

BEFORE THE METRO CONTRACT REVIEW BOARD

FOR THE PURPOSE OF AUTHORIZING ) RESOLUTION NO. 03-3346  
THE CHIEF OPERATING OFFICER TO )  
EXECUTE A CONTRACT NO. 925081 FOR ) Introduced by Michael J. Jordan, Chief Operating  
MANAGEMENT OF RETAIL OPERATIONS ) Officer, with the concurrence of David Bragdon,  
AT THE OREGON ZOO ) Council President

WHEREAS, the Oregon Zoo is dependent on enterprise income for over 60% of its operating budget;  
and

WHEREAS, retail sales are a critical component of the Zoo's revenue base; and

WHEREAS, currently retail sales at the Oregon Zoo are below the median for similar zoos; and

WHEREAS, an operating contract with a retail expert should increase operating revenues for the  
Oregon Zoo; and

WHEREAS, in Resolution No. 03-3319A, For the Purpose of Authorizing Release of RFP 03-1065-  
ZOO for Retail Operations at the Oregon Zoo and Exempting Selected Contractor from Excise Tax, adopted  
May 1, 2003, the Metro Council authorized the release of RFP 03-1065-ZOO for retail operations at the Oregon  
Zoo;

WHEREAS, three proposers submitted proposals in response to the RFP; and

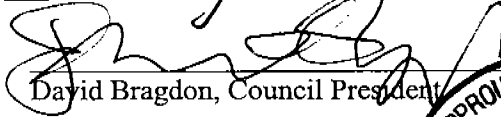
WHEREAS, staff reviewed the three proposals and recommends ARAMARK Sports and Entertainment  
Services, Inc. as the proposer with the qualifications, experience, and financial proposal most beneficial to  
Metro; now, therefore,

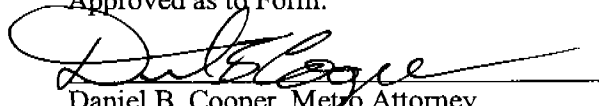
BE IT RESOLVED,

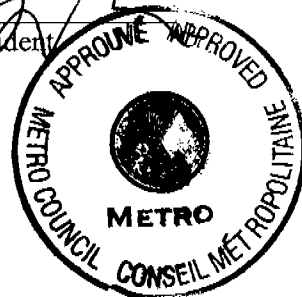
That the Metro Council, acting as the Contract Review Board,

1. Authorizes the Chief Operating Officer to execute a contract substantially similar to the  
attached Exhibit "A" with ARAMARK Sports and Entertainment Services, Inc.

ADOPTED by the Metro Council this 14<sup>th</sup> day of August 2003.

  
David Bragdon, Council President

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



## RETAIL SERVICES OPERATIONS AGREEMENT

THIS AGREEMENT is between Metro, a metropolitan service district organized under the laws of the State of Oregon and the Metro Charter, located at 600 NE Grand Avenue, Portland, Oregon 97232-2736 (“Metro” or “ZOO”), and ARAMARK Sports and Entertainment Services, Inc. referred to herein as “CONTRACTOR,” located at ARAMARK Tower, 1101 Market St., Philadelphia, PA 19107.

In exchange for the promises and other consideration set forth below, the parties intending to be legally bound agree as follows:

**1. Scope of Work.**

CONTRACTOR shall have the exclusive right to operate the Oregon Zoo retail services in a competent and professional manner, subject to the requirements of this Agreement.

**2. Use of Retail Services Premises.**

a. Retail Services Premises.

The Oregon Zoo retail services premises are the retail shop located near the main entrance to the ZOO (“Cascade Outfitters”); and any existing office space in the ZOO that is currently dedicated to the retail operation; and four (4) retail kiosks in locations to be determined by the ZOO, with CONTRACTOR’s advice (collectively, the “Premises,” which currently totals approximately 4,000 square feet of space).

b. Use and Exclusive Rights Granted to CONTRACTOR.

Zoo, having the right to do so, hereby grants CONTRACTOR the exclusive right to sell the Retail Items (as herein defined) at the Premises at the Oregon Zoo, subject to ZOO’s rights as described in paragraph 9(p).

The Premises, which shall be the only locations within the ZOO where merchandise is sold, except as herein provided, shall be used for the retail sale of educational and ZOO-related gift items and non-food merchandise including, but not limited to, the sale of books, prints, statuary, jewelry, stuffed animals, posters, paintings, paper products, educational children’s gifts, design objects, decorative accessories, design furniture, clothing accessories, and collectibles for adults and children in connection with ZOO promotions and exhibits, and other similar type merchandise (collectively, “Retail Items”) and for no other purpose whatsoever. With ZOO’s prior consent, CONTRACTOR may sell at the Premises food items

that are prepared for off-site consumption, e.g. fudge, but CONTRACTOR shall not have the exclusive right to sell such food items. ZOO shall have the right to require CONTRACTOR to remove from the Premises or prohibit CONTRACTOR from selling in the Premises merchandise that ZOO's Assistant Director, in her sole discretion, determines is inappropriate for display and sale in the Premises or inconsistent with ZOO's mission statement.

Certain coin-operated vending operations -(except for stroller and wagon rentals, postage stamp machines, photo booths, sticker machines and penny machines, which are reserved to CONTRACTOR) are excluded from CONTRACTOR's exclusive rights and shall continue to be operated by the ZOO. ZOO vending operations include (1), telescopes (1), rental lockers (1 location), and food vending machines (multiple locations). The ZOO may increase or decrease these vending operations at any time, so long as such increase does not have a material adverse impact on the retail operations reserved to CONTRACTOR hereunder, as determined by the ZOO in its sole discretion.

c. Internet Sales.

CONTRACTOR's exclusive right to sell Retail Items shall also include all sales of Retail Items on the internet.

3. Term.

This Agreement commences on August 1, 2003 (commencement date) and continuing through July 31, 2008, unless terminated or extended as provided in this Agreement.

Renewal Term.

The Agreement may be extended once, for an additional 5-year term, at Metro's sole discretion, if the attendance guarantees are met. If the attendance guarantees are not met, the Agreement may be extended for one additional 5-year term upon the party's mutual agreement.

4. Payments to ZOO.

In further consideration of the rights granted to CONTRACTOR, as set forth in this Agreement, CONTRACTOR shall pay ZOO the following percentage of Gross Receipts obtained by CONTRACTOR from the Premises ("Commissions"):

Gross Receipts	
Up to \$1,500,000.00	30.5%
\$1,500,001.00 - \$2,000,000.00	34.0% (on the increment)
\$2,000,001.00 - \$2,500,000.00	38.0% (on the increment)
\$2,500,001.00	42.0% (on the increment)
Discounted Sales	26%

The revenue from Discounted Sales to members and employees shall not be counted against Gross Receipts for the purpose of determining which percentage tier specified above applies. The Commissions shall be paid monthly in arrears no later than the 15<sup>th</sup> day of each month, the first due date following the commencement date being September 15, 2003.

The term "Gross Receipts" shall mean the dollar aggregate of:

- a. The receipts received by CONTRACTOR for all goods, wares and merchandise sold and the charges for all services rendered or performed by CONTRACTOR or otherwise, from all business conducted on, in, at, or from the Premises, whether made for cash, by check, on credit, charge account, exchange or otherwise, without reserve or deduction for inability or failure to collect for the same, and regardless of the amount, if any, of profits realized on any transaction, including, but not limited to, such sales and services (i) where the orders therefore originate at and are accepted by CONTRACTOR in the Premises, but delivery or performance thereof is made from or at any other place; (ii) pursuant to mail, telegraph, internet, telephone or other similar orders received or billed at or from the Premises; (iii) as a result of transactions pertaining to the Premises originating from whatever source, and which CONTRACTOR in the normal and customary course of its operations would credit or attribute to its business at the Premises and; (iv) receipts CONTRACTOR receives from Subcontractors, provided that ZOO has previously approved the contract between CONTRACTOR and its Subcontractor.
- b. All moneys or other things of value received by CONTRACTOR relating to its operations at the Zoo, which are neither included in nor excluded from Gross Receipts by the other provisions of this definition. Any discounts, rebates or allowances received by CONTRACTOR from merchandise vendors shall not be deemed to be Gross Receipts. All sales and orders originally made in or at the Premises shall be considered as made and completed therein, even though payment of the account may be transferred to some other office of CONTRACTOR for collection, or although delivery of merchandise sold or the performance of service ordered in or at the Premises be made from or at a place other than the Premises.
- c. The term "Gross Receipts" shall not include (or if included, there shall be deducted to the extent of such inclusion) the following: (a) the selling price of all merchandise returned by customers and accepted for full credit or the amount of discounts and allowances made thereon, or the amount of discounts or allowances made in lieu of acceptance thereof, (b) ZOO Member Discounts (as defined in paragraph 14), (c) any sales, use or excise tax required by law to be collected and paid directly by CONTRACTOR, (d) credit card fees, (e) Discounted Sales to members and employees, and (f) Reserve Fund referred to in Section 9(o).

**5. Annual Commission Guarantee.**

Annual Commission guarantees will be based on each Contract Year (as defined below). From commencement August 1, 2003 to July 31, 2004, CONTRACTOR guarantees total Commissions to the Zoo of \$525,000.00. If on July 31, 2004, CONTRACTOR has made Commission payments to ZOO during the Contract Year of less than \$525,000.00, then CONTRACTOR shall remit to ZOO, thirty (30) days after the end of the Contract Year, an amount equal to the difference between \$525,000.00 and the sum of all Commission payments made. CONTRACTOR will be assessed late penalty of 1.5% per month from the date the balance payment is due for any late payments.

During each of the Contract Years in years two through five (2-5) of the Agreement, beginning on August 1, 2004, CONTRACTOR guarantees total Commission payments to ZOO of \$575,000.00. Any shortfalls due shall be paid thirty (30) days after the end of the Contract Year. For any year during the term consisting of less than twelve (12) full months, the guaranteed minimum payment amounts set forth in this Section 5 shall be adjusted on a pro rata basis on the basis of the number of months or partial months in such year.

**6. Minimum Attendance Guarantee and Reductions to Annual Payment Guarantee.**

ZOO guarantees that annual attendance (as defined below) during each contract year (from August 1 to July 31, hereinafter "Contract Year") shall be no less than 1,250,000. Should annual attendance fall below this minimum threshold, CONTRACTOR's annual Commission guarantee (as described in section 5) to ZOO shall be reduced by the same percentage as the attendance shortfall. For any Contract Year during the term consisting of less than twelve (12) full months, the guaranteed annual attendance amount set forth in this Section 6 shall be adjusted on a pro rata basis on the basis of the number of months or partial months in such Contract Year. Annual attendance is defined as the number of members of the public counted through the ZOO admission points during periods when the ZOO is open to the public, during each of the Contract Years during the term, but shall not include individuals entering the Zoo for business purposes. A schedule, which shows total annual attendance, as defined herein, at the ZOO for the years 1998 through 2002 is attached to this document as an Exhibit "A" and the ZOO represents that such attendance figures are true and correct. During the life of this Agreement, daily attendance reports, if available, shall be provided to CONTRACTOR by ZOO. The Zoo shall submit to ARAMARK an attendance report on a weekly basis, certified as accurate by the Budget and Finance Manager of the Zoo, summarizing ticketing system's total turnstile attendance. ARAMARK shall have the right, at its expense, to audit the books and records of the Zoo in connection with the turnstile attendance from time to time during Zoo's normal business hours upon reasonable advance notice. Such books and records shall be retained by Zoo for a period of at least three (3) years.

7. Premises Condition.

a. Surrender.

ZOO hereby delivers the Cascade Outfitters store in its "AS-IS", present condition, including office furnishings. Upon the termination of the Agreement, CONTRACTOR shall surrender the Premises and all keys thereto, including all improvements, apparatus, fixtures (including lighting fixtures), display cases and shelving, furniture, equipment, storefront signage and all signage within the Premises, and all components to the heating, air-conditioning, plumbing and electrical systems (the "ZOO Property"), which were located in or installed in the Premises on the commencement date of this Agreement, in as good condition and repair as on the commencement date, reasonable wear and tear and obsolete items excepted. CONTRACTOR will be permitted to remove from the Premises only CONTRACTOR's personal property, such as computers, point of sale systems and registers as may be installed on the Premises and paid for by CONTRACTOR. At the time that ZOO conducts the inventory of merchandise pursuant to paragraph 10, ZOO will also prepare a schedule of the ZOO Property contained in the Premises, which schedule will be signed by ZOO and agreed upon by CONTRACTOR and will be attached to and become a part of this Agreement as Exhibit "B."

b. Improvements.

CONTRACTOR shall expend a minimum of \$150,000.00 but not more than \$185,000.00 (the "Investment") to make substantial improvements (as defined below) to the Premises. CONTRACTOR shall comply with all applicable laws when making such improvements. CONTRACTOR and ZOO shall mutually agree upon the terms and conditions for CONTRACTOR, at CONTRACTOR's sole expense, to make said improvements to the Premises for the purpose of enhancing the performance of the retail operation. Upon termination or expiration of the Agreement for any reason, ZOO shall be responsible to reimburse CONTRACTOR for the unamortized balance of the Investment and start-up costs (not to exceed \$25,000) not later than ten (10) days prior to the expiration or termination of this Agreement ("Termination Payment"). The Investment and start-up costs shall be amortized over five years on a straight-line basis from the commencement date. As of July 31, 2008, any improvements made will be 100% depreciated, and ZOO shall have no responsibility to reimburse CONTRACTOR and shall have free and unencumbered title to said improvements.

"Substantial improvements" are defined as improvements that require capital expenditures by CONTRACTOR of \$25,000.00 or more.

**8. Assignment.**

CONTRACTOR shall not sublet or assign its rights under the Agreement, except that Contractor shall be permitted to assign this Agreement to an affiliate, with the prior written approval of the Zoo, not to be unreasonably withheld.

**9. Operating Covenants.**

a. Hours of Operation.

The Premises shall be open for business to the public during the same hours in which the ZOO is open. The Premises shall remain open at least 30 minutes later than ZOO closure during April, May and September or until substantially all visitors have left the ZOO; and at least 1 hour later than ZOO closure from Memorial Day weekend through Labor Day weekend or until substantially all visitors have left the ZOO. ZOO staff shall be permitted to access the Premises during CONTRACTOR's hours of operations. Notwithstanding the foregoing, CONTRACTOR, in the exercise of its reasonable business judgment, may vary on a temporary basis the number and hours of operation of its sales outlets as dictated by changes in business conditions, such as changes in weather and attendance; provided, however, that the Cascade Outfitters store shall be open at all times that the ZOO is open to the public.

b. Trade Names.

Initially, CONTRACTOR shall operate the store under its current name Cascade Outfitters, but may propose and implement, with ZOO's consent, a name change for the store.

c. Noise Control.

CONTRACTOR shall keep the noise level associated with the Premises to a level acceptable to ZOO, determined at the ZOO's discretion.

d. Merchandise Controls.

CONTRACTOR shall purchase and sell only merchandise that is appropriate relative to ZOO's mission statement and in conformance with the permitted uses as provided in paragraph 2. CONTRACTOR will select, order, stock, replenish, insure, and pay for, a sufficient level of merchandise so that there is ample inventory for sale during the term of the Agreement. The ZOO shall have the right to disapprove of any products sold in the retail operations.

e. Recording of Sales.

All sales by CONTRACTOR in the Premises shall be recorded in a POS system maintained by CONTRACTOR and approved by ZOO, such approval not to be unreasonably withheld.

f. Gross Receipts and Tax Records and Reporting.

In accordance with the terms of this Agreement, CONTRACTOR will exercise its best efforts to maximize gross receipts from the retail sales operation during the term of the Agreement. With each monthly percentage of Gross Receipts payment, CONTRACTOR shall provide ZOO with a monthly summary report that shows the daily sales for each retail location separately for the corresponding period. On a daily basis, ZOO's Assistant Director will be included in the distribution of CONTRACTOR's summary sales reporting via e-mail and, on a weekly basis, will receive the POS system station summary reports and the sales by department report for each retail location.

g. Quality Control Standards.

CONTRACTOR shall provide adequate personnel and shall carry a full and complete stock of merchandise during the term of the Agreement.

h. Signage.

All signage shall be subject to review and approval by ZOO's Assistant Director.

i. Licenses.

CONTRACTOR shall obtain and maintain all business and other licenses as may be required by law in connection with the operation of the Premises for retail purposes.

j. POS System.

ZOO's existing POS hardware (registers and computers) will remain in the Premises. CONTRACTOR shall install and maintain a computer point of sale software system necessary to process transactions and control inventory throughout the term of this Agreement. Maintenance and any upgrade of both POS hardware and software systems will be the responsibility of CONTRACTOR.



k. CONTRACTOR Staff.

- 1) CONTRACTOR shall employ and compensate its own employees at the Premises.
- 2) CONTRACTOR shall employ a highly skilled professional retail sales manager who possesses the necessary experience and expertise to provide the overall management capability for a first-class retail sales operation. The ZOO retains the right to approve or disapprove the retail sales manager at any time during the term of this Agreement, and to require CONTRACTOR to replace such personnel within thirty (30) days of receipt of written notice by the Oregon Zoo Assistant Director notifying CONTRACTOR of dissatisfaction with the manager's performance; provided, however, CONTRACTOR shall not be required to take any steps which it deems contrary to applicable law.
- 3) CONTRACTOR shall employ and train all employees necessary for the successful operation of the retail sales operation. Training of the employees must encompass the concepts and policies of a first-class retail operation, including superior customer services skills.
- 4) CONTRACTOR shall employ only competent and orderly employees who will keep themselves neat and clean and accord courteous and competent treatment and service to all ZOO guests. Whenever ZOO notifies CONTRACTOR or its retail operations manager that any employee is deemed by ZOO to be incompetent, disorderly or unsatisfactory, CONTRACTOR will investigate the matter thoroughly and if good cause, as determined by CONTRACTOR exists, CONTRACTOR shall discharge such person, provided however that such discharge is not in violation of any outstanding collective bargaining agreements that may be entered into between CONTRACTOR and a union or any Oregon or federal employment law or regulation.
- 5) CONTRACTOR shall design and prepare specifications for the purchase of uniforms for retail operations employees to be worn on ZOO premises at all times. The uniform design must be approved the Zoo Assistant Director, prior to purchase. CONTRACTOR shall ensure that employees' uniforms are neat and clean at all times.
- 6) CONTRACTOR employees shall have free access to the ZOO under the guidelines of the ZOO's access policy, but family and friends of CONTRACTOR employees must pay normal ZOO fees to enter the ZOO.

1. Additional Powers.

The ZOO shall at all times have the following powers reserved to itself:

- 1) The right to final approval of all policies and procedures related to the operation and management of the retail operations, to the extent such policies and procedures pertain to or affect CONTRACTOR's interaction with customers and ZOO personnel.
- 2) Sole discretion to cancel, terminate, or interrupt any ZOO event, and cause the patrons to be dismissed, or to stop the sale of any product by CONTRACTOR. ZOO shall not be liable to CONTRACTOR for any loss or cost occasioned by any such determination or action by ZOO taken in good faith for the benefit or protection of Metro, Oregon Zoo, or the public generally.
- 3) In the event that any of the retail sales premises are destroyed by an act of God, fire, terrorism, vandalism, or other casualty to the extent that continued operation of the retail sales operations is not feasible, Oregon Zoo is under no obligation to replace the facilities. CONTRACTOR'S Annual Payment

Guarantee under Section (5) shall be proportionately abated during any period the retail sales premises are destroyed or reduced as provided in this section. The abatement shall cease when the destroyed premises are restored or replaced by a comparable facility.

If the entire Zoo must be closed due to fire or other casualty and is not reopened to the public within 180 days from the date of such suspension, CONTRACTOR shall have the right to terminate this Agreement by providing Zoo with 180 days' prior written notice of its intention to do so and Zoo shall pay or cause to be paid to CONTRACTOR the Termination Payment.

m. Applicable Laws.

CONTRACTOR shall comply with all applicable laws and regulations in the operation of the retail sales operations.

n. Taxes.

CONTRACTOR shall pay all sales, business, and occupational taxes, including any property tax ZOO may be assessed as a result of this Agreement, required by law related to the operation of the facilities. Unless Metro excise taxes are imposed as an additional amount to be collected at the time of sale, Metro excise taxes shall be paid by ZOO.

o. Marketing.

At CONTRACTOR'S sole expense, CONTRACTOR shall create a marketing reserve fund in an amount equal to .50% of annual Gross Receipts to be expended on marketing and advertising under this section ("Reserve Fund"). CONTRACTOR is solely responsible for any marketing or advertising of the store, such marketing or advertising to be expended from those amounts in the Reserve Fund. If CONTRACTOR determines, in its sole discretion, to spend more than what is in the Reserve Fund on such marketing and advertising and obtains ZOO's prior approval, such excess expenditure shall be excluded from Gross Receipts, up to a maximum of 1% of annual Gross Receipts. Advertising materials on ZOO grounds or in public media developed by CONTRACTOR must be approved by ZOO. ZOO reserves the right to display materials promoting ZOO programs in the store. At the request of the Zoo Assistant Director, CONTRACTOR shall participate in marketing and advertising-related meetings and provide ZOO with recommendations and assistance related to marketing and advertising. CONTRACTOR acknowledges and agrees to support ZOO's sponsorship sales to the degree that CONTRACTOR is sensitive to any merchandise tie-ins that are contemplated as part of a ZOO sponsorship package. The Reserve Fund need not be deposited into a separate account and may be commingled with other funds of CONTRACTOR. CONTRACTOR, on a quarterly basis, shall provide to Zoo a statement of the Reserve Fund balance and a summary of the Reserve Fund activity. Upon the expiration or sooner termination of the Term, CONTRACTOR and Zoo shall split the then outstanding balance of the Reserve Fund and CONTRACTOR shall remit to Zoo its portion.

p. Non-exclusivity.

ZOO reserves the right to sell from time to time special promotional items and event-related items, or to permit such sales by the Oregon Zoo Foundation, provided, however, that ZOO shall not permit sales that cause an ongoing material adverse impact on CONTRACTOR's sales at the ZOO.

**10. Existing Inventory.**

At a time to be mutually agreed upon, ZOO and CONTRACTOR will jointly conduct a preliminary physical inventory of the merchandise ZOO currently owns and intends to resell in the ZOO store. CONTRACTOR will have at least one representative present during the time when such inventory is taken. During the period between the time when the preliminary inventory is taken and the commencement date, ZOO shall provide CONTRACTOR with the inventory data from the preliminary inventory and shall permit CONTRACTOR to enter such inventory data into CONTRACTOR's systems, provided that CONTRACTOR's presence at the ZOO or in the ZOO store during such period shall not be interpreted or regarded in any way as a commencement of the Agreement. Immediately prior to the commencement date, ZOO and CONTRACTOR will conduct a final physical inventory of the merchandise. CONTRACTOR

will have at least one representative present during the time when such inventory is taken. All damaged and obsolete merchandise to be determined mutually by the parties, not to exceed \$50,000.00 in value, will be removed from stock by ZOO at the time of the final inventory or may be discounted as agreed upon by the parties. The removed merchandise will belong exclusively to ZOO. The remaining merchandise will be valued at the time of the final inventory, at the price for such merchandise, plus freight costs of 1.5%. CONTRACTOR will make cash payments to ZOO for the remaining merchandise – excluding that which is deemed to be damaged or obsolete, up to \$300,000.00 – in accordance with the following schedule:

Commencement date:	25% of value
October 1, 2003:	25% of value
January 1, 2004:	25% of value
April 1, 2004:	25% of value

#### **11. ZOO's Services.**

ZOO shall provide the following services to CONTRACTOR:

a. Utilities.

HVAC and electrical power "AS-IS" to site. ZOO will pay monthly for electric and natural gas utilities. Telephone hook-ups and point of sale network cable lines in the store will be "AS-IS", present condition. CONTRACTOR shall be responsible for procuring telephone service to and point of sale network cable lines within the store. Electrical power to the store will be "AS-IS", present condition. Electrical power lines, telephone lines and point of sale network cable lines, as may be required by CONTRACTOR to the retail kiosks will be installed at CONTRACTOR's expense. ZOO will be responsible for the supervision of the installation of telephone lines and electrical power lines and will bill CONTRACTOR for the reasonable cost thereof.

b. Security.

ZOO will provide security service to the Premises at levels consistent with levels of security currently being provided by ZOO at the ZOO. ZOO shall not be responsible for any losses that CONTRACTOR may suffer due to shrinkage. ZOO security staff shall have reasonable access to the store to patrol and shall provide emergency response as necessary during operating and non-operating hours.

c. Janitorial/Trash and Pest Control Services.

ZOO shall provide the following janitorial services to the Premises: daily trash removal and recycling pickup from holding area, quarterly cleaning of office and shop entryway carpet, and annual scrub and top coat of sales floor. The ZOO will provide no janitorial services at kiosk locations. CONTRACTOR shall pay ZOO for the costs of any additional janitorial services requested by CONTRACTOR or required as a result of CONTRACTOR's operations in the Premises. CONTRACTOR will be responsible for cleaning the Premises. ZOO shall provide pest control and extermination services in the Premises.

d. Maintenance and Repairs.

CONTRACTOR shall be responsible for maintenance, repair and replacement of fixtures, personal property and computer point of sale systems furnished by Contractor, normal wear and tear excepted; Contractor shall be responsible for the maintenance and repair of those items listed on Exhibit "B," normal wear and tear and obsolete items excepted; Contractor shall not be responsible for the maintenance, repair or replacement of any other items except as provided herein. CONTRACTOR shall clean up all trash and rubbish in and around delivery areas, loading platforms and docks and service corridors that occur in connection with the delivery of merchandise to the ZOO and the Premises. CONTRACTOR will utilize ZOO's maintenance personnel CONTRACTOR's maintenance, repair and cleanup obligations and will be billed by ZOO on a monthly basis for such work; provided such work is not otherwise the responsibility of the Zoo hereunder. Maintenance and repair functions may be performed outside of the Premises' normal operating hours with prior arrangement by CONTRACTOR. Notwithstanding anything contained herein to the contrary, Zoo shall timely make and pay for all maintenance, repairs and replacements to all utilities and building systems of the Premises, except when such repairs are necessitated by Contractor's negligence.

**12. Parking.**

The use and occupation by CONTRACTOR of the Premises shall include the non-exclusive use in common with others entitled thereto the parking area designated for ZOO employees, subject to the terms and conditions of this Agreement and reasonable rules and regulations for the use thereof as prescribed from time to time by ZOO. The parking area shall be subject to the exclusive control of ZOO, and ZOO shall have the right to make changes, additions, deletions, alterations or improvements to the parking area. ZOO may designate certain portions of the parking area as reserved for use by certain designated parties. CONTRACTOR and CONTRACTOR's employees and agents will park their vehicles only in those portions of the parking area designated for that purpose by ZOO. CONTRACTOR's employees will participate in ZOO employee programs to limit parking usage in peak visitor periods.

**13. Website.**

CONTRACTOR shall develop, host and operate ZOO's online store at www.oregonzoo.org through third party vendors and suppliers chosen by CONTRACTOR, subject to ZOO's approval, in ZOO's sole and absolute discretion. The cost of hosting, software and maintenance of the website shall be borne solely by CONTRACTOR. CONTRACTOR shall obtain written approval by ZOO for text, logo use, and website design. Upon expiration or sooner termination of the term hereof, CONTRACTOR, at ZOO's request, shall assign its interests in such website to ZOO.

**14. ZOO Member Discounts.**

CONTRACTOR agrees to participate in ZOO's program which offers discounts on merchandise to ZOO members as a benefit of membership ("Zoo Member Discounts"), as may be determined by ZOO, and approved by CONTRACTOR, from time to time. Zoo Members, ZOO and Metro employees, to the extent that discounts are provided to Metro employees as part of Metro's employment compensation and benefit program, shall be entitled to a 10% discount off the ticketed or otherwise listed price of each item in the Premises for the life of the Agreement ("Employee Discounts"). Verification of membership or ZOO or Metro employment must be made at the time of the purchase. Zoo Member Discounts and Employee Discounts are sometimes collectively referred to herein as "Discounts". Discounted Sales shall mean Gross Receipts from the Discounts.

**15. CONTRACTOR Inventory.**

At the expiration (or earlier termination) of the Agreement, provided that CONTRACTOR is not then in default, ZOO will pay CONTRACTOR for the merchandise then in the Premises per paragraph 10 above – i.e., in the same manner and with the exactly the same terms that CONTRACTOR buys the existing inventory (as of the commencement date) from ZOO.

**16. Annual Meetings.**

Commencing in the year 2004, during the month of January of each calendar year during the term of the Agreement, ZOO and CONTRACTOR will meet to discuss CONTRACTOR's operations in the Premises, including, but not limited to, the nature and type of merchandise being marketed in the Premises, CONTRACTOR's success in meeting targeted gross receipts, capital improvements to the premises which may be necessary, staffing issues and any other matters which ZOO and CONTRACTOR consider appropriate to enhance operations in the Premises. At least 90 days in advance of the annual meeting, CONTRACTOR will develop a survey of the ZOO visitor shopping experience that will be administered by ZOO. The results from the survey will be discussed at the annual meeting.

**17. Financial Statements.**

Commencing in the year 2004, during the month of January of each calendar year during the term of the Agreement, CONTRACTOR shall provide ZOO with a copy of CONTRACTOR's most recent audited statement of Gross Receipts, certified by the CONTRACTOR's chief financial officer.

CONTRACTOR shall also provide monthly, during the term of the Agreement, Gross Receipts reports accompanying the monthly payments, in a format reasonably acceptable to ZOO.

**18. Construction in the Premises.**

All construction, renovation and alterations in the Premises during the term of the Agreement must be approved by and supervised by ZOO's Assistant Director.

**19. Indemnity and Insurance.**

CONTRACTOR shall indemnify and hold Metro, its agents, employees and elected officials harmless from any and all claims, demands, damages, actions, losses and expenses, including attorney's fees, arising out of or in any way connected with its performance of this Agreement, or with any patent infringement or copyright claims arising out of the use of CONTRACTOR's designs or other materials by Metro and for any claims or disputes involving Subcontractors. ZOO shall cooperate with CONTRACTOR in the investigation, defense, and settlement of all claims; except such damages or liability arising from, or attributable to Zoo's sole negligence or willful misconduct.

CONTRACTOR shall procure and maintain at CONTRACTOR's sole cost and expense, throughout the term of the Agreement, the following insurance policies, written by companies licensed in the State of Oregon and acceptable to Metro:

- a. Commercial General Liability Insurance in combination with excess covering the Premises with combined single limits of Two Million Dollars (\$2,000,000.00) per occurrence for bodily injury and property damage with automatic coverage for premises operations and product liability; and
- b. Contractual liability insurance sufficient to cover CONTRACTOR's indemnity obligations under the Agreement; and
- c. Automobile bodily injury and property damage liability insurance in a minimum of One Million Dollars (\$1,000,000.00) per occurrence; and
- d. All risk or special form insurance coverage for inventory, CONTRACTOR's contents, or any real or personal property, or its agents, employees, and waives all rights of subrogation. Business Interruption Insurance to assure continued payments in amounts consistent with the contract and all other payments historically received; and
- e. Money and security insurance coverage and employee dishonesty coverage to cover loss or theft of money and property by employees, each to have a minimum limit of \$100,000.00.
- f. A performance bond in the attached form as Exhibit "C" in the amount of not less than \$500,000 to Metro to assure compliance with all provisions of this

Agreement, including all financial obligations. The performance bond shall be conditioned on the faithful performance of CONTRACTOR's payment of moneys due or obligations owing to Metro, all suppliers, material men, Subcontractors, and employees.

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 Metro with certification of Workers' Compensation insurance including employer's liability. If CONTRACTOR has no employees and will perform the work without the assistance of others, a certificate to that effect may be attached, as Exhibit "D," in lieu of the certificate showing current Workers' Compensation; and

Metro will provide property insurance on all real and personal property owned by Metro and waives subrogation for all losses except such waiver of subrogation shall not be applied toward deductibles or any amounts not reimbursed by Metro's property insurance; and

All insurance policies required by the Agreement shall be in form and content reasonably satisfactory to ZOO and General, Excess and Automobile Liability insurance policies shall include **Metro, Oregon Zoo, its elected officials, employees, and agents as an ADDITIONAL INSURED.** CONTRACTOR shall make no adverse modifications to its insurance without the authorization of Metro. Notice of any policy cancellation shall be provided to Metro 30 days prior to the cancellation.

Upon request, CONTRACTOR shall provide Metro with certificates of insurance complying with this section and naming Metro as an additional insured within fifteen (15) days of execution of this Agreement or twenty-four (24) hours before services under this Agreement commence, whichever date is earlier.

**20. Inspection and Audit of Records.**

- a. CONTRACTOR shall keep within the Metro regional boundary true and complete records and accounts of all revenues, including daily bank deposits, with respect to Gross Receipts. CONTRACTOR agrees to establish and maintain a system of bookkeeping, which is consistent with generally accepted accounting principles and satisfactory to ZOO and to give the ZOO's authorized representatives access during reasonable hours to such books and records upon reasonable advance written notice to CONTRACTOR. CONTRACTOR agrees that it will keep and preserve for at least three (3) years all cash register tapes, credit card invoices, bank books, or duplicate deposit slips, and other evidence of Gross Receipts and business transacted for such period, and upon ten (10) business days written



notice, CONTRACTOR shall make available to ZOO all documents required to be kept and maintained pursuant to the Agreement.

- b. ZOO shall have the right at any reasonable time, and from time to time at ZOO's expense, to engage auditors to conduct an audit of all of the books of account, bank statements, documents, records, returns, papers, and files of CONTRACTOR relating to Gross Receipts, and CONTRACTOR, upon reasonable advance written request, shall make all such matters available for such examination. If such audit shows a deficiency in reporting Percentage of Gross Receipts for the period covered, and a deficiency in the payment of such fees shall be finally determined to exist, the amount thereof shall be paid promptly by CONTRACTOR to ZOO plus a service charge of 1% of said sum per month for each month from the date payment was due until the date payment is made. Further, in the event any audit or inspection discloses a single or cumulative deficiency in excess of 1% of the amount previously paid by CONTRACTOR to ZOO on account of any Contract Year, CONTRACTOR shall forthwith pay to ZOO the reasonable cost of the audit and/or inspection and such cost shall include all direct and indirect salary costs of ZOO, any charges made by any auditor or consultant of ZOO, and materials, supplies, and administrative overhead (as shall be determined by ZOO's Assistant Director from time to time).
- c. Subject to the notice and cure period, nothing contained in this paragraph shall preclude ZOO from terminating in the event any inspection or audit discloses a material deficiency or deficiencies as indicated in this paragraph. In the event the ZOO uses counsel to collect any sums ultimately determined to be due to it from CONTRACTOR, CONTRACTOR agrees to pay ZOO its costs and reasonable attorney's fees, including the reasonable value of any services provided by in-house counsel.
- d. CONTRACTOR will record each individual sale by cash register tape and will not permit any of its employees to make change for customers from boxes or containers, or from pockets of clothing, but will, instead, furnish lockable cash registers and cash drawers for its employees.

**21. Inspection and Testing by ZOO.**

ZOO shall have the right to observe a transaction or transactions between CONTRACTOR and the public to determine the quality and quantity of merchandise offered to the public, the prices charged for merchandise, and the accountability of the revenue received from the sale of merchandise.

**22. Termination by Mutual Consent.**

This Agreement may be terminated by mutual consent of the parties.

23. Termination by ZOO.

- a. The ZOO may terminate at its option and without prior notice if any one or more of the following events shall occur:
- 1) CONTRACTOR shall become insolvent, or shall take the benefit of any present or future insolvency statute; or shall make a general assignment for the benefit of creditors, or file a voluntary petition in bankruptcy or petition or answer seeking an arrangement or its reorganization or the readjustment of its indebtedness under the Federal bankruptcy laws or under any other law or statute of the United States or of any state thereof, or consent to the appointment of a receiver, trustee, or liquidator of all or substantially all of its property; or
  - 2) By order or decree of a court CONTRACTOR shall be adjudged bankrupt or an order shall be made approving a petition filed by any of its creditors or by any of its stockholders, seeking its reorganization or the readjustment of its indebtedness under the Federal bankruptcy laws or under any law or statute of the United States or any state thereof; or
  - 3) A petition under any part of the Federal bankruptcy laws or an action under any present or future insolvency law or statute shall be filed against CONTRACTOR and shall not be dismissed within ninety (90) days after the filing thereof; or
  - 4) By or pursuant to, or under authority of any legislative act, resolution or rule, or any order or decree of any court or government board, agency or officer, a receiver, trustee, or liquidator shall take possession or control of all or substantially all of the property of CONTRACTOR and such possession or control shall continue in effect for a period of thirty (30) days; or
  - 5) CONTRACTOR shall become a corporation in dissolution; or
  - 6) The interests of or rights of CONTRACTOR hereunder shall be transferred to, passed to, or devolve upon, by operation of law or otherwise, any other person, firm, corporation, or other entity, by, in connection with or as a result of any bankruptcy, insolvency, trusteeship, liquidation, or other proceeding or occurrence described in sub-paragraph 1, 2, 3, 4 or 5 of this paragraph; or
  - 7) Labor Disputes: In the event CONTRACTOR cannot perform its obligations under this Agreement because of labor disputes, ZOO may terminate the contract, in part or in whole, and take control of the operations.

- 8) CONTRACTOR shall abandon its operations on the Premises, or, after exhausting or abandoning any further appeals, CONTRACTOR shall be prevented for a period of thirty (30) days by action of any governmental agency from conducting its full operation on the Premises regardless of the fault of CONTRACTOR.
- b. If, in the opinion of the ZOO, a change in ownership or control of the CONTRACTOR occurs, then such change shall not be grounds for termination of CONTRACTOR's rights hereunder if the successor corporation shall acknowledge in writing to ZOO that it has all the obligations of CONTRACTOR under the Agreement and the ZOO provides written consent. The ZOO reserves the right to change terms and conditions as it sees appropriate. If the successor corporation shall fail to satisfy the foregoing condition, ZOO may, at its option, terminate this Agreement by sending written notice of termination, by registered or certified mail, at its address set forth herein, which notice shall be deemed given when mailed.
- c. If CONTRACTOR shall fail duly and punctually to pay the Percentage of Gross Receipts, or shall fail to pay when due any other sum required to be made to ZOO pursuant to the Agreement, or if CONTRACTOR shall be in default of any payment required to be made to ZOO pursuant to any other agreement between CONTRACTOR and ZOO, or if CONTRACTOR violates any of the terms of the Agreement with respect to the items sold, their quality, or price, then fifteen (15) business days after receipt by CONTRACTOR of notice of default sent by ZOO by registered or certified mail return receipt requested, ZOO may, at its option, terminate the Agreement by sending written notice of termination, by registered or certified mail, to CONTRACTOR at its address specified herein; provided, however, that ZOO may, at its option, include notice of termination in its notice of default. It is understood and agreed that CONTRACTOR may avoid termination by curing all such defaults within the fifteen-(15) day period described herein.
- d. Upon the occurrence of any of the following events or at any time thereafter during the continuance thereof, ZOO may, at its option, terminate the Agreement by sending ten-(10) business days' written notice of termination by registered or certified mail to CONTRACTOR at its address specified herein:
- 1) Any lien shall be filed against the Premises or any portion thereof because of any act or omission of CONTRACTOR and not discharged within twenty (20) business days, unless CONTRACTOR within the aforesaid twenty (20) business days furnishes to ZOO such bond as ZOO in its discretion determines to be adequate to protect the interests of ZOO; or
  - 2) CONTRACTOR fails to keep, perform and observe any promise, covenant, or other provision of the Agreement (other than a default as described in sub-paragraph c. hereof), or fails to keep, perform, and

observe any promise, covenant, or other provision of any other agreement between CONTRACTOR and ZOO, within twenty (20) business days after receipt by CONTRACTOR of written notice of default by registered or certified mail, return receipt requested, from ZOO; or if fulfillment of the obligation in question requires activity over a longer period of time, CONTRACTOR fails to begin such activity within twenty (20) business days after receipt by CONTRACTOR of notice of default as aforesaid, or in the opinion of ZOO fails diligently to pursue such activity.

- e. CONTRACTOR will be allowed only one (1) notice of material default under sub-sections c. or d. above in any ZOO fiscal year which it may cure within the time specified therein. The second such notice in any ZOO fiscal year shall, at the option of ZOO, be final and shall cancel and terminate all of CONTRACTOR's rights hereunder without any right on the part of CONTRACTOR to cure such default after receiving such notice.

**24. Intellectual Property.** Neither party shall have any right to use the other party's trademarks, service marks and copyrighted materials without first obtaining the prior written consent of the other party, except as follows: All logos, trade names or other proprietary information or materials used by CONTRACTOR in its business shall remain the sole property of CONTRACTOR. Any marketing, public relations, advertising, sponsorship, and promotional materials used or created specifically in connection with the Retail Services at the Zoo (excluding any such materials used or created by CONTRACTOR in the conduct of its business at operating locations other than the Zoo), whether prepared by Zoo or otherwise, including but not limited to logos, radio ads, television ads, billboards, letterhead, ticket stock, on-site signs, banners, programs, coupons, print ads and like printed materials of any kind (collectively, the "Property") shall be owned exclusively by Zoo and may not be used by CONTRACTOR, its employees, Subcontractors and/or agents for any other purpose except in the conduct of the Retail Services. Without limiting the foregoing, Zoo specifically acknowledges that CONTRACTOR routinely develops proprietary products and systems for use in its business, which proprietary products and systems include trademarks, logos, trade names and marketing and promotional materials and that all such materials, unless pertaining solely to the Zoo and specifically created solely for use at the Zoo, shall remain the property of CONTRACTOR and shall not be deemed to be "Property" for purposes of this Agreement. CONTRACTOR hereby assigns to Zoo all rights, title and interests in such Property and shall enter into agreements with each of its employees, Subcontractors and/or agents which shall likewise provide for assignment to Zoo of all rights, title and interest in the Property. Any and all Property, and material containing Property, shall be forthwith delivered by CONTRACTOR to Zoo on request by Zoo. Zoo may alter any such work, add to it, or combine it with any other work or works, in its sole discretion.

**25. Non-Solicitation:** Zoo hereby expressly agrees that during the Term (including any extensions thereof) and for a period of twenty-four (24) months following either the expiration or earlier termination of this Agreement, neither Zoo nor any other retail service operator under Zoo's control and providing retail services, in, to, or for any areas of the Zoo, nor any of their respective affiliates, related entities or individuals under Zoo's control shall directly or indirectly

solicit, hire, offer to hire or employ any former or current salaried or management level employee of CONTRACTOR or its partners (including, but not limited to CONTRACTOR's current or former general manager and the manager of the various areas of the Premises) to work or in connection with the Zoo or the Premises as a consultant, employee, independent contractor or otherwise in any other capacity without CONTRACTOR's prior written approval, which approval can be granted or denied in CONTRACTOR's sole and absolute discretion. The provision of this Section shall survive the termination of this Agreement for any reason.

**26. Notices.**

- a. All notices required to be given by CONTRACTOR to ZOO pursuant to the Agreement shall be in writing and sent by registered mail to:

Oregon Zoo  
Attn: Teri Dresler, Assistant Director  
4001 SW Canyon Road  
Portland, Oregon 97221-2705

Or such other place as ZOO may from time to time designate in writing to CONTRACTOR.

- b. All notices required to be given by ZOO to CONTRACTOR pursuant to the Agreement shall be in writing and sent by registered mail to:

ARAMARK Sports and Entertainment Services, Inc.  
1101 Market Street  
Philadelphia, PA 19107-2934

Or such other place as CONTRACTOR may from time to time designate in writing to ZOO.

**27. Assistant Director.**

The ZOO may designate another ZOO employee to perform any or all of the duties of the Assistant Director under this Agreement.

**28. Equal Employment Opportunity.**

During the performance of the Agreement, CONTRACTOR agrees not to discriminate against any employee or applicant for employment because of race, creed, color, sex, sexual preference or national origin.

**29. Project Information.**

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

**30. 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 Metro. CONTRACTOR is solely responsible for its performance under this Agreement and the quality of its work; for obtaining and maintaining all licenses and certifications necessary to carry out this Agreement; for payment of any fees, taxes, royalties, or other expenses necessary to complete the work except as otherwise specified in the 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 any request for payment to Metro. Nothing in this Agreement shall be construed as creating a partnership or joint venture between ZOO and CONTRACTOR.

**31. State and Federal Law Constraints.**

Both parties shall comply with the public contracting provisions of ORS chapter 279, and the recycling provisions of ORS 279.545 - 279.650, to the extent those provisions apply to this Agreement. All such provisions required to be included in this Agreement are incorporated herein by reference. CONTRACTOR shall comply with all applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations including those of the Americans with Disabilities Act; provided, however, that, all structural modifications to the existing premises of the Oregon Zoo, or any part thereof, required by the Federal or State Occupational Safety and/or Health Acts, Title III of the Americans With Disabilities Act ("ADA"), and building construction codes shall be made by Zoo, and such modifications shall not be made at Contractor's expense. Contractor shall be responsible for the ADA compliance of its improvements.

**32. 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.

**33. No Waiver of Claims.**

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

34. **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.

**ARAMARK SPORTS AND  
ENTERTAINMENT SERVICES, INC.**

**METRO**

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

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

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

Michael J. Jordan  
Chief Operating Officer

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

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

**Exhibit A**  
**Schedule of Total Annual Attendance of**  
**Oregon Zoo Years 1998 through 2002**



OREGON ZOO MONTHLY ATTENDANCE HISTORY							Exhibit A - Attendance History						
FISCAL													
YEAR	JULY	AUG	SEPT	OCT	NOV	DEC	JAN	FEB	MAR	APR	MAY	JUNE	TOTAL
59-60	90,626	127,856	34,117	40,782	35,728	14,402	10,372	32,158	39,935	56,651	83,605	99,543	665,775
60-61	138,412	137,144	52,684	35,148	22,407	10,186	9,491	14,197	28,888	41,052	101,733	71,500	662,842
61-62	140,358	135,175	45,412	31,310	11,460	9,391	21,630	17,571	38,860	115,237	132,297	217,210	915,911
62-63	217,783	219,152	103,982	61,146	41,623	24,679	24,267	33,909	51,957	43,880	93,673	94,913	1,010,964
63-64	138,096	162,059	97,175	52,430	32,308	11,049	17,915	27,953	50,345	58,349	84,948	104,695	837,322
64-65	146,384	125,590	65,687	44,208	10,528	5,897	13,603	22,688	72,020	67,166	78,273	94,904	746,948
65-66	135,797	120,554	67,540	40,102	14,619	12,635	12,993	17,129	30,771	80,566	84,283	95,040	712,029
66-67	138,088	133,074	70,975	31,520	17,662	8,890	12,595	25,047	47,415	68,160	88,163	99,276	740,865
67-68	132,644	126,156	67,043	41,091	17,301	8,651	12,255	23,789	45,416	65,601	85,065	95,880	720,892
68-69	121,285	115,353	61,302	37,572	15,820	7,910	11,206	21,752	41,527	59,983	77,781	87,667	659,158
69-70	133,035	125,644	65,778	39,074	14,782	6,652	6,265	27,562	55,578	36,957	104,661	123,094	739,082
70-71	116,499	125,925	76,666	34,167	18,514	12,614	7,932	31,259	39,314	61,439	84,787	112,742	721,858
71-72	113,246	102,903	48,549	33,770	10,507	4,057	9,968	16,125	35,266	52,582	82,003	85,204	594,180
72-73	115,682	100,945	41,104	36,441	14,667	4,974	10,214	24,516	39,444	56,746	75,104	65,068	584,905
73-74	93,964	84,863	43,030	17,525	6,771	5,381	4,007	9,954	39,334	35,681	65,766	69,627	475,903
74-75	85,023	77,154	42,766	26,478	13,194	5,140	5,915	8,212	25,623	32,783	66,035	63,112	451,435
75-76	78,343	83,169	51,571	17,898	9,319	6,218	15,939	26,715	48,227	54,055	80,012	85,209	556,675
76-77	105,053	99,287	55,258	32,822	26,339	12,722	18,818	23,324	52,237	61,367	64,521	89,565	641,313
77-78	101,035	74,587	38,249	33,112	8,718	8,128	9,148	24,044	70,148	42,510	78,031	74,935	562,645
78-79	88,441	71,898	32,120	39,284	11,938	8,740	4,952	8,272	73,066	49,577	85,315	82,367	555,970
79-80	104,544	99,326	56,781	42,193	21,123	18,140	16,706	26,986	70,583	63,259	84,149	72,087	675,877
80-81	118,661	125,405	47,852	35,480	15,439	16,173	30,565	32,027	69,157	49,994	90,137	81,876	712,766
81-82	127,350	105,740	51,947	33,087	22,312	7,677	9,164	14,727	71,042	54,073	113,356	84,519	694,994
82-83	126,082	112,156	48,679	41,998	16,451	14,227	14,207	22,240	56,862	85,154	95,452	82,199	715,707
83-84	123,847	126,729	61,558	36,799	12,250	3,986	24,154	30,880	68,489	50,002	95,073	104,677	738,444
84-85	142,992	133,710	64,359	21,210	9,970	7,116	18,853	28,522	71,300	82,021	115,391	119,104	814,548
85-86	141,530	122,590	53,052	29,542	8,859	11,726	18,248	20,697	94,789	62,903	110,623	120,019	794,578
86-87	164,914	158,167	53,464	53,800	20,817	18,748	19,003	35,750	95,437	75,133	126,063	156,663	977,959
87-88	162,482	142,902	71,483	63,431	23,031	10,655	20,757	47,552	63,847	66,361	98,069	121,650	892,220
88-89	138,419	152,084	70,019	55,978	13,307	38,350	21,231	19,540	54,295	115,762	166,818	157,610	1,003,413

	OREGON ZOO MONTHLY ATTENDANCE HISTORY						Exhibit A - Attendance History						
FISCAL													
YEAR	JULY	AUG	SEPT	OCT	NOV	DEC	JAN	FEB	MAR	APR	MAY	JUNE	TOTAL
89-90	196,156	165,554	88,926	50,834	26,847	78,102	17,904	33,911	101,966	78,144	108,649	133,349	1,080,342
90-91	160,464	142,925	89,254	36,708	25,433	36,660	37,074	45,279	60,346	60,511	109,353	148,918	952,925
91-92	191,487	168,802	91,127	91,079	21,126	67,722	33,745	46,171	117,840	72,452	138,844	121,683	1,162,078
92-93	174,331	153,197	72,655	81,210	18,559	43,738	18,430	35,238	67,830	52,195	132,898	127,241	977,522
93-94	150,322	161,059	88,109	94,675	21,821	77,283	33,645	23,154	85,336	85,385	129,066	154,514	1,104,369
94-95	163,598	159,517	111,386	104,736	17,415	78,439	22,828	42,637	71,411	100,038	148,713	130,726	1,151,444
95-96	172,032	155,232	77,766	85,192	23,575	57,878	18,166	23,951	87,725	82,351	123,317	145,625	1,052,810
96-97	131,443	144,239	72,439	70,375	25,118	42,913	17,332	39,003	60,390	81,115	131,940	128,706	945,013
97-98	162,336	137,858	69,706	79,846	44,287	61,077	17,318	21,939	63,267	99,636	113,063	134,462	1,004,795
98-99	157,053	150,058	102,878	52,062	23,001	57,506	22,616	23,363	72,035	111,154	145,396	130,157	1,047,279
99-00	193,546	162,184	107,395	72,783	28,512	92,143	24,146	39,955	81,037	130,007	138,965	155,329	1,226,002
00-01	228,413	224,858	99,731	62,377	40,851	103,092	36,660	48,930	96,287	99,626	179,942	147,173	1,367,940
01-02	206,946	205,192	114,491	54,126	38,210	86,389	19,719	51,694	92,452	128,777	159,560	161,903	1,319,459
02-03	200,982	204,484	113,038	64,147	47,271	86,811	33,950	53,047	77,894	96,138	169,123	146,712	1,293,597

**Exhibit B**  
**Schedule of the ZOO Property Contained in the Premises**

## **Existing Equipment Listing 8/15/03**

### **Cascade Outfitters (Main Store)**

19 ea. Gondola Floor Fixtures  
4 ea. Cash Wrap Counters  
2 ea. Glass Display Case  
3 ea. Square Floor Display Counter  
2 ea. Bunker Display Unit  
1 ea. Market Umbrella  
4 ea. Micros POS Device, Receipt Printer, Cash Drawer  
1 ea. Chrome T-Stand  
1 ea. Chrome 4 Way Stand  
1 ea. Glass Etagere Unit  
2 ea. Tree Display Units  
Glass Shelves  
Assorted Chrome Hardware (Peg Hooks, Brackets, Baskets)  
Grid Wall Panels

### **Office Area**

3 ea. File Cabinets  
3 ea. Desks  
1 ea. Computer Desk  
1 ea. Fax Machine \*  
1 ea. Fax Machine Cart \*  
3 ea. Computer Monitors \*  
2 ea. Servers \*  
3 ea. Percon Hand Held Units

### **Warehouse Area**

3 ea. Cabinets  
1 ea. Work Bench  
1 ea. Security Cage Cabinet  
1 ea. Ladder  
1 ea. Slat Display Fixture  
Metro Style Warehouse Shelving  
1 ea. Bunker  
2 ea. Shelf Unit Bunker  
1 ea. CD Stereo System  
1 – 4 drawer Till Locker \*

### **Stroller Garage**

1 ea. Micros POS Device, Receipt Printer, Cash Drawer  
1 ea. Cash Wrap station  
Double Blue Metal Strollers  
Single Blue Metal Strollers  
Blue Plastic Wagons  
Wheelchairs

### **Tiger Store**

1 ea. Micros POS Device, Receipt Printer, Cash Drawer  
1 ea. Pin Wheel Floor Fixture  
1 ea. Register Base Counter

**Crossroads Tent**

1 ea. Micros POS Device, Receipt Printer, Cash Drawer

1 ea. Counter

1 ea. Pinwheel Floor Fixture

\* Denotes items to be returned to Zoo as replacement items are purchased by Aramark

**Exhibit "C"**

**PERFORMANCE BOND**

KNOW BY ALL MEN THESE PRESENTS:

We the undersigned ARAMARK Sports And Entertainment Services as PRINCIPAL (hereinafter called "CONTRACTOR"), and \_\_\_\_\_ a corporation organized and existing under and by virtue of the laws of the state of \_\_\_\_\_, duly authorized to do surety business in the state of Oregon and named on the current list of approved surety companies acceptable on federal bonds and conforming with the underwriting limitations as published in the Federal Register by the audit staff of the Bureau of Accounts and the U.S. Treasury Department and is of the appropriate class for the bond amount as determined by Best's Rating System, as SURETY, hereby hold and firmly bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, to pay to Metro, a metropolitan service district organized under the laws of the State of Oregon and the Metro Charter, located at 600 NE Grand Avenue, Portland, Oregon 97232-2736 ("Metro" or "Oregon Zoo"), the amount of Five Hundred Thousand Dollars (\$ 500,000), in lawful money of the United States of America.

WHEREAS, the CONTRACTOR entered into a contract amendment with Metro dated \_\_\_\_\_, which contract is hereunto annexed and made a part hereof, for accomplishment of the project described as follows: To perform as the retail services operator at the Oregon Zoo facilities pursuant to the Retail Services Operations Agreement between CONTRACTOR and Metro.

NOW, THEREFORE, the condition of this obligation is such that if the CONTRACTOR shall promptly, truly and faithfully perform all the undertakings, covenants, terms, conditions, and agreements of the aforesaid Retail Services Operations Agreement, Metro having performed its obligations thereunder, then this obligation shall be null and void; otherwise it shall remain in full force and effect.

Whenever CONTRACTOR shall be declared by Metro to be in default under the Contract Documents for the project described herein, the SURETY may promptly remedy the default. SURETY, for value received, further stipulates and agrees that all changes, extensions of time, alterations, or additions to the terms of the Contract or Specifications for retail services at the Oregon Zoo facilities are within the scope of the SURETY'S undertaking on this bond, and SURETY hereby waives notice of any such change, extension of time, alteration or addition to the terms of the Retail Services Operations Agreement. Any such change, extension of time, alteration or addition to the terms of the Retail Services Operations Agreement or to the Work or to the Specifications shall automatically increase the obligation of the SURETY hereunder in a like amount, provided that such increase shall not exceed twenty-five percent (25%) of the original amount of the obligations without the consent of the SURETY.

This obligation shall continue to bind the PRINCIPAL and SURETY, notwithstanding successive payments made hereunder, until the full amount of the obligation is exhausted.

No right of action shall accrue on this bond to or for the use of any person or corporation other than Metro or its heirs, executors, administrators, successors or assigns.

If more than one SURETY is on this bond, each SURETY hereby agrees that it is jointly and severally liable for obligations on this bond.

IN WITNESS WHEREOF, we have hereunto set our hands and seals this \_\_\_\_ day of \_\_\_\_\_, 2003.

\_\_\_\_\_  
SURETY

\_\_\_\_\_  
CONTRACTOR

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

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

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

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

\_\_\_\_\_  
Street Address

\_\_\_\_\_  
Street Address

\_\_\_\_\_  
City State ZIP

\_\_\_\_\_  
City State ZIP

\_\_\_\_\_  
Phone Number

\_\_\_\_\_  
Phone Number

**Exhibit D**  
**Certificate of Workers' Compensation Insurance**  
**Including Employer's Liability**



# ACORD <sup>TM</sup> CERTIFICATE OF INSURANCE

ISSUE DATE (MM/DD/YY)  
05/21/2003

PRODUCER  
Willis  
Penn Center, Suite 2700  
Philadelphia, PA 19103

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.

### COMPANIES AFFORDING COVERAGE

ARA005B

COMPANY LETTER **A** PACIFIC EMPLOYERS INS. CO.

COMPANY LETTER **B** BANKERS STANDARD INS. CO.

COMPANY LETTER **C** ROYAL INDEMNITY COMPANY

COMPANY LETTER **D**

COMPANY LETTER **E**

INSURED **ARAMARK Sports & Entertainment Services, Inc.**  
ARAMARK CORPORATION  
ITS DIVISIONS & SUBSIDIARIES  
ARAMARK TOWER  
1101 MARKET ST., 30TH FLOOR  
PHILADELPHIA, PA 19107

### COVERAGES

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED, NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OR SUCH POLICIES, LIMITS MAY HAVE BEEN REDUCED BY PAID CLAIMS.

CO LTR	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS	
A	<b>GENERAL LIABILITY</b>	HDO G20594731	10/01/2002	10/01/2003	BODILY INJURY OCC.	\$
	<input checked="" type="checkbox"/> COMMERCIAL GL FORM				BODILY INJ AGG.	\$
	<input checked="" type="checkbox"/> PREMISES/OPERATIONS				PROPERTY DAMAGE OCC.	\$
	<input checked="" type="checkbox"/> UNDERGROUND EXPLOSION & COLLAPSE HAZARD				PROPERTY DAMAGE AGG.	\$
	<input checked="" type="checkbox"/> PRODUCTS/COMPLETED OPER				BI & PD COMBINED OCC.	\$ 1,000,000
	<input checked="" type="checkbox"/> CONTRACTUAL				BI & PD COMBINED AGG.	\$ NONE
	<input checked="" type="checkbox"/> INDEPENDENT CONTRACTORS				PERSONAL INJURY AGG.	\$
	<input checked="" type="checkbox"/> BROAD FORM PROPERTY DAMAGE				<b>PERS INJ OCC</b>	<b>1,000,000</b>
	<input checked="" type="checkbox"/> PERSONAL INJURY	INCL. LIQUOR LAW LIAB., VENDORS LIAB. & FIRE	LEGAL LIAB.			
A	<b>AUTOMOBILE LIABILITY</b>	ISA H07677303	10/01/2002	10/01/2003	BODILY INJURY (Per Person)	\$
	<input checked="" type="checkbox"/> ANY AUTO				BODILY INJURY (Per Accident)	\$
	<input type="checkbox"/> ALL OWNED AUTOS (PRIV PASS)				PROPERTY DAMAGE	\$
	<input type="checkbox"/> ALL OWNED AUTOS (OTHER THAN PRIV)					
	<input checked="" type="checkbox"/> HIRED AUTOS				BODILY INJURY PROPERTY DAMAGE COMBINED	\$ 1,000,000
	<input checked="" type="checkbox"/> NON-OWNED AUTOS					
	<input type="checkbox"/> GARAGE LIABILITY					
	<input checked="" type="checkbox"/> SELF-INSURED FOR PHYSICAL DAMAGE					
C	<b>EXCESS LIABILITY</b>	RHA005686	10/01/2002	10/01/2003	EACH OCCURRENCE	\$ 1,000,000
	<input type="checkbox"/> UMBRELLA FORM				AGGREGATE	\$ NONE
	<input checked="" type="checkbox"/> OTHER THAN UMBRELLA FORM					
B	<b>WORKERS'S COMPENSATION</b>	WLR C43495240(AOS)	10/01/2002	10/01/2003	<input checked="" type="checkbox"/> STATUTORY LIMITS	\$
A	<b>AND</b>	WLR C43500685(ME&NH)	10/01/2002	10/01/2003	EACH ACCIDENT	\$ 1,000,000
B	<b>EMPLOYERS' LIABILITY</b>	SCF C43500727(WI)	10/01/2002	10/01/2003	DISEASE-POLICY LIMIT	\$ 1,000,000
					DISEASE-EACH EMPLOYEE	\$ 1,000,000
	<b>OTHER</b>				<b>Total Limit:</b>	<b>\$2,000,000</b>

DESCRIPTION OF OPERATIONS/LOCATIONS/VEHICLES/SPECIAL ITEMS \*\* WHERE APPLICABLE, SEE OVERLEAF FOR ADDITIONAL INSURED COVERAGE \*\*  
RFP 03-10065-ZOO, Retail Operations: OREGON ZOO.. Upon award of contract, Metro, Oregon Zoo, its elected officials, departments, employees and agents will be included as additional insureds to the extent Additional Insureds are liable for losses arising out of ARAMARK's negligent acts or omissions as required by contract

**CERTIFICATE HOLDER**

This is a sample certificate indicating ARAMARK's coverage. Requests to modify the certificate may be accommodated in certain instances. It is necessary for the Corp. Risk Mgt. Dept. to review the insurance provisions and indemnification requirements contained in the contract prior to granting any modifications or extensions that are considered appropriate.

**CANCELLATION**

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING COMPANY WILL ENDEAVOR TO MAIL 30 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED ON THE LEFT, BUT FAILURE TO MAIL SUCH NOTICE SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE COMPANY, ITS AGENTS OR REPRESENTATIVES.

AUTHORIZED REPRESENTATIVE

*[Signature]*

**ORIGINAL**

## STAFF REPORT

IN CONSIDERATION OF RESOLUTION NO.03-3346, FOR THE PURPOSE OF AUTHORIZING THE CHIEF OPERATING OFFICER TO EXECUTE A CONTRACT NO. 925081 FOR MANAGEMENT OF RETAIL OPERATIONS AT THE OREGON

---

Date: June 30, 2003

Prepared by: Teri Dresler

### BACKGROUND

At the Metro Council meeting held May 1, 2003, Council approved Resolution No. 03-3319A, authorizing the release of RFP #03-1065-ZOO for retail operations services at the Oregon Zoo. This resolution authorized the Zoo to solicit proposals from highly qualified retail firms, and select the firm that best meets the Zoo's operational needs and returns the highest percentage of net sales to the Zoo operations.

After passage of Resolution No. 03-3319A, Council requested the finalized contract be returned to Council for review prior to signature by the vendor. Additionally, the zoo is requesting the Council exempt the contractor from paying excise tax on the gross retail sales.

The Oregon Zoo received proposals from Event Network, Inc., Aramark Corporation, and Service Systems Associates. The Zoo talked with all three groups and evaluated the proposals. All of the proposers met the required level of percentage rent payment and minimum guarantee on gross sales required by the Zoo. In addition, all of the proposers are prepared to make significant capital investment in retail facilities.

The financial guarantee, capital investment budget and depth of related experience provided by Aramark Corporation has resulted in the most favorable proposal for the Oregon Zoo. The Zoo and Legal are currently working on contract language with Aramark Corporation. A copy of the negotiated contract will be attached to the final form of the resolution.

### ANALYSIS/INFORMATION

#### 1. **Known Opposition** None

##### **Legal Antecedents**

Metro Code section 2.04.026 (1)(A) requires Council approval for private operation of Metro concessions.

Metro Code section 2.04.054(c) authorizes, subject to ORS 279.015, the use of alternative contracting practices that take into account market realities and innovative contracting methods consistent with the public policy of encouraging competition.

Metro Code section 7.01.020 provides for users of Metro facilities to pay excise tax, unless exempted as provided therein.

**2. Anticipated Effects** Oregon Zoo will award a five-year contract to Aramark Corporation for operation of retail services. Excise taxes will be based on gross sales of retail merchandise and will be paid from Zoo contract revenue in the first year of the contract, FY 03 / 04. The Zoo will follow Council direction on retail excise tax payments in years two through five.

### **3. Budget Impacts**

Cost Savings:

The Zoo will reduce direct expenses related to retail operations in FY 03/04, by approximately \$1,200,000.

Revenues:

The Zoo expects minimum payments of \$525,000 year one and a minimum of \$575,000 years two through five in percentage rent.

Excise Tax:

The Zoo will be responsible for retail excise tax in FY 03/04. Excise tax liability for the Zoo retail operation years two through five is to be determined by Council.

### **RECOMMENDED ACTION**

The Chief Operating Officer recommends approval of Resolution No. 03-3346.