

**METROPOLITAN EXPOSITION-RECREATION COMMISSION**

**Resolution 00-11**

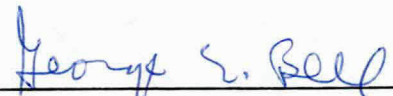

Approving Ticketmaster as a selected contractor to provide non-exclusive ticketing services and authorizing the Chair and Secretary-Treasurer to execute an Automated Ticketing Services Agreement with Ticketmaster; and further, authorizing the MERC General Manager to enter non-exclusive Ticketing Services Agreements with other responsive proposers.

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

1. That the current ticketing services contracts for MERC facilities expire on March 31, 2000; and
2. That in October 1999, the Metropolitan Exposition Recreation Commission solicited written proposals for nonexclusive automated ticketing services for its facilities; and
3. That on November 22, 1999 the Commission received proposals from four qualified proposers, Ticketmaster, Fastixx, Tickets.com, and Admission Network USA, Inc; and
4. That staff has evaluated the proposals and recommends the selection of Ticketmaster as the proposer which offers the required services and best financial return to the Commission; and
5. That the Commission facilities and licensees would be best served by having additional ticketing service providers available on the same terms and conditions as those offered by Ticketmaster.


**BE IT THEREFORE RESOLVED** that the Metropolitan Exposition-Recreation Commission approves the selection of Ticketmaster as a provider of nonexclusive ticketing services for MERC facilities, and further, authorizes the Chair and Secretary-Treasurer to execute the contract attached as Exhibit A with Ticketmaster for non-exclusive ticketing services; and further, authorizes the MERC general manager to execute a contract for non-exclusive ticketing services with any of the other qualified ticketing services proposers in substantially the same form as the attached Exhibit A.

Passed by the Commission on March 15, 2000.

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

APPROVED AS TO FORM:

Daniel B. Cooper, General Counsel

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

## **MERC STAFF REPORT**

**Agenda Item: Automated Ticket Services Contract**

**Resolution No. 00-11**

**Date: March 15, 2000**

**Presented by: Commissioner Judy Rice  
Staff: David Biedermann**

**Background Analysis:** In 1991 MERC entered into non-exclusive agreements with Ticketmaster and FASTIXX to provide the Memorial Coliseum, PCPA and Civic Stadium with necessary equipment to utilize automated ticketing for events held at these facilities. The two companies offered both ticket outlets and telephone centers at which tickets to MERC events could be purchased.

These contracts expired in December of 1994. At the conclusion of these initial contracts MERC decided to negotiate new, multi-year contracts with the existing 2 computerized ticketing companies. The new contracts were simplified and reflected changes when Memorial Coliseum was no longer a MERC facility.

These contracts contained two one-year extensions; both were exercised and the second expired on December 31, 1999. An additional 3-month extension by the Commission allowed further review of the proposals, and it expires on March 31, 2000.

In September of 1999 a MERC Ticketing Committee was formed with the goal of deciding what plan of action was needed to continue automated ticket services for the facilities. This committee included all four Facility Directors, two Ticket Services Managers, the Director of Administration and two MERC Commissioners.

In November an RFP was issued to numerous companies nationwide asking for responses to provide MERC automated ticket services. From this request, MERC received four responses.

Responding were the two existing providers, Ticketmaster and FASTIXX and two newer companies: Tickets.com and Admission Network. The responses were varied with each containing strengths and weaknesses. All of the committee members evaluated each of the responses and scored them based on criteria listed in the RFP.

Two of the responses scored well ahead of the other two. One of the companies not scoring well was FASTIXX, which is a locally based company that has been contracted with MERC since 1990. In an attempt not to exclude a company, particularly a local one that relies heavily upon MERC business, the committee has made the following decision.

We recommend the Commission select and contract with Ticketmaster, as their response is the one that benefits MERC the most financially. This contract will then be offered to each of the other three companies who may choose to either enter into the agreement on those terms or decline to conduct business with MERC.

This accomplishes two main goals. One, it keeps MERC on a non-exclusive basis which provides our clients with more than one option in selecting a company to handle their ticketing. Two, it provides increased competition in the market, which in turn keeps costs to MERC, our users, and the consumer consistent with current market conditions.

The risk that we take is that all four companies have the opportunity to enter into the agreement and do business with MERC. While this would create a burden on staff in dealing with more than two systems (as we currently do) and there would be space limitations, the set-up for the two new companies would be substantial. Given the limited market share it is unlikely a new company would want to make this investment. However, should they wish to do so, we are prepared to accept their contracts on the same conditions as noted.

**Fiscal Impact:** Under the current agreements with Ticketmaster and FASTIXX, MERC receives \$.25 from the two companies on each ticket they sell to an event that is held at a MERC facility. The new contract provides MERC with increased revenue in the following categories:

PCPA and Civic Stadium

The new contract increases the \$.25 per ticket fee to \$.50 for tickets sold through outlets, telephone and Internet for tickets priced below \$22.00. For tickets priced above \$22.00, the current \$.25 per ticket fee is increased to \$1.25.

OCC and Expo

Currently there is no fee imposed for events held at the OCC and Expo. The new contract establishes a \$.25 per ticket fee for tickets sold through outlets, telephone and Internet on tickets priced below \$22.00. For tickets priced above \$22.00 the contract establishes a fee of \$1.00. This difference reflects the nature of the tickets being sold (consumer type shows) and a schedule of maximum allowable service charges, which are lower at these two facilities.

These increased fees are expected to generate approximately \$200,000 in additional revenue for MERC Facilities.

**Recommendation:** The committee's recommendation is to issue the new contract to each of the four interested respondents. Each company could then accept these conditions and enter into the agreement. The committee would then oversee that each of those companies that enter into the agreement will abide by all provisions stated in the contracts.

**EXTENSION TO  
AUTOMATED TICKETING SERVICES AGREEMENT (the "Agreement")  
BETWEEN FASTIXX ("Ticket Agent")  
AND THE METROPOLITAN EXPOSITION-RECREATION COMMISSION  
("MERC/Commission")  
Originally dated February 8, 1995  
Amended and Extended December 30, 1997**

This Extension to the Agreement is agreed by and between the Metropolitan Exposition-Recreation Commission ("MERC/Commission") and Fastixx ("Ticket Agent") on this 27<sup>th</sup> day of December, 1999.

**RECITALS**

1. The initial term of the Agreement expired on December 31, 1997.
2. The Agreement was amended and extended through December 31, 1999.
3. The parties wish to extend the Agreement for an additional period through March 31, 2000.

**EXTENSION**

Now, therefore, in consideration of the mutual covenants of the parties hereto, IT IS AGREED by and between them that the term of the Agreement, as amended, is extended through March 31, 2000.

**FASTIXX**



Title: Vice President

**METROPOLITAN EXPOSITION-  
RECREATION COMMISSION**



Mark B. Williams, General Manager

APPROVED AS TO FORM  
Daniel B. Cooper, General Counsel

By:   
Kathleen A. Pool, Senior Assistant Counsel

**ADDENDUM**

**Metropolitan Exposition Recreation Commission  
Ticketing Services Proposal of Fastixx**

Fastixx hereby extends the period of validity of its ticketing services proposal to March 31, 2000.

**FASTIXX**

Tom Keenan  
By: Tom KEENAN  
Title: Vice President  
Date: 12/26/99



arts. sports. conventions. shows.

METROPOLITAN EXPOSITION-RECREATION COMMISSION

June 9, 2000

Tom Keenan, Vice President  
Fastixx  
10 NW 6<sup>th</sup> Avenue  
Portland, Oregon 97209

Re: Ticketing Agreement Amendment

Dear Tom:

This confirms our conversation and agreement on June 8, 2000:

1. We had previously agreed that your company would be in full compliance with all internet related requirements of the contract, including but not limited to real time ticketing, no later than June 1, 2000. You informed me recently that your company would not be in full compliance with these requirements by June 1, 2000, and requested a 30-day extension of the deadline.
2. I agreed today on behalf of MERC to extend this deadline until July 5, 2000.
3. In consideration of MERC's agreement to extend this deadline until July 5, 2000, and because MERC's actual damages in the event of non-compliance with the contract are difficult to ascertain, your company has agreed to pay MERC liquidated damages in the amount of \$100 per day for each day subsequent to July 5, 2000, in which your company is not in full compliance with all internet related requirements of the contract, including but not limited to real time ticketing.
4. The remainder of the agreement is unmodified and remains in full force and effect between the parties unless terminated as authorized therein.

Tom, please indicate your agreement with these terms by signing as indicated and returning one fully executed copy to me.



Thank you for your cooperation in resolving this issue.

Sincerely,



Mark B. Williams  
MERC General Manager

IT IS SO AGREED:

By: Tom Keenan Vice President Dated: 6/14/00  
Tom Keenan  
Vice President, Oregon Ticket Company, Inc. dba Fastix  
TICKETSWEST.COM, INC

cc: MERC Management Team *John*

## AUTOMATED TICKETING SERVICES AGREEMENT

This agreement is made and entered into on this 28<sup>th</sup> day of MARCH, 2000 by and between the Metropolitan Exposition-Recreation Commission ("MERC"/Commission), and TICKETS WEST. com P/B/A, Ticket Agent.  
FASTIXX

### WITNESSETH:

#### RECITALS

1. The Commission is a subdivision of Metro, a municipal corporation.
2. The Automated Ticket Agent is an Oregon State Corporation entity.
3. The Commission desires to make tickets to events held in Commission Facilities widely available to the public.
4. The Ticket Agent represents that it is able to provide automated ticket sales services for the locations specified.
5. The Ticket Agent further represents that it possesses the necessary equipment and systems to provide automated ticketing sales and service, inclusive of outlet sales and telephone, internet and kiosk 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), and at MERC's option, the Oregon Convention Center (OCC) and the Metropolitan Exposition Center (EXPO). MERC may delete Civic Stadium or any other facility from this agreement at any time MERC ceases to be responsible for its management.
- 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" means 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 long 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. 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 locations for ticket sales and Commission Facilities' Ticket Centers.
- i. "Facility Ticket Services Manager" means the MERC employee in charge of ticketing services at each Commission facility.

## **2. PURPOSE OF THE CONTRACT**

The purpose of this Agreement is to engage Ticket Agent(s) 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.

Ticket Agent is granted the non-exclusive right to conduct automated ticket sales for Commission facility events at Ticket Agent's outlets (including telephone, Internet and kiosk sales) under the terms and conditions of this Agreement.

Ticket Agent shall provide standard required equipment as listed in Exhibit A for use at PCPA facilities on a permanent basis for the duration of the contract.

At the Commission's option, Ticket Agent shall also provide non-exclusive ticketing equipment and services (including selling non-MERC events) at Civic Stadium, Oregon Convention Center, and/or Expo. Ticket Agent shall install and commence ticketing services within 60 days of the Commission's written notice to extend services. Services provided to the Civic Stadium, Oregon Convention Center and/or Expo shall be in accordance with the terms and conditions of this Agreement.

## **3. TERM OF THE AGREEMENT**

The term of this Agreement shall be from April 1, 2000 until March 31, 2003, unless sooner if terminated by the mutual agreement of the parties or as provided 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 shall be sufficient to exercise the renewal option.

## **4. DUTIES OF THE TICKET AGENT**

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

### **A. Outlet, Telephone and Internet Sales**

- 1) Ticket Agent shall establish and maintain a network of at least fifteen (15) outlets throughout the Portland metropolitan area including Salem and southwest Washington. An outlet plan to include locations must be submitted and approved by the General

Manager prior to the contract being entered into by the Ticket Agent These outlets shall be established and operating no later than 30 days after contract execution. Ticket Agent shall use its best efforts to continue to build and expand this network of outlets into other areas of the State and region. Ticket Agent shall make reasonable efforts to provide information to those outside the Portland metropolitan area about ticket sales.

- 2) The Ticket Agent shall maintain regular commercially reasonable 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 are subject to the approval of the Commission. If requested to do so by the Portland Oregon Visitors Association (POVA), Ticket Agent shall establish and maintain an additional ticket outlet at the POVA Visitor Information Center, co-locating with other ticketing agencies if required.
- 3) The Ticket Agent shall provide real time Internet ticket sales including the ability to offer deep link or nesting capabilities. MERC event information shall be kept current and maintained daily. The Ticket Agent shall be responsible to provide updated services that keep MERC technologically advanced, including but not limited to bar-coding, e-ticketing and other Internet ticketing innovations.

#### **B. Facilities and Equipment**

1) The Ticket Agent shall provide, in any facility, the level of equipment, facilities and systems for ticket sales as provided in Exhibit A. the Ticket Agent shall also provide hard copy report printers, which provide each Ticket Center with transaction-by-transaction reports. This reporting system shall be acceptable to the Commission and shall provide sufficient information to monitor all sales and ensure proper auditing of ticket sales. Additional equipment shall be provided when needed to meet additional demand for sales. In no case, shall the level of equipment, in any facility, be reduced unless approved by the Facility Ticket Services 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.

#### **C. System Safeguards**

All ticketing system security 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 programs, data files,

data lines and other components of the system 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.
- 5) Written documentation of credit card number protection systems for telephone sales and internet sales.

Ticket Agent shall allow operational audits and system review by the Commission and its independent systems 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 Facility Ticket Services 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 Ticket Services Manager with a complete seating manifest prior to tickets going on sale.
- 3) Upon receiving final approval from the Ticket Services 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 Commission facility events unless otherwise authorized by the Commission's General Manager or his designee.
- 5) Sale of tickets will be made at all Ticket Agent outlets, telephone and internet sales at the same price as charged at the Commission Ticket Centers, with the exception of Ticket Charges as described in Section F and Exhibits B & C.

- 6) No tickets shall be held back prior to or during the time of sale unless authorized by the Facility Ticket Services Manager, in writing.
- 7) If an event is cancelled, Ticket Agent shall contact and refund all tickets including telephone and Internet sales generated by the Ticket Agent at all location(s). All refunds shall include user's fee and convenience charge. Ticket Agent shall maintain accurate records of refunded amounts. Any ticket sale proceeds, including telephone and Internet sales, remaining sixty (60) days after the scheduled event shall be returned to the Commission. Tickets remaining out after the sixty (60) day period will be refunded through MERC. Exceptions may be approved by Facility Ticket Services Manager
- 8) Any costs associated with duplicate tickets issued through Ticket Agent error, or tickets lost, stolen or misappropriated from Ticket Agent's outlets, will be paid by Ticket Agent.
- 9) All tickets purchased by telephone or by Internet, 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 will-call tickets to Commission's Ticket Center where event is scheduled at least two (2) hours prior to the start of the event. A fifty dollar penalty shall be imposed if will call tickets are delivered after the two hour deadline. 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 one dollar and fifty cents (\$1.50) per order.
- 10) 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.
- 11) Ticket Agent's sales practices and policies shall comply with the Americans With Disabilities Act and ORS 659.405.

**E. Ticket Content and Advertising**

- 1) Ticket Agent shall provide ticket stock, which will be used under this agreement. Stock shall be 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 for facility events by the Ticket Agent is subject to this provision. Back print will be used for legal notification to patrons of applicable policies, laws and regulations.

4) The Commission reserves the right to sell advertising on tickets and ticket envelopes for tickets sold at MERC facility ticket centers. Prior to exercising this right, Commission will give reasonable notice and incur costs associated with changes in printing.

**F. Compensation/ Financial Arrangements**

- 1) The Commission will not pay any remuneration to the Ticket Agent for performing services. The Ticket Agent may independently establish a fee for the sale of all tickets to be paid to the Ticket Agent by the event Licensee, but at no time may this fee exceed five percent (5%) of the dollar value of the ticket. Additionally, the Ticket Agency may charge to the Licensee 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 approved 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.
- 2) Ticket Agent shall pay to the Commission per ticket charges established in Exhibits B and C on all outlet and telephone sales. Service charges for Portland Rockies games at Civic Stadium shall be determined by the Commission's contract with the Rockies.
- 3) 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 Ticket Agent's 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. The Commission will retain 25% of the ticket charges on tickets sold at Commission Ticket Centers for events at non-Commission Facilities.

- 4) 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.
- 5) 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.
- 6) The Ticket Agent shall be paid its sales commissions by direct invoice to the event Licensee or at the time of event settlement. No funds shall be withheld 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 will make reasonable efforts, on behalf of the Ticket Agent, to collect amounts owing at settlement.

#### 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, internet 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, Internet, kiosk or over-the-counter sales. The reported settlement amount shall not be reduced by credit card charges, losses due to bad checks, or any other losses incurred by the Ticket Agent 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, internet 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 0.3. 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) A) The Ticket Agent shall notify Commission when total MERC event ticket sales for the week (Sunday through Saturday) have reached \$50,000. On the second Monday following each sales week Ticket Agent shall make the weekly deposit of all ticket sales above \$50,000 as reported on Event Audits or Settlements. For each week in which the Ticket Agent fails to make the required Monday deposit of all ticket sales above \$50,000, Ticket Agent shall pay to the Commission the sum of \$1,000 or one week of interest, at the current ninety-day US Treasury bill rate, on the un-deposited amount, whichever is greater. The General Manager may waive the assessment of interest and of payment in lieu of interest if he or she finds, in his or her sole discretion, that failure to make timely payment under this section was due to circumstances beyond the control of the Ticket Agent.

B) Ticket Agent shall make all funds to settle Commission events available at the time of settlement for such events or, for events occurring on weekends, by 12:00 Noon on the first business day following the final performance or event. Failure to make such funds available for Commission event settlement shall be a Material Breach of this Agreement pursuant to Section 8. Termination for Breach.

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

#### H. Training and Service Standards

The following provisions apply to the operation of ticket outlets, internet 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 operational during normal business hours and for Commission events.
- c. Ticket Agent shall use its best efforts to obtain software capability to tie into the Commission's computerized facility management system, including report capability as well as general information pertaining to event-related sales.
- d. Ticket Agent shall maintain uniform advertising practices to provide quality information to the buying public. This information includes but is not limited to, date, time, location of



outlets and Commission ticket centers, telephone number for ticket sales, web-site address for internet 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 a system which captures 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. This list shall apply to ticket buyers purchasing tickets by telephone and internet only.

5) **RESPONSIBILITIES OF THE COMMISSION**

The Commission shall be responsible for 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.

e. The Commission shall supply necessary electricity and space in its facilities for the installation and operation of the Ticket Agent's ticketing system.

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 during the term of this agreement. Approval shall be at the sole discretion of the Commission.
- 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.
- g. The Commission reserves the right to sell tickets at its own Tickets Centers by telephone and internet through Commission web sites. The Commission reserves the right to sell hard (roll) tickets to all events and to sell tickets from its own automated ticket system.

## **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 MERC automated ticketing facilities' services are destroyed by an act of God, fire, vandalism, or similar events, so 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 Ticket Agent's equipment at Commission Facilities shall be obtained by Ticket Agent at Ticket Agent's expense.

Workers' Compensation Insurance: Ticket Agent, its subcontractors, if any, and all employees working under this Agreement that are subject employers under the Oregon Workers' Compensation Law shall comply with ORS 656.017, which requires them to provide Workers' Compensation coverage for all their subject workers. Contractor shall provide Commission with certification of Workers' Compensation insurance including employer's liability. If Ticket Agent has no employees and will perform the work without the assistance of others, a certificate to that

effect may be attached, as an Exhibit in lieu of the certificate showing current Workers' Compensation.

## **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 the foregoing, 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, for a period of two (2) years.

## **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, in a form 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 Licensees against the Ticket Agent. The Agent may place an irrevocable letter of credit, in a form acceptable to the Commission, 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.

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

TOM KEENAN  
Vice President  
FASTIX  
10 NW 6th Ave  
Portland OR  
97209

Commission

General Manager  
MERC  
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, 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.

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 Count in the circuit Court of the State of Oregon or if jurisdiction exists in the Federal District Court, Portland, Oregon.

The underlined titles for 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 & EMERGING SMALL BUSINESS PROGRAM/EQUAL OPPORTUNITY HIRING**

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

b. The Ticket Agent agrees to follow the policies and rules set out in Commission's Minority Business Enterprises, Emerging Small Business 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, Emerging Small Business or Women-owned Business subcontractor, the Ticket Agent shall follow the policies and rules set out in Commission's Minority Business Enterprises, Emerging Small Business and Women-Owned Enterprises Programs.

d. The Ticket Agent shall provide reports on its compliance with the MBE / WBE/ESB 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, Emerging Small Business or Women-Owned Business participation in the agreement, and any representation made by the Ticket Agent regarding replacement of any Minority, Emerging Small Business 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, emerging small business 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: Tom Keenan  
Title: Vice President

**METROPOLITAN EXPOSITION-  
RECREATION COMMISSION**

George E. Bell  
Chair  
[Signature]

Secretary-Treasurer

Approved as to Form  
Daniel B. Cooper, General Counsel

By: Kathleen A. Pool  
Kathleen A. Pool  
Senior Assistant Counsel



## EXHIBIT A

### AUTOMATED TICKETING SERVICES AGREEMENT

#### Standard Required Equipment

**A. NEW THEATER BUILDING BOX OFFICE**

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

**B. CIVIC AUDITORIUM**

Three (3) CRT terminals; three (3) ticket printers and one (1) hardcopy report printers.

**C. ARLENE SCHNITZER CONCERT HALL**

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

#### Optional Facilities

**D. CIVIC STADIUM:**

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

**E. OREGON CONVENTION CENTER**

One (1) CRT terminal, one (1) ticket printer and one (1) hardcopy report printer

**F. EXPO Center**

One (1) CRT terminal, one (1) ticket printer and one (1) hardcopy report printer

The ticket Agent(s) shall provide the necessary equipment and signal to each MERC Facility (Civic Stadium, New Theater Building Ticket Center, Civic Auditorium, Arlene Schnitzer Concert Hall, Oregon Convention Center, and EXPO Center) 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 on PCPA and Civic Stadium Events (Except Portland Rockies Games)

| <u>Ticket Price</u>  | <u>Outlet</u> | <u>Phone</u> |
|----------------------|---------------|--------------|
| \$ 0 - \$10          | \$1.50        | \$2.50       |
| \$10.01 to \$14      | \$2.00        | \$3.00       |
| \$14.01 to 18        | \$2.50        | \$3.50       |
| \$18.01 to 22        | \$3.00        | \$4.00       |
| \$22.01 to \$30      | \$3.50        | \$4.50       |
| \$30.01 to \$40      | \$4.00        | \$5.00       |
| \$40.01 to \$50      | \$4.50        | \$5.50       |
| \$50.01 to \$60      | \$5.00        | \$6.00       |
| \$60.01 +<br>events. | \$5.50        | \$6.50       |

Ticket Agent shall be charged \$0.50 on all tickets priced between \$0-\$22.00 for tickets sold to Commission events on all tickets sold at outlets, by telephone and Internet. For tickets priced at \$22.01 and above Ticket Agent shall be charged \$1.25 on all tickets sold at outlets by telephone and Internet.

Where the ticket agent has a national contract which must be honored, ticket agent may request in writing, and MERC, acting through its delegee(s) in its sole discretion may authorize in writing, a \$1.00 increase in the maximum ticket fee. In the event that any such increase is authorized, MERC shall receive 50 cents of the \$1.00 increase.

**EXHIBIT C****AUTOMATED TICKETING SERVICES AGREEMENT****Maximum Allowable Per Ticket Charge on OCC & EXPO Center Events**

| <u>Ticket Price</u> | <u>Outlet</u> | <u>Phone</u> |
|---------------------|---------------|--------------|
| \$ 0 - \$10         | \$1.00        | \$2.00       |
| \$10.01 to \$14     | \$1.50        | \$2.50       |
| \$14.01 to 18       | \$2.00        | \$3.00       |
| \$18.01 to 22       | \$2.50        | \$3.50       |
| \$22.01 to \$29     | \$3.00        | \$4.00       |
| \$29.01 to \$40     | \$4.00        | \$5.00       |
| \$40.01 to \$50     | \$4.50        | \$5.50       |
| \$50.01 to \$60     | \$5.00        | \$6.00       |
| \$60.01 +           | \$5.50        | \$6.50       |

Ticket Agent shall be charged \$0.25 on tickets priced between \$0-\$22.00 sold at outlets, by telephone and internet.

Ticket Agent shall be charged \$1.00 on tickets priced at \$22.01 and above sold at outlets, by telephone and internet.

## **EXHIBIT D**

### **AUTOMATED TICKETING SERVICES AGREEMENT**

#### **A. TRAINING**

1. All Ticket Agent sales personnel shall be well trained and thoroughly knowledgeable regarding the ticketing 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. Ticket Agent shall regularly provide all sales personnel information about Commission events and shall provide such information to patrons, upon request. Information will be conveyed to patrons 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 use a telephone call sequencing device to monitor incoming phone calls and correctly handle the calls waiting for service (hold and answered in order received).

2. Ticket Agent will maintain sufficient staff so that 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. Commission shall periodically verify waiting times and may require written confirmation of corrective action if maximum waiting times are exceeded.

3. A supervisor must be on duty to handle questions and difficult patrons when large events begin selling or multiple events are on sale. Monthly reports shall be submitted to Commission on compliance with regard to this requirement. 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.