

## Metropolitan Exposition-Recreation Commission

### Resolution 97-17

For the Purpose of Approving an Interim Support Services Agreement With Metro

**WHEREAS**, the Metro Council recently passed Metro Ordinance 97-677-B, the MERC reform plan, and

**WHEREAS**, the provisions of Metro Ordinance 97-677-B relating to MERC's purchase of support services has been codified as Metro Code Section 6.01.040(m) and

**WHEREAS**, Metro Code Section 6.01.040(m) provides in pertinent part that MERC's power and authority includes the right:

To determine the type, quality, and scope of services required by the commission in order to conduct its business in a cost effective, entrepreneurial, and independent manner, as required by this chapter. Services of the district including accounting, personnel, risk management, public affairs, and other services may be provided by the district subject to compensation being provided by the commission to the district as the district and the commission may agree upon. The commission may acquire such services by other means, provided that the commission determines by duly adopted resolution that the provision of such services by other means is cost effective, and results in a net benefit to the residents of the district and the regional facilities managed by the commission. The commission shall provide Metro with 90 days written notice of its intent to purchase any service outside of Metro which was previously provided by Metro.

**WHEREAS**, MERC staff have negotiated an interim agreement with Metro which results in approximate savings of \$197,133 on an annual basis, and which preserves MERC's right under Metro Code Section 6.01.040(m) to terminate the agreement without cause upon 90 days notice to Metro, and

**WHEREAS**, staff recommends that the Commission approve the interim services agreement now, so as to ensure that adequate support services will be in place by July 1, 1997, and

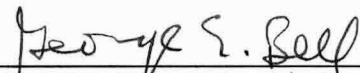
**WHEREAS**, it is the desire of the Commission to implement Metro Code Section 6.01.040(m) on an ongoing basis, by continuing to evaluate support services so as to ensure that MERC conducts its business in the most cost effective, entrepreneurial, and independent manner possible,

**NOW THEREFORE:**

1. The Commission approves the proposed Memorandum of Understanding between MERC and Metro for provision of support services.
2. The General Manager is authorized to sign the Memorandum of Understanding on behalf of the Commission.
3. MERC staff is directed to continue to evaluate MERC's need for support services in order to ensure that MERC is operating in the most cost effective, entrepreneurial, and independent manner possible, and to bring any proposals for improvements in MERC's support services to the Commission for its consideration.

Passed by the Commission on April 9, 1997.

  
\_\_\_\_\_  
Chair

  
\_\_\_\_\_  
Secretary-Treasurer

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

By:   
\_\_\_\_\_  
Kathleen Pool  
Senior Assistant Counsel

## MERC STAFF REPORT

Agenda Item/Issue: Approving an interim support services agreement with Metro.

Resolution No.: 97-17

Date: April 9, 1997

Presented by: Mark B. Williams

**Background Analysis:** On February 13, 1997, the Metro Council passed Metro Ordinance No. 97-677-B, the MERC reform package. Effective upon passage, the Ordinance enacted a number of changes designed to enhance MERC's ability to operate in a more independent and entrepreneurial manner. The provisions of the ordinance regarding MERC's purchase of support services have now been codified as Section 6.01.040(m) of the Metro Code. That provision eliminates the historical practice of having Metro tell MERC what services it will provide, and what the price for those services will be. Instead, the new provisions allow MERC to negotiate at arm's length with Metro's Department of Administrative Services for an acceptable agreement, or, upon passage of a MERC resolution and 90 days advance notice to cease purchasing Metro services altogether, and obtain those services by other means. Since the reform package was effective upon passage, MERC staff was required to come up with a plan for continued support services for MERC effective July 1, 1997. As part of that process, staff has engaged in a negotiating process with Metro's Department of Administrative Services (DAS) with respect to the services that department can provide (note that legal services are handled separately, and will be the subject of different Memorandum of Understanding). The result of that negotiating process is the Memorandum of Understanding for an interim support services agreement which is before you for your consideration today. The highlights of the agreement are as follows:

- By our analysis, cost savings of approximately \$197,133 from what we had anticipated in our budget.
- MERC will be invoiced monthly and pay Metro monthly.
- The net cost of Metro's services under the agreement comes out to about \$907,000 on an annual basis—note that this cost is "net"—it includes attribution to MERC of \$375,000 in support services credits by Metro to MERC's account. Under the agreement, MERC is entitled to use these credits in any manner that meets its needs, including but not limited to the option of using the credits to cover MERC's payments for July, August, September, and ½ of October, 1997, so that no full monthly payment would be due from MERC to Metro until the end of November, 1997.
- The services are spelled out in the proposal, and include a variety of enhancements of current services, including a more vendor-vendee oriented relationship between MERC and Metro, as well as an improved Human Resources package.

- MERC's existing right under the reform ordinance to terminate the agreement upon 90 days notice and obtain its support services by other, more cost-effective means remains unimpaired by the Agreement.

Resolution 97-17, in addition to approving the Memorandum of Understanding, directs MERC staff to continue to evaluate alternative means of providing support services in a more cost-effective manner, and further directs MERC staff to bring any such proposals to the Commission for consideration.

**Fiscal Impact:** The fiscal impact for the entire year would be a \$197,133 reduction in anticipated expenditures for these support services from current budgeted amounts.

**Recommendation:** Staff recommends that the Commission approve Resolution 97-17, authorize the General Manager to execute the Memorandum of Understanding, and direct the staff to continue to evaluate alternative means of providing support services in the most cost-effective manner possible, subject to future Commission consideration, approval, and direction.

## MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding, dated \_\_\_\_\_ for reference, (hereinafter, "Memorandum") is entered into between the Metropolitan Exposition-Recreation Commission (hereinafter, "MERC") and Metro's Department of Administrative Services (hereinafter, "Contractor"), collectively referred to as "the Parties," pursuant to the terms of Metro Code Section 6.01.040(m).

### A. RECITALS

1. MERC is a municipal commission organized under Chapter 6 of the Metro Code.
2. Contractor is Metro's Department of Administrative Services.
3. Section 6.01.040(m) of the Metro Code provides in pertinent part that MERC's power and authority includes the right:

To determine the type, quality, and scope of services required by the commission in order to conduct its business in a cost effective, entrepreneurial, and independent manner, as required by this chapter. Services of the district including accounting, personnel, risk management, public affairs, and other services may be provided by the district subject to compensation being provided by the commission to the district as the district and the commission may agree upon. The commission may acquire such services by other means, provided that the commission determines by duly adopted resolution that the provision of such services by other means is cost effective, and results in a net benefit to the residents of the district and the regional facilities managed by the commission. ... The commission shall provide Metro with 90 days written notice of its intent to purchase any service outside of Metro which was previously provided by Metro.

4. This Memorandum is entered into between the Parties in order to implement on an administrative level the requirements of Metro Code Section 6.01.040(m).

**B. TERMS**

1. Term of Memorandum. The term of this Memorandum begins on July 1, 1997, and ends on June 30, 1998, unless earlier terminated by mutual agreement or as otherwise provided herein.

2. Contract Documents/Precedence of Contract Documents/Scope of Services

A. Contract Documents.

The Contract Documents shall consist of this Memorandum of Understanding; Contractor's Business Services Proposal, dated February 25, 1997, a copy of which is attached and incorporated herein as Exhibit A; Contractor's letter dated February 26, 1997, a copy of which is attached and incorporated herein as Exhibit B; Contractor's letter dated February 27, 1997, a copy of which is attached and incorporated herein as Exhibit C; and Contractor's letter dated March 18, 1997, a copy of which is attached and incorporated herein as Exhibit D.

B. Precedence of Contract Documents. This Memorandum of Understanding shall have the highest precedence of the Contract Documents, and its terms shall apply in the event of a conflict or ambiguity with any other contract document. In general, the terms of the agreement between the parties shall be governed by this Memorandum of Understanding, followed by Exhibit A, as modified by Exhibits B, C, and D.

C. Scope of Services. The scope of services to be provided to MERC by Contractor are as specified in Exhibit A, as modified by Exhibit D. It is noted that

at the present time, MERC has not selected any of the "add on" proposals offered by Contractor. Should MERC wish to add any of those services at a later date, the parties agree to meet and bargain in good faith on the addition of those services.

3. MERC's Right to Control Services. In all cases, MERC shall have the normal and accustomed right of a buyer of services to direct and evaluate the performance of Contractor; this shall not include the right to demand services from Contractor above and beyond those set out in the Contract Documents, absent subsequent mutual agreement to that effect.

4. Compensation/Credits/Invoices and Payments.

A. Compensation.

The compensation due to Contractor from MERC for all of the services set out in the Contract Documents, on an annual basis, is \$907,772.

B. Credits.

It is understood that the annual compensation of \$907,772 is a net figure, which includes credits against support charges in the amount of \$375,000, offered by Contractor to MERC. This Memorandum of Understanding is, in its entirety, contingent upon approval by the Metro Council of Contractor's proposal for offering MERC \$375,000 in credits. In the event that the Metro Council does not approve the full amount of these proposed credits, this Memorandum of Understanding shall be null and void in all respects. Assuming approval by the Metro Council of this credit proposal, MERC may utilize the credits in whatever

manner best suits its needs, at MERC's sole discretion. The following are acceptable examples of MERC's options for utilizing the \$375,000 in credits:

- (i). As a monthly reduction of \$31,250 in the monthly payment that would otherwise be required over the course of the fiscal year.
- (ii). As a full credit at the beginning of the year, so that no actual cash payments from MERC to Contractor would be due until October, 1997.
- (iii). As a full credit at the end of the year.
- (iv). Any other mechanism that yields a total credit of \$375,000.

C. Invoices and Payments.

Contractor shall invoice MERC on the first of each month for the payment due for that month's services. MERC shall pay Contractor by the last day of that month for that month's services. In the event that MERC decides to apply part of its \$375,000 credits to all or part of that month's services, MERC shall so notify Contractor in writing by the 15th day of that month.

5. Re-negotiation of Compensation. MERC may initiate a re-negotiation of the compensation payable by MERC to Contractor pursuant to this Memorandum in the event of a significant unexpected budget shortfall for MERC. A significant unexpected budget shortfall for MERC shall be defined as an unanticipated 10% increase in MERC expenditures or 10% decrease in MERC revenues due to market conditions, natural disasters, or other occurrences beyond the control of MERC. In the event that MERC wishes to re-negotiate compensation pursuant to this paragraph, MERC shall provide Contractor with 30 days advance notice in writing. Thereafter, the Parties



shall meet and bargain in good faith for a successor provision on compensation and/or service levels.

6. Termination of Memorandum of Understanding. Nothing in this Memorandum of Understanding is intended in any way to supplant the provisions enacted by the Metro Council in the MERC reform package. Specifically, MERC shall retain the right established in Metro Code Section 6.01.040(m) to cease purchasing services from Contractor, and terminate this Memorandum of Understanding without cause, upon 90 days written advance notice. It is understood that, in the event of any such termination, the required 90 day advance notice would begin to run upon the adoption of a formal MERC resolution to that effect.

7. Pass Through of Savings Through Efficiencies. It is anticipated that Contractor will garner savings during this fiscal year from implementation of the People Soft computer system. It is agreed that MERC shall be entitled to a fair share of any such savings. Contractor shall regularly report to MERC with respect to any savings obtained through the use of this system. MERC and Contractor will separately negotiate a mutually agreeable mechanism for passing any such savings through from Contractor to MERC.

8. Efficiency Meetings. MERC and Contractor shall meet regularly to discuss service issues, methods of improving services, and potential cost efficiencies.

**MERC:**

**CONTRACTOR:**

By: \_\_\_\_\_  
Mark B. Williams  
General Manager

By: \_\_\_\_\_  
Doug Butler, Director  
Department of Administrative Services