

METROPOLITAN EXPOSITION-RECREATION COMMISSION

Resolution 96-2

Approving the First Amendment to the Broadway Series Agreement, and authorizing the Chairman and Secretary-Treasurer to execute the Amendment.

THE METROPOLITAN EXPOSITION-RECREATION COMMISSION FINDS:


1. On March 15, 1994, the Commission entered into a Broadway Series Agreement with Dan Bean Presents, Inc.
2. During the time that the Agreement has been in effect, the Broadway Series has been highly successful.
3. Commission staff and Dan Bean Presents, Inc. have been discussing technical changes in the Agreement which are designed to provide for more efficient handling of funds, while maximizing the Commission's share of interest proceeds from season ticket sales.
4. Commission staff and Dan Bean Presents, Inc. have negotiated a tentative agreement amending the Broadway Series Agreement which will provide for more efficient handling of funds and provide adequate protection to the Commission with respect to season ticket proceeds, while maximizing the Commission's share of interest proceeds from season ticket sales.
5. Approval of the proposed amendments would be in the Commission's best interests.

THEREFORE BE IT RESOLVED

1. That the Commission approves the First Amendment to the Broadway Series Agreement, a copy of which is attached as Exhibit "A".
2. That the Chairman and Secretary-Treasurer of the Commission are authorized to execute the First Amendment to the Broadway Series Agreement on the Commission's behalf.
3. That this Resolution shall be effective immediately.

Passed by the Commission on January 10, 1996.

  
Chairman

  
Secretary-Treasurer

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

By:

  
Mark B. Williams  
Senior Assistant Counsel

**FIRST AMENDMENT TO BROADWAY SERIES AGREEMENT**

**WHEREAS**, the Metropolitan Exposition-Recreation Commission ("Commission," "Metro ERC," or "MERC") and Dan Bean Presents, Inc. ("Presenter"), collectively known as, "the Parties," entered into a Broadway Series Agreement dated March 15, 1994; and,

**WHEREAS**, Section 26(c) of the Broadway Series Agreement provides that it can only be amended by a written document executed by the Parties; and,

**WHEREAS**, the Parties wish to amend the Broadway Series Agreement so as to provide for a more efficient method of handling funds associated with the Broadway Series Agreement,

**NOW, THEREFORE IT IS HEREBY AGREED AS FOLLOWS:**

1. Section 5(d) of the Broadway Series Agreement is amended to read as follows:

d. **Ticketing**: Presenter has selected Ticketmaster Oregon as the official ticketing service to be used for the sales of subscriptions and single tickets for all shows. All proceeds from single ticket sales shall 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. For the 1995-96 Series, all proceeds from full or "mini" season subscription ticket sales shall be maintained and controlled by the Presenter, provided that all of the following shall apply:

(i) Five hundred thousand dollars (\$500,000.00) shall be maintained by the Presenter's bank in a liquid investment trust held in Commission's favor, in a manner and form acceptable to Commission.

(ii) Withdrawals from said trust shall require the approval and signatures of both Presenter and Commission, provided, however, that Commission shall have access to said trust without Presenter's approval or signature in the event that Commission or its designee(s) determine that Presenter is in default of this Agreement. Withdrawals from said trust shall be made only for the purpose of payment of deposits and other expenses necessary for presentation of the Broadway Show Subscription Series, unless Commission exercises its right of access in the event of a determination of default by Presenter, in which case Commission may apply said funds towards any of Presenter's obligations under this Agreement.

(iii) After settlement of the fourth show in the five 1995-96 Series, the trust amount shall decrease to two hundred fifty thousand dollars (\$250,000.00); upon settlement of the final show, the trust amount shall decrease to zero dollars (\$0.00).

(iv) Any full season or "mini" season subscription ticket sales proceeds above the five hundred thousand dollar (\$500,000.00) threshold shall be invested prudently by Presenter, and shall be used by Presenter solely and exclusively for the purpose of payment of deposits and other expenses necessary for presentation of the Broadway Show Subscription Series.

Presenter shall, at Commission's reasonable request, provide information to Commission concerning the investment and distribution of any funds invested directly by Presenter.

(v) In lieu of Commission's share of interest proceeds as provided for in the Broadway Series Agreement prior to this Amendment, Presenter shall pay to Commission the sum of \$14,000.00 per year, to be paid evenly at each remaining show settlement.


Presenter and Commission shall execute any further forms or documents necessary to effectuate the terms herein.

2. The terms of this Amendment shall apply to the 1995-96 series only, provided, however, that Commission or its designee shall have the option to extend the terms of this Amendment to cover any subsequent season(s) of the Broadway Series Agreement.

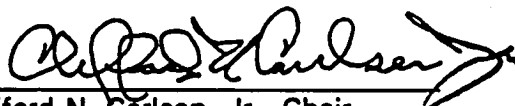
3. All other terms and conditions of the Broadway Series Agreement shall continue in full force and effect.

4. Except as specifically provided herein and in the Broadway Series Agreement, this document, together with the Broadway Series Agreement, 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 or the Broadway Series Agreement has been or is relied upon by any party. No modification or amendment of this document or the Broadway Series Agreement shall be in force or effect unless in writing executed by all Parties hereto.

DAN BEAN PRESENTS, INC.


By: \_\_\_\_\_  
By:  \_\_\_\_\_  
Daniel N. Bean, President

METROPOLITAN EXPOSITION-  
RECREATION COMMISSION

By:  \_\_\_\_\_  
Clifford N. Carlsen, Jr., Chair

By:  \_\_\_\_\_  
Alice Norris, Secretary-Treasurer

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

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

## **MERC STAFF REPORT**

**Agenda/Item Issue:** Approval of amendment to the Broadway Series Agreement dated March 15, 1994, between MERC and Dan Bean Presents, Inc.

Resolution 96-2

Date: January 10, 1996

Presented by: Heather Teed & Pat LaCrosse

### **BACKGROUND AND ANALYSIS:**

The Broadway Series Agreement between MERC and Dan Bean Presents, Inc. is for the term from March 15, 1994 through June 30, 1997, with two additional one-year options. This term represents 3 seasons (excluding the options). Additionally, the Agreement contains some stringent requirements regarding season ticket sales, use of season ticket sales proceeds and sharing of interest earnings. These strict requirements were established based on the fact that the Broadway Series arrangement was a new endeavor and that there had been a failure of a similar series in the recent past.

The Broadway Series presented by Mr. Bean concluded its first season with very successful results and has begun its second season. The success is continuing with a high percentage of season ticket holders returning.

In light of the fact that one successful Broadway Series season has been completed and that the requirements contained in the Agreement regarding season ticket sales are fairly strict, Mr. Bean has requested changes to the Agreement.

Based on discussions with MERC staff and Mr. Bean, staff proposed the following changes for the second season occurring during FY 95-96:

1. Under the current Agreement, control of the season ticket sales is accomplished through the use of an Oregon Bank account containing the Commission's signatories. The Commission may obtain these monies upon default of Dan Bean Presents, Inc. Further, the Agreement restricts the use of season ticket proceeds monies by Dan Bean Presents, Inc. prior to settlement of season shows.

The proposed amendment was designed to maintain a level of security for the Commission over the season ticket sales monies, yet allow Dan Bean Presents, Inc. more autonomy in the use of those proceeds. This will be accomplished by allowing the season ticket proceeds to be deposited with Dan Bean Presents, Inc. However, \$500,000, which represents approximately two season shows' worth of season ticket sales, will be required to be maintained by Mr. Bean's banker in a liquid security. Further this \$500,000 will be accessible by the Commission without Mr. Bean's approval or signature if default of the Series should occur. This \$500,000 would decline to \$250,000 upon settlement of the 4th show in the 5 show series, and then decline to \$0 after settlement of the final show.

2. The current Agreement stipulates that the Commission shall receive 50% of the interest earnings from the season ticket sales proceeds. In order to remain whole in this regard, and to simplify the record keeping, we have agreed that a guarantee, in lieu of interest, in the amount of \$14,000 will be paid to the Commission in equal increments over the four remaining shows in the series. This amount represents a slight increase over the interest earnings realized in the first season.

**FISCAL IMPACT:**

The revised terms regarding the season ticket sales proceeds have a neutral impact in terms of revenues previously received through interest earnings.

There will be some staff time/cost savings through reduced record keeping and procedures.

**RECOMMENDATION:**

Staff recommends that the Commission approve the changes to the Broadway Series Agreement regarding season ticket sales proceeds.