

# METROPOLITAN EXPOSITION-RECREATION COMMISSION

## Resolution No. 05-06

**For the purpose of selecting Ungerboeck Systems International as the successful proposer in response to the Request For Proposals For Event Management Software and Event Business Management Software Implementation services, and authorizing the General Manager to execute contracts with Ungerboeck Systems International.**

Whereas, MERC management determined that current core business information systems software should be updated and improved in order to support accurate and efficient accounting; and

Whereas, implementing new business information systems software should reduce expenses, improve physical inventory accountability, and enhance personnel productivity; and

Whereas, previous Metro Code Section 2.04.053, which governed this procurement, exempted Metro and MERC contracts for computer software from competitive bidding requirements; and

Whereas, MERC management determined that the issuance of a comprehensive Request For Proposals for business information systems software, along with the associated personal services necessary to implement the software, would be in the best interests of MERC; and

Whereas, the Commission has delegated to the General Manager authority to prepare and approve Request for Proposal (RFP) documents and to solicit proposals; and

Whereas, MERC staff, under the direction of the General Manager, prepared and issued a Request for Proposals for Event Management Software Implementation, which requested proposals for both software and the consulting services necessary to implement the software; and

Whereas, three (3) proposers submitted proposals in response to Request for Proposals; and

Whereas, a selection committee evaluated the proposals and interviewed the finalists, and recommends the selection of Ungerboeck Systems International as the proposer who will provide the software best suited to MERC's business operations and the highest quality consulting services for the most reasonable price; and

Whereas, licensing, implementing, and maintaining the software will require MERC to enter into a license agreement, a maintenance agreement, and a personal services contract with the vendor; and


Whereas, the Commission's Contracting And Purchasing Rules require the Commission, by duly adopted resolution, to select the contractor and approve the contract in all procurements of \$100,000 or more.

**BE IT THEREFORE RESOLVED** as follows:

1. The Metropolitan Exposition Recreation Commission selects Ungerboeck Systems International as the proposer who will provide the software best suited to MERC's business needs and the highest quality of personal services for the most reasonable price.
2. The Metropolitan Exposition Recreation Commission approves a license agreement in a form substantially similar to the attached Exhibit "A."
3. The Metropolitan Exposition Recreation Commission approves a maintenance agreement in a form substantially similar to the attached Exhibit "B."
4. The Metropolitan Exposition Recreation Commission approves a personal services contract in a form substantially similar to the attached Exhibit "C."
5. The Metropolitan Exposition Recreation Commission authorizes the General Manager to execute the license agreement, the maintenance agreement, and the personal services contract on behalf of the Commission.

Passed by the Commission on March 23, 2005.

  
\_\_\_\_\_  
Chair

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

Approved As to Form:  
Daniel B. Cooper, Metro Attorney

By:   
\_\_\_\_\_

## MERC STAFF REPORT

**Agenda Item/Issue:** Approval of the purchase and implementation of Event Business Management Software with Ungerboeck Systems International, St. Louis, MO for all MERC facilities.

**Resolution No:** 05-06    **Date:** March 23, 2005    **Presented by:** Kathy Taylor

**BACKGROUND:** The existing business management software used at MERC has been determined, by a committee of senior staff, to be inadequate to provide the management tools needed to improve operating efficiency and financial performance. An Event Management Software Selection Committee was formed to define requirements and pick the best package in the marketplace. MERC staff prepared and issued a Request for Proposals in accordance with MERC's Purchasing Policies for the purchase and implementation of Event Management Software. Three (3) proposals were received by the January 17<sup>th</sup> 2005 closing date. The selection committee voted unanimously to pick Event Business Management Software (EBMS) from Ungerboeck Systems International (USI). The total estimated cost of the project is two hundred thirty three thousand six hundred thirty & NO/100 dollars (\$233,630) and includes EBMS software licensees, USI implementation services, and network/personal computer upgrades.

**FISCAL IMPACT:** The Project's estimated cost is currently set at \$243,630 and will be funded from the MERC pooled capital fund. The on-going annual maintenance contract is \$36,060 and will be funded from the MERC operating fund. An amendment to the 2005-06 operating fund will be included in the next budget update for 2005-06 budget.

**RECOMMENDATION:** Staff recommends that the Metropolitan Exposition Recreation Commission, by Resolution 05-06 approve the EBMS Software License Agreement, EBMS Software Master Agreement (implementation services), and EBMS Software Maintenance Agreement (attached hereto) with Ungerboeck Systems International, St. Louis, MO, for the amount of one hundred ninety one thousand two hundred and NO/100 dollars (\$191,200.00), for the purchase of EBMS and implementation services from USI. Staff recommends that fifty two thousand four hundred thirty and NO/100 (\$52,430) be approved for personal computer and network upgrades, travel and lodging expenses for USI employees, and contingency to support EBMS implementation.



## **EBMS Software License Agreement**

This Software License Agreement between Ungerboeck Systems International (USI) and the Metropolitan Exposition Recreation Commission (CLIENT), sets forth the terms and conditions under which USI will license to CLIENT the use of software products (SOFTWARE) including:

A) The computer programs identified in the attached INVESTMENT SUMMARY no. 30387 dated December 21, 2004, sections EBMS Modules, Optional Modules, and iEBMS Web Services (collectively called SOFTWARE) and associated documentation, and

B) any revised corrected and enhanced versions (UPGRADES) of programs and documentation which USI makes available hereunder.

**1. OWNERSHIP:** CLIENT acknowledges that the SOFTWARE is the sole property of USI or its licensors, and the CLIENT shall gain no right, title or interest in the SOFTWARE by virtue of this Agreement other than the non-exclusive right of use granted herein.

**2. LICENSE:** In consideration of CLIENT's payment of the license fee specified in the attached INVESTMENT SUMMARY and any maintenance and support fees payable hereunder, USI grants to CLIENT a perpetual, non-transferable license to use the SOFTWARE for internal business management purposes

**3. MAINTENANCE AND SUPPORT SERVICES:** During the first ninety days after installation (the SOFTWARE installation date is the date on which the SOFTWARE is first loaded on the licensed Computer), USI shall provide to CLIENT at no additional charge:

3.1. Such UPGRADES as are generally released by USI to all customers holding current Maintenance and Support agreements.

3.2. Electronic customer support for general system trouble shooting, loading of software modifications and enhancements.

3.3. Toll-free telephone support services Monday through Friday - except on holidays observed by USI - during the following hours:

- **North America:** 6:00 a.m. to 10:00 p.m. US Central Standard Time (CST) at 800 400 4052
- **Europe:** 8:00 am – 05:00 pm Central European Time (CET) at + 00 800 3267 4357
- **Australia:** 9:00 a.m. to 5:30 p.m. Australian Eastern Standard Time (AEST), locally at 1 800 80 80 53,
- **Asia-Pacific:** 9:00 a.m. to 5:30 p.m. Australian Eastern Standard Time (AEST), locally at + 00 800 4357 3267

3.4. Emergency assistance via toll-free international telephone service to USI St. Louis at + 00 800 3267 4357, available 24 hours per day, 7 days per week.

3.5. Access to USI's internet-based User Forum at [www.ungerboeck.com](http://www.ungerboeck.com)

3.6. Attendance at the regional and international User Conferences (however, some of these conferences are also subject to registration fees).

After ninety days CLIENT shall be entitled to continue maintenance and support services upon execution of the EBMS Software Maintenance Agreement and payment to USI of an annual maintenance fee of fifteen percent (15%) of the list license fee then charged to new customers for the then current version of the products identified in the attached INVESTMENT SUMMARY.

However, the annual fee for maintenance and support services for the first three (3) years shall not increase per year by more than five percent (5%), or the increase in the US Consumer Price Index, whichever is higher.

If CLIENT allows maintenance to lapse, it may thereafter renew maintenance by paying USI the then current maintenance fees plus a reinstatement fee equal to the omitted maintenance fees plus compound interest of ten (10) percent per annum.

However, USI shall provide written notice of CLIENT's delinquency on maintenance payments. Only if CLIENT fails to make such delinquent payments within 30 days of said notice, the maintenance coverage shall be deemed to have lapsed.

This agreement does NOT include any licenses, training, installation, maintenance and ongoing support of integrated third-party products (including Microsoft Office, SQL Server, Crystal Reports, etc.) unless specifically defined in the Agreement.

3.1 Any SOFTWARE modifications or enhancements performed by USI specifically on behalf of the CLIENT, whether paid for by CLIENT or not, remain the property of USI and may at USI sole discretion be incorporated into or withheld from the software generally made available to USI's other clients.

**4. SERVICES EXCLUDED:** This agreement covers only the right to use the SOFTWARE. Any related services (including installation, training, implementation assistance, custom programming, and integration of updates and upgrades) may be procured by separate contract with USI.

**5. CONFIDENTIALITY:** CLIENT acknowledges that the information contained in the SOFTWARE is confidential and contains trade secrets and proprietary data belonging to USI or USI's licensor(s). Therefore, CLIENT shall implement all reasonable measures necessary to safeguard USI's ownership and confidentiality of the SOFTWARE, including without limitation:

a) to allow its employees and third parties access to the SOFTWARE only to the extent necessary to permit the performance of their services to CLIENT and to require that they agree to comply with the provisions of this Section.

b) not to permit the removal or alteration of any copyright or confidentiality labels or notices contained in the SOFTWARE,

c) not to disassemble or reverse engineer the SOFTWARE,

d) and not to duplicate or reproduce the SOFTWARE, except that CLIENT may make reasonable backup copies for backup and recovery purposes, user training and testing of software updates.

**6. WARRANTY:** USI warrants to CLIENT for twelve(12) months from the date of software installation that the SOFTWARE shall function substantially in accordance with the related user documentation provided by USI.

USI further warrants that the SOFTWARE does not contain, nor will future releases thereof contain any disabling devices which could be capable of intentionally impairing CLIENT's use of the SOFTWARE.

USI also warrants that it does not violate any US or international copyrights or patents.

USI's sole obligation in respect of a breach of the foregoing warranty shall be to modify or replace the SOFTWARE so as to correct the defective performance; if necessary, the warranty period extends automatically to the completion of such modification or replacement.

CLIENT shall give USI prompt written notice of any claims by third parties under the foregoing warranties. USI shall have sole control and bear the entire cost of the defense of any infringement claim and any negotiations for the settlement thereof.

Neither of the foregoing warranties shall apply in the event that any alleged infringement or defect derives from a combination of the SOFTWARE with any program, equipment or device not supplied or recommended by USI in the case of a modification or customization of the SOFTWARE by or on behalf of CLIENT, or in the event of CLIENT's failure to install promptly any updates or upgrades provided by USI under this agreement.

**7. DISCLAIMER OF OTHER WARRANTIES:** Except as provided in Section 6, all warranties, conditions, representations and guarantees whether expressed or implied, are hereby excluded, superseded and disclaimed.

**8. REMEDY LIMITATIONS:** In no event shall USI be liable for any consequential, indirect or special damages, except only in the case of personal injury where and to the extent applicable law imposes such liability.

USI's liability for damages shall in any event be limited to the aggregate license and maintenance fees received by USI from CLIENT under this agreement.

**9. ESCROW:** USI agrees to deposit the then most current SOFTWARE source code and associated support materials at least once per year with a reputable software escrow agent for possible release to REGISTERED LICENSEES.

CLIENT may at any time elect to become a REGISTERED LICENSEE by filing the prerequisite REGISTERED LICENSEE addition form and paying the associated annual Escrow Registration fees.

The source code may be used by CLIENT only if USI discontinues the ongoing support of software. In that event, CLIENT may acquire a perpetual, non-exclusive license by paying to USI an amount of US\$ 1.00 to use the source code for the purpose of maintaining, supporting and modifying the software for its internal uses only.

**10. TERMINATION:** USI shall have the right to terminate this agreement for cause upon thirty (30) calendar days written notice if CLIENT breaches any of its obligations under this agreement. CLIENT shall have the above thirty (30) days to cure the breach to the satisfaction of this Agreement. Otherwise, CLIENT shall, upon the effective date of such notice or upon ceasing to use the SOFTWARE, whichever is earlier, immediately purge all SOFTWARE from the licensed computer and all other computer systems, storage media and other files, return to USI any copies of the SOFTWARE, and certify to USI in writing that it has complied with the foregoing obligations and has not provided total or partial copies of the SOFTWARE to any third party.

The expiration or termination of this agreement for any reason shall not extinguish or diminish CLIENT's obligation under Section 6 to maintain the confidentiality of the SOFTWARE, which obligation is continuing and shall survive termination of this agreement.

**11. ASSIGNMENT:** This agreement is personal to CLIENT and neither this agreement nor any of CLIENT's rights or duties hereunder shall be assigned, sub-licensed, sold or otherwise transferred by CLIENT, including to any successor-in-interest to CLIENT's rights in the Licensed Computer, without USI's prior written consent, which shall not be unreasonably withheld.

**12. GOVERNING LAW:** This agreement shall be governed by and interpreted in accordance with the laws of the state of Missouri.

**13. PAYMENTS:**

13.1 CLIENT shall pay the license fee specified in the attached INVESTMENT SUMMARY in accordance with the following payment terms:

- 50% (fifty percent) of license fees upon execution of this license agreement
- 50% (fifty percent) of license fees within ten (10) days of software installation date

13.2. CLIENT shall pay the first Annual Maintenance and Support fee ninety (90) days after the software installation date.

13.3. USI's Implementation, Consulting and Custom Report services will be billed monthly as incurred and shall be paid within 10 days of invoice receipt..

Alternatively, CLIENT may procure these services via prepaid Bronze, Silver or Gold Service Packs offering substantial discounts as described in the attached INVESTMENT SUMMARY

**14. EFFECTIVE DATE:** This agreement shall take effect on the later of the two parties' acceptance date(s) signed by an officer of USI and by an authorized representative of CLIENT.

**15. TRAVEL EXPENSES:** All reasonable travel related expenses including air fare, hotel, meals, taxi, telephone, etc. incurred by USI on the behalf of CLIENT shall be reimbursed by CLIENT within ten (10) days after USI submits a written statement of actual expenses incurred. Travel expenses specifically include USI's time spent traveling during normal business hours.

Any time during the SOFTWARE implementation, CLIENT may elect to require pre-approval of USI's future travel expenses by notifying USI of such intent and defining a reasonable procedure for its administration.

**16. ADVERTISEMENT:** CLIENT authorizes USI to reference CLIENT's name and business association in published advertisement and public discussions as appropriate. USI agrees not to divulge CLIENT's proprietary information, trade secrets, or related data.

**17. MISCELLANEOUS:** Neither CLIENT nor USI shall disclose the terms and conditions of this agreement to third parties, (except CLIENT's auditors or third parties whose review is mandated by law) without prior written authorization from the other party.

All notices or writings required to be given pursuant hereto shall be deemed given, when actually delivered to an officer of the receiving party.

In the event that a court of competent jurisdiction holds that a particular provision or requirement of the agreement is in violation of any applicable law, each such provision or requirement shall be enforced only to the extent it is not in violation of such law or is not otherwise unenforceable, and all other provisions and requirements of this agreement shall remain in full force and effect.

No amendment to this agreement or waiver of any rights hereunder shall be effective unless in writing and signed by the party against whom enforcement is sought.

This agreement contains the entire agreement and understanding of the parties as to the subject matter hereof and merges and supersedes all prior discussions and agreements with respect thereto.

CLIENT agrees that it has read this agreement, understands it, and agrees to be bound by it. Further, CLIENT and USI agree that this agreement is the complete statement of terms and conditions of the license granted hereunder to CLIENT.

**USI:**

**CLIENT:**

\_\_\_\_\_  
Authorized Signature

\_\_\_\_\_  
Authorized Signature

Dieter K. Ungerboeck  
Typed or Printed Name

\_\_\_\_\_  
Typed or Printed Name

President  
Title

\_\_\_\_\_  
Title

\_\_\_\_\_  
Acceptance Date

\_\_\_\_\_  
Acceptance Date



## EBMS Software Maintenance Agreement

This Agreement between Ungerboeck Systems International ("USI") and the Metropolitan Exposition Recreation Commission ("CLIENT") sets forth the terms and conditions under which USI will provide Software Maintenance and Support services to CLIENT.

1. **SCOPE:** This agreement is an extension of, and an attachment to the USI Software License Agreement dated December 21, 2004 by and between USI and CLIENT regarding:

1.1 selected EBMS modules \_\_\_\_\_ for 64 concurrent users.

1.2. Up to 25,000 IEBMS internet transactions per year.

2. **MAINTENANCE AND SUPPORT SERVICES:** During the period beginning on \_\_\_\_\_ and ending on \_\_\_\_\_, USI shall provide to CLIENT:

2.1. Such UPDATES and UPGRADES as are generally released by USI to all customers holding current Maintenance and Support Agreements.

2.2. Electronic customer support for general system trouble shooting, loading of software modifications and enhancements.

2.3. Toll-free telephone support services Monday through Friday - except on holidays observed by USI - during the following hours:

- **North America:** 6:00 a.m. to 10:00 p.m. US Central Standard Time (CST) at 800 400 4052
- **Europe:** 8:00 am – 05:00 pm Central European Time (CET) at 800 3267 4357
- **Australia:** 9:00 a.m. to 5:30 p.m. Australian Eastern Standard Time (AEST), locally at 1 800 80 80 53,
- **Asia-Pacific:** 9:00 a.m. to 5:30 p.m. Australian Eastern Standard Time (AEST), locally at 800 4357 3267

2.4. Emergency assistance via toll-free international telephone service to USI St. Louis at 800 3267 4357, available 24 hours per day, 7 days per week.

2.5. Access to USI's internet-based User Forum at [www.ungerboeck.com](http://www.ungerboeck.com)

2.6. Attendance at the regional and international User Conferences (however, some of these conferences are also subject to registration fees).

This service does not include the cost of modification of the new software release to accommodate any of CLIENT'S prior custom modifications such as custom reports, triggers, or system interfaces.

3. **SERVICE LEVELS:** CLIENT may report EBMS software errors, usage questions, and enhancement requests (collectively called INCIDENTs) by email, fax, or telephone.

Critical errors (which prevent the CLIENT from performing essential business activities) should be reported by telephone to assure that they are received and handled with appropriately high priority as jointly determined by the CLIENT and USI support personnel.

3.1. INCIDENTS are processed as follows:

3.1.1. **Critical Error:** Within 2 business hours, each Critical Error will be given a tracking number, classification, and initial action plan, and will be reported back to CLIENT.

Each critical error is assigned to testing by USI Support in a similar environment and the same release level as used by CLIENT.

If replicated, the error is directly assigned to Software Development for top priority correction. When the error is corrected and retested, a patch with the correction is issued to the CLIENT via the FTP site.

If the error cannot be replicated, a USI Support representative is assigned to pursue a resolution in coordination with CLIENT at top priority.

3.1.2. **Non-Critical Error:** Within 4 business hours, each non-critical error will be given a tracking number, classification, and initial action plan, and will be reported back to CLIENT.

Each non-critical error is assigned to testing by Support in similar environment and the same release level as used by CLIENT.



## EBMS Software Maintenance Agreement (cont.)

If replicated, the error is directly assigned to Software Development for correction. Once the error has been corrected and retested, a general patch is issued to all CLIENTs via the FTP site.

If the error cannot reasonably be corrected in the CLIENT's release of EBMS, CLIENT is asked to upgrade the current release.

If CLIENT cannot reasonably upgrade, USI Support and the CLIENT jointly determine an alternate course of action.

If the error cannot be replicated, a USI Support representative is assigned to pursue a resolution during the normal course of business.

**3.1.3 Enhancement:** Requests are reviewed by the Product Design Team once a week. If applicable to the EBMS product, the enhancement will be planned for an upcoming release. If not applicable to the EBMS product, then USI will consider performing the enhancement on a fee-basis.

**3.1.4 Other:** Questions regarding the use of EBMS are handled free of charge by a Support representative. However, training issues may - at USI's discretion - be assigned to the consulting department for chargeable services.

Technical issues not related directly to the software program, but related to network or database issues, are assigned to a technical consultant, who troubleshoots the issue with CLIENT.

Documentation matters are assigned to the Quality Assurance Department for review and updating.

**4. SERVICE GUARANTEE:** In the event that USI fails materially to respond in accordance with the above service level objectives, the end time of the then current EBMS Software Maintenance Agreement shall be extended at no cost to CLIENT by 7 calendar days for each such failure occurrence, provided that CLIENT has provided USI with written notice of the failure within ten (10) business days of the failure.

In the case of Critical Error, the ten(10) day period for providing USI notice of a service failure shall not begin until USI has provided CLIENT with a correction, PATCH, or WORKAROUND and CLIENT has had a reasonable opportunity to evaluate its effectiveness.

**5. ALTERATIONS BY CLIENT:** If CLIENT arranges to modify data in the EBMS database by means other than technology provided by USI, any troubleshooting, maintenance and support work requested by CLIENT and resulting from such modifications, will be chargeable to CLIENT at USI's standard service rates.

**6. LIABILITY:** Any liability of USI will be limited under all circumstances to the above maintenance period and maintenance fee paid to USI.

Also, USI will NOT be liable for the recreation of lost or polluted data only to the extent that such data has been properly backed up in standard EBMS database formats on electronic media.

**7. PAYMENT:** CLIENT shall be entitled to these maintenance and support services upon payment to USI of a maintenance fee of \$36,060 prior to the beginning of the maintenance period stated above for its licensed software modules.

In addition, CLIENT will be charged for any travel and lodging which may be incurred by USI to perform the service. However, any such expenses will be subject to prior approval by the CLIENT.

For USI:

\_\_\_\_\_  
Authorized Signature

\_\_\_\_\_  
Typed or Printed Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

For CLIENT :

\_\_\_\_\_  
Authorized Signature

\_\_\_\_\_  
Typed or Printed Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

## EBMS Software Master Agreement

Page 1 of 2

This Master Agreement is made between the Metropolitan Exposition Recreation Commission, hereafter referred to as "CLIENT" and Ungerboeck Systems International (USI), with principal offices at 87 Hubble, St. Charles, Missouri 63304, hereafter referred to as "USI".

**1. GENERAL:** CLIENT desires to engage USI to perform certain system implementation and consulting services and USI agrees to undertake these services described in the attached document titled "Investment Summary number 30387 dated December 21, 2004 plus any additional Project Estimates to which the parties may subsequently agree and incorporate under the provisions of this Master Agreement.

The terms of this Master Agreement shall commence on 4/1/2005 and shall continue until completion of the services and payment of the associated fees, or until termination by mutual agreement, or by 3/31/2006.

Both parties' obligations under paragraphs 2, 3 and 4 of this Master Agreement shall continuously survive its termination.

**2. CHANGES:** Each project change which is likely to affect the overall system delivery price or dates will be governed by a Project Estimate.

USI will submit to CLIENT a Project Estimate describing the change, its estimated cost, delivery time, and payment terms. The cost of preparing the Project Estimate will be borne by USI unless otherwise agreed to by CLIENT prior to the preparation of such estimate.

Upon acceptance by both parties, a project estimate will become an extension of the Master Agreement. In the event of a conflict among project estimates, the stipulations of the project estimate which was accepted by CLIENT more recently shall survive.

**3. CONFIDENTIALITY:** To the extent permitted by the Oregon Public Records Act, each party will treat as confidential all information supplied to it by the other party under this Master Agreement which is designated as confidential by the other party, or which is by its nature clearly confidential, however, excluding any information which was rightfully in its possession prior to the negotiations leading this Master Agreement, or information which was in the public domain at the time of this Master Agreement.

To the extent permitted by the Oregon Public Records Act, neither party shall divulge any confidential information to anyone other than duly designated members of the project team. Each party shall reasonably ensure that its team members are aware of and comply with the provisions of this clause.

**4. OWNERSHIP OF DESIGNS, PROGRAMS & DOCUMENTATION:** All inventions, discoveries, designs, programs, displays, reports and documentation developed during the course of this engagement will become the property of USI, and will be licensed to CLIENT subject to all the rights and obligations contained in the Software License Agreement between the parties.

However, any designs, programs, displays, reports and documentation specifically developed by USI for CLIENT, paid by CLIENT, and NOT included in USI's standard product offering to other clients within 12 months of completion, will become the property of CLIENT. These designs, programs, displays, reports and documentation will be excluded from USI's standard Software Maintenance service.

**5. WARRANTIES:** USI warrants that for any software products supplied by USI under this Master Agreement it is the rightful owner of such software, or—where USI supplies a third party's product—has arranged valid license agreements with the software owner free of any further cost to CLIENT.

USI warrants that after acceptance by the CLIENT the software products supplied and owned by USI will conform fully with the specifications as defined in any applicable requirements study or proposal submitted by USI.

USI shall indemnify CLIENT against all expenses and liabilities arising from any claims by third parties that the use or possession of the software products supplied by USI infringes on their intellectual property rights, patents or registered trademarks.

CLIENT shall give USI prompt written notice of any claims under the foregoing warranties. USI shall have sole control and bear the entire cost of the defense and settlement of such claims.

**6. TRANSFER:** Neither party shall assign or otherwise transfer any of its rights or obligations under this Master Agreement in whole or part without the other party's prior written consent.

**7. INSURANCE:**

a. USI shall purchase and maintain at USI's expense, the following types of insurance, covering USI, its employees, and agents:

- (1) Broad form comprehensive general liability insurance covering bodily injury and property damage, with automatic coverage for premises, operations, and product liability shall be a minimum of \$1,000,000 per occurrence. The policy must be endorsed with contractual liability coverage; and
- (2) Automobile bodily injury and property damage liability insurance coverage shall be a minimum of \$1,000,000 per occurrence.

b. **MERC, its appointed officials, departments, employees, and agents shall be named as ADDITIONAL INSUREDS.** Notice of any material change or policy cancellation shall be provided to Client 30 days prior to the change or cancellation.

c. USI, its subcontractors, if any, and all employers 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. USI shall provide Client with certification of Workers' Compensation insurance including employer's liability. If USI has no employees and will perform the work without the assistance of others, a certificate to that effect may be attached, as Exhibit B, in lieu of the certificate showing current Workers' Compensation.

d. USI 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.

e. USI agrees to indemnify CLIENT, its appointed officials, employees, and departments against any costs, claims, demands, damages, actions, losses and expenses, including attorney's fees, arising out of or in any way connected with this Master Agreement.

**8. LIMITATION OF REMEDIES:** In all situations involving performance or nonperformance of services furnished under this Master Agreement, the CLIENT shall be entitled to recover any actual damages up to the amounts paid to USI under this Master Agreement for the specific project being disputed.

USI will in no event be liable for lost profits, lost savings or other damages even if USI has been advised of the possibility of such damages.

**9. PAYMENTS:** USI's implementation and consulting services will be billed to CLIENT monthly as incurred and are payable within 10 days of invoice receipt.

Alternatively, CLIENT may procure these services via prepaid Bronze, Silver, or Gold Service Packs offering substantial savings of 10%, 12.5% and 17.5% respectively.

**10. STATUS:** USI's status under this Master Agreement is that of an independent contractor. USI will provide all personnel required to perform the work hereunder; that personnel may be employees of USI or may be independent contractors hired by USI for the purpose of providing services pursuant to this Master Agreement.

In either event, USI will be responsible to CLIENT for the completion of work to be performed pursuant to the terms of this Master Agreement and the persons performing such services as representative of USI shall perform such services under the direct control of USI rather than the CLIENT.

Neither USI, nor any of the personnel used by USI in performing services under this Master Agreement will be entitled to any rights or benefits made available to CLIENT's employees, nor shall such personnel be entitled to any compensation or remuneration from CLIENT as a result of the performance of this Master Agreement, except for CLIENT's obligations to pay the fees to USI provided for herein.

CLIENT recognizes that USI holds significant investments in its employees, affiliates and subcontractors. Therefore, CLIENT agrees to refrain from employing or otherwise engaging ANY former USI employee, affiliate or subcontractor within six months following such employee's, affiliate's or subcontractor's termination with USI. Should CLIENT violate this section of the Master Agreement, CLIENT will immediately pay USI an amount equal to the last twelve months' total compensation of employee, affiliate or subcontractor.

**11. STATE AND FEDERAL LAW CONSTRAINTS:** Both parties shall comply with the public contracting provisions of ORS chapters 279A and 279B, 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.

**12. RIGHT TO WITHHOLD PAYMENTS:** Client shall have the right to withhold from payments due to USI such sums as necessary, in Client's sole opinion, to protect Client against any loss, damage, or claim which may result from USI's performance or failure to perform under this Agreement or the failure of USI to make proper payment to any suppliers or subcontractors.

**13. NOTICES:** Any notice required or permitted to be given under this Master Agreement shall be in writing and shall be deemed to have been sufficiently given if delivered in person or sent by certified mail to the attention of a key employee at the principal business office of the other party.

**14. MISCELLANEOUS:** This Master Agreement shall be construed and enforced in accordance with the laws of the State of Oregon, USA. 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

**15. TERMINATION:** This Agreement may be terminated by mutual consent of the parties. In addition, Client may terminate this Agreement by giving USI seven days prior written notice of intent to terminate, without waiving any claims or remedies it may have against USI. 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.

**16. NO WAIVER OF CLAIMS:** The failure to enforce any provision of this Agreement shall not constitute a waiver by Client of that or any other provision.

**17. 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.

Accepted By **USI:**

Accepted By **CLIENT:**

Signed: \_\_\_\_\_

Signed: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_



# Investment Summary

December 21, 2004

MERC

Nr. 30387

Client Server Option

EBMS Modules	Number of Concurrent Users: 64	License Fee
Event Sales & Marketing		17,100
Contract Administration		11,400
Event Management & Coordination		32,400
Query & Reporting		6,000
Facility Booking		15,100
Inventory Management		12,200
Personnel Management		10,300
Food Service		10,300
Facility Maintenance		15,100
Purchasing		10,500
Accounts Payable		12,500
Accounts Receivable		12,500
General Accounting & Analysis		28,600
EBMS Cad		17,100
System Access Manager (Required)		17,400
	List Price	\$228,500
	Package Discount	-91,700
	Package Price	\$136,800
<b>IEBMS Web Services</b>		
Includes all IEBMS Web transactions: Calendar Of Events, Event Booking, Orders, Event Service Orders, Delegate Registration, Membership Profiles, Appointment Scheduling, Online Exhibitor Profiles, IEBMScad Viewer, PDA Features (Job Entry, Work Order Status, Work Order Completion ...)	Trans./Year	License Fee
	Up to 25,000	11,900
	Up to 50,000	21,400
	Up to 100,000	34,200
	Over 100,000	54,700
	First Annual IEBMS Maintenance (15% of License)	\$1,785
<b>Implementation &amp; Training</b>		
Project Management, EBMS Concepts & Applications, Data Collection	Days	No Charge
Software Installation	1.0	No Charge
Base System Configuration	2.0	No Charge
Other (Per attached EBMS Implementation Plan)	50.0	\$0,000.0
	Subtotal	\$50,000
	Prepaid Service Pack Discount	17.5%
	Total Implementation & Training	\$42,500
<b>Custom Reports &amp; Data Conversion</b>		
Design & Preparation		TBD
Maintenance & Support		TBD
Data Conversion		TBD
	Subtotal	\$0
	Prepaid Service Pack Discount	
	Total Custom Reports	\$0
<b>Notes:</b>		
1) Database software (MS SQL Server, Oracle, or Sybase AS) not included		
2) Software includes 5 days of Implementation assistance		
3) Travel Expenses are not included and may be charged as per diem or on actual costs as incurred.		
Unless otherwise indicated, the above pricing is subject to change without notice		
<b>Summary:</b>		
EBMS Modules		136,800
IEBMS Web Services		11,900
	Total License Fees	\$148,700
Implementation & Training		42,500
Custom Reports		TBD
Other Services		TBD
	Total Initial Investment	\$191,200
	First Annual Maintenance & Support (15% EBMS List Price + IEBMS Web Services Maintenance)	\$36,060