

METROPOLITAN EXPOSITION-RECREATION COMMISSION

Resolution No. 04-03

For the purpose of approving a Revised Third Amendment to the Personal Services Agreement with Front Row Marketing Services, LP, and authorizing the MERC General Manager to execute the Revised Third Amendment.

WHEREAS, MERC and Front Row Marketing Services, LP (hereinafter "Contractor") are parties to a Personal Services Agreement (hereinafter "Agreement") for the purpose of assessing, identifying and developing a sponsorship, advertising and naming right program for MERC in two phases, with an original term of April 1, 2002 to June 1, 2003; and

WHEREAS, in Resolution No. 02-26, the Commission authorized Contractor to begin Phase II of the scope of work, which requires the Contractor to market and sell naming and sponsorship opportunities on MERC's behalf; and

WHEREAS, MERC and Contractor agreed to amend the Agreement to extend the term through May 31, 2005 and to provide for a revised sales commission structure to compensate Contractor for its services during the extended term; and

WHEREAS, in Resolution 03-39, the Commission approved the Third Amendment to the Personal Services Agreement between MERC and Front Row Marketing Services (hereinafter "Third Amendment") for the purpose of extending the term of the contract to May 31, 2005 so that Contractor could continue the Phase II scope of work; and

WHEREAS, MERC and Contractor signed the Third Amendment; and

WHEREAS, MERC and Contractor agree that the Third Amendment approved in Resolution 03-39 does not accurately describe the financial terms of the agreement between MERC and Contractor; and

WHEREAS, MERC and Contractor wish to enter into a Revised Third Amendment To The Personal Services Agreement in order to accurately document the financial agreement between MERC and Contractor.

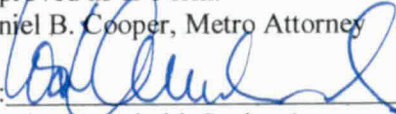
BE IT THEREFORE RESOLVED that the Metropolitan Exposition Recreation Commission approves the Revised Third Amendment to the Front Row Marketing Services Agreement, in a form substantially similar to the attached Exhibit A, and authorizes the General Manager to execute the Revised Third Amendment.

Passed by the Commission on March 24, 2004

Approved as to Form:

Daniel B. Cooper, Metro Attorney

By:

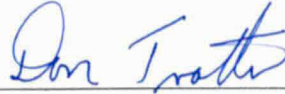


Lisa Umscheid, Senior Attorney

Chair



Secretary-Treasurer



**REVISED THIRD AMENDMENT TO THE PERSONAL SERVICES AGREEMENT
BETWEEN MERC AND FRONT ROW MARKETING SERVICES, LP**

This Revised Third Amendment is entered into this ___ day of _____, 2004 by and between the Metropolitan Exposition-Recreation Commission (hereinafter "MERC") and Front Row Marketing Services, LP (hereinafter "Contractor").

RECITALS

1. MERC and Contractor are parties to a Personal Services Agreement (hereinafter "Agreement") with an original term of April 1, 2002 to June 1, 2003; and
2. MERC and Contractor mutually desire to amend the Agreement to extend the term of the Agreement and to provide for additional payments for Contractor's services during the extended term; and
3. In Resolution 03-39, the MERC Commission approved the Third Amendment To The Personal Services Agreement Between MERC and Front Row Marketing Services, Inc. (hereinafter "Third Amendment"); and
4. MERC and Contractor signed the Third Amendment; and
5. MERC and Contractor agree that the Third Amendment approved in Resolution 03-39 does not accurately describe the terms of the agreement between MERC and Contractor; and
6. MERC and Contractor wish to enter into this Revised Third Amendment To The Personal Services Agreement Between MERC and Front Row Marketing Services, LP (hereinafter "Revised Third Amendment") in order to accurately document the agreement between MERC and Contractor.

NOW, THEREFORE, in consideration of the mutual covenants of the parties, the parties agree as follows:

1. The Third Amendment To The Personal Services Agreement Between MERC and Front Row Marketing Services, Inc. signed by the parties on October 9, 2003, is hereby revoked. Contractor acknowledges that on or about July 25, 2003, MERC paid Contractor the lump sum payment of \$10,000, as required by paragraph 3 of the Third Amendment.
2. The term of the Agreement, originally dated April 1, 2002, is extended for a period commencing June 2, 2003 and ending May 31, 2005.

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AGREEMENT BETWEEN MERC AND FRONT ROW
MARKETING SERVICES, LP

3. Contractor shall furnish all labor, materials, equipment, and technical and professional services, as well as any related out-of-pocket expenses and other items required, to provide the services described in the Agreement's Scope of Work as "Phase II."

4. Commencing on August 1, 2003, Contractor shall employ a full-time salesperson devoted exclusively to marketing and selling naming rights, advertising and sponsorships on behalf of MERC. Such salesperson shall be acceptable to MERC. Contractor shall be solely responsible for paying all wages, benefits, and payroll taxes for the salesperson, and under no circumstances shall the salesperson be considered an employee of MERC.

5. Commencing on August 1, 2003, MERC shall pay Contractor a monthly payment of \$6,533 for the remainder of the term of the Agreement. This monthly payment shall consist of two components: (a) a monthly fee of \$5,533 for contractor's services (hereinafter "Monthly Fee For Contractor Services"); and (b) a monthly advance of \$1,000 on Contractor's commissions (hereinafter "Monthly Commission Advances"). Contractor acknowledges that MERC paid Contractor the \$6,533 monthly payment for the months of July 2003 through January 2004, as required by paragraph 4 of the Third Amendment, including seven Monthly Commission Advances totaling \$7,000.

6. The Monthly Fee For Contractor Services includes all Contractor's personnel and administration costs for employing a full-time salesperson and all Contractor's out-of-pocket expenses incurred in connection with Contractor's Phase II work. The Monthly Fee For Contractor Services is subject to the following:

- a. The Monthly Fee For Contractor Services shall be due only if Contractor employs a full-time salesperson devoted exclusively to MERC marketing and sales. If a full-time salesperson is employed for a partial month, MERC shall be required to pay only a pro-rated portion of the Monthly Fee For Contractor Services for that month.
- b. The Monthly Fee For Contractor Services includes payment for all Contractor's out-of-pocket expenses, including, but not limited to, travel, meals and entertainment, office supplies, postage, parking, computer, telephone, sales proposals, and photocopies.

7. The total sum of any commissions Contractor earns (as described in paragraph 8, below) shall be reduced by \$40,250 (hereinafter "MERC's Payment Offset"), plus the total sum of all Monthly Commission Advances paid by MERC. The first \$40,250 of Contractor's commissions shall be offset by MERC's Payment Offset. Contractor's commissions in excess of \$40,250 shall be offset by Monthly Commission Advances.

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AGREEMENT BETWEEN MERC AND FRONT ROW
MARKETING SERVICES, LP

8. Paragraph B(3) of the payment section of the Agreement is hereby amended in its entirety as follows:

“3. For purposes of this paragraph, “revenue” shall mean cash actually received by MERC or actual savings from previous existing contracts, such savings to be determined by MERC in its sole discretion. In the event that MERC realizes revenue from naming rights, advertising, or sponsorship agreements entered into by MERC during Phase II 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 cash 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 any sponsorship agreement with a beverage supplier, MERC shall pay Contractor a commission in the amount of five percent (5%) of the total revenue MERC actually receives from the beverage sponsorship agreement.

c. For advertising or sponsorship agreements other than naming rights agreements and beverage 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.

d. 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. MERC shall have the right to pay Contractor its commissions over a shorter time period, or in fewer installments, if MERC and Contractor mutually agree to a modified payment schedule.

e. MERC shall be required to pay commissions to Contractor only if MERC enters into a naming rights, advertising, or sponsorship agreement during the time that this agreement with Contractor is in effect. MERC is not required to pay commissions to Contractor for naming rights, sponsorship, or advertising

agreements MERC enters into after this agreement with Contractor is terminated or expires.”

9. At the conclusion of the term of the Agreement (whether May 31, 2005 or earlier if this Agreement is terminated earlier), if Contractor has not earned sufficient commissions to fully offset the MERC Payment Offset, the remaining MERC Payment Offset shall not be reimbursed to MERC. However, at the conclusion of the term of the Agreement, Contractor shall reimburse MERC for all Monthly Commission Advances paid by MERC that have not been offset against Contractor’s commissions. Contractor shall make one lump sum payment to MERC on or before the last day of the Agreement to reimburse MERC.

10. MERC shall establish annual performance goals to assess Contractor’s performance during the remainder of the term of the Agreement. On or before the 15th day of each month, Contractor shall provide MERC a monthly report describing Contractor’s work performed during the previous month. Nothing in this paragraph shall be construed to amend the termination provision in the Agreement.

11. All other provisions of the Agreement, as amended by the August 3, 2002 Amendment and the September 25, 2002 Amendment, shall remain in effect through the term of the Agreement, unless sooner terminated as provided by the Agreement.

12. This Revised Third Amendment, together with the Agreement, the August 3, 2002 Amendment and the September 25, 2002 Amendment, constitute the entire agreement and understanding between MERC and Contractor. No provision of this Agreement may be modified unless mutually agreed to in writing, signed by both parties.

**METROPOLITAN EXPOSITION-
RECREATION COMMISSION**

**FRONT ROW MARKETING
SERVICES, LP**

By: _____

By: _____

Title: _____

Title: _____

Date: _____

Date: _____

MERC Staff Report

Agenda Item/Issue: Approving the Revised Third Amendment to the Personal Services Agreement with Front Row Marketing Services LP.

Resolution No.: 04-03

Presented By: Julie Reed

Date: March 15, 2004

Background and Analysis: MERC hired Front Row Marketing Services to assess, identify and develop a sponsorship, advertising and naming right program for MERC, to be completed in two phases. Front Row Marketing Services (hereinafter "Contractor") completed the first phase (assessment and identification) in May 2003.

The Commission approved Resolution 02-26, which authorized the Phase II Scope of Work outlined in the Agreement to begin. However, it did not alter the terms of the Agreement or the payment structure to Contractor. Phase II work was started in August 2002.

The current Third Amendment to the Agreement (hereafter Third Amendment), approved by Resolution 03-39, extended the contract term through May 31, 2005, and it provided a revised service fee and commission structure to adequately compensate Contractor for selling the program on behalf of MERC.

Subsequent to the signing of the Third Amendment, Contractor and MERC determined that the agreement did not accurately describe the financial terms between MERC and Contractor.

Under the original Agreement, Contractor was paid a fixed service fee and directly reimbursed for all out of pocket expenses for Phase I scope of work. The Third Amendment, which sought to compensate Contractor for the selling phase of the program, provides a monthly service fee payment to Contractor, which included a presumed prepayment of sales commissions, and it defines a sales commission structure. This compensation arrangement between Phase I and Phase II are quite different, and erroneous assumptions were made that caused misunderstanding between Contractor and MERC.

At issue were the ownership of out of pocket expenses, the amount which MERC had agreed to compensate Contractor for its services, the reimbursement of advanced commissions, and the amount of the payment offset specified in the original Agreement. Negotiations have cleared up these differences, and the terms acceptable to and fiscal responsibilities of both parties are reflected in the proposed Revised Third Amendment.

Here is a summary of fiscal terms that have been resolved that are reflected in the Revised Third Amendment:

- MERC pays Contractor a monthly fee of \$5,533 for consulting and sales services for Phase II scope of work. Under this arrangement, Contractor is responsible to provide technical and professional services and all materials, equipment and other items required to fulfill the scope of services.

- Contractor is required to pay all labor, personnel and administration costs necessary to provide contracted services, employ a full-time salesperson in Portland to sell the MERC assets, and pay its out of pocket expenses incurred in connection with provide scope of services.
- The Revised Third Amendment clarifies that out of pocket expenses are now to be paid by Contractor out of the monthly service fee, not in addition to it, so there is an estimated savings to MERC of approximately \$1,000 per month.
- If Contractor doesn't employ a full-time sales person dedicated to MERC during any month or a portion thereof, the monthly payment to Contractor is pro-rated.
- MERC pays a monthly sales commission advanced of \$1,000 to Contractor, which is to be fully reimbursed to MERC as Contractor earns commissions for sales of naming and sponsor rights for MERC assets.
- The Payment Offset to be credited to MERC for payments made by MERC to Contractor for Phase I and II services is capped at \$40,250. The Payment Offset was a condition of the original Personal Services Agreement. Commissions earned by Contractor for selling rights to MERC assets shall be reduced until the \$40,250 Payment Offset credit is satisfied.

Fiscal Impact: A monthly service fee payment of \$6,533 was authorized in the Third Amendment, so there is no material change in the amount contractor is getting paid. However, savings to MERC will result because \$1,000 of the \$6,533 monthly payment is now dedicated as an advance on sales commission to be earned by Contractor, which is to be reimbursed to MERC by Contractor as it earns commissions through sales of naming and sponsor rights to MERC assets. Finally, the Revised Third Amendment clarifies that MERC is entitled to a reimbursement in the amount of \$40,250 for fees paid to Contractor based on terms in the original Agreement.

Recommendation: Staff recommends that the Metropolitan Exposition Recreation Commission adopt the Revised Third Amendment to the Personal Services Agreement between MERC and Front Row Marketing Services, LP and that it authorize the General Manager to executive a contract in a form substantially similar to the Exhibit A attached to Resolution 04-03.