

**Metropolitan Exposition Recreation Commission
Resolution No. 14-24**

For the purpose of approving a Second Amendment of the Food and Beverages Operations Agreement (Agreement) with ARAMARK/Giacometti Joint Venture Partnership (Aramark) for the MERC Facilities.

WHEREAS, the Agreement expired on June 30, 2014, and MERC approved an additional sixty days for the completion of the negotiations for an additional five year term and other changes to the Agreement; and

WHEREAS, MERC and ARAMARK desire to extend the term of the Agreement that is scheduled to expire on August 31, 2014, for a period of five years with additional terms addressing FOTA/MWESB requirements, Joint Venture participation, financial reporting and capital contributions; and

WHEREAS, MERC and ARAMARK entered into the Food & Beverage Operations Agreement Addendum on February 1, 2011, for the creation of the Leg-Up Program. The parties now desire to replace the Leg-Up Program with a FOTA/MWESB Subcontractor Qualifying Process as described in the revised Exhibit 11; and


WHEREAS, Aramark has committed to \$2,500,000 in capital investments with an additional \$250,000 contingent upon the initiation of construction of a headquarters hotel;

BE IT THEREFORE RESOLVED, that the Metropolitan Exposition Recreation Commission:


1. Approves the Second Amendment to the Food and Beverage Operations Agreement in a form substantially similar to Attachment A;
2. Delegates authority to the Metro Deputy COO to execute the Second Amendment on behalf of MERC.

Passed by the Commission on August 6, 2014.


Chair


Secretary Treasurer

Approved As to Form:
Alison R. Kean, Metro Attorney

By: 
Nathan A. S. Sykes
Deputy Metro Attorney

MERC Staff Report

Agenda Item/Issue: For the purpose of approving a Second Amendment of the Food and Beverages Operations Agreement (Agreement) with ARAMARK/Giacometti Joint Venture Partnership (Aramark) for the MERC Facilities.

Resolution No.: 14-24

Presented By: Scott Cruickshank

Date: August 6, 2014

Background and Analysis: In November 2009, the Metropolitan Exposition Recreation Commission (MERC) approved a Food and Beverage Operations Agreement with ARAMARK/Giacometti Joint Venture Partnership (Aramark). This contract ran from November 5, 2009, to June 30, 2014.

MERC staff has been pleased with the performance of the Aramark team operating at the MERC venues and favorably acknowledges recent efforts by Aramark senior management to respond to venue requests to place greater emphasis on financial operations. Customer feedback on the food and beverage program is exceptional.

Terms of the original contract allowed a five year extension. Staff provided Aramark the required 60 day notice of intent to extend the contract but was unable to negotiate terms by June 30, 2014. Commission approved a 60 day extension to fully negotiate the terms of an amendment extending the term of the Agreement scheduled to expire on August 31, 2014 for a period of five years.

Key components to the new contract address Aramark's FOTA/MWESB requirements, Joint Venture participation, financial reporting and capital contributions. Additionally, the parties have replaced the Leg-Up Program with a FOTA/MWESB Subcontractor Qualifying Process. Guidelines specify Giacometti Joint Venture partner's outreach efforts, goals and reporting in these areas.

The new agreement also addresses additional fiscal oversight. The Aramark Regional Finance Director will conduct annual audits of Aramark operations at MERC Facilities. The District Manager shall conduct biannual audits of Aramark operations at MERC Facilities. In addition, Aramark's District Manager and Regional Vice-President will meet quarterly with the General Manager of Visitor Venues and the Venue Directors.

Fiscal Impact: Aramark shall deposit a total of \$2,500,000 in specified increments into a segregated account. MERC will control the funds for the purpose of agreed upon capital investments. An additional payment of \$250,000 will be deposited in 2017 contingent upon the initiation of construction of a headquarters hotel making a total possible investment of \$2,750,000.

Recommendation: Staff recommends that the Metropolitan Exposition Recreation Commission approve a Second Amendment to the Food and Beverage Operations Agreement with MERC and ARAMARK/Giacometti Joint Venture Partnership and authorizes the Metro Deputy COO to execute the Second Amendment.

ATTACHMENT A

SECOND AMENDMENT TO THE FOOD AND BEVERAGE OPERATIONS AGREEMENT

This Second Amendment to the Food and Beverage Operations Agreement ("Second Amendment") is entered into on this ____ day of _____, 2014, by and between the Metropolitan Exposition Recreation Commission ("MERC" or "Commission"), and ARAMARK/Giacometti Joint Venture Partnership ("Contractor" or "ARAMARK"), a joint venture partnership formed under the laws of the State of Oregon between ARAMARK Sports & Entertainment Services, LLC and Giacometti Partners, Ltd., an Oregon corporation.

BACKGROUND

- A. MERC and ARAMARK entered into the Food and Beverage Operations Agreement ("Agreement") on November 5, 2009 that expired on June 30, 2014. The parties extended the term of the Agreement to August 30, 2014 in order to continue negotiations for a five year extension.
- B. MERC and ARAMARK entered into the Food & Beverage Operations Agreement Addendum on February 1, 2011 for the creation of the Leg-Up Program. The parties now desire to replace the Leg-Up Program with a FOTA/MWESB Subcontractor Qualifying Process.
- C. MERC and ARAMARK desire to extend the term of the Agreement that is scheduled to expire on August 31, 2014, for a period of five (5) years with additional terms as described below.

AGREEMENT

In consideration of the mutual promises and covenants set forth herein, the Parties hereby agree as follows:

- 1. Defined Term(s). All capitalized terms used and not otherwise defined in this Second Amendment shall have the meanings ascribed to them in the Agreement.
- 2. Definitions. Section 1 shall be amended as follows:

The following language shall be added to the end of Definition 1(L) "including any modifications to the existing FOTA program by the Commission."
The following language shall be added to the end of Definition 1(Q) "or other Facilities as agreed to by the Commission and Aramark."

3. Extension of Term. Pursuant to Section 2 of the Agreement, the term of the Agreement is hereby extended for a period of five (5) years terminating on June 30, 2019.
- 4. Duties of Contractor. Section 5 shall be amended as follows:

Section 5(BB) shall include the following language: The Aramark Regional Finance Director will conduct an annual audit of Aramark operations at MERC Facilities. The District Manager shall conduct biannual audits of Aramark operations at MERC Facilities.

The District Manager and Regional Vice-President shall meet, in person, with the MERC Venue Directors on a pre-scheduled basis, at a minimum of, four times per year.

The last two sentences of Subsection CC shall be deleted and replaced with:

Aramark will create an FOTA/MWESB Subcontractor Qualifying Process as described in the revised Exhibit 11 that is attached to this Second Amendment and will replace the current Exhibit 11 and the Leg-Up Program. The Food and Operations Addendum shall no longer apply to the Agreement as the parties have mutually agreed to terminate the Leg-Up program except that the indemnification obligations described in paragraph 7 shall remain in effect. Aramark will provide quarterly reports to MERC which shall include financial performance, minority contracting and employment performance against targets, joint venture partner activity and updates on the FOTA/MWESB Subcontractor Qualifying Process. The Giacometti Joint Venture partner will participate in the FOTA/MWESB Subcontractor Qualifying Process, organize and actively participate in no less than 2 FOTA targeted Job Fairs each year in partnership with Aramark, and work directly with Aramark Human Resources and management to oversee and manage Aramark's Affirmative Action Plan. The Giacometti Joint Venture partner must identify three potential new FOTA vendors per calendar year which shall be reviewed at quarterly meetings with MERC and both parties to the Joint Venture.

5. Contractor's Payment of Facilities Capital Investment. Section 8 shall be amended as follows:
C. Within ten days of the execution of the Second Amendment, Aramark shall deposit the sum of \$1,000,000.00 (One Million Dollars) in a segregated account controlled by MERC for capital investments proposed by Contractor or MERC that are mutually agreed upon. MERC shall be the sole owner of these funds. By July 1, 2015, Aramark shall deposit \$750,000.00 (Seven Hundred and Fifty Thousand Dollars) into this same account for the same purpose. By July 1, 2016 Aramark shall deposit \$750,000.00 (Seven Hundred and Fifty Thousand Dollars) into this same account for the same purpose. By January 1, 2017, Aramark shall deposit \$250,000.00 (Two Hundred and Fifty Thousand Dollars) into this same account for the same purpose contingent upon the initiation of construction of a headquarters hotel. The deposits, taken together, shall be referred to as the "Renewal Investment."
6. Powers Reserved to MERC. Section 7(O) shall be amended as follows:
MERC will approve any management postings prior to formal recruitment.
7. Business Practice of the Parties. Section 10 shall be amended as follows:
O. Aramark agrees to provide all accounting reporting to MERC in accordance with MERC's accounting practices and fiscal calendar.
8. Termination Accounting. Section 15 shall be amended as follows:
D.6. Upon termination, MERC shall reimburse Contractor for the undepreciated value of the Renewal Investment paid by the Contractor. Each tranche of the Renewal Investment will be depreciated using simple straight line depreciation beginning on the date the payment is made and continuing through June 30, 2019.

9. Conflicting Terms. In the event a conflict arises between this Second Amendment and the terms and conditions of the Agreement, the terms and conditions of this Second Amendment shall control. Except as specifically set forth herein to the contrary, all of the terms and conditions of the Agreement are in full force and effect, shall continue in full force and effect throughout the term and are hereby ratified and confirmed by the parties.

In Witness Whereof, the parties have executed this Amendment as of the date set forth below.

**ARAMARK/Giacometti Joint Venture
Partnership**

By: Aramark Sports and Entertainment Services,
LLC

By: _____
Mark Adams
CFO and Vice President, Finance

**METROPOLITAN EXPOSITION
RECREATION COMMISSION**

By: _____
Scott Robinson
Metro Deputy Chief Operating Officer and
Interim General Manager of Metro Visitor
Venues

Date: _____

Date: _____

EXHIBIT 11

FOTA/MWESB Subcontractor Qualifying Process

- The intent of the qualifying process is to solicit FOTA/MWESB subcontractors to be utilized at the MERC Facilities. A solicitation process through a formal Request for Bids (RFB) in accordance with MERC contracting rules will take place annually starting in April, and selected Subcontractors would begin business operations on July 1. Aramark will enter into 1 year contracts with selected subcontractors.
 - Both JV Partners will participate in the scoring and selection of subcontractors that respond to the RFP
 - Both JV Partners will establish criteria for subcontractor selection/RFP
 - Aramark will place ads in no less than 3 community based newspapers , including, but not limited to the Skanner and ORPIN, soliciting advertising bids for FOTA/MWESB Subcontractor opportunities.
 - Both JV Partners will review applications and select applicants for presentations as part of the RFB process
 - Both JV Partners and MERC will select no less than 2 subcontractors based on a 20 Point Scoring System
 - Experience 5pts
 - Business Plan 3pts
 - Proposal 2pts
 - Presentation 2pts
 - Technical Requirments (Liceneses, Permits, etc.) 3pts
 - FOTA 3pts
 - MWESB 2pts
- Subcontractors will be subject to annual evaluations. Subcontractors that do not have a successful evaluation based on pre-determined scoring will need to rebid during the annual process to remain a subcontractor.

FOTA Hiring Practices/Community Outreach:

- The JV Partners will continue its existing partnership with Roosevelt High School – I AM ACADEMY
- The JV Partners will identify and develop at least one additional partnership with organizations such as Goodwill Industry, Catholic Charities, New Initiatives, Central City, Dress for Success job placement programs or other identified organizations.
- The JV Partners will work with the PCC Cascade Campus as follows:
 - Participate in Internship Program
 - Preferred Hiring for PCC Students
 - Partner with PCC Culinary Assistant Certification Program
- ARAMARK HR will partner with METRO HR as follows:
 - Utilize FOTA hiring processes

- Participate in METRO sponsored Job Fairs
 - Post opportunities on METRO Website
 - Preferential Hiring for FOTA Applicants
- ARAMARK's target is to increase FOTA spending by 5% each year, based on 2014 as a baseline. FOTA spending will be reviewed during the qualitative review process with each venue.

