

## SOLE SOURCE DETERMINATION

The Purchasing Division has been requested to approve a sole source purchase for the commodity or service described below. Pursuant to West Virginia Code 5A-3-10c, the Purchasing Division is attempting to determine whether the commodity or service is a sole source procurement. If you believe your company meets the required experience and qualification criteria stated below, please e-mail the Purchasing Division at [team@wvadmin.gov](mailto:team@wvadmin.gov) to express your interest in the project. Please forward any and all information that will support your company's compliance with required qualification and eligibility criteria along with any other pertinent information relative to this project to the Purchasing Division no later than 11/01/06.

Requisition Number: RAC2007001

Department/Agency: Racing Commission

Detailed Description of the Project: 18 month events contract to administer and promote the running of the annual WV Breeders Classic Races.

Proposed Sole Source Vendor: WV Breeders Classics LTD

Specific Eligibility Criteria: Expertise in horse racing and horse breeding.

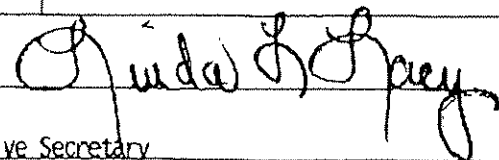
Specific Qualification Criteria: Promotional skills and expertise in the racing and breeding of thoroughbred horses.

State of West Virginia  
Purchasing Division

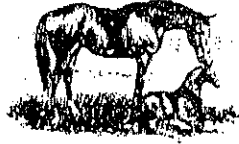
# PURCHASE REQUISITION

Req. No. <b>RAC 2007 001</b>	Req. Date <b>10/12/2006</b>	Buyer	<b>PURCHASING DIVISION'S USE ONLY</b>	
WV FIMS Document # <b>Mul - Mul</b>			Instructions:	
Agency/Invoice To:  WV Racing Commission 106 Dee Drive Suite 2 Charleston, WV 25311		TEAM Code		
Agency/Ship To:  WV Racing Commission 106 Dee Drive Suite 2 Charleston, WV 25301		TEAM Code		
This Section Only For: <i>Releases, Direct Purchases, Emergency Purchases &amp; Agreements</i>				
Vendor Name & Address:  WV Breeders Classics LTD P. O. Box 1261 Charles Town, WV 25314				
WV FIMS Vendor #	TEAM Vendor #	Bid Opening Date	Bid Opening Time	
SBPO#	Terms	F.O.B.	Advertising Dates	
Commodity Code:				

Item No.	Quantity	Description	Unit Price	Amount
		<u>Direct Purchase</u> <i>Type of Purchase</i>		
1		(18) months "EVENTS CONTRACT" commence January 1, 2007 through June 30, 2008  Schedule of payments ) per month for 18 months		

Authorized Signature:   
 Title: Executive Secretary  
 Telephone: 304-558-2150

Total Estimated Value of this Requisition: \_\_\_\_\_  
 Suggested Vendors:  
 1. \_\_\_\_\_  
 2. \_\_\_\_\_  
 3. \_\_\_\_\_



## West Virginia Breeders Classics, LTD.

September 20, 2006

Linda L. Lacy  
Executive Secretary  
West Virginia Racing Commission  
106 Dee Drive  
Charleston, WV 25311

Dear Linda,

Thank you for your on-going help with the Breeders Classics.

The West Virginia Breeders Classics, Ltd. agrees to the attached contract (with the same terms and conditions) for the period of January 1, 2007 thru June 30, 2008, totaling eighteen months.

Thank you once again for your help and assistance with West Virginia's showcase of Thoroughbred Racing.

Sincerely,

A handwritten signature in black ink, appearing to read "Sam Huff". The signature is written in a cursive style and is positioned above the printed name and title.

Sam Huff  
CEO, WVBC

SH/ces

<b>WEST VIRGINIA BREEDERS CLASSICS ADMINISTRATIVE EXPENSES</b>				
<b>July 1, 2006 - June 30, 2007</b>		<b>12 Months</b>		
				Amount
Office Expense				\$
Postage				\$
Office Rent				\$
Telephone				\$
Payroll Taxes				\$
WVBC Insurance				\$
Medical Insurance				\$
Workman's Compensation				\$
Sam Huff				\$
Carol Holden				\$
Theresa Bitner				\$
Bank Charges				\$
Legal/Accounting				\$
Consulting/Media Relations				\$
Board Member Fees				\$
5% Charity from Sponsor Money				\$
		<b>12 month</b>	<b>Total</b>	\$
<b>ADMINISTRATIVE EXPENSES</b>				
<b>PAID BY CONTRACT: 12 MONTHS</b>				\$
<b>18 MONTHS</b>				\$
<b>Paid monthly</b>				\$
<b>Total not covered by contract for 12 months</b>				\$
<b>ADVERTISING</b>				
WVRC covers advertising which includes \$				for ESPN

## AGREEMENT

This is an Agreement for administration as well as the furnishing of promotional activities and advertising services for the West Virginia Thoroughbred Breeders Classics (hereinafter called ("BREEDERS CLASSICS")) pursuant to West Virginia Code § 19-23-13 (b) (6) by and between the WEST VIRGINIA RACING COMMISSION, a public corporation and governmental agency of the State of West Virginia (hereinafter called "RACING COMMISSION"), and WEST VIRGINIA BREEDERS CLASSICS LTD, a non-profit corporation organized under the laws of the State of West Virginia (hereinafter called "BREEDERS CLASSICS LTD").

**WHEREAS,** The Racing Commission desires to obtain the services of Breeders Classics LTD to provide administrative services as well as to furnish promotional activities and advertising services to the Racing Commission in and about the conducting of the Breeders Classics; and,

**WHEREAS,** Breeders Classics LTD having participated in the development, operation and administration of the Breeders Classics program and as well having furnished promotional activities and advertising services for the Breeders Classics for more than a decade, has unique technical knowledge, specialized expertise and as well has generated and maintained Breeders Classics' records deemed to be necessary and useful to provide the services that the Racing Commission desires to obtain.

### **NOW THEREFORE WITNESSETH:**

That in consideration of the promises and undertakings, hereafter set forth, the parties hereto agree and contract as follows:

The Racing Commission hereby retains the services of Breeders Classics LTD  
Breeders Classics LTD hereby accepts the responsibility as agent of the Racing Commission in connection with services requested by the Racing Commission as follows:

## 1. PURPOSES:

The fundamental purposes of this Agreement are to:

- 1.1 Assure that the Breeders Classics are properly and efficiently administered to provide the highest quality program of stakes races for all horses qualifying under the West Virginia Breeders Program, as provided for in West Virginia Code 19-23-13 (b) (6) (A); and
- 1.2 Assure that the promotional activities conducted for the Breeders Classics will enhance and maximize interest in the program of stakes races for all horses qualifying under the West Virginia Breeders Program, as provided for in West Virginia Code 19-23-13 (b) (6) (A); and
- 1.3 Assure that the Breeders Classics receives the best prices as well as most effective and best placements for placing advertising to the general consumers in the State of West Virginia and bordering media markets within the ambit of the Breeders Classics such as those in Virginia, Maryland, the District of Columbia and Pennsylvania, as provided for in West Virginia Code 19-23-13 (b) (6) (A).

## 2. SERVICES:

Breeders Classics LTD shall provide the following services:

### 2.1 Administrative Services

- 2.1.1 Breeders Classics LTD shall administer and manage the nomination and registration process of horses for the Breeders Classics stakes races, giving equal consideration to all horses qualifying under the West Virginia Breeders Program, based solely on the horse's sex,

age, and earnings, as required by West Virginia Code 19-23-13 (b) (6) (A).

2.1.2 Breeders Classics LTD shall administer and manage the advertising program for the Breeders Classics as provided for in paragraph 2.2 hereinafter.

2.1.3 Breeders Classics LTD shall administer and manage the promotional activities as provided for in paragraph 2.3 hereinafter.

2.1.4 Breeders Classics LTD shall administer and manage the entry qualifications in accordance with West Virginia Code 19-23-13 (b) (6) (A), scheduling and running of the Breeders Classics stakes races, as directed by the Racing Commission, and as set forth in Exhibit "A" attached hereto and incorporated herein by reference.

2.1.5 Breeders Classics LTD shall provide all necessary qualified personnel, as well as administrative backup including but not limited to all necessary business equipment and systems necessary to undertake and provide the administrative services required hereunder for the administration and management of the Breeders Classics program.

2.1.6 Breeders Classics LTD shall advise, counsel and make recommendations to the Racing Commission with respect to the administration and management of the Breeders Classics.

## 2.2 Advertising Services

- 2.2.1 Breeders Classics LTD shall advise, counsel, and make recommendations with respect to media selections, themes, copy, multi-media presentations and positioning;
- 2.2.2 Breeders Classics LTD shall develop promotional materials to be used in advertising and marketing activities for the Breeders Classics (with no exception to point of sale materials, promotional items and signage at the retailer level);
- 2.2.3 Breeders Classics LTD shall undertake an agent relationship for the Racing Commission to develop, produce, and place advertising materials in newspapers, radio and television broadcasts.
- 2.2.4 Breeders Classics LTD shall furnish any such professional service necessary to develop and maintain a successful advertising campaign for the Breeders Classics program.
- 2.2.5 In the event the Racing Commission desires the Breeders Classics LTD to do so, it will furnish the Racing Commission its advice, recommendations, research and counsel concerning advertising for the Breeders Classics. However, Breeders Classics LTD may not act in any capacity for the Racing Commission without the written consent of the Racing Commission.
- 2.2.6 Should the Racing Commission wish to use any forms of advertising, materials, or services not herein provided for by Breeders Classics LTD, Breeders Classics LTD shall, at request of the Racing



Commission, assist the Racing Commission in their consideration and preparation. Further, while the parties hereto anticipate and intend that Breeders Classics LTD shall primarily make media placements, the Racing Commission reserves the right to make direct media placements in addition to those described in the Advertising Plan provided for in paragraph 2.2.9.

2.2.7 The Racing Commission, after recommendation by Breeders Classics LTD, shall determine the proper time schedule in which all advertising is to take place. Advertising will be placed as expressly directed in writing by the Racing Commission prior to placement, as evidenced by the signature of the Executive Secretary of the Racing Commission.

2.2.8 All layouts, sketches, art work, and copy including but not limited to advertising copy, copy, film, typesetting, photocopies, storyboards, and computer data storage disks, used in advertisements or other materials developed or placed by Breeders Classics LTD for the Racing Commission shall become the exclusive property of the Racing Commission after termination of this Agreement and payment by the Racing Commission of all sums for which it may be liable under this Agreement. Thereafter, upon written request to Breeders Classics LTD made within one (1) year of termination of this Agreement, the Racing Commission shall have the full and free right to possess and use any and all said property in any way deemed

by it to be necessary or advisable, either directly or through Breeders Classics LTD or otherwise and without payment of any compensation to the Breeders Classics LTD for the same.

PROVIDED: That, from time to time, Breeders Classics LTD may find it necessary to use the services of a non-employee for the design, production or delivery of such goods or services which are the subject of this paragraph, who may claim or maintain a copyright or proprietary interest in such goods or services, the ownership of which Breeders Classics LTD cannot pass to the Racing Commission. It is anticipated by the parties that such situation may include royalties that may be owed to certain unions as a result of the use of union personnel in media productions. In such instances, Breeders Classics LTD shall make a good faith effort to obtain the ownership of such goods or services without additional costs to the Racing Commission. However, when ownership is not available, or when obtaining the same would increase the cost to the Racing Commission, Breeders Classics LTD shall obtain the advance written authorization of the Racing Commission before entering into any agreement with any non-employee for such goods or services.

2.2.9 The Breeders Classics LTD shall develop an Advertising Plan with support schedule of timely and appropriate media advertising supported by a line item budget within the budget of monies allocated for advertising services, for the advertising services to be furnished

pursuant to this paragraph 2.2, and submit the Advertising Plan with support schedule and line item budget to the Racing Commission for review by the Racing Commission. The Racing Commission will determine, in advance upon the recommendation of Breeders Classics LTD, as set forth in the said Advertising Plan, what advertising is to be produced and as well, how, when and where it is placed. Except as described in the Advertising Plan approved by the Racing Commission, no other advertising and production costs shall be reimbursed to Breeders Classics LTD under paragraph 3 of this contract without prior approval of by the Racing Commission and such approval shall be in the form of a work order containing the signature of the Executive Secretary of the Racing Commission.

2.2.10 Breeders Classics LTD shall furnish the Advertising Services within the Budget set forth on Exhibit B attached hereto and incorporated herein by reference.

### 2.3 Promotional Activities

2.3.1 Breeders Classics LTD shall advise, counsel and make recommendations with respect to Promotional Activities for the Breeders Classics.

2.3.2 By March 1st of each year during the term of this Agreement, Breeders Classics LTD shall develop a detailed and specific Promotional Activities Plan, and submit the Promotional Activities

Plan with detailed support schedule and line item budget to the Racing Commission for its review and advice.

**3. COMPENSATION:**

For and during the initial contract year (January 1, 2007 - June 30, 2008), the Racing Commission agrees to pay Breeders Classics LTD

for all services rendered the Racing Commission pursuant to this Agreement with respect to the Breeders Classics, payable in eighteen (18) consecutive monthly installments of \$10,000.00 each, commencing January 1, 2007, in accordance with the provisions of paragraph 5. For and during each contract year after the initial

contract year terminating June 30, 2008, the Racing Commission agrees to pay Breeders Classics LTD, for all services rendered the

Racing Commission pursuant to this Agreement with respect to the Breeders Classics, payable in eighteen (18) consecutive monthly installments of \$10,000.00

each, commencing in the first month of the term of this Agreement, in accordance with the provisions of paragraph 5. The parties hereto agree that this shall be the only form of compensation payable to Breeders Classics LTD; meaning that there shall be no separate or additional charge for all Breeders Classics administrative services, to be furnished hereunder, promotional activities and/or advertising services, including but not limited to account/client services, creative planning, media planning, strategic planning, art direction, general management, in-house research, copy, layout, art production/mechanical services, broadcast production services, print production services, legal and accounting costs, travel costs, educational conferences and meetings, employee expense, consulting fees, office expenses and other expense items which fall under the category of ordinary and necessary expenses necessary to fulfill the purposes of this

Agreement. The parties acknowledge however that, in order to fulfill this Agreement, Breeders Classics LTD will upon occasion find it necessary to employ outside vendors to direct services, which services would include, among other things, (a) research for data gathering, (b) outside work to be performed by film companies and recording studios, and (c) outside vendors for print production such as photography and illustrations. Except for bidding requirements under paragraph 4.2 which shall not apply to third party purchases, as described in paragraph 2.2.9, all third party purchases are specifically subject to the limitations and restrictions found in paragraph 4 of this Agreement.

**4. THIRD PARTY PURCHASES:**

4.1 The Racing Commission will reimburse Breeders Classics LTD for necessary third party purchases approved in advance by the Racing Commission. Such third party purchases must be germane to the subject matter of this Agreement. The Racing Commission will pay no commission or markup to Breeders Classics LTD for making third party purchases. The Racing Commission shall receive the benefit of all media cash discounts, rebates, frequency discounts, other discounts or special adjustments allowed or allowable to Breeders Classics LTD. Breeders Classics LTD shall make available to the Racing Commission copies of all invoices, including broadcast affidavits, and proof of payment of all invoices, including any third party that was used to provide such production services or materials for the Breeders Classics hereunder. Such documentation shall be made available to the Racing Commission in such form as prescribed by the Racing Commission. The Racing Commission may audit such documentation at any time it deems necessary.

4.2 Except for third party purchases described in paragraph 2.2.9, all third party purchases, for which reimbursement shall be sought under paragraph 4.1, shall be subject to the following:

4.2.1 Prior to any such third party purchases in excess of \_\_\_\_\_, Breeders Classics LTD shall procure three (3) written Bids, which shall be submitted to the Racing Commission for prior written approval. A "No bid" is not considered a bid.

4.2.2 Prior to any such third party purchases in amounts in excess of \_\_\_\_\_ but less than \_\_\_\_\_, Breeders Classics shall procure three verbal bids and shall maintain a record of the verbal bids solicited and received.

4.2.3 When contracting for such third party purchases, Breeders Classics LTD shall make every affirmative effort to contract with West Virginia business vendors, whenever reasonably possible.

## 5. MONTHLY INVOICES:

Pursuant to the finance regulations of the State of West Virginia and the preference of the Racing Commission, all payments will be made to Breeders Classics LTD on a monthly basis following completion of the aforementioned work, herein agreed upon in this Agreement, and the Racing Commission's receipt of monthly invoices from Breeders Classics LTD. West Virginia State law strictly prohibits the payment of any invoice prior to the service being rendered. Breeders Classics LTD therefore agrees to receive its payment from the Racing Commission in arrears only, including especially but not limited to its compensation as provided for in Paragraph 3. All Breeders Classics LTD invoices shall be accompanied by documentation to support each charge.

Subject to the provisions of the State's finance regulations, Breeders Classics LTD shall assure that all products, services and/or media provided or purchased on the Racing Commission's behalf is documented as to actual cost. In the event such documentation is not submitted, no payment will be made on items lacking such documentation. Original invoices must be remitted to the Racing Commission before payment will be made to Breeders Classics LTD. Invoices for broadcast media shall be notarized as testament that the ads represented by the bills actually were aired. Tear sheets must accompany all print media invoices. Breeders Classics LTD shall pay all third-party invoices on or before the due date of the respective invoice regardless of whether or not it has received reimbursement from the Racing Commission for the respective invoice. In the event Breeders Classics LTD fails to pay third-party invoices on or before the due date of each such invoice, then the Racing Commission reserves the right to require that Breeders Classics LTD submit paid source invoices to the Racing Commission before payment will be made on its invoices.

**6. RECORDS AND DOCUMENTS SUBJECT TO INSPECTION AND  
AUDIT:**

All records, contracts, papers, correspondence, copy, books, accounts, as well as other documentation and information in Breeders Classics LTD's possession and care or otherwise under its direction and control and/or relating to the business of the Racing Commission and the Breeders Classics shall be continuously maintained by Breeders Classics LTD and shall be open to inspection, examination, audit and copying at all reasonable times by any authorized representative of the Racing Commission, including especially but not limited to the Racing Commission's Director of Audits, as well as any independent auditors hired by the Racing Commission.

**7. LIABILITY INSURANCE:**

Breeders Classics LTD shall carry liability insurance which shall name the Racing Commission as additional insured, in amounts satisfactory to the Racing Commission, which will protect it and insure against claims and liability arising out of the performance of services required to be provided under the provisions of this Agreement and for the life of this Agreement. Breeders Classics LTD shall provide proof of this insurance coverage.

**8. PAYMENT OF STATE AND LOCAL TAXES:**

Breeders Classics LTD shall at all times be current in its payment of West Virginia state and local taxes and fees.

**9. AGREEMENT NON-ASSIGNABLE:**

This Agreement is non-assignable. Services may be subcontracted only if they are not available within Breeders Classics LTD, as set forth in fulfillment of this Agreement. All subcontracted services, for which reimbursement is sought under paragraph 4.1, must be authorized in advance by the Racing Commission as evidenced by signature of the Racing Commission Executive Secretary; otherwise payment will not be made for such services.

**10. EFFECTIVE DATE AND TERM:**

This Agreement shall become effective beginning on January 1, 2007, and it shall continue in force thereafter for a period of eighteen (18) months unless this Agreement is terminated at an earlier time as hereinafter provided in paragraphs 12 and 13 or extended to a later time as provided in paragraph 11.

**11. OPTIONAL RENEWAL TERMS:**

This Agreement may be renewed upon the mutual written consent of the Racing Commission and Breeders Classics LTD, submitted to the West Virginia Division of Purchasing



thirty (30) days prior to the expiration date. Such renewal shall be in accordance with the terms and conditions of the original Agreement and shall be limited to two (2) eighteen (18) month periods.

**12. CANCELLATION:**

The Racing Commission or the Director of Purchasing reserves the right to cancel this Agreement upon ninety (90) days prior written notice to Breeders Classics LTD that the services supplied by Breeders Classics LTD are deficient as being of inferior quality or do not conform to the specifications and/or requirements of this Agreement; Provided, however, that Breeders Classics LTD may avoid such cancellation if, within such ninety (90) day period, at its own expenses, it corrects such deficiency or nonconformity to the satisfaction of the Racing Commission. In the event this Agreement is canceled, reasonable value for all authorized work performed or services rendered and delivered pursuant to this Agreement and the amount to be paid shall be determined and paid to Breeders Classics LTD by the Racing Commission.

**13. BREEDERS CLASSICS LTD'S RIGHT TO TERMINATE:**

Breeders Classics LTD reserves the right to terminate this Agreement at any time upon no less than ninety (90) days written notice to the Racing Commission. In the event the Breeders Classics LTD elects to terminate this Agreement, reasonable value for all authorized work performed or services rendered and delivered pursuant to this Agreement and the amount to be paid shall be determined and paid to Breeders Classics LTD by the Racing Commission.

**14. CANCELLATION OR TERMINATION OF THIS AGREEMENT:**

Nothing herein contained shall be construed to give the Racing Commission the right to terminate or amend any part of all of this Agreement without reimbursing Breeders Classics LTD for all of its expenses in the preparation of authorized work not fully executed or in the termination of commitments which cannot be canceled in their entirety.

**15. NOTICES:**

Notices required in paragraphs 11, 12, and 13 shall be mailed by certified mail to the following addresses:

Linda L. Lacy, Executive Secretary  
West Virginia Racing Commission  
106 Dee Drive  
Charleston, West Virginia 25311

Robert L. (Sam) Huff, Chief Executive Officer  
West Virginia Breeders Classics LTD  
Post Office Box 1251  
Charles Town, West Virginia 25414

**16. GOVERNING LAW:**

This Agreement is controlled by the laws of the state of West Virginia. Any legal actions to enforce provisions of this Agreement shall be brought only in the Circuit Court of Kanawha County, West Virginia.

**17. INCONSISTENCY IN AGREEMENT:**

In the event of an inconsistency in this Agreement, the inconsistency shall be resolved by giving precedence in the following order:

17.1 The code of West Virginia, 1931, as amended

17.2 The terms of this Agreement.