

METROPOLITAN EXPOSITION-RECREATION COMMISSION

Resolution No. 05-22

For the Purpose of Approving the Award of the National Sales, Marketing and Convention Services Agreement for the Oregon Convention Center to the Portland Oregon Visitors Association ("POVA"), and Authorizing the General Manager to Execute the Agreement on Behalf of the Commission.

WHEREAS, the Commission's current contract for national sales, marketing, and convention services for the Oregon Convention Center expires on September 30, 2005; and

WHEREAS, in Resolution No. 05-10, the Commission approved the Request for Proposals for National Sales, Marketing and Convention Services for the Oregon Convention Center, and authorized the General Manager to issue the Request for Proposals; and

WHEREAS, the General Manager issued the Request for Proposals, which authorized competitive negotiations with the successful proposer or proposers; and

WHEREAS, POVA submitted the sole proposal in response to the Request for Proposals, and the General Manager has negotiated with POVA to reach agreement on an annual sales plan, annual performance measures, an annual line-item budget, and numerous reporting requirements; and

WHEREAS, section 5(D)(4) of the Metropolitan Exposition-Recreation Commission Contracting and Purchasing Rules requires the Commission, by duly adopted resolution, to approve the contract award and the terms of the contract in procurements of personal services in an amount of \$100,000 or more; and

WHEREAS, the General Manager recommends that the Commission award the National Sales, Marketing and Convention Services Agreement for the Oregon Convention Center to POVA.

BE IT THEREFORE RESOLVED AS FOLLOWS:

1. The Metropolitan Exposition-Recreation Commission approves the award of the National Sales, Marketing, and Convention Services Agreement for the Oregon Convention Center to the Portland Oregon Visitors Association; and
2. The Metropolitan Exposition-Recreation Commission approves the National Sales, Marketing, and Convention Services Agreement for the Oregon Convention Center in a form substantially similar to the attached Exhibit "A"; and

3. The Metropolitan Exposition-Recreation Commission authorizes the General Manager to execute the contract on the behalf of the Commission.

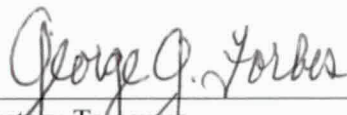
Passed by the Commission on September 28, 2005.

Approved as to Form:

Daniel B. Cooper, Metro Attorney

By: 


Chair


Secretary-Treasurer

NATIONAL SALES, MARKETING AND CONVENTION SERVICES AGREEMENT FOR THE OREGON CONVENTION CENTER

This National Sales, Marketing And Convention Services Agreement For The Oregon Convention Center (hereinafter "Agreement") is entered into on this 1st day of October, 2005 by the Metropolitan Exposition-Recreation Commission (hereinafter "MERC") and the Portland Oregon Visitors Association (hereinafter "Contractor").

RECITALS

WHEREAS, MERC manages the Oregon Convention Center; and

WHEREAS, in order to maximize the economic impact of the Oregon Convention Center for the tri-county metropolitan region, it is critical that conventions, trade shows, and other national events take place at the Oregon Convention Center; and

WHEREAS, MERC has determined that it is desirable to enter into a contract with a sales, marketing, and convention services firm to secure aggressive and cost-effective national sales, marketing, and convention services for the purpose of attracting and securing national convention, trade show, and event business for the Oregon Convention Center; and

WHEREAS, the convention and trade show industry has become increasingly competitive, and MERC desires to retain the greatest degree of flexibility possible in order to respond appropriately to changing business and economic conditions, including retaining the right to require changes to the sales, marketing, and convention services provided during the term of this Agreement in accordance with the provisions of this Agreement.

NOW, THEREFORE, the parties agree as follows:

1. EFFECTIVE DATE

The effective date of this Agreement is October 1, 2005.

2. TERM

The term of this Agreement shall be from October 1, 2005 until June 30, 2008, unless terminated sooner as provided herein.

MERC shall have the option to extend this Agreement for four (4) additional two-year periods. At least sixty (60) days' written notice to the Contractor by MERC prior to the expiration of the Agreement shall be sufficient to exercise a renewal option.

3. DEFINITIONS

- A. "Annual Approved Line-Item Budget" means Contractor's annual line-item budget, approved by MERC, for work required by this Agreement.

- B. "Annual Approved Sales Plan" means Contractor's annual sales plan, approved by MERC, for the sales services, marketing services, and convention services required by this Agreement.
- C. "Booked Event" means a convention or trade show that has confirmed, in writing, its intention to hold its event in Portland.
- D. "Contract Year" means the period from October 1, 2005 to June 30, 2006, and every July 1 to June 30 thereafter.
- E. "Fixed Annual Payment" means the annual fixed compensation MERC shall pay Contractor for services performed during a Contract Year as set forth in the Annual Approved Line-Item Budget.
- F. "Quarterly Incentive Payment" means the quarterly payment Contractor is eligible to earn if the Annual Approved Line-Item Budget includes incentive payments for the Contract Year and if Contractor meets the quarterly qualitative and quantitative goals proposed by Contractor and approved by MERC.
- G. "Monthly Progress Payment" means the monthly disbursement of the Fixed Annual Payment to Contractor in equal monthly payments.

4. ANNUAL SALES PLAN AND ANNUAL LINE-ITEM BUDGET

Contractor's work under this Agreement shall be performed in accordance with an Annual Approved Sales Plan and an Annual Approved Line-Item Budget, in accordance with the provisions of this paragraph 4.

A. Deadlines For Annual Sales Plan and Annual Line-Item Budget

At least ninety (90) days before the first day of the Contract Year, Contractor shall submit to MERC a proposed annual sales plan and a proposed annual line-item budget for marketing the Oregon Convention Center for the Contract Year.

B. Required Content For Annual Sales Plan

Contractor's proposed annual sales plan shall describe Contractor's proposed work for the applicable Contract Year, and shall include a detailed sales plan in each of the work areas listed in this subparagraph (4)(B). The proposed annual sales plan shall list the specific personnel assigned to each work task and the number of hours each assigned person will devote to each work area. The proposed annual sales plan shall include proposed quarterly qualitative and quantitative goals for each work area listed below. The sales plan shall include all the following work areas:

1. Sales. The proposed annual sales plan shall describe in detail the elements of the annual sales efforts, including, at a minimum:

- a. Direct sales tasks to be undertaken by staff and for trade shows. Sales activities to be undertaken annually shall include attendance at trade shows, familiarization tours for conventions and trade shows, "sales blitzes" to the convention and trade show headquarter locations to generate leads, nationally, regionally and state-wide. The sales plan shall detail the sales approach for each activity as well as the minority market for each activity.
- b. Number of sales managers and markets each will serve.
- c. Number of sales managers dedicated to selling solely the Oregon Convention Center, and the support staff proposed to be assigned to this sales effort.
- d. Number of national sales managers to generate leads, provide face-to-face sales and marketing.
- e. Identification of all markets on which Contractor proposes to focus the sales effort.
- f. The number and location(s) of sales offices.

2. Marketing.

- a. Direct Marketing Activities and Web Site Development. The proposed annual sales plan shall describe in detail the proposed direct marketing activities and web site-related efforts that Contractor proposes to implement for the Contract Year.
- b. Minority Marketing Approach. The proposed annual sales plan shall describe in detail the proposed marketing to minority communities, including but not limited to the African American, Hispanic, Asian American, and gay and lesbian communities. This marketing shall focus in particular on minority convention and tradeshow markets. This section of the proposed annual sales plan shall include a description of proposed advertising, familiarization tours, trade show attendance, special promotions, subcontracting, and any other proposals to penetrate the minority market.
- c. Market Research. The proposed annual sales plan shall describe in detail the market research the Contractor proposes to undertake for the Contract Year, including how this research will be utilized to develop potential conventions and trade show lists and sales opportunities.
- d. Advertising. The proposed annual sales plan shall describe in detail the process to be utilized, publications to be used, measurements of such advertising, and all proposed subcontracting.

- e. Public Relations. The proposed annual sales plan shall describe in detail the specific elements of the public relations campaign for the Contract Year, including the types of programs and publications that will be used.
3. Convention Services. The proposed annual sales plan shall describe the work plan for convention services. The plan shall identify the staff who will provide customer service, on-site and local amenities, and ancillary needs and services to support the scheduled conventions and trade shows for the applicable Contract Year. The ancillary services shall include housing, attendance building, special event coordination, transportation assistance, and any other services necessary to create a superior convention services operation.
4. Other Proposed Activities. The proposed annual sales plan shall describe any additional activities that Contractor recommends as likely to increase the overall effectiveness of Contractor's efforts to attract, secure, and retain national convention and trade show business for the Oregon Convention Center. The proposed annual sales plan shall also describe any additional activities that MERC requests be included in the sales plan.

C. Required Content For Annual Line-Item Budget

The Contractor's proposed annual line-item budget shall contain a detailed breakdown of proposed expenditures for the Contract Year, including personnel costs (with a breakdown of cost for every staff person working on work tasks required by this Agreement), materials and services costs, subconsultant costs, all other expenses directly attributable to the services required by this Agreement, and any additional information MERC may require.

D. MERC's Right To Approve The Annual Sales Plan And Annual Line-Item Budget

1. Process For Review. MERC shall review the Contractor's proposed annual sales plan (including the proposed qualitative and quantitative goals) and the proposed annual line-item budget. If the proposed annual sales plan and/or proposed annual line-item budget is not acceptable to MERC, in its sole discretion, MERC shall request revisions. Contractor shall submit to MERC a revised sales plan and line-item budget within ten calendar days of MERC's request for revisions. This process shall continue until Contractor has submitted a proposed sales plan (including proposed qualitative and quantitative goals) and budget that is approved by MERC (hereinafter "Annual Approved Sales Plan" and "Annual Approved Line-Item Budget"). Each Contract Year, the Annual Approved Sales Plan and the Annual Approved Line-Item Budget shall be attached to this Agreement and incorporated herein.

2. Negotiation of Annual Funding For Quarterly Incentive Payments. During the review process required by subparagraph 4(D)(1), MERC and the Contractor shall negotiate in good faith regarding the amount of the Quarterly Incentive Payments, if any, that Contractor is eligible to earn for the Contract Year. If the parties cannot agree on the amount of the Quarterly Incentive Payments, MERC, in its sole discretion, shall determine the amount.
3. Timelines. This Agreement is contingent on MERC approving on or before October 1, 2005, an Annual Approved Sales Plan and an Annual Approved Line-Item Budget for the October 1, 2005 to June 30, 2006 Contract Year. For the second and all subsequent Contract Years, if MERC does not approve an Annual Approved Sales Plan and an Annual Approved Line-Item Budget at least forty-five (45) days before the first day of the applicable Contract Year, this Agreement shall terminate in accordance with Paragraph 9(A)(3) of this Agreement, unless the parties agree to an extension of the deadline.

E. MERC's Right To Remove Work From Annual Approved Sales Plan

With at least ninety (90) days' written notice to Contractor, MERC may remove work tasks from the Annual Approved Sales Plan. The written notice shall identify the specific work tasks to be removed and the corresponding funding reduction. Removal of work tasks shall result in a corresponding reduction in the Annual Approved Line-Item Budget, as provided in paragraph 7(F) of this Agreement. MERC may reassign such work tasks to MERC employees or another MERC contractor or contractors.

5. CONTRACTOR'S PERFORMANCE

A. Performance

Contractor shall perform all work in the Annual Approved Sales Plan and all tasks requested by MERC in a workmanlike and professional manner. Contractor shall at all times use its best efforts to identify, attract, and secure national convention and trade show business for the Oregon Convention Center. Contractor shall perform all work within the limitations of the Annual Approved Line-Item Budget.

B. Separate Accounts

Contractor shall keep accurate records and accounts of funds paid to it by MERC pursuant to this Agreement, and shall keep such accounts and records separate and identifiable from all other accounts.

C. Trade Associations

Contractor shall join any trade associations requested by MERC. Any cost for joining any such associations shall be included in the Annual Approved Line-Item Budget.

D. Cooperation

Contractor shall at all times cooperate in good faith with MERC and with the Oregon Convention Center's in-house staff. Contractor shall attend any meetings requested by MERC related to the work required by this Agreement. Contractor shall not commit any act, the nature of which would tend to bring discredit or embarrassment to MERC or its operations.

E. Compliance With MERC Policies

Contractor shall comply with all MERC policies, resolutions, rules, and regulations, as they apply to the work being performed by Contractor under this Agreement.

6. REPORTING

A. Progress Reports

The Contractor shall submit quarterly reports to MERC detailing its progress in meeting the objectives and goals set forth in the then current Annual Approved Sales Plan. These quarterly reports shall include all information identified below:

1. All information identified on the quarterly report form, attached to this Agreement as Exhibit "A"; and
2. The current status of all planned sales events, including the names of Contractor's sales representatives who are planning to attend such sales events, for the fifteen (15) month period beginning with the date of the report.

B. Oral Reports to the Metropolitan Exposition-Recreation Commission

At least quarterly, or more frequently if requested by MERC, Contractor shall present the following oral reports to the Metropolitan Exposition-Recreation Commission at a properly noticed public meeting of the Commission:

1. Contractor shall report on Contractor's progress in meeting the objectives and goals in the Annual Approved Sales Plan.
2. Any subcontractor(s) retained by Contractor to market the Oregon Convention Center to minority communities and groups shall report on the progress and results of such marketing. If Contractor has no subcontractor(s) performing such marketing, Contractor shall present this report.

C. Financial Reports

1. Quarterly Financial Report. On or before the 20th day after the end of each quarter, the Contractor shall submit to MERC a quarterly comprehensive financial statement that details the Contractor's use of the funds provided by MERC during the preceding quarter. The quarterly financial statement shall

show, at a minimum, actual expenditures by category, expenditures as a percentage of the Annual Approved Line-Item Budget, and actual expenditures compared to actual expenditures in the preceding Contract Year.

2. Audited Financial Statement. The Contractor shall provide MERC with a copy of its annual audited financial statement when the Contractor receives the audited financial statement from its auditors.

D. Other Reports

Contractor shall submit such other reports as MERC may request in writing.

7. BASIS AND METHOD OF PAYMENT

A. Total Annual Cost Of Services

1. Contractor's Compensation for Services Performed. The total annual cost of Contractor's services for a Contract Year shall be the total annual cost agreed to by MERC in the Annual Approved Line-Item Budget. The total annual cost may consist of one or both of the two components identified in subparagraphs 7(A)(2) and 7(A)(3), below.
2. Fixed Annual Payment. The Annual Approved Line-Item Budget shall identify a fixed annual payment (hereinafter "Fixed Annual Payment") for services performed by Contractor.
3. Visitor Development Initiative Funding. In addition to the Fixed Annual Payment, MERC, at its sole option, may approve in the Annual Approved Line-Item Budget an allocation of a stated percentage of the funding paid to Metro (and transferred to MERC) by Multnomah County from the Visitor Facilities Trust Account in accordance with Section II(D)(4)(e) of the January 31, 2001 Visitor Facilities Intergovernmental Agreement (such allocation hereinafter referred to as "VDI Funding"). (As an example only: MERC may approve in an Annual Approved Line-Item Budget (a) the Fixed Annual Payment of a specified dollar amount, and (b) one hundred percent (100%) of the VDI Funding actually received by MERC.)

B. Disbursement of Fixed Annual Payment

MERC shall pay Contractor the Fixed Annual Payment identified in the Annual Approved Line-Item Budget in equal monthly disbursements (hereinafter "Monthly Progress Payments").

C. Disbursement of VDI Funding

In the event that the Annual Approved Line-Item Budget includes as a portion of Contractor's compensation a specified percentage of VDI Funding, MERC shall pay

Contractor the specified percentage of the VDI Funding actually received by MERC no later than thirty (30) days after MERC actually receives the funds.

D. Incentive Payments

1. Quarterly Incentive Payments. In addition to the payments described in subparagraphs 7(B) and 7(C), above, each quarter Contractor may be eligible to earn an incentive payment for superior performance during the quarter (hereinafter "Quarterly Incentive Payment"). The amount of the Quarterly Incentive Payments, if any, shall be determined in accordance with the provisions of paragraph 4(D)(2) of this Agreement. No later than 30 days after the end of each quarter, MERC, in its sole discretion, shall determine whether Contractor has met the quarterly goals established for that quarter in the Annual Approved Sales Plan. If the Annual Approved Sales Plan and the Annual Approved Line-Item Budget include Quarterly Incentive Payments, MERC shall pay Contractor a Quarterly Incentive Payment for the goals met by Contractor during the preceding quarter.

2. Commission Payments for New Events Generated for the Oregon Zoo, the Portland Center for the Performing Arts, and the Portland Exposition Center. Contractor shall also earn commission payments on new events generated for the Portland Center for the Performing Arts ("PCPA") and the Portland Exposition Center ("Expo Center"), and may earn commission payments on new events generated for the Oregon Zoo. Contractor may earn commission payments only for new events that actually occur and that result solely from Contractor's sales efforts. For purposes of this Agreement a "new event" is a first-time event that has not previously occurred at a MERC or Metro facility. Contractor shall not earn commission payments on repeat events. Commission payments shall be calculated as set forth below, and shall be paid by MERC to Contractor within thirty (30) days after the last day of the event.

a. *Commission Payments for New Events Generated for PCPA and Expo Center.* MERC shall pay Contractor commission payments in accordance with the schedule below, such commission payments to be calculated as a percentage of net revenue collected by MERC as a result of the event:

<u>Date of First Day of Event</u>	<u>Commission</u>
September 1 through June 30	Ten percent (10%)
July 1 through July 31	Fifteen percent (15%)
August 1 through August 31	Twenty percent (20%)

For purposes of this paragraph, "net revenue" means the sum of (a) facility rental charges actually received by MERC after subtracting any applicable excise, sales or use taxes, plus (b) MERC's net food

and beverage revenue generated by the event after subtracting all costs, concessionaire's share of the revenues and any concessionaire's fees, and applicable excise, sales or use taxes.

- b. *Commission Payments for New Events Generated for the Oregon Zoo.* Contractor may also earn commission payments for new events generated for the Oregon Zoo. MERC shall determine the commission calculation, if any, each Contract Year, and shall confer with Contractor regarding such commissions during the process described in paragraph 4(D) of this Agreement. If MERC agrees to pay commission payments for new events generated for the Oregon Zoo for a Contract Year, the commission calculation shall be agreed to in writing by the parties and attached to this Agreement as an exhibit.

E. Funding Reductions

Funding reductions occurring at any time during a Contract Year may affect the amount of the Fixed Annual Payment, the VDI Funding (if any is included in the Annual Approved Line-Item Budget), and/or the Quarterly Incentive Payments. In the event of any funding reductions, the parties shall negotiate in good faith to determine the allocation of the funding reductions among the Fixed Annual Payment, the VDI Funding (if any is included in the Annual Approved Line-Item Budget), and the Quarterly Incentive Payments. If the parties are unable to agree, the allocation of the funding reductions shall be determined by MERC in its sole discretion.

F. MERC's Removal Of Work Tasks From The Annual Approved Sales Plan

1. Effect on Annual Approved Line-Item Budget. In the event that MERC removes work tasks from the Annual Approved Sales Plan pursuant to paragraph 4(E) of this Agreement, MERC shall reduce the amount of the Fixed Annual Payment and/or the VDI Funding (if any is included in the Annual Approved Line-Item Budget), to reflect the reduced work required by this Agreement. MERC shall determine, in its sole discretion, the amount of such reduction. MERC shall determine, in its sole discretion, whether to apply a corresponding funding reduction to the Quarterly Incentive Payments, if any.
2. Contractor's Commitments to Third Parties. In the event that Contractor has made legally binding commitments to third parties to purchase goods or services related to the work tasks removed from the Annual Approved Sales Plan, MERC shall not remove from the Annual Approved Line-Item Budget those funds required to reimburse Contractor for expenses incurred or to be incurred by Contractor related to such legally binding commitments. Contractor shall be entitled to reimbursement only for purchases of goods or services directly related to marketing or selling the Oregon Convention

Center. Within ten (10) business days of the date of the notice required by paragraph 4(E), Contractor shall give MERC a list of all legally binding commitments for which Contractor requests reimbursement.

G. Return Of Unused Funds

At the end of each Contract Year, and at the expiration or termination of this Agreement, if any portion of the Annual Approved Sales Plan has not been completed, Contractor shall refund to MERC within thirty (30) days unused funds allocated to such services in the Annual Approved Sales Plan, provided that Contractor has not used funds to pay for products or services. For purposes of this subparagraph 7(G), funds are used if the Contractor has made a legally binding commitment to pay for goods or services based on agreements or contracts that have been entered into but have not yet been performed.

8. AUDITS

A. Audits

MERC may conduct a performance review of Contractor's performance and/or a review of Contractor's records, books, and accounts related to matters covered by this Agreement, in accordance with the procedures described in this paragraph. In the event that MERC wishes to conduct such a review, MERC shall give Contractor at least thirty (30) days prior written notice, identifying the reasons MERC wishes to conduct the proposed review. No later than thirty (30) days after the date of the notice, Contractor shall permit MERC to inspect all records, books, and accounts that are relevant to the reasons identified by MERC in the written notice, and shall provide MERC with a written response to the reasons identified in MERC's notice. After the expiration of the thirty (30) day period, if MERC determines in its reasonable discretion that the review should proceed, the review shall be conducted by a firm selected by MERC. The cost of such a review will be deducted from the Fixed Annual Payment.

B. Contractor's Cooperation

Contractor shall cooperate in good faith with MERC and with any outside firm retained by MERC in any matter related to an audit or review permitted by this paragraph 8. Contractor shall provide any books, records, or other information requested in writing within five (5) business days of any request.

9. TERMINATION

A. Termination

This Agreement may be terminated by the mutual consent of the parties. In addition, MERC may terminate this Agreement as follows:

1. Material Breach. In the event that Contractor shall default in the material obligations or conditions set forth in this Agreement, or shall commit any act the nature of which would tend to bring discredit or embarrassment to MERC or its operations, and such default continues unremedied for ten (10) business days after written notice of said material default to Contractor, thereupon, at MERC's option, this Agreement may be terminated upon thirty (30) days' written notice by MERC.
2. Notice. MERC may terminate this Agreement by giving Contractor one hundred twenty (120) days' written notice of intent to terminate, without waiving any claims or remedies it may have against Contractor. Termination shall not excuse payment for expenses or legally binding commitments properly incurred in accordance with the Annual Approved Line-Item Budget, prior to notice of termination, but neither party shall be liable for indirect or consequential damages arising from termination under this section.
3. No Annual Approved Sales Plan Or Annual Approved Line-Item Budget. In the event that MERC does not approve an annual sales plan and/or an annual line-item budget at least forty-five (45) days before the first day of the next Contract Year, this Agreement shall terminate automatically on the last day of the current Contract Year.
4. Non-Appropriation. The continuation of this Agreement is contingent on the appropriation of funds to fund this Agreement. In the event that MERC's budget does not contain funds to pay for the services provided by Contractor in accordance with this Agreement, this Agreement shall terminate automatically on the last day of the fiscal year for which funds are appropriated.

B. Termination Accounting

1. Return of Unused Funds. No later than forty-five (45) days after the last day of this Agreement, Contractor shall return to MERC any unused funds, as required by Paragraph 7(G) of this Agreement. No later than forty-five (45) days after the last day of this Agreement, Contractor shall account to MERC for all funds paid to Contractor for that Contract Year.
2. Costs Incurred by Contractor. No later than forty-five (45) days after the last day of this Agreement, Contractor shall submit documentation to MERC of any out-of-pocket costs (such as booth fees or registration fees) incurred by Contractor in order to enable MERC and/or MERC's marketing contractor to attend trade shows or industry events on behalf of MERC after the last day of the Agreement. MERC shall reimburse Contractor for any such documented out-of-pocket costs actually incurred by Contractor.

10. MERC'S DUTIES

A. Cooperation

1. MERC shall cooperate in good faith with Contractor and Contractor's staff. MERC shall attend meetings reasonably requested by Contractor related to the services required by this Agreement, provided that Contractor provides sufficient advance notice to MERC so that MERC has a reasonable opportunity to arrange attendance.
2. MERC shall act in good faith to assist Contractor in showcasing the Oregon Convention Center, facilitating executive airlifts, and responding to requests from potential clients.
3. MERC shall work cooperatively and in good faith with Contractor to negotiate facility charges with potential clients, provided, however, that Contractor understands and agrees that MERC has the final right to determine all facility charges.

B. Notification of MERC Policies

MERC shall provide Contractor with updates of policies, resolutions, rules and regulations that are necessary for Contractor's compliance with the requirements of this Agreement.

C. MERC Reporting

MERC shall provide Contractor with information related to the services required by this Agreement in a timely and complete manner, so as not to delay Contractor's performance of reporting requirements that may be dependent on such information.

11. FIRST OPPORTUNITY TARGET AREA PROGRAM

Contractor shall comply with MERC's First Opportunity Target Area ("FOTA") Program, as it may be amended from time to time. Contractor shall submit to MERC semiannual written reports that detail Contractor's FOTA compliance efforts.

12. MERC GENERAL MANAGER

The MERC General Manager, or his or her designee, shall have the authority to administer all aspects of this Agreement, including but not limited to approving the quarterly incentive goals, the Annual Approved Sales Plan, and the Annual Approved Line-Item Budget.

13. INSURANCE

- A. Contractor shall purchase and maintain at the Contractor's expense, the following types of insurance, covering the Contractor, 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. The policy must be endorsed with contractual liability coverage; and
 2. Automobile bodily injury and property damage liability insurance.
- B. Insurance coverage shall be a minimum of \$1,000,000 per occurrence.
- C. MERC, the City of Portland, and their elected and appointed officials, departments, employees, and agents shall be named as ADDITIONAL INSUREDS. Notice of any material change or policy cancellation shall be provided to MERC 30 days prior to the change or cancellation.
- D. Contractor, 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. Contractor shall provide MERC with certification of Workers' Compensation insurance including employer's liability.
- E. Contractor shall provide MERC with a certificate of insurance complying with this article and naming MERC and the City of Portland as additional insureds under its liability policies within fifteen (15) days of execution of this Contract or twenty-four (24) hours before services under this Contract commence, whichever date is earlier.

14. INDEMNIFICATION

Contractor shall indemnify and hold MERC, its agents, employees, and appointed 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.

15. MAINTENANCE OF RECORDS

Contractor shall maintain all of its records relating to this Agreement on a generally accepted 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.

16. OWNERSHIP OF DOCUMENTS

All documents of any nature including, but not limited to, reports, drawings, works of art and photographs, produced by Contractor for the purpose of marketing and selling the Oregon

Convention Center 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.

17. 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 this Agreement. 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 this Agreement, 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 to MERC any request for payment.

18. RIGHT TO WITHHOLD PAYMENTS

In the event that Contractor fails to perform an obligation required by this Agreement, and such failure continues unremedied for ten (10) business days after written notice to Contractor of such failure to perform, 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.

19. FORCE MAJEURE

If the Oregon Convention Center is destroyed or damaged by fire or any other cause, or if any other casualty or unforeseen occurrence outside the control of Contractor (including any act of terrorism in the United States if it actually disrupts travel to or from Portland) renders the performance of the services required by the Annual Approved Sales Plan impossible, then MERC and Contractor shall confer in good faith to discuss revisions to the Annual Approved Sales Plan (including the quarterly qualitative and quantitative goals) and the Annual Approved Line-Item Budget. Notwithstanding the foregoing, MERC shall have the final right to determine whether to revise the Annual Approved Sales Plan, the quarterly qualitative and quantitative goals, and/or the Annual Approved Line-Item Budget.

20. 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.

21. 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.

22. 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.

23. NO WAIVER OF CLAIMS

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

24. 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.

**PORTLAND OREGON VISITORS
ASSOCIATION**

**METROPOLITAN EXPOSITION-
RECREATION COMMISSION**

By: _____

By: _____

Title: _____

Title: _____

Date: _____

Date: _____

**Index of Exhibits to the
National Sales, Marketing and Convention Services
Agreement for the Oregon Convention Center**

Exhibit A: Required Quarterly Report Form

Exhibit B: Contractor's Commission for New Events Generated for the Oregon Zoo,
identified by Contract Year

Exhibit "A"
National Sales, Marketing and Convention Services Agreement
For the Oregon Convention Center

Required Quarterly Report Form

❖ **EXECUTIVE SUMMARY**

- ACCOMPLISHMENTS SUMMARY
- TRENDS, SUCCESSES, OBSTACLES

❖ **RETURN ON INVESTMENT**

➤ RETURN ON INVESTMENT

- Convention Center Revenue generated by POVA Convention Sales Function¹

Measurement:
$$\frac{\text{3 year average of Convention Center revenue}^2}{\text{Current year Annual POVA Contract}^3}$$

- Convention Center Revenue generated by POVA Convention Sales Function - Chicago

Measurement:
$$\frac{\text{Convention Center revenue generated by POVA Chicago}}{\text{Chicago's direct operating costs}}$$

- Convention Center Revenue generated by POVA Convention Sales Function – Minority Subcontractor

Measurement:
$$\frac{\text{Convention Center revenue generated by POVA Minority Subcontractor}}{\text{Minority Subcontractor's direct operating costs}}$$

- Convention Center Revenue generated by POVA Convention Sales Function – Washington DC

Measurement:
$$\frac{\text{Convention Center revenue generated by POVA Washington DC}}{\text{Washington DC's direct operating costs}}$$

¹ Convention Center Revenues means actual revenue recorded for the period per MERC accounting records for conventions at OCC. Excludes hotel/motel transient lodging tax.

² 3 year average means the current fiscal year and the two most recent fiscal years.

³ Annual POVA Contract means the Marketing Contract, including the VDI Enhanced Marketing paid to Contractor as part of the Marketing Contract.

PROJECTED FUTURE REVENUE

➤ REPORTS

- Future Convention Center Revenue generated by POVA Convention Sales Function

Measurement: Estimated future Convention Center revenue generated by POVA
Annual POVA Contract

Note: 2005-06 is the benchmark year to establish return on investment based on future revenue.

- New OCC bookings during the quarter and year to date
- Repeat OCC bookings during the quarter and year to date
- Total OCC bookings during the quarter and year to date
- Room Nights from OCC bookings during the quarter and year to date
- Total Room Nights during the quarter and year to date (includes OCC and single hotel)
- Minority Subcontractor Reports
 - New OCC bookings during the quarter and year to date
 - Repeat OCC bookings during the quarter and year to date
 - Total OCC bookings during the quarter and year to date
 - Room Nights from OCC bookings during the quarter and year to date
- OCC Revenue from OCC bookings for the quarter and year to date

❖ LEAD CONVERSION

➤ REPORTS

- Lead Conversion of Qualified Convention Leads

Measurement: Leads converted to bookings for the period
OCC leads as of prior fiscal year end less lost leads due to OCC space or hotel package

Note: 2005-06 is the benchmark year to establish conversion rate for subsequent years.

- OCC leads during the quarter and year to date
- Lost OCC Leads Due to space & availability during the quarter and year to date
- Lost OCC Leads Due to hotel package & availability during the quarter and year to date
- Chicago Reports
 - OCC leads during the quarter and year to date
 - Lost OCC Leads Due to space & availability during the quarter and year to date
 - Lost OCC Leads Due to hotel package & availability during the quarter and year to date

- Minority Subcontractor Reports
 - OCC leads during the quarter and year to date
 - Lost OCC Leads Due to space & availability during the quarter and year to date
 - Lost OCC Leads Due to hotel package & availability during the quarter and year to date
- Washington DC Reports
 - OCC leads during the quarter and year to date
 - Lost OCC Leads Due to space & availability during the quarter and year to date
 - Lost OCC Leads Due to hotel package & availability during the quarter and year to date

❖ **CONVENTION SERVICES**

➤ **REPORTS**

- Narrative of performance survey results for the quarter including the name of the group and the performance ratings.
- Number of active OCC clients
- Site Visits during the quarter and year to date
- Pre-Convention activities during the quarter – list activities
- Number of attendance building material provided during the quarter and year to date
- Room Nights booked by convention housing during the quarter and year to date

❖ **PUBLIC RELATIONS**

➤ **MEDIA PLACEMENT**

➤ **REPORTS**

- Media Placement

Measurement:
$$\frac{\text{Media Placement Value}}{\text{Direct Cost}}$$

- Media Placement – Minority Subcontractor

Measurement:
$$\frac{\text{Media Placement Value by Minority Subcontractor}}{\text{Minority Subcontractor Direct Cost}}$$

- List of Media Placements for the quarter
- List of Media Placements for the quarter – Minority Subcontractor

❖ **ECONOMIC IMPACT**

➤ ECONOMIC IMPACT ➤ REPORTS

- Economic Impact to the Community

Measurement:
$$\frac{\text{Economic Impact of bookings recorded during the year}^4}{\text{Annual POVA Contract Amount}^2}$$

- Economic Impact to the Community – Minority Subcontractor

Measurement:
$$\frac{\text{Economic Impact of bookings recorded during the year}^5}{\text{Minority Subcontractor Direct Cost}}$$

- Narrative of economic impact results for the quarter including the name of the group and the methodology.
- Narrative of economic impact results for minority subcontractor for the quarter including the name of the group and the methodology.

❖ **FINANCIAL REPORTS**

➤ REPORTS

- Oregon Convention Center actual revenue recorded for the period per MERC accounting records. (to be provided by MERC)
- POVA Quarterly Financial Statements
- MBE/WBE/ESB Quarterly Expenditures including percentage of total expenditures
- FOTA Semiannual Report – six months ended December and June
- POVA Annual Financial Statements – no later than August Commission meeting
- POVA Annual Audit – no later than December Commission meeting

⁴ Booking recorded for the year means all OCC convention business estimated for future years.

⁵ Booking recorded for the year means all OCC convention business estimated for future years that was developed by the minority subcontractor.

Exhibit "B"
National Sales, Marketing and Convention Services Agreement
For the Oregon Convention Center.

Contractor's Commissions For New Events Generated For The Oregon Zoo
For the Period October 1, 2005 to June 30, 2006

The parties agree that MERC shall pay commissions to Contractor for new events generated by Contractor for the Oregon Zoo in accordance with the provisions of this Exhibit "E." For purposes of this Exhibit, a "new event" is a first-time event that has not previously occurred at a MERC or Metro facility. Contractor shall not earn commission payments for repeat events.

Contractor may earn commission payments only for new events that actually occur and that result solely from Contractor's sales efforts. Contractor shall be paid a commission payment for an event only if the first day of the event occurs between October 1, 2005 and June 30, 2006. Contractor's commission payment shall be ten percent (10%) of the facility rental charge actually received by the Oregon Zoo after subtracting any applicable excise, sales or use taxes. MERC shall pay Contractor commissions earned within thirty (30) days after the last day of the event.

**Index of Exhibits to the
National Sales, Marketing and Convention Services
Agreement for the Oregon Convention Center**

Exhibit A: Required Quarterly Report Form

Exhibit B: Contractor's Commission for New Events Generated for the Oregon Zoo,
identified by Contract Year

Exhibit "A"
National Sales, Marketing and Convention Services Agreement
For the Oregon Convention Center

Required Quarterly Report Form

❖ **EXECUTIVE SUMMARY**

- ACCOMPLISHMENTS SUMMARY
- TRENDS, SUCCESSES, OBSTACLES

❖ **RETURN ON INVESTMENT**

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➤ REPORTS

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- REPORTS

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MERC Staff Report

Agenda Item/Issue: For the Purpose of Approving the Award of the National Sales, Marketing and Convention Services Agreement for the Oregon Convention Center to the Portland Oregon Visitors Association ("POVA") and authorizing the General Manager to execute the Agreement on behalf of the Commission.

Resolution No.: 05-22

Presented By: Jeffrey A. Blosser

Date: September 28, 2005

Background and Analysis: The Oregon Convention Center marketing contract was put out for proposals after 10 years and the MERC Commission extended the current contract until September 30, 2005. The request for proposals laid out specific contract needs relating to sales and marketing of the Oregon Convention Center and required the successful vendor to put together a work plan, budget, reporting process and goals to be achieved. The new elements in the contract give MERC accountability for monies being spent, flexibility in contract terms and contract management, out clauses, if needed for non-performance, and a reporting process on goals being accomplished and operational progress of the work plan. The Portland Oregon Visitors Association was the only submittal and staff has worked diligently over the last three months to craft a new agreement.

POVA staff has agreed to all of the items, goals and reports in the new agreement and its effective date will be October 1, 2005. Commission Chair Manning and Commissioner Forbes have also assisted staff through this negotiating process. The contract requires the contractor to submit a proposed annual sales plan, proposed goals, and a proposed line-item budget before the start of each contract year. MERC and the contractor negotiate the content of these documents. Attached to this staff report are the following documents for the first contract year (October 1, 2005 to June 30, 2006). MERC management and POVA management have agreed that these documents will serve as the annual approved sales plan, the annual goals, and the annual approved line-item budget for this October 1, 2005 through June 30, 2006 period:

1. The approved sales plan;
2. The contract goals and performance measures; and
3. The approved line-item budget.

Fiscal Impact: For the period October 1, 2005 through June 30, 2006, the contractor's compensation under this contract will be \$1,425,000. (This sum represents a pro rated amount for nine months based on annual compensation of \$1.9 million.) In addition, the VDI enhanced marketing funds will be administered through this contract. The VDI enhanced marketing funds for fiscal

year 2005-2006 are presently estimated to be \$377,676. MERC will remit these funds to the contractor when MERC actually receives the funds.

The total disbursement to POVA for OCC national sales, marketing, and convention services for fiscal year 2006 will be \$2,367,369. The 2006 budget for marketing and VDI enhanced marketing is \$2,641,030.

Recommendation: Staff recommends that the Metropolitan Exposition Recreation Commission approve the National Sales, Marketing and Convention Services Agreement with the Portland Oregon Visitors Association for such services to the Oregon Convention Center and authorize the General Manager to execute the agreement.