr. Assist. Counsel

  
Chair  
Secretary/Treasurer

## AGREEMENT

### PARKING LOT OPERATION AND MANAGEMENT

This Agreement is made June 21, 1995, to be effective July 1, 1995, by the Metropolitan Exposition-Recreation Commission (MERC) and City Center Parking, (Contractor).

#### WITNESSETH

The Contract Documents together form the Agreement between Commission and Contractor. 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. Parking Lot Operation and Management Agreement.
2. The Contractor's proposal dated May 22, 1995, which was accepted by MERC at its meeting on June 21, 1995.
3. PROPOSAL DOCUMENTS for Parking Lot Operation and Management for the Oregon Convention Center, prepared by the Oregon Convention Center dated April 28, 1995.
4. Contractor shall provide MERC with Workers' Compensation coverage for all Contractor's employees as provided by ORS 656.407.

IN CONSIDERATION of the services to be performed by the Contractor and the amount to be paid by the Oregon Convention Center all as specified below, it is hereby agreed:

#### SCOPE OF SERVICES

1. Contractor shall provide qualified, competent and uniformed labor to operate the parking lot facilities at the Oregon Convention Center (OCC) at such times as OCC Management may request. Such labor shall include, but not be limited to, sellers, spotters and change makers at the gates; sufficient personnel to assist motorists entering and leaving the parking facilities and such other personnel as may be required to conduct the parking and exiting of vehicles in a fast, safe, and efficient manner.

Contractor's employees, representatives, and agents shall at all times comply

with MERC rules, regulations and orders for operation of the OCC. Contractor shall discharge any person employed by Contractor in the performance of this Agreement upon written notice from General Manager or his designee that such person is not acceptable to the OCC Management. Contractor's duties of defense and indemnification, set out below, shall extend to any actions, remarks, or claims brought by or on behalf of any persons discharge pursuant to this paragraph.

2. Contractor shall comply, to the maximum extent possible, with the goal of providing the target area the first opportunity for available jobs to economically disadvantaged residents living in economically distressed neighborhoods in the immediate vicinity of the Oregon Convention Center site. Contractor must also cooperate, to the maximum extent possible, with local job training and economic development agencies to identify, solicit, assist and, if necessary, train such persons to qualify for and receive employment with Proposer. Contractor must document and report to MERC every six months on the implementation of these requirements.

Target Area Boundary Designation:

North Boundary: Columbia Boulevard

East Boundary: 42nd Avenue

South Boundary: Banfield Freeway, I-84

West Boundary: Chautauqua Avenue to Willamette Boulevard to include Columbia Villa by designation [Portsmouth and Willis]; follow the Willamette River and Greeley Avenue by Fremont Bridge; west on Fremont Bridge to Albina Community and Northwest Target Area boundaries but continue south along Willamette River to I-5 and I-84. (A map of the target area is available upon request from MERC).

Target Area Definitions:

First Opportunity: The Contractor will conduct an aggressive advertising and outreach program intended to inform economically disadvantaged residents in the target area of job opportunities. When an applicant pool is identified, economically disadvantaged residents of the target area will be considered first. If a qualified applicant is identified, that applicant will be appointed. If no qualified applicants are identified from the target area, individuals outside the target area will be considered for open positions.

## **COMPENSATION; BILLING**

The Oregon Convention Center shall pay to Contractor, as consideration for the services to be performed under this Agreement, a flat rate equal to **eight dollars and ninety-five cents (\$8.95)\*** per labor hour. [\*Per hour compensations to be increased in accordance with state or federal wage increases.]

Payment due to the Contractor shall be made monthly.

## **TERM OF AGREEMENT; TERMINATION:**

1. The term of this Agreement shall be for three (3) years beginning on July 1, 1995 and ending on June 30, 1998.
2. MERC shall have the right to terminate this Agreement for convenience upon giving the Contractor thirty (30) days written notice of its intention to do so. Upon the giving of such notice, this Agreement shall terminate on the date specified in the notice.
3. MERC shall have the option to renew this Agreement for two additional one-year terms not to exceed a total contract term of five (5) years:
  - a. Each renewal term shall commence on the day following the date of termination of the preceding term.
  - b. The option may be exercised by written notice to the Contractor given not less than 30 days prior to the expiration of the current term of this Agreement. The giving of such notice shall be sufficient to make this Agreement binding of the renewal term without further act of the parties.

## **INSURANCE:**

**Comprehensive or Commercial General Liability:** Contractor shall obtain, at contractor's expense, and keep in effect during the term of the Agreement, Comprehensive or Commercial General Liability Insurance covering bodily injury and property damage. This insurance shall include contractual liability coverage for the indemnity provided in the Agreement plus products/completed operations liability. Combined single limit per occurrence shall not be less than \$1,000,000. The parties agree that these limits of liability coverage in no way limit Contractor's duty of defense and indemnification.

**Workers' Compensation:** Contractor shall obtain Workers' Compensation coverage for all Contractor's employees as provided by ORS 656.407.

**Additional Insured:** The liability insurance coverage required for performance of the Agreement shall include, by endorsement, Metro and the Metropolitan Exposition-Recreation Commission (MERC) and their officers, employees, agents and members as Additional Insureds. No changes or cancellation can be made without 30 days prior written notice to MERC.

**Indemnity/Hold Harmless:** Contractor agrees to defend, indemnify and hold harmless Metro, the Metropolitan Exposition-Recreation Commission and their respective members, officers, directors, elected or appointed officials, agents, and employees from and against any and all liabilities, damages, actions, costs, losses, claims and expenses (including attorney fees), including claims of employees, contractors, subcontractors, guests, and express or implied invitees of Contractor, arising out of or in any way related to activities conducted by Contractor, its agents, employees, members, patrons, guests, express or implied invitees, or exhibitors, including claims based on whole or in part upon negligence of Commission or others.

**Employee Dishonesty Bond:** All persons handling money in performance of the Agreement shall be bondable in an amount not less than \$10,000.

**PERFORMANCE BOND:**

Each Contractor's employee engaged in the performance of this Agreement shall account for all money and the value of all property which may come into his/her possession or control as the Contractor's employee in the performance of this Agreement. In order to secure the payment of any money or the value of any property coming into the possession or under the control of any of the Contractor's employees in the performance of this Agreement, for which the employee or employees shall fail to account, Contractor has paid MERC the sum of \$50,000. MERC shall deposit this sum in a savings account or savings certificate at the \_\_\_\_\_ (Bank), in the name "Metropolitan Exposition-Recreation Commission--(Contractor's) Employees Fidelity Account". If Contractor fails to pay the amount of money or the value of any property coming to the possession or under the control of any of its employees, for which such employee or employees fail to account, MERC shall be entitled to withdraw that sum or those sums from this \$50,000 deposited by Contractor, upon these conditions.

Before MERC makes any withdrawal from such Fidelity Account, MERC shall furnish to Contractor a detailed computation, showing how the amount of such charge was computed, and Contractor shall have the opportunity to refute such accounting. If MERC and Contractor cannot agree upon the correct amount of the charge, the matter

shall be submitted to binding arbitration, MERC and Contractor each to select one arbitrator, and the arbitrators so selected to select a third arbitrator. The party which does not prevail in the arbitration shall pay all costs of arbitration provided that each party shall bear their own attorney fees.

Contractor shall be entitled to all interest earned on this \$50,000 or any part of it.

At the termination of this Agreement, MERC shall repay to Contractor the \$50,000, plus any interest thereon not previously paid to Contractor, reduced by any amounts withdrawn therefrom and paid to MERC under the terms of this Agreement.

#### **ASSIGNMENT:**

1. The parties acknowledge that the Contractor has been selected for its unique abilities through a public competition, and therefore the Contractor may not subcontract or assign this contract nor transfer any interest therein to any third party without the prior written consent of MERC. Any attempted assignment, subcontract or transfer without such written prior approval shall be null and void.

#### **THE CONTRACTOR'S EMPLOYEES NOT COMMISSION EMPLOYEES:**

a. The Contractor is engaged as an independent Contractor and will be responsible for any federal, state and City statutes, ordinances and regulations.

#### **MAINTENANCE OF RECORDS:**

At all times during the term of this Agreement, the Contractor shall maintain accurate and current payroll and accounting records to support its billings to MERC. Payroll records shall be maintained in such a way to provide easy comparison with and corroboration of billings to MERC. MERC or its authorized representative shall have the authority to inspect, audit, and copy on reasonable notice and from time to time any records of the Contractor regarding its billings or its work hereunder. The Contractor shall retain these records for inspection, audit and copying for three (3) years from the date of completion or termination of this Agreement.

- a. MERC, either directly or through a designated representative, may audit the records of the Contractor at any time during the three (3) year period established by this Section.
- b. If an audit discloses that payments to the Contractor were in excess of the amount to which the Contractor was entitled, then the Contractor

shall repay the amount of the excess to MERC plus accrued interest at existing prime rate plus 4%, starting from original due date of said payments.

- c. To the extent that Contractor holds MERC funds for any period of time pursuant to this Agreement, Contractor shall at all times act in a fiduciary capacity.

#### **RELATIONSHIP OF THE PARTIES:**

1. The Commission and the Contractor have entered into this Agreement for the purpose of establishing an independent contractor relationship between the Commission and the Contractor. 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 Contractor has a leasehold interest in any of Commission's facilities, Contractor 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. It is further understood and agreed by and between the Parties that nothing herein shall constitute or be construed to be an employment, partnership, joint venture, or joint employer relationship between the Commission, its successors or assigns on the one part, and the Contractor, its successors or assigns on the other part.

#### **POWERS RESERVED TO THE COMMISSION:**

In the event of a dispute between the Contractor and the Commission, the decision of the Commission and/or its designee(s) concerning the operation or management of the Oregon Convention Center 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 the Oregon Convention Center.
- 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 Contractor or any third parties for any loss or cost occasioned by any such determination or action by the General Manager, the OCC Director, or their designee(s) taken in good faith for the benefit or protection of the Commission and the public generally or the Oregon Convention Center.
- c. The power to terminate this Agreement for convenience upon 30 days

notice as specified herein.

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

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), Contractor is advised to give each insurance company written notice of the terms of such waiver, and to have insurance policies properly endorsed, if necessary.

**NON-DISCRIMINATION:**

Contractor 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.

**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.

**DEFAULT BY CONTRACTOR:**

Contractor shall be in default of this Agreement if Contractor fails to pay any amounts due under the Agreement or any other written agreement between Contractor and Commission, breaches any provisions of this Agreement or any other written agreement between Contractor and Commission, including transfer or funds and maintenance of required insurance in strict accordance with this Agreement, violates any applicable laws or ordinances, 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 Contractor, the Commission may have one or more of the following remedies, in its sole discretion:

- a. Terminate the Agreement by giving the Contractor written notice of such termination, without the necessity of the 30 days notice which is required for a termination for convenience, which shall not excuse breaches of the Agreement which have already occurred.
- b. 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.
- c. 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 Contractor, such sums as are necessary, in Commission's sole opinion, to apply to any claims Commission may have against Contractor, or to protect Commission against any loss, damage, or claim which may result from Contractor's performance or failure to perform under this Agreement.
- d. Commission may, at its sole option, also terminate any other contract(s) with Contractor.

#### **SEVERABILITY:**

If any provision of this Agreement or any incorporated documents shall be declared invalid or unenforceable, the remainder of the provisions shall continue in force and effect to the fullest extent permitted by law.

#### **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.

**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  
PO Box 2746  
Portland, Oregon 97208

Copy to: Oregon Convention Center  
Attn: Director  
PO Box 12210  
Portland, Oregon 97212

Copy to: Metro Regional Center  
Attn: Office of General Counsel  
600 NE Grand Avenue  
Portland, Oregon 97232

To Contractor:

**MISCELLANEOUS:**

- a. Contractor's Assumption of Responsibility. The Contractor expressly assumes full responsibility for all persons connected with Contractor's performance of its duties under this Agreement, 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 and Contractor. 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.

**MODIFICATION AND AMENDMENT:**

- 1. The Agreement may not be modified or amended except in writing signed by both parties.

EXECUTED IN THREE COPIES ON 7-27, 1995.

**CONTRACTOR**



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



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

**METROPOLITAN EXPOSITION-  
RECREATION COMMISSION**



**Chair**



**Secretary/Treasurer**

**PERFORMANCE AND PAYMENT BOND**

KNOW ALL PEOPLE BY THESE PRESENTS that, we \_\_\_\_\_ as Principal, and \_\_\_\_\_ a corporation organized and existing under the laws of the State of \_\_\_\_\_ and duly authorized to transact a surety business in the State of Oregon, as Surety, are held and firmly bound unto the Metro, acting through its Metropolitan Exposition-Recreation Commission (MERC) in the penal sum of fifty thousand dollars (\$50,000), lawful money of the United States of America, for the payment of which we and each of us, jointly and severally, bind ourselves, our, and each of our, heirs, executors, administrators, successors and assigns.

THE CONDITIONS of this obligation are such that, whereas the Principal did on \_\_\_\_ day of \_\_\_\_\_, 1995, enter into an Agreement with MERC for parking lot operation and management services, which Agreement hereby is made apart hereof as if fully copied herein;

NOW, THEREFORE, if the Principal faithfully, punctually, and completely performs and abides by all covenants, conditions and agreements of the Contract, and any addenda thereto, including payment of money to MERC, and with all laws, ordinances, regulations and orders of the State of Oregon, the City of Portland, the Metro, and the agencies and bureaus thereof, directly or indirectly governing or applicable to the Principal's performance under the Agreement, including but not limited to ORS 279.312, which hereby is made a part hereof as if fully copied herein, and shall make payment promptly as due, to all subcontractors who shall provide equipment, supplies, labor or materials for the prosecution of the work or any part thereof, provided for in the Agreement, then this obligation shall be null and void, otherwise to be in full force and effect.

Surety agrees (1) that no extension of time allowed the Principal for completion of work or for delivery under the Agreement shall impair this obligation; (2) that no change made in the terms or provisions of the Agreement, without notice to the Surety, shall impair this obligation, but any such change shall automatically increase the obligation of the Surety hereunder in a like amount, PROVIDED that such increase shall not exceed twenty-five percent (25%) of the original amount of this obligation without consent of the Surety and (3) that this obligation shall continue to bind the Principal and Surety notwithstanding successive payments made hereunder for successive breaches, until the full amount of this obligation is exhausted. Surety further agrees that no termination or cancellation of this bond shall relieve the Surety from its obligation for the performance by the Principal of all provisions of said Agreement.

IN WITNESS THEREOF, THE PRINCIPAL AND SURETY HAVE CAUSED THESE PRESENTS TO BE EXECUTED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 1995.

\_\_\_\_\_  
(Principal)

BY: \_\_\_\_\_  
(Title)

\_\_\_\_\_  
(Surety)

By: \_\_\_\_\_  
Attorney-In-Fact

COUNTERSIGNED:

\_\_\_\_\_  
Oregon Resident Agent

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

\_\_\_\_\_  
By: Mark B. Williams  
Senior Assistant Counsel