

**METROPOLITAN EXPOSITION-RECREATION COMMISSION**

**RESOLUTION NO. 96-38**

Authorizing the Oregon Convention Center Director to execute a one-year extension to the Advertising/Marketing Services Agreement with Borders, Perrin and Norrande (BPN) commencing July 1, 1996 and ending June 30, 1997.

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

1. That on July 13, 1994, MERC Resolution No. 94-35 was approved selecting Borders, Perrin and Norrande for Advertising and Marketing Services of MERC Facilities and authorizing a one year contract, with 2 one-year extension options, commencing July 1, 1994 and ending June 30, 1995.

2. That on May 10, 1995, MERC Resolution No. 95-19 was approved extending the B.P.N Advertising and Marketing Services Agreement one year commencing July 1, 1995 and ending June 30, 1996.


3. That the Metropolitan Exposition-Recreation Commission approved a 1996-97 budget to adequately promote MERC facilities.

4. That BPN has provided excellent professional advertising and marketing services to the MERC facilities in line with contract requirements.

**BE IT THEREFORE RESOLVED**, that the Metropolitan Exposition-Recreation Commission authorizes the Oregon Convention Center Director to execute a one-year extension to the Advertising/Marketing Services Agreement with Borders, Perrin and Norrande for a period commencing July 1, 1996 and ending June 30, 1997.

Passed by the Commission on June 12, 1996.

APPROVED AS TO FORM  
Daniel B. Cooper, General Counsel

  
By: Mark B. Williams  
Sr. Assistant Counsel

  
Chair  
  
Secretary/Treasurer

## **MERC STAFF REPORT**

**Agenda Item:** One-year extension of the Advertising Agreement with Borders, Perrin, Norrande Agency (BPN).

**Resolution No.:** 96-38

**Date:** June 12, 1996

**Presented by:** Jeffrey A. Blosser

**Background Analysis:** On July 13, 1994, MERC selected Borders, Perrin and Norrande for Advertising and Marketing Services for MERC facilities through a public RFP process. The Agreement provided for a one year contract with two one-year extensions at the option of the MERC Commission. On May 10, 1995, MERC approved Resolution No. 95-19, extending the BPN Agreement for one year commencing July 1, 1995 and ending June 30, 1996. BPN has provided excellent service within budget and staff is very pleased with their service and results.

**Fiscal Impact:** The expenses for advertising and marketing services are approved annually by the MERC Commission through the departmental budget process and review. The MERC Commission passed their budget for 1996-97 and it has been sent to Metro for approval. Funds budgeted for fiscal year 1996-97 are \$119,370.

**Recommendation:** Staff recommends that the Metropolitan Exposition-Recreation Commission approve the final one year extension to the Advertising and Marketing Services Agreement with Borders, Perrin and Norrande for a period to commence July 1, 1996 and end June 30, 1997.

## ADVERTISING AGENCY SERVICES AGREEMENT

This agreement is made and entered into on this 13 day of July, 1994, by and between the Metropolitan Exposition - Recreation Commission ("MERC"/Commission), and Borders Perrin & Norrander, Inc., Contractor.

### WITNESSETH:

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

#### 1. DEFINITIONS

The following terms are defined as follows:

a. "Convention Center" means the Oregon Convention Center (OCC) located at 777 N.E. Martin Luther King, Jr. Blvd., Portland, Oregon.

b. "EXPO" means the Portland Metropolitan Exposition Center located at 2060 North Marine Drive, Portland, Oregon 97217

c. "Stadium" means Civic Stadium (CS) at 1844 S.W. Morrison, Portland, Oregon.

d. "Performing Arts Center" means the Portland Center for the Performing Arts (PCPA), and its related facilities, located at 1111 S.W. Broadway, Portland, Oregon.

e. "Contractor" shall mean the Borders Perrin & Norrander, Inc., located at 222 SW Yamhill, Portland, Oregon. 97204

f. "Service"

1) The advertising agency expertise which meets the expectations of the requesting MERC facility(s).

The Commission shall have the right at the end of the term of this agreement to extend this agreement for two additional one-year terms, based on the same conditions as set out in the original agreement. Notwithstanding, the Commission shall have the right to renegotiate the terms, with the agreement of Contractor, of any renewal agreement to accommodate changes in operations, circumstances or industry practice. Sixty (60) days' written notice to the Contractor by the Commission prior to the termination of the original agreement, or at renewal term, shall be sufficient to exercise the renewal option.

## **5. DUTIES OF THE CONTRACTOR**

For the consideration provided for in Article 8 hereof, the Contractor shall be responsible for performing satisfactorily all functions, duties and activities outlined in this agreement and any incidental activities required to successfully accomplish said functions and duties.

The Contractor shall be responsible for performing but shall not be limited to the following duties and functions:

- a. To perform the services and deliver to the Commission the materials described in the Scope of Work attached hereto;
- b. To provide all services and materials in a competent and professional manner in accordance with the Scope of Work;
- c. To comply with all applicable provisions of ORS Chapter 279, and all other terms and conditions necessary to be inserted into public contracts in the state of Oregon, as if such provisions were a part of this Agreement;
- d. To maintain records relating to the Scope of Work in a generally recognized accounting basis and to make said records available to the Commission at mutually convenient times;
- e. To indemnify and hold the Commission, their agents and employees harmless from any and all claims, demands, damages, actions, losses and expenses, including attorney's fees, arising out of or in any way connected with its performance of this Agreement, or with any copyright or patent infringement arising out of the use of Contractor's designs or other materials by the Commission and for any claims or disputes involving subcontractors or employees of Contractor.

## **6. RESPONSIBILITIES OF THE COMMISSION**

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

a. The Commission shall furnish the Contractor full information regarding its requirements for the Scope of Work to assist the Contractor in accomplishing its services and accounting responsibilities.

b. To pay Contractor for services performed and materials delivered in an amount not to exceed:

1) \$138,650 for the Oregon Convention Center

and in the manner, and at the rates specified and time designated in the Scope of Work.

c. Other MERC facilities may use Contractor on a time and material basis as may be requested and as budgets are approved. All MERC facilities are not exclusively restricted to using selected contractor services.

d. The Commission shall conduct business with the Contractor in an efficient and professional manner.

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

In the event of a dispute between the Contractor and the Commission, the decision of the Commission concerning the advertising agency 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 power to approve or disapprove the staff provided by the Contractor at any time during the term of this agreement, and to require the Contractor to replace such staff by receipt of written notice by the Commission regarding dissatisfaction with the Staff's performance.

b. The Contractor must maintain through the term of the contract an Affirmative Action/Equal Opportunity employment program. In addition, Contractor shall submit annually for the Commission's approval a program of affirmative action recruitment and training, for minorities and women, as appropriate. Such plan shall be submitted by June 1, for the first year of services, and June 1 of each succeeding year. Contractor agrees to participate with and integrate into its affirmative action

plan, programs in which the Commission may choose to participate, in programs designed to train and employ disadvantaged members of the local community.

In addition, Contractor shall, consistent with Oregon law and policies adopted by the Commission, pursue a policy of providing first opportunity for available jobs to economically disadvantaged residents living in economically distressed neighborhoods in the immediate vicinity of the OCC and Civic Stadium.

c. The power to terminate this agreement with the Contractor in accordance with Article 10 hereof.

d. The Commission must approve in advance and in writing any change in subcontractors which may be proposed by the Contractor throughout the life of this agreement.

#### **8. PAYMENT METHOD OF COMMISSION TO CONTRACTOR AND CONTRACTOR TO COMMISSION**

a. For provision of advertising agency services for the Commission, all invoices shall be submitted as work is completed and approved. Invoices shall be approved by the Commission prior to submission for payment. All billing subject to thirty (30) day net billing cycle.

b. The Contractor shall not be entitled to any other remuneration from the Commission for the performance of the Contractor's duties, obligations and activities pursuant to this agreement.

#### **9. INSURANCE**

Contractor shall provide a General Comprehensive Liability Insurance Policy in the aggregate amount of \$500,000 or a per occurrence basis.

The foregoing insurance policy or policies shall:

- a. Name Metro and the Commission as additional insured.
- b. Apply as primary insurance on behalf of Metro and Commission, regardless of what insurance the Commission may maintain.
- c. Provide for not less than thirty (30) days advance written notice to the Commission regarding termination or any material change to the policy.

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



## 10. TERMINATION

A. Termination for Material Breach: In the event that Contractor shall default in the obligations or conditions set forth in this and other paragraphs of this agreement, and such default shall continue unremedied and no action taken to correct for three (3) days' after written notice of said default to the Contractor, thereupon, at Commission's option, this agreement may be terminated upon thirty (30) days' written notice notwithstanding, nothing herein shall preclude the Commission or its agents from taking any immediate necessary action to remedy dangerous or unsafe conditions, regardless of the impact upon the Contractor. The parties agree that the Commission shall retain the right to determine whether any action or failure of Contractor constitutes a material breach hereunder, and any such determination shall be conclusive and shall be binding upon the parties hereto.

B. Termination for Loss of Essential Licenses-Extraordinary Breach: The parties agree that the loss by Contractor of any license or permit necessary to legal performance of its duties and obligations hereunder shall constitute an extraordinary breach of this agreement and shall be grounds for immediate termination by the Commission. This provision shall apply irrespective of the reason for loss or revocation of any necessary license or permit.

C. Termination for Unsatisfactory Performance: The parties agree that the Commission shall retain the right to demand performance which is in all ways satisfactory to it, and that the Commission shall retain the exclusive right to determine whether performance is or is not satisfactory. In the event Contractor's performance hereunder is deemed unsatisfactory, the Commission shall have the right to terminate this agreement and all rights and obligations hereunder. This right to terminate is in addition to any other rights Commission may have to terminate this Agreement. Notice of termination under this section shall provide such time for termination, discontinuance of operations as deemed appropriate by the Commission's General Manager.

## 11. ASSIGNMENT

Both parties fully understand and agree that the professional advertising services for the Commission facilities are of paramount importance and that this agreement would not be entered into by the Commission except for its confidence in, and assurances provided for, the character, management abilities and financial stability of the Contractor. The Contractor, therefore, shall not sell, assign, sublet, transfer or in any manner encumber the rights and privileges granted herein, nor allow such assignment, subletting, transfer or any other encumbrance to occur by operation of

law or otherwise without the prior consent of the Commission at the Commission's sole discretion. The parties agree, further, that any occurrence, whether within or beyond the control of Contractor, which renders Contractor incapable of performing all duties required hereunder shall constitute a material breach hereunder and shall give the Commission the option of terminating this agreement.

## **12. BEST EFFORTS**

The Contractor and the Commission shall each use their best efforts to obtain the most professional and creative advertising service as is possible.

## **13. MISCELLANEOUS PROVISIONS**

This agreement constitutes the entire agreement and understanding between the Commission and the Contractor. No provision of this agreement may be changed or eliminated unless mutually agreed to in writing by the Commission and the Contractor. This agreement shall be construed to incorporate by reference Contractor's Request for Proposals (RFP), all addendum issued thereto, and Contractor's proposal in response thereto dated June 10, 1994. In the event of a conflict between the terms and conditions of this agreement and the documents incorporated by reference, the terms and conditions of this agreement shall take precedence. In the event of a conflict between the documents incorporated by reference, the RFP as modified by any addendum thereto shall take precedence over Contractor's proposal.

The failure of either party to insist upon strict and prompt performance of the terms and conditions of this agreement shall not constitute a waiver of the party's right to strictly enforce such terms and conditions thereafter.

All notices relative to this agreement shall be in writing and shall be mailed by certified mail or delivered in person to the Commission or the Contractor. Said notices shall be addressed to the following:

### **Contractor**

### **Commission**

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

With a copy to:

General Counsel  
Metro  
600 NE Grand Ave.  
Portland, OR 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.

**14. MBE/WBE PROGRAM**

a. Contractor will, consistent with its proposal enter into agreements with those Minority Business Enterprises and Women-Owned Business Enterprises specified in Contractor's proposal.

b. The Contractor agrees to follow the policies and rules set out in Commission's Request for Proposals regarding Minority Business Enterprises and Women-Owned Business Enterprises which by this reference are hereby fully incorporated as if fully set forth herein.

c. The Contractor shall not replace a Minority Business Enterprises or Women-Owned Business subcontractor with another subcontractor during Agreement performance, so as to reduce its level of MEB/WBE participation below the annual goals then in effect, without prior approval of Commission. In so replacing a Minority or Women-Owned Business subcontractor with another certified Minority or Women-Owned Business subcontractor or make good faith efforts to do so.

d. The Contractor 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 Contractor prior to Agreement award pertaining to Minority or Women-Owned Business participation in the Agreement, and any representation made by the Contractor regarding replacement of any Minority or Women-Owned Business subcontractor during the duration of this Agreement.

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

CONTRACTOR:

By

Title

CEO

METROPOLITAN EXPOSITION-  
RECREATION COMMISSION

Chairman

Secretary/Treasurer

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

By

Mark B. Williams

Senior Assistant Counsel