

METROPOLITAN EXPOSITION-RECREATION COMMISSION

RESOLUTION NO.: 98-30

For the purpose of approving Ace Parking Management, Inc. as the contractor to provide parking lot labor services at the Portland Metropolitan Exposition Center and authorizing the MERC Chairman and Secretary/Treasurer to execute an agreement with Ace Parking Management, Inc. to provide such services commencing July 1, 1998 and ending June 30, 2001.

The Metropolitan Exposition-Recreation Commission finds:

WHEREAS, the Expo Center parking lot operation and management agreement will terminate June 30, 1998;

WHEREAS, on April 17, 1998, Commission staff issued a Request for Proposals for Expo Center parking lot labor services;

WHEREAS, the Expo Center has an ongoing need for parking lot labor services;

WHEREAS, a selection committee engaged in a proposal review, interview and selection process and has recommended a Ace Parking Management, Inc. as the parking lot labor services contractor to the Commission.

BE IT THEREFORE RESOLVED that the Metropolitan Exposition-Recreation Commission ratifies the solicitation of proposals for Expo Center parking lot labor services; selects Ace Parking Management, Inc. to provide parking lot labor services at the Portland Metropolitan Exposition Center; and authorizes the MERC Chairman and Secretary/Treasurer to execute the "Parking Lot Labor Services Agreement" (attached as Exhibit A) with Ace Parking Management, Inc. to commence July 1, 1998 and end June 30, 2001.

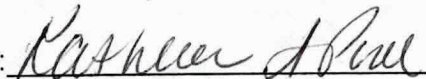
Passed by the Commission on June 10, 1998.


Chair

Secretary-Treasurer

APPROVED AS TO FORM:

Daniel B. Cooper, General Counsel

By: 

Kathleen Pool
Senior Assistant Counsel

AGREEMENT

PARKING LOT LABOR SERVICES

This Agreement is made **June 10, 1998**, to be effective July 1, 1998, by the Metropolitan Exposition-Recreation Commission (MERC) and **Ace Parking Management, Inc.** (Contractor).

WITNESSETH

The Contract Documents together form the Agreement between Commission and Contractor. All determination of the precedence of, discrepancy in, or conflicts regarding the Contract Documents shall be made by Commission, but, in general, precedence will be in accordance with the following list with the highest precedence item at the top:

1. Parking Lot Labor Services Agreement.
2. The Contractor's proposal dated **May 6, 1998**, which was accepted by MERC at its meeting on **June 10, 1998** (Exhibit A).
3. PROPOSAL DOCUMENTS for Parking Lot Labor Services for the Portland Metropolitan Exposition Center, prepared by the Portland Metropolitan Exposition Center dated **April 17, 1998** (Exhibit B).
4. Contractor shall provide MERC with Workers' Compensation coverage for all Contractor's employees as provided by ORS 656.407.

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

SCOPE OF SERVICES

1. Contractor shall provide qualified, competent and uniformed labor to operate the parking lot facilities at the Portland Metropolitan Exposition Center (Expo) at such times as event requirements, Licensees or Expo Management may request. Such labor shall include, but not be limited to, supervisor, sellers, spotters, traffic directors and/or other related personnel to conduct fee collection, entering and parking of vehicles in a fast, safe and efficient manner.

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

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

Target Area Boundary Designation:

North Boundary: Columbia Boulevard

East Boundary: 42nd Avenue

South Boundary: Banfield Freeway, I-84

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

Target Area Definitions:

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

COMPENSATION SCHEDULE

The Portland Metropolitan Exposition Center shall pay to Contractor, as consideration for the services to be performed under this Agreement, a flat rate equal to **twenty-one and eighty-nine one-hundredths dollars (\$ 21.89)** per labor hour for a Supervisor and a flat rate equal to **twelve and ninety-five one-hundredths dollars (\$ 12.95)** per labor hour for all other labor services.

Payment due Contractor shall be made monthly.

Contractor shall deposit, on a daily basis, one hundred (100) percent of the gross parking revenue received that day in an account approved by MERC and in accordance with procedures specified by MERC.

Gross revenue shall include all parking fees collected by Contractor's employees and shall include event, exhibitor and overnight parking.

TERM OF AGREEMENT; TERMINATION:

1. The term of this Agreement shall be for three (3) years beginning on July 1, 1998 and ending on June 30, 2001.
2. MERC shall have the right to terminate this Agreement for convenience upon giving the Contractor thirty (30) days written notice of its intention to do so. Upon the giving of such notice, this Agreement shall terminate on the date specified in the notice.
3. MERC shall have the option to renew this Agreement for one additional two-year term not to exceed a total contract term of five (5) years:
 - a. The renewal term shall commence on the day following the date of termination of the preceding term.
 - b. The option may be exercised by written notice to the Contractor given not less than 30 days prior to the expiration of the current term of this Agreement. The giving of such notice shall be sufficient to make this Agreement binding of the renewal term without further act of the parties.
 - c. Compensation rate(s) shall be increased for the renewal term by the increase (if any) in the Portland CPI for the period July 1, 1998 - June 30, 2001, plus any state or federally mandated increases in the applicable minimum wage which take effect between February 1, 1999 and June 30, 2001.

INSURANCE:

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

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

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

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

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

PERFORMANCE BOND:

Contractor, and each Contractor's employee engaged in the performance of this Agreement, shall account for all money and the value of all property which may come into his/her possession or control in the performance of this Agreement. In order to secure the payment of any money or the value of any property coming into the possession or under the control of Contractor or any of the Contractor's employees in the performance of this Agreement, and to assure compliance of the Contractor with all provisions of this Agreement, including but not limited to those related to the financial obligations owed to MERC, the Contractor shall provide a performance bond in the form attached as Exhibit A

to and in favor of MERC in an amount of not less than Fifty Thousand Dollars (\$50,000.00). Said performance bond shall be conditioned upon faithful performance of Contractor and its employees, and upon payment of moneys due or obligations owing to MERC and to all suppliers and materialmen of Contractor or its subcontractors

ASSIGNMENT:

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

THE CONTRACTOR'S EMPLOYEES NOT COMMISSION EMPLOYEES:

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

MAINTENANCE OF RECORDS:

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

- a. MERC, either directly or through a designated representative, may audit the records of the Contractor at any time during the three (3) year period established by this Section.
- b. If an audit discloses that payments to the Contractor were in excess of the amount to which the Contractor was entitled, then the Contractor shall repay the amount of the excess to MERC plus accrued interest at existing prime rate plus 4%, starting from original due date of said payments.
- c. To the extent that Contractor holds MERC funds for any period of time pursuant to this Agreement, Contractor shall at all times act in a fiduciary capacity.

RELATIONSHIP OF THE PARTIES:

The Commission and the Contractor have entered into this Agreement for the purpose of establishing an independent contractor relationship between the Commission and the Contractor. This Agreement is not, nor should it be construed as, a lease or an agreement in the nature of a lease. In the event that any governmental authority of competent jurisdiction determines that Contractor has a leasehold interest in any of Commission's facilities, Contractor shall be responsible for payment of any property or other taxes which may result. No covenant of quiet enjoyment shall be implied in this Agreement. It is further understood and agreed by and between the Parties that nothing herein shall constitute or be construed to be an employment, partnership, joint venture, or joint employer relationship between the Commission, its successors or assigns on the one part, and the Contractor, its successors or assigns on the other part.

POWERS RESERVED TO THE COMMISSION:

In the event of a dispute between the Contractor and the Commission, the decision of the Commission and/or its designee(s) concerning the operation or management of the Portland Metropolitan Exposition Center shall be final and binding on both Parties. By way of illustration and not as a limitation, the reserved powers of the Commission include:

- a. The final determination of all policies and procedures relative to the operation and management of the Portland Metropolitan Exposition Center.
- b. Sole discretion to cancel, terminate or interrupt any event, and cause the patrons to be dismissed during any event. The commission shall not be liable to the Contractor or any third parties for any loss or cost occasioned by any such determination or action by the General Manager, the Expo Manager, or their designee(s) taken in good faith for the benefit or protection of the Commission and the public generally or the Portland Metropolitan Exposition Center.
- c. The power to terminate this Agreement for convenience upon 30 days notice as specified herein.
- d. The Commission may, at its discretion, conduct a performance review and/or audit of Contractor's compliance with this Agreement on an annual basis or more frequently as appears necessary to the Commission or its designee(s).

Each party hereto hereby waives any and every claim which arises or may arise in its favor and against the other party hereto during the terms of this Agreement or any extension or renewal thereof for any loss of or damage to any of its property, which loss or damage is covered by valid and collectible fire and extended coverage insurance

policies to the extent that such loss or damage is recovered under said insurance policies. Said waivers shall be in addition to, and not in derogation of, any other waiver or release contained in this Agreement with respect to any loss or damage to property of the Parties hereto. Inasmuch as the waiver will preclude the assignment of any aforesaid claim by way of subrogation (or otherwise) to an insurance company (or any other person), Contractor is advised to give each insurance company written notice of the terms of such waiver, and to have insurance policies properly endorsed, if necessary.

NON-DISCRIMINATION:

Contractor agrees not to discriminate against any employee or applicant for employment because of race, creed, ancestry, sexual orientation, disability, color, sex, marital status, age, religion or national origin, and further agrees not to discriminate for the same aforementioned reasons against any person or persons in connection with admission, services, or privileges offered to or enjoyed by the general public.

IMPOSSIBILITY:

The Commission shall not be liable for failure to perform as agreed herein where such performance is rendered impossible or financially impractical due to labor strikes, walkouts, acts of God, inability to obtain necessary materials, products and services, civil commotion, fire, casualty, or similar cause beyond the control of the Commission.

DEFAULT BY CONTRACTOR:

Contractor shall be in default of this Agreement if Contractor fails to pay any amounts due under the Agreement or any other written agreement between Contractor and Commission, breaches any provisions of this Agreement or any other written agreement between Contractor and Commission, including transfer of funds and maintenance of required insurance in strict accordance with this Agreement, violates any applicable laws or ordinances, violates any Commission rules or policies, or should dissolve or cease doing business as a going concern or become insolvent or bankrupt. Upon such default by Contractor, the Commission may have one or more of the following remedies, in its sole discretion:

- a. Terminate the Agreement by giving the Contractor written notice of such termination, without the necessity of the 30 days notice which is required for a termination for convenience, which shall not excuse breaches of the Agreement which have already occurred.
- b. Pursue any other remedies available to the Commission either at law or equity. No single or partial exercise of a right or remedy shall preclude any other or further exercise of a right or remedy.

c. Commission shall have the right, without resorting to any legal action, to withhold from any and all sums, receipts or deposits which may be in the possession of the Commission for or on behalf of Contractor, such sums as are necessary, in Commission's sole opinion, to apply to any claims Commission may have against Contractor, or to protect Commission against any loss, damage, or claim which may result from Contractor's performance or failure to perform under this Agreement.

d. Commission may, at its sole option, also terminate any other contract(s) with Contractor.

SEVERABILITY:

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

WAIVER:

The failure by the Commission to insist upon strict and prompt performance of the terms and conditions of this Agreement shall not constitute a waiver of the Commission's right to strictly enforce such terms and conditions thereafter. No waiver by the Commission of any default shall operate as a waiver of any other default on a future occasion or the same default. No delay or omission by the Commission in exercising any right or remedy shall operate as a waiver thereof, and no single or partial exercise of a right or remedy shall preclude any other or further exercise thereof, or the exercise of any other right or remedy.

DELIVERY OF NOTICES:

Any notice, request, demand, instruction, or any other communications to be given to any party hereunder shall be in writing, sent by registered or certified mail as follows:

To Commission: Metropolitan Exposition-Recreation Commission
Attn: General Manager
PO Box 2746
Portland, Oregon 97208

Copy to: Portland Metropolitan Exposition Center
Attn: Manager
2060 N. Marine Drive
Portland, Oregon 97217

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

To Contractor: **Ace Parking Management, Inc.**
Attn: Steve Burton, Executive Vice President
645 Ash Street
San Diego, CA 92101-3211

MISCELLANEOUS:

- a. Contractor's Assumption of Responsibility. The Contractor expressly assumes full responsibility for all persons connected with Contractor's performance of its duties under this Agreement, including all its employees, agents, members, invitees and contractors.
- b. Time is of the Essence. Time is of the essence to this Agreement.
- c. Entire Agreement. Except as specifically provided herein, this document contains the complete and exclusive agreement between the Parties, and is intended to be a final expression of their agreement. No promise, representation or covenant not included in this document has been or is relied upon by any party. No modification or amendment of this Agreement shall be in force or effect unless in writing executed by all Parties hereto.
- d. Headings. The headings used in this Agreement are inserted only as a matter of convenience and for reference and in no way define, limit or describe the scope of this Agreement nor the extent of any provision thereof.
- e. No Third Party Beneficiaries. This Agreement is not intended to benefit any individual, corporation, or other legal entity other than Commission and Contractor. This Agreement shall not be deemed to vest any rights in, nor shall it be deemed to be enforceable by, any other parties in any proceeding whatsoever.

MODIFICATION AND AMENDMENT:

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

EXECUTED IN FOUR COPIES ON JUNE 10, 1998.

Ace Parking Management, Inc.

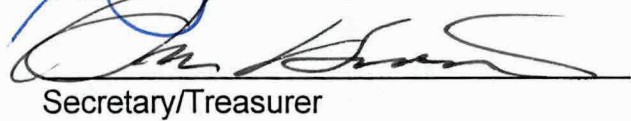
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Steve Burton
Executive Vice President

**METROPOLITAN EXPOSITION-
RECREATION COMMISSION**

A handwritten signature in blue ink, written over a horizontal line.

Chair

A handwritten signature in black ink, written over a horizontal line.

Secretary/Treasurer

APPROVED AS TO FORM:

Daniel B. Cooper, General Counsel

A handwritten signature in black ink, appearing to be "Kathleen A. Pool", written over a horizontal line.

By: Kathleen A. Pool
Senior Assistant Counsel

PERFORMANCE BOND FORMAT

Bond No. _____

Bonding Company's Name

Address

City

State

KNOW ALL MEN BY THESE PRESENTS:

That we, _____

As Principal, and _____ a
corporation organized and existing under and by virtue of the laws of the State of
_____ and legally doing business in the State of Oregon, as
Surety, are held and firmly bound and obligated unto the Metropolitan Exposition-
Recreation Commission for Fifty Thousand Dollars and no/100 (\$50,000), lawful money of
the United States, for the payment of which sum will and truly to be made, we do bind
ourselves, our and each of our heirs, executors, administrators, successors and assigns,
jointly and severally, firmly by these presents

THE CONDITIONS OF THIS OBLIGATION ARE SUCH, that whereas the
Principal entered into contract with _____ dated
_____ day of _____, 1998 for Parking Lot
Operation and Management.

NOW, THEREFORE, if the Principal shall faithfully perform all the provisions of
such contract, then this obligation is void; otherwise to remain in full force and effect.

Provided, however, that the conditions of this obligation shall not apply to any
money loaded or advanced to the Principal or to any subcontractor or other person in the
performance of any such work

Signed and Sealed this _____ day of _____, 1998.

Countersigned:

_____ (Seal)

Principal

_____ (Seal)

Surety

By _____
Attorney in Fact

MERC STAFF REPORT

Agenda Item/Issue: Approval of Ace Parking Management, Inc. as the recommended contractor to provide parking lot labor services at the Portland Metropolitan Exposition Center; and authorize the MERC Chairman and Secretary/Treasurer to execute an agreement with Ace Parking Management, Inc. for such services commencing July 1, 1998 and ending June 30, 2001.

Resolution No.: 98-30

Date: June 10, 1998

Presented by: Chris Bailey

BACKGROUND: In June 1995, the Commission approved a three year agreement with Metro Auto Park/Ace Parking Management, Inc. a Joint Venture, to operate and manage the Expo Center parking facilities. This agreement will terminate June 30, 1998.

On April 17, 1998, MERC staff issued a Request For Proposals (RFP) to provide parking lot labor services, as distinguished from the current operation and management agreement, for the Portland Metropolitan Exposition Center parking facilities. Among other items; the RFP identified the scope of services, required submittals, pre-proposal meeting and a sample agreement.

The new agreement, attached as Exhibit A, represents a change in business needs associated with the Expo Center parking facilities. The current agreement provides for a percentage of the gross parking revenues as compensation due the contractor for management and operation of the parking lot. The new agreement provides for flat hourly labor rates for services as determined by the Expo Center staff; a three year term with one,-two year renewal option; and predetermined criteria for labor rate increases at renewal, if any.

Seven RFP's were issued and five companies were in attendance at the pre-proposal meeting. Represented companies included Ace Parking Management, Inc., City Center Parking, Diamond Parking, Metro Auto Park and Star Park.

Four responses were submitted in response to the request. An RFP selection committee consisting of Chris Bailey, Jeffrey Blosser, Candy Cavanagh, Norm Kraft, Anne Marrone and Chris Palmer, reviewed and scored the proposals. Through this process, the committee short listed to two firms, Ace Parking Management, Inc. and City Center Parking, for follow-up interviews.

On May 28, 1998, following the interviews and scoring, the committee selected and determined to recommend Ace Parking Management, Inc. to the Commission as the successful respondent.

FISCAL IMPACT: Based upon the event driven scheduling of parking lot labor services, it is anticipated that the expenditure during FY 1998-99 will approximate \$121,000.

RECOMMENDATION: Staff recommends that the Metropolitan Exposition-Recreation Commission approve the recommendation of Ace Parking Management, Inc. as the selected contractor to provide parking lot labor services at the Portland Metropolitan Exposition Center; and authorize the MERC Chairman and Secretary/Treasurer to execute an agreement with Ace Parking Management, Inc. for such services commencing July 1, 1998 and ending June 30, 2001.