

METROPOLITAN EXPOSITION RECREATION COMMISSION

RESOLUTION NO. 02-10

For the purpose of selecting Front Row Marketing Services as the Contractor to provide consulting services to assist the MERC Commission to assess, identify and develop a sponsorship, advertising and naming rights program for MERC facilities and further, to authorize the General Manager to execute a Personal Services Agreement on behalf of the Commission.

WHEREAS, the Commission approved Resolution No. 02-02 on January 23, 2002, authorizing staff to issue a Request for Proposal for consulting services to assist the MERC Commission to assess, identify and develop a sponsorship, advertising, and naming rights program for MERC Facilities; and

WHEREAS, the MERC Sponsorship, Advertising and Naming Rights Program Selection Commission was established, and the Committee reviewed and scored the two RFP responses received; and

WHEREAS, the Selection Committee has determined that Front Row Marketing Services is the firm who best meets MERC's needs and further recommends that a consulting services contract be awarded to Front Row Marketing, Inc. to assist the MERC Commission to assess, identify and develop a sponsorship, advertising and naming rights program for MERC facilities.

BE IT THEREFORE RESOLVED that the Metropolitan Exposition Recreation Commission approves the selection of Front Row Marketing Services as the Contractor to provide consulting services to assist the MERC Commission to assess, identify and develop a sponsorship, advertising and naming rights program for MERC facilities, and authorizes the MERC General Manager to execute a Personal Services Agreement on behalf of the Commission, attached as Exhibit A.

Passed by the Commission on March 27, 2002



Chair

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



By: Kathleen A. Pool,
Senior Assistant Counsel



Secretary/Treasurer

PERSONAL SERVICES AGREEMENT

THIS AGREEMENT is entered into between the Metropolitan Exposition-Recreation Commission (MERC), whose address is P.O. Box 2746, Portland, Oregon 97208 and governing body for The Oregon Convention Center, The Portland Metropolitan Exposition Center and The Portland Center for the Performing Arts and FRONT ROW MARKETING SERVICES whose address is 10601 U.S. Hwy 19 North, Pinellas Park, Florida 33782 hereinafter referred to as the "CONTRACTOR."

In exchange for the promises and other consideration set forth below, the parties agree as follows:

Duration

This personal services agreement shall be effective April 1, 2002, and shall remain in effect until and including June 1, 2003, unless terminated or extended as provided in this Agreement.

Scope of Work

CONTRACTOR shall provide all services and materials specified in Phase I of the attached "Exhibit A — Scope of Work," which is incorporated into this Agreement by reference. Following completion of Phase I, MERC may elect, at its sole option, to proceed with Phase II, said election to be by Resolution of the MERC Commission. CONTRACTOR, in accordance with the Scope of Work, shall provide all services and materials in a competent and professional manner.

Payment

- A. For services performed and materials delivered in connection with Phase I of the Scope of Work, MERC shall pay Contractor as follows:
1. A maximum sum not to exceed THIRTY-FIVE THOUSAND DOLLRS (\$35,000); and
 2. Reimbursement for CONTRACTOR'S reasonable out-of-pocket expenses (such as expenses for travel, entertainment, marketing fliers or other marketing materials, postage, telephone charges and teleconferencing), provided that MERC has approved the expenses in advance.
 3. Payment shall be made monthly upon receipt of invoice with final payment due with final report.

B. If MERC, at its sole option, elects to proceed with Phase II of the attached Scope of Work, MERC shall pay CONTRACTOR for Phase II services as follows:

1. During the first sixth months of the Phase II work, MERC shall pay CONTRACTOR a monthly fee of \$6,500 per month. The total sum of any commissions CONTRACTOR earns under this agreement (as described in paragraph 3, below) will be reduced by the amount of one-half of the total of all Phase II monthly fees paid under this agreement.
2. Any commissions due under this agreement will also be reduced by \$17,500 (one-half of all fees paid by MERC for Phase I work).
3. In the event that MERC realizes revenue from naming rights, advertising, or sponsorship agreements entered into by MERC as a sole result of the work and efforts of CONTRACTOR during Phase I, MERC shall pay CONTRACTOR a commission as follows:
 - a. For any naming rights agreement, MERC shall pay CONTRACTOR a commission in the amount of seven percent (7%) of the total revenue MERC actually receives from the naming rights agreement. A naming rights agreement is defined as any facility, portion of a facility, room or space that is permanently renamed as a result of the CONTRACTOR'S process and approved by MERC, Metro and/or the City of Portland.
 - b. For all other advertising or sponsorship agreements, MERC shall pay CONTRACTOR a commission in the amount of ten percent (10%) of the total revenue MERC actually receives from the agreements.
 - c. MERC shall pay any commissions owed in three equal installments over a three-year period beginning on the date MERC actually receives the revenue from the agreements.

Insurance

CONTRACTOR shall push and maintain at CONTRACTOR'S expense, the following types of insurance covering the CONTRACTOR, its employees and agents.

- A. Broad form comprehensive general liability insurance covering personal injury, property damage, and bodily injury with automatic coverage for premises and operation and product liability. The policy must be endorses with contractual liability coverage.
- B. Automobile bodily injury and property damage liability insurance. Insurance coverage shall be a minimum of \$500,000 per occurrence. If coverage is written with an aggregate limit, the aggregate limit shall not be less than \$1,000,000. MERC, its elected officials, departments, employees, and agents shall be named as an ADDITIONAL INSURED. Notice of any material change or policy cancellation shall be provided to MERC thirty (30) days prior to the change.

This insurance as well as all workers' compensation coverage for compliance with ORS 656.017 must cover CONTRACTOR'S operations under this Contract, whether such operations be by CONTRACTOR or by any subcontractor or anyone directly or indirectly employed by either of them.

CONTRACTOR shall provide MERC with a certificate of insurance complying with this article and naming MERC as an additional insured within fifteen (15) days of execution of this Contract or twenty-four (24) hours before services under this Contract commence, whichever date is earlier.

CONTRACTOR shall not be required to provide the liability insurance described in this Article only if an express exclusion relieving CONTRACTOR of this requirement is contained in the Scope of Work.

Indemnification

CONTRACTOR shall indemnify and hold MERC, its agents, employees, and elected officials harmless from any and all claims, demands, damages, actions, losses and expenses, including attorney's fees, arising out of or in any way connected with its performance of this Agreement, or with any patent infringement or copyright claims arising out of the use of CONTRACTOR'S designs or other materials by MERC and for any claims or disputes involving subcontractors.

Maintenance of Records

CONTRACTOR shall maintain all of its records relating to the Scope of Work on a generally recognized accounting basis and allow MERC the opportunity to inspect and/or copy such records at a convenient place during normal business hours. All required records shall be maintained by CONTRACTOR for three years after MERC makes final payment and all other pending matters are closed.

Ownership of Documents

All documents of any nature including, but not limited to, reports, drawings, works of art and photographs, produced by CONTRACTOR pursuant to this Agreement are the property of MERC, and it is agreed by the parties that such documents are works made for hire. CONTRACTOR hereby conveys, transfers, and grants to MERC all rights of reproduction and the copyright to all such documents.

Project Information

CONTRACTOR shall share all project information and fully cooperate with MERC, informing MERC of all aspects of the project including actual or potential problems or defects. CONTRACTOR shall abstain from releasing any information or project news without the prior and specific written approval of MERC.

Project _____

Contract No. _____

Independent Contractor Status

CONTRACTOR shall be an independent CONTRACTOR for all purposes and shall be entitled only to the compensation provided for in this Agreement. Under no circumstances shall CONTRACTOR be considered an employee of MERC. CONTRACTOR shall provide all tools or equipment necessary to carry out this Agreement, and shall exercise complete control in achieving the results specified in the Scope of Work. CONTRACTOR is solely responsible for its performance under this Agreement, the quality of its work, for obtaining and maintaining all licenses and certifications necessary to carry out this Agreement, for payment of any fees, taxes, royalties, or other expenses necessary to complete the work except as otherwise specified in the Scope of Work, and for meeting all other requirements of law in carrying out this Agreement. CONTRACTOR shall identify and certify tax status and identification number through execution of IRS form W-9 prior to submitting any request for payment to MERC.

Right to Withhold Payments

MERC shall have the right to withhold from payments due to CONTRACTOR such sums as necessary, in MERC's sole opinion, to protect MERC against any loss, damage, or claim which may result from CONTRACTOR'S performance or failure to perform under this Agreement or the failure of CONTRACTOR to make proper payment to any suppliers or subcontractors.

State and Federal Law Constraints

Both parties shall comply with the public contracting provisions of ORS chapter 279, and the recycling provisions of ORS 279.545 - 279.650, to the extent those provisions apply to this Agreement. All such provisions required to be included in this Agreement are incorporated herein by reference. CONTRACTOR shall comply with all applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations including those of the Americans with Disabilities Act.

Situs

The situs of this Agreement is Portland, Oregon. Any litigation over this agreement shall be governed by the laws of the State of Oregon and shall be conducted in the Circuit Court of the state of Oregon for Multnomah County, or, if jurisdiction is proper, in the U.S. District Court for the District of Oregon.

Assignment

This Agreement is binding on each party, its successors, assigns, and legal representatives and may not, under any circumstance, be assigned or transferred by either party.

Termination

This Agreement may be terminated by mutual consent of the parties. In addition, MERC may terminate this Agreement by giving CONTRACTOR written notice of intent to terminate, without waiving any claims or remedies it may have against CONTRACTOR. Termination shall not excuse payment for expenses properly incurred prior to notice of termination, but neither party shall be liable for indirect or consequential damages arising from termination under this section.

Project _____

Contract No. _____

No Waiver of Claims

The failure to enforce any provision of this Agreement shall not constitute a waiver by MERC of that or any other provision.

Modification

Notwithstanding and succeeding any and all prior agreement(s) or practice(s), this Agreement constitutes the entire Agreement between the parties, and may only be expressly modified in writing(s), signed by both parties.

FRONT ROW MARKETING SERVICES Metropolitan Exposition-Recreation Commission

By _____

By _____

Title _____

Title _____

Date _____

Date _____

SCOPE OF SERVICES
Description of the Work

A. Phase I – CONTRACTOR shall furnish all labor, materials, equipment and technical and professional services and other items required to provide the Commission with a comprehensive analysis of potential arrangements and the benefits and terms of these arrangements for the MERC based assets in a marketing plan for an advertising sponsorship and naming program (the “Marketing Plan”). It is anticipated that the following activities will be undertaken by the successful proposer in conjunction with development of the Marketing Plan.

1. The identification and package of the naming rights (the “Naming Rights”) product to include: title recognition, the logo, permanent signage, advertising exposure, media exposure, on and off-site exposure, sponsorship opportunities, hospitality, and other opportunities.
2. The identification of other sponsorship opportunities throughout the MERC facilities, to include: the logo, permanent signage, advertising exposure, media exposure, on and off-site exposure, sponsorship opportunities, hospitality and other opportunities.
3. The identification of advertising opportunities throughout the MERC facilities, to include: the logo, permanent signage, advertising exposure, media exposure, on and off-site exposure, and other opportunities.
4. Estimate of the media impressions, media and exposure value of such naming rights, sponsorship opportunities, and advertising opportunities.
5. Analysis of the value of naming rights for comparable exposition, performing arts and convention center facilities and the various issues associated with establishing a “naming package”.
6. If requested by the Commission, an analysis of potential revenues to be generated from the packaging of Naming Rights to the expanded Center with naming rights to any other public space or facilities deemed related to the areas.
7. Identify an inventory of assets (the “Salable Assets”) in all facilities for which sponsorship or advertising rights can be sold.
8. Identify other forms of potential private sector support or sponsorship (the “Other Assets”) for all facilities including, without limitation, pouring rights, exclusive service contracts, ticket back advertisements, retail opportunities, telecommunications contracts, sponsorship of business center and audio/visual capabilities.
9. Evaluate each of the Salable Assets, the other Assets and the Naming rights (Collectively, the “Assets”) group them into classifications or packages or sponsorship opportunities and assign a value to each according to their classifications. Some assets may be identified as stand-alone opportunities.
10. Development of a marketing/information program for the assets and the separate asset packages, which shall focus on the benefits to be obtained by sponsors of the assets, including building of brand awareness, penetrating new markets and capturing the attention of targeted audiences.
11. Identification and targeting of prospective buyers.

12. Fee structure showing hourly rate plus related costs with a not to exceed amount; or, a commission plus related costs for development of Phase I.

B. Phase II – CONTRACTOR shall furnish the labor, materials, equipment and technical and professional services and any related items required to provide the following services.

1. Marketing the assets and sponsorship opportunities to prospective buyers, which may include, at the Commission's sole discretion, the preparation and issuance of one or more request(s) for proposals.
2. Evaluation of prospective offers/proposals from buyers.
3. Negotiation with prospective buyers and consummation of sponsorship contracts.
4. Work in conjunction with the Commission to prepare a communication program regarding the Marketing Plan and the merits of completed sponsorship contracts for use by the Commission in communicating with its major shareholders, elected officials, clients, media outlets and the community.
5. Proposed fee structure for Phase II with hourly rate plus related costs with a not to exceed amount; or a commission plus an estimate of any costs associated with Phase II.

The Commission, in its sole discretion, shall decide whether to proceed with Phase II based on its analysis of the results of Phase I and the Marketing Plan developed by the successful proposer, and the contract between the Commission and the successful proposer (the "Contract") shall provide the Commission with the right to terminate the same upon the completion of Phase I.

The Commission hopes to receive the completed Marketing Plan within 120 days of the commencement of the Contract. If any proposer believes that they would be unable to complete the Marketing Plan within such period of time, such proposer must include an estimate of the amount of time required for completion of the Marketing Plan in its proposal.

CONTRACTOR'S billing statements will include an itemized statement of work done and expenses incurred during the billing period, will not be submitted more frequently than once a month, and will be sent to MERC. MERC will pay CONTRACTOR within 30 days of receipt of an approved billing statement.