MERC Commission Meeting

November 4, 2009
12:30 pm

Oregon Convention Center
Room F 150
777 NE ML King Jr. Blvd.
Portland, Oregon

THE MERC

A SERVICE OF METRO

METROPOLITAN EXPOSITION RECREATION COMMISSION

MEETING:	Metropolitan Exposition Recreation Commission
DATE:	Wednesday, November 4, 2009
TIME:	12:30 PM
LOCATION:	Oregon Convention Center Room F150 777 NE Martin Luther King Jr. Blvd.

AGENDA

	CALL TO ORDER	12:30 PM	
1.0	**QUORUM CONFIRMED**	12:35 PM	
2.0	**COMMISSIONER COMMUNICATIONS**	12:50 PM	Ray Leary
3.0	**INTERIM GENERAL MANAGER COMMENTS/COMMISSIONER QUESTIONS**	1:05 PM	Cheryl Twete
3.1	Introduction of Students from REAP Program - Mark Jackson		
3.2	Commissioner Questions on Packet Information - Interim General Manager Executive Summary - FY 2008-09 Preliminary 3rd Close Financials - Packet Information Only - September 2009 Financial Report - Packet Information Only - MERC Venue Business Reports - Information Only		
4.0	**OPPORTUNITY FOR PUBLIC COMMENT ON NON-AGENDA ITEMS**	1:15 PM	
5.0	**CONSENT AGENDA**	1:20 PM	
5.1	For the Purpose of Ethics Law, Authorize MERC Commissioners and MERC Executive Staff to Attend the November 2009 Travel Portland Familiarization Trip Functions November 5-7, 2009		
5.2	**Resolution 09-17** For the Purpose of Authorizing a Modification of Office Lease Between MERC and and Clarus Property Ventures		
6.0	**MERC ACTION AGENDA**	1:30 PM	
6.1	**Resolution 09-14** For the Purpose of Approving the Selection of ARAMARK/Giacometti Joint Venture Partnership ("ARAMARK/Giacometti") to provide contracted services under a Food and Beverage Operations Agreement for the Oregon Convention Center, Exposition Center and the Portland Center for the Performing Arts facilities		Jeff Blosser
6.2	**Resolution 09-16** Accepting Curtis Restaurant Equipment as the Lowest Responsive and Responsible Bidder in Accordance with the MERC Purchasing Policy and Guidelines, and Authorizing the MERC Interim General Manager to Execute a contract with Curtis Restaurant Equipment for the Dishwasher and Scrapper Table at the Oregon Convention Center		Jeff Blosser
6.3	**Resolution 09-15** For the Purpose of Approving the Selection of SunEdison and the Solar Power and Services Agreement Between MERC and SunEdison Origination3, LLC for the Purchase of Electricity for a Minimum 20 Year Term		Jeff Blosser
6.4	**Resolution 09-18** For the Purpose of Authorizing a Rent Adjustment for the Period of November 1, 2009 through October 31, 2014 for the Antoinette Hatfield Hall Land Lease with the First Congregational Church		Robyn Williams
6.4	**Resolution 09-19** For the Purpose of Approving and Transmitting a Budget Amendment to the MERC Fund for Fiscal Year 2009-2010		Cynthia Hill
7.0	**COMMENTS FROM METRO CHIEF OPERATING OFFICER**	2:15 pm	Michael Jordan
7.1	Discussion of Metro Code, Title 6 Matrix		
ADJOURNMENT		2:30 PM	

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Agenda items may not be considered in the order listed

For questions, call Lisa Brown at 503.274.6595

MERC Commission Meeting

November 4, 2009
12:30 pm

3.2 Packet Information Only

THE MERC
METROPOLITAN EXPOSITION
RECREATION COMMISSION
A SERVICE OF METRO

October 28, 2009

To: MERC Commission

From: Cheryl Twete, Interim General Manager

Re: Information only agenda items for November 4 Commission Meeting

The November 4, 2009 Commission meeting agenda is very full, and in the interest of time, I am providing to you this brief summary of key issues in advance, which I do not intend to discuss at the meeting. I will be available to answer any questions you have at that time or if you have questions or concerns you would like flagged or answered prior to the meeting, please do not hesitate to contact me.

Preparations for the H1N1 virus

This topic is receiving much public scrutiny and I want to make you aware of our preparedness and business continuity planning. The venues rely on a pool of specifically trained employees and contractors to serve large groups of event clients and customers, and if any one of these groups is significantly impacted by the H1N1 virus during a large event or for significant amount of time, MERC's financial position could be at risk.

Since the first cases were reported in the Portland region last spring, the venues immediately implemented certain precautionary measures, most notably, enhanced cleaning and disinfecting of high-traffic areas and places where the general public comes into frequent contact with employees. In addition, managers have participated in planning discussions and exercises with counterparts at Metro and among colleagues through the International Association of Assembly Managers (IAAM). IAAM held a webinar on H1N1 flu prevention and planning on October 6 in which both PCPA and OCC sponsored participation sites for MERC employees.

Next week, MERC HR Manager Joni Johnson will finalize guidelines and a Frequently Asked Question (FAQ) document for employees and supervisors that she developed in conjunction with Metro HR and in accordance with local health officials and U.S. Centers for Disease Control (CDC) plans. In short, we do not anticipate a need to alter MERC's existing employment policies and procedures and, if necessary, arrangements may be made on a case-by-case basis. I am happy to provide you with a copy.

Each venue is preparing a pandemic flu action plan based on industry best practices to address likely scenarios that might occur in the event of large scale absences. Facility directors will ensure that management teams and key staff are well versed and prepared to handle a variety of contingencies.

Columbia River Crossing (CRC) Marine Drive/Portland Expo Center Master Plan

The Marine Drive Stakeholder Committee held its final meeting on September 30 and reached consensus on the alignment option titled "Modified Option 12" (see **Attachment A** to this memo). I am pleased with this outcome and that the key public agencies involved are also satisfied. Of specific importance to Expo was the agreement to move the ramps that were originally proposed directly over the TriMet MAX light rail station to a location further north. In the end, the net right-of-way take impact to Expo is 3 acres of the northeast corner.

The CRC process is a long way off from being completed, but as the project progresses, we will continue to monitor the design process as it pertains to Marine Drive and Expo and report back to you any developments. I would also like to thank our staff partner at Metro, Ross Roberts, for his support and efforts to ensure a successful outcome.

Oregon Convention Center Headquarters Hotel

Jeff Blosser and I continue to work with Metro, Travel Portland, industry stakeholders and others to identify new approaches to actively market the Oregon Convention Center (OCC). The suspension of the headquarters hotel project has lead to a renewed commitment to focus our sales and marketing efforts to keep OCC as viable as possible and to retain its regional economic development role. We are also continuing to work with the City of Portland and Portland Development Commission (PDC) to preserve the PDC's dedicated resources (2 blocks of land and $4 million) for the needs of OCC.

2008-2009 MERC Economic & Fiscal Impact Report

Last fall, MERC embarked on its first ever organization-wide analysis of the economic and fiscal impacts benefits provided by the venues in the Tri-County Region, through a multi-year contract with Susan Sieger, with Crossroads Consulting. Susan is currently working on an update for Fiscal Year (FY) 2008-2009 and she is scheduled to present her findings to the Commission on January 6, 2010.

The results of last year's study were eye-opening: MERC contributed more than $535 million in direct and indirect spending in the region, supported 5,810 jobs and contributed $18.4 million in tax revenues. We look forward to receiving Susan's update and sharing that important information with you.

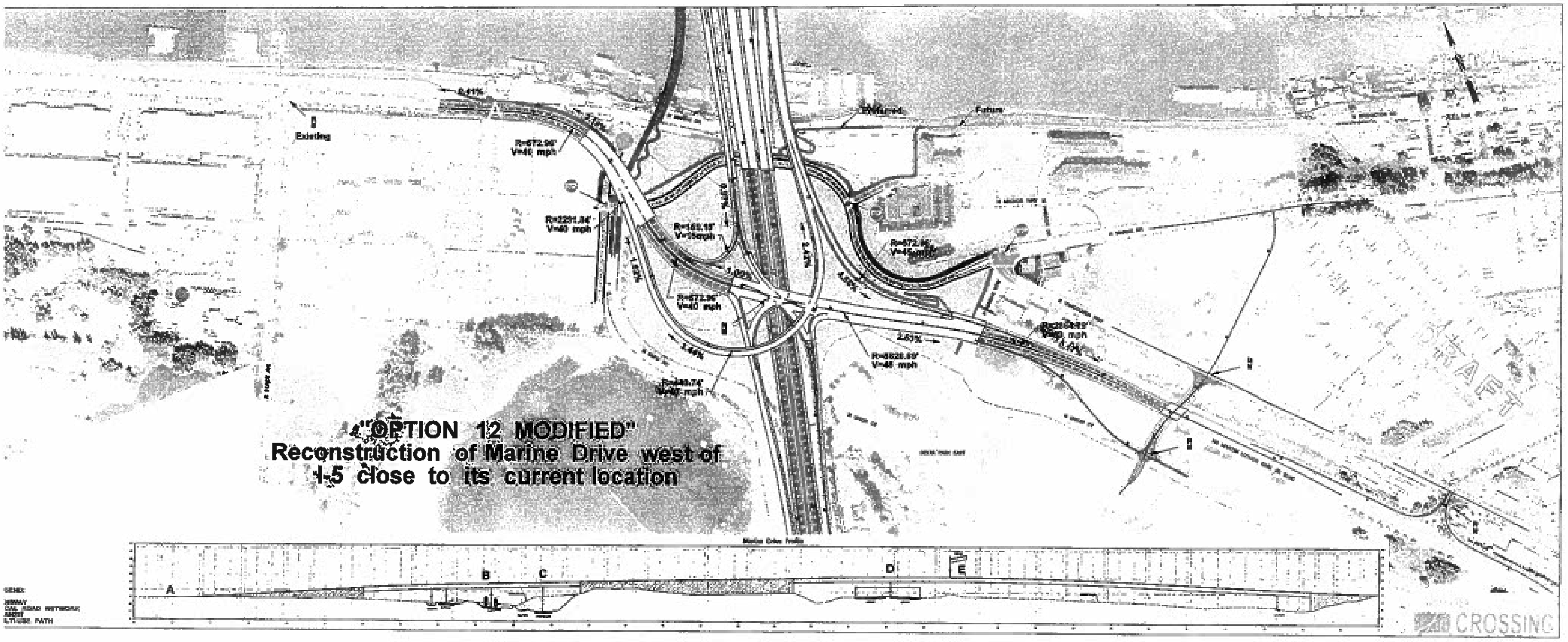
City of Portland Sidewalk Management Plan

Last Wednesday, October 22, the Portland City Council unanimously approved a draft resolution outlining the framework to develop a sidewalk management plan, the primary elements of which are included in **Attachment B**. In the coming months, the City Council is expected to consider a proposed ordinance. MERC will continue to monitor the progress on this important policy issue.

FY 2010-2011 Budget Process

The budget preparation season for FY 2010-2011 is beginning and in the coming weeks, the first meeting of the MERC Budget Committee will be scheduled. Commissioner Dozono will serve as Chair and Commissioners Hammerstad and McClain are committee members. MERC Budget and Finance Manager Cynthia Hill is finalizing the timeline for this process and will be distributing it soon.

Please don't hesitate to contact me if you are interested in receiving additional information about any of these topics. I look forward to updating you on the progress of these projects as they proceed.


"OPTION 12 MODIFIED"
Reconstruction of Marine Drive west of I-5 close to its current location
Existing
Future
R=672.96'
V=40 mph
R=5820.89'
V=45 mph
2.63%
0.41%
1.62%
1.44%
A
B
C
D
E
CROSSING

Portland, OR 97232-2736
503-797-1540
503-797-1804 TDD
503-797-1793 fax

Metro | *People places. Open spaces.*

COUNCIL PRESIDENT DAVID BRAGDON

October 12, 2009

Mayor Sam Adams, City of Portland
Nick Fish, Portland City Commissioner
Amanda Fritz, Portland City Commissioner
Randy Leonard, Portland City Commissioner
Dan Saltzman, Portland City Commissioner

Attachment B to Executive Summary Memo

1224 SW Fourth Avenue
Portland, OR 97204

Dear Mayor Adams and City Commissioners:

The Metro Council has a strong interest in the vitality of downtown Portland, for a number of reasons related to our mission: First and foremost, the success of our regional plan depends on a successful downtown Portland, where jobs, retail, and housing can all be served by transit. Our economic aspirations include concentrations of jobs in town and regional centers including downtown Portland. We also have a very strong interest in visitors' willingness to come to our region: as operators of the Oregon Convention Center and the Portland Center for the Performing Arts through our affiliate the Metropolitan Exposition and Recreation Commission, we know firsthand the positive impact that tourist dollars can have on the region's employment picture – and we also know that the visitor experience and our reputation as a pleasant place to visit is essential to continue generating those dollars.

For all those reasons, we applaud your commitment to creating a sidewalk management strategy that will address the safety and livability issues associated with aggressive sidewalk panhandling activity. I share the concerns recently expressed by residents, business owners, property managers and visitors that recent incidents of menacing negatively impact the future of our valued downtown city core.

I personally received complaints from a group of urban planners and architects who had come from all over the country to a small conference on urban design. While those professionals were impressed with downtown Portland's physical planning and architecture, several observed to me that they were unpleasantly surprised at not being able to walk the streets without being repeatedly harassed by people congregating on corners and requesting money. It was disappointing to have this group of urbanists report on this negative aspect to an otherwise impressive visit. In the competitive realm of tourism, once a destination gets such a reputation it becomes more difficult to attract new dollars.

We appreciate the important legal rights and liberties to which all Americans are entitled, and believe those rights – which do not include a right to intimidate or harass others - can be preserved with a new Sidewalk Management Plan. The draft Sidewalk Management Plan begins to address many of the problems identified in recent months by the management of Metro's MERC convention and entertainment venues. Specifically we applaud the following elements:

- Integrating regulation and enforcement of all city codes pertaining to sidewalk use
- Adopting a zero tolerance for criminal behavior combined with proactive, community-based law enforcement
- Improving and expanding downtown homeless care services and
- Implementing an education campaign to encourage the public to donate to charities that provide homeless support services, rather than giving directly to individuals on the street.

Given the history of selective enforcement of past regulations and the complex and emotional topic, people will be unhappy with any proposed ordinance. To ensure as broad a consensus as possible – which is essential to effective implementation – I urge you to identify plenty of places where people are able to sit downtown, and ample areas for engaging in free speech activities. Because there are countless reasons for people to be on the street, I also hope you will work to ensure that there is flexibility in administering punishments for violating new regulations. Punishing people who need services is unfair and ineffective.

Metro and MERC are committed to making Portland a great place to do business, offering entertainment options, welcoming out-of-town visitors, and keeping Portland livable, safe and prosperous for all. Our plans and our facilities are a key element in those goals. A successful sidewalk management strategy, combined with investments in housing and services, is critical to the success of the region's visitor industry.

Thank you for taking strong steps to stop anti-social behavior that is detrimental to all concerned and for the opportunity to provide input on the draft Sidewalk Management Plan. Please let us know how we can help you in this important effort.

Sincerely,

David Bragdon
Metro Council President

cc: Metro Councilors
Michael Jordan, Metro Chief Operating Officer
MER Commissioners

RESOLUTION No.

To approve the elements of a Sidewalk Management Plan to balance the demands of multiple sidewalk users in a way that respects everyone's legal rights and makes Downtown Portland the nation's best place to do business, work, live and visit.

WHEREAS, the City of Portland's thriving urban culture and economic success depends in part upon sidewalks that serve the needs of all our community's members; and

WHEREAS, the City of Portland has 4,804 miles of sidewalks, including 37,744 street corners; and

WHEREAS, the Westside of downtown Portland alone comprises 152 miles of sidewalks and 1, 778 corners; and

WHEREAS, people and bicycle racks, signal controller boxes, drinking fountains, fire hydrants, parking meters, transit shelters, light poles, mail boxes, telephones, retail and commercial doorways, garbage cans, newspaper boxes, benches, permitted carts and cafés, "A" board signs and public art among other items must share sidewalks that can range from five to fifteen feet wide; and

WHEREAS, media reports and community concerns about aggressive panhandling have been increasing; and

WHEREAS, a complex interplay of federal, state, county, and city law and court decisions govern how sidewalks must or can be managed; and

WHEREAS, the current national and local economic recession has forced significant budget cuts to government safety net and human service programs leaving more people homeless or without needed services;

WHEREAS, close to 2,500 homeless Portlanders sleep outside or in a shelter bed on any given night in Portland due to a lack of sufficient housing in our community; and

WHEREAS many of those sleeping outside or in shelters, and concerned residents who want to assist them, want to know where to find information and resources for homeless services and housing;

NOW, THEREFORE BE IT RESOLVED that the Portland City Council directs the creation of a Sidewalk Management Plan with the following actions to be completed within the next 60 days:

1. The Office of the City Attorney will propose an integration of all city codes that regulate sidewalk uses into one Chapter in the Portland City Code;

2. The Portland Police Bureau shall create and regularly update a work plan to be approved by Commissioner Dan Saltzman to enforce laws prohibiting criminal behavior on sidewalks including littering, harassment, disorderly conduct and drug dealing;

3. Commissioner Dan Saltzman and the Portland Police Bureau will review current training programs and may propose possible additional training programs for security guards under contract with the City of Portland who have authority to patrol the public right-of-way;

4. To improve, expand and continue the investment in day space and other basic services for homeless people that have been established in the downtown area over the past three years, Commissioner Nick Fish and the Portland Housing Bureau will proceed with his plan to construct and fund the operation of proposed Resource Access Center (RAC);

5. Commissioner Nick Fish and the Portland Housing Bureau will partner with community providers to ensure continuity and coordination of existing over-the-counter and internet-based information and referral resources for people experiencing homelessness or needing housing services. Information and referral resources will include info 211, Rose City Resources Guide, Housing Connections, and the Community Service Center at Glisan Street Shelter.

6. With Commissioner Nick Fish, Mayor Sam Adams will partner with the Portland Business Alliance and community providers to create a "Give Real Change, Not Spare Change" public education and over-the-counter donation program at retail stores throughout Downtown Portland. United Way will, in collaboration with community partners, ensure that funding is distributed for needed services;

7. The Office of the City Attorney will propose a new city code to implement the sidewalk access and passage requirements of the federal American's With Disabilities Act;

8. With the Portland Business Alliance, the Portland Development Commission and community stakeholders, Mayor Sam Adams will propose a Downtown Portland Retail Strategy to assist Downtown Portland retailers;

9. Commissioner Randy Leonard will propose a plan to increase the Number of Public Toilets and increase their visibility by fast tracking the "Loo" citing process, implement visible signage identifying "Loo" locations, and create a plan for long term funding and maintenance;

10. Commissioner Amanda Fritz will publicize telephone and internet-based option for the public to report concerns regarding sidewalks and the public realm in Downtown Portland;

11. Mayor Sam Adams will propose a plan to better manage the concentration and placement of publication boxes located on public sidewalks;

12. City Council will propose an ongoing program to monitor, and improve Sidewalk Management Plan, with an oversight committee including representatives from all stakeholders. Commissioner Amanda Fritz will lead discussions to outline the program and propose an ongoing Commissioner liaison to the oversight committee

Adopted by the Council:
Mayor Sam Adams

October ____, 2009

LaVonne Griffin-Valade
Auditor of the City of Portland
By:

Deputy

OFFICE OF MAYOR SAM ADAMS
CITY OF PORTLAND

Downtown Portland Sidewalk Management Issues
Frequently Asked Questions

Why was Portland's previous sidewalk obstruction law ruled unconstitutional?
The State Constitution prohibits a local government from passing laws that conflict with state laws. Recently, a Multnomah County judge threw out a woman's ticket for Sidewalk Obstruction because he believed that the State law governing the issue "pre-empted" Portland's sidewalk ordinance, making Portland's law "unconstitutional."

Am I allowed to ride my bike on sidewalks downtown?
No. The City prohibits riding your bike on sidewalks in the downtown core. See Portland City Code 16.70.320

Does the City require licenses for dogs on sidewalks?
Yes. Multnomah County controls pet licensing. See Multnomah County Code Chapter 13 Animal Services

Can the City ban all panhandling on the sidewalks?
No. A request for charity is "protected speech" under the Oregon Constitution. City government cannot ban protected speech. See Outdoor Media Dimensions v ODOT.

Can the City require panhandlers and sidewalk solicitors to obtain a business license?
No. City government can require limited time, place and manner rules regarding the exercise of free speech but cannot require a license to engage in protected speech. See Outdoor Media Dimensions v ODOT and First Unitarian Church v Salt Lake City

Can the City "privatize," "lease" or "sell" the downtown sidewalks to the adjoining landowners so that they can have greater control over conduct on the sidewalks?
No. A "public forum" is government-owned property that has historically been open to the public for the purposes of expression and assembly. Sidewalks, particularly in downtown areas, are public forums. Courts have developed strict rules about the types of conduct that can be regulated in public forums. These rules apply to downtown sidewalks even if they are privately owned. See First Unitarian Church v Salt Lake City

Does the City regulate the placement or removal of media sidewalk boxes?
Not to date. However, the City now is developing a process to regulate the placement or removal of newspaper boxes.

What is the difference between a misdemeanor and a violation?
A misdemeanor is an offense where the penalty includes jail time and a fine. A violation is an offense where the penalty is a fine only.

JUNE 2009
PRELIMINARY 3RD CLOSE

FINANCIAL INFORMATION

For Management Purposes only

PORTLAND CENTER FOR THE PERFORMING ARTS
A SERVICE OF METRO

expo
A SERVICE OF METRO

OREGON CONVENTION CENTER
A SERVICE OF METRO

THE merc
METROPOLITAN EXPOSITION RECREATION COMMISSION
A SERVICE OF METRO

Date: October 29, 2009

To:

Commissioner Ray Leary, Chair
Commissioner Elisa Dozono, Secretary-Treasurer
Commissioner Gary Conkling
Commissioner Yvonne McClain
Commissioner Judie Hammerstad
Commissioner Chris Erickson
Commissioner Cynthia Haruyama

Re: MERC Financial Information for the 12 months ended June 2009 Preliminary 3rd Close

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This information summarizes the operating revenues and expenditures of the facilities managed by the Metro Exposition-Recreation Commission (MERC). These facilities include the Oregon Convention Center (OCC), the Portland Metropolitan Exposition Center (EXPO), and the Portland Center for the Performing Arts (PCPA). In addition, this report includes the cost of support services provided by MERC Administration. These reports omit substantially all disclosures required by generally accepted accounting principles. This report is intended solely for the information and use of the Commission and is not intended to be and should not be used by anyone other than the Commission.

Financial Highlights

Operating Results

- The year-to-date results indicate that the net F&B is less than budget by approximately 8%. While total operating revenue and expenditures are slightly less than forecasted, the net result is approximately 150% better than budget, this is primarily due to the Venue Directors monitoring the economic climate which drove F&B revenue & Transient Lodging Tax to be slightly less than budget and adjusting their expenditures accordingly.
- Highest event revenue generators year to date:
  - **Expo**
    - Feb: 10799 ~ Pacific NW Sportsman & Sport Fishing Boat Show - $521k
      - F&B - $284k
    - Feb: 10801 ~ '09 Home & Garden Show - $315k
      - Parking (including Exhibitor) - $110k
    - Mar/Apr: 10917 ~ '09 Portland Auto Swap Meet - $309k
      - F&B - $197k
  - **OCC**
    - Jul: 7265 ~ OSCON - $515k
      - F&B - $380k
    - Jan/Feb: '09: 7242 ~ '09 Portland Auto Show - $447k
      - Combined Rent (Ballroom, Exhibit Hall, & Lobby)- $233k
    - Jul: 7714 ~ American Association of Law Libraries - $419k
      - F&B - $204k
  - **PCPA**
    - Mar: 11708 ~ Wicked - $1.3 Million
      - Admission & User Fee - $357k
    - Aug: 9432 ~ Phantom of the Opera - $710k
      - Admission & User Fee - $189k
    - Apr: 12605 ~ Grease - $238k
      - Admission & User Fee - $72k

Non – Operating Revenue

- Transient, Lodging Tax (TLT) year to date is 11.9% less than prior period which is a decrease of $1.2 million and is less than budget by 5% which is a decrease of $465. This was primarily due to the economic down turn, the Venue Directors and the Budget Manager will continue to monitor the TLT closely for FYE10.
- PCPA received a capital donation of $258 from the Friends of PCPA for projects completed in FY 2008-09 and they also received a $225 thousand grant from the City of Portland for the ASCH Renovation & Main Street project, however only $8 thousand was actually spent in FY 2008-09; the balance will carry into FY 2009-10.
- While the economy took a down turn which softened attendance and change in event structure, Expo was still able to meet their Debt Service obligation of approximately $1.2 million.
- Metro Risk Management expenses are in the first period of each quarter. 100% of the annual budget has been paid or $561 thousand year-to-date.

Metropolitan Exposition-Recreation Commission

MERC Statement of Activity with Annual Budget

All Departments

June 2009

3rd Close Preliminary: 10-29-09

	Current Year to Date Actual June-09	Prior Year to Date Actual June-08	% of Prior Year	2008-09 Adopted Budget June-09	% of Annual Budget 100%
Operating					
Revenue	18,508,377	17,780,211	104%	18,079,390	102%
Revenue - Food and Beverage	11,562,005	12,662,562	91%	12,579,134	92%
Total Operating Revenue	**30,070,382**	**30,442,773**	**99%**	**30,658,524**	**98%**
Costs - Food and Beverage	(9,774,387)	(10,072,088)	97%	(9,789,499)	100%
Personal Services	(17,507,657)	(15,808,463)	111%	(18,287,629)	96%
Goods & Services	(7,410,287)	(7,589,048)	98%	(8,543,758)	87%
Marketing	(3,037,088)	(2,621,997)	116%	(3,032,043)	100%
Total Operating Expenses	**(37,729,419)**	**(36,091,597)**	**105%**	**(39,652,929)**	**95%**
Net Operating Results	**(7,659,037)**	**(5,648,824)**	**136%**	**(8,994,405)**	**85%**
Non Operating	**(0)**	-		-	
Transient, Lodging Tax	10,658,552	11,112,056	96%	11,114,685	96%
Government Support City of Portland	734,709	711,375	103%	737,449	100%
Non-Operating Revenue	600,784	886,242	68%	739,194	81%
Non-Operating Expense	(2,506)	(2,503)	100%	(2,500)	100%
	11,991,539	**12,707,169**	**94%**	**12,588,828**	**95%**
Support and Risk Management					-
MERC Administration	-	-	-	-	-
Indirect Cost Metro Support	(104,000)	-	-	(104,000)	100%
Metro Support Services	(1,694,662)	(1,521,312)	111%	(1,842,802)	92%
Metro Risk Management	(560,556)	(547,706)	102%	(582,761)	96%
	(2,359,218)	**(2,069,018)**	**114%**	**(2,529,563)**	**93%**
Net Increase (Decrease)	**1,973,284**	**4,989,327**	**40%**	**1,064,860**	**185%**
Transfers					
Transfers from	758,083	669,720	113%	758,081	100%
Debt Service	(1,209,780)	(1,208,281)	100%	(1,210,037)	100%
Net Transfers	**(451,697)**	**(538,561)**	**84%**	**(451,956)**	**100%**
Net Operations	**1,521,587**	**4,450,767**	**123%**	**612,904**	**248%**
	(0)	-		-	
Capital					
Capital Outlay	(1,234,782)	(954,075)	129%	(1,523,336)	81%
Construction Management	-	-	-	-	-
Goods & Services	(8,075)	-	-	(225,000)	4%
Non-Operating Revenue	270,483	222,863	121%	767,672	35%
Net Capital	**(972,374)**	**(731,212)**	**133%**	**(980,664)**	**99%**
Fund Balance Inc (Dec)	**549,214**	**3,719,555**	**15%**	**(367,760)**	**-149%**
	(0)	(0)		-	
Food and Beverage Gross Margin	**1,787,618**	**2,590,474**	**69%**	**2,789,635**	**64%**
Food and Beverage Gross Margin	**15.5%**	**20.5%**		**22.2%**	
Full Time Employees - per Budget	**192**	**186**		**192**	
Excise Tax	**(1,563,554)**	**(1,716,189)**			
Taxes as percent of revenue	**26.2%**	**26.7%**		**26.6%**	
Fund Balance					
Beginning Fund Balance	26,070,022	22,350,466		26,070,022	
Fund Balance Inc (Dec)	549,214	3,719,555		(367,760)	
Ending Fund Balance	**26,619,236**	**26,070,021**		**25,702,262**	
Unrestricted Fund Balance	15,114,670	21,388,628		14,252,689	
Contingency	1,989,067	-		1,989,067	
Contingency for Renewal & Replacement	520,000	295,000		520,000	
Designated for Renewal & Replacement	295,000	-		295,000	
Designated for Phase 3	1,154,728	944,840		1,154,728	
Contingency for HQH	3,700,000	-		3,700,000	
Contingency for HQH (PERS Rsvr - Prior)	1,486,398	94,306		852,106	
Designated for PERS Reserve - Current	375,932	-		-	
Designated for PERS Reserve - Prior	709,380	2,460,862		1,664,611	
Restricted by Contract - Aramark	93,750	187,500		93,750	
Restricted by Agreement - TLT	1,180,311	698,885		1,180,311	
Ending Fund Balance	**26,619,236**	**26,070,021**		**25,702,262**	
	-	-		-	
Strategic Goal	**15,007,603**	**13,583,854**		**15,007,603**	
Available for Strategy Goal	17,623,737	21,683,628		16,761,756	
Excess (Gap)	**2,616,134**	**8,099,774**		**1,754,154**	

Metropolitan Exposition-Recreation Commission

MERC Statement of Activity with Annual Budget

Portland Exposition Center

June 2009

3rd Close Preliminary: 10-29-09

	Current Year to Date Actual June-09	Prior Year to Date Actual June-08	% of Prior Year	2008-09 Adopted Budget June-09	% of Annual Budget 100%
Operating					
Revenue	3,730,742	3,985,117	94%	3,819,977	98%
Revenue - Food and Beverage	1,847,803	2,093,352	88%	2,151,319	86%
Total Operating Revenue	**5,578,546**	**6,078,469**	**92%**	**5,971,296**	**93%**
Costs - Food and Beverage	(1,475,214)	(1,552,665)	95%	(1,515,262)	97%
Personal Services	(1,483,747)	(1,436,762)	103%	(1,591,637)	93%
Goods & Services	(1,151,306)	(1,144,938)	101%	(1,293,518)	89%
Total Operating Expenses	**(4,110,266)**	**(4,134,365)**	**99%**	**(4,400,417)**	**93%**
Net Operating Results	**1,468,279**	**1,944,104**	**76%**	**1,570,879**	**93%**
Non Operating					
Non-Operating Revenue	109,354	167,958	65%	161,619	68%
Non-Operating Expense	-	-		-	-
	109,354	**167,958**	**65%**	**161,619**	**68%**
Support and Risk Management					
MERC Administration	(291,027)	(250,578)	116%	(291,027)	100%
Metro Support Services	(169,466)	(152,131)	111%	(184,280)	92%
Metro Risk Management	(76,354)	(68,624)	111%	(79,379)	96%
	(536,847)	**(471,333)**	**114%**	**(554,686)**	**97%**
Net Increase (Decrease)	**1,040,787**	**1,640,729**	**63%**	**1,177,812**	**88%**
Transfers					
Transfers from	1,194	-		1,194	100%
Debt Service	(1,192,232)	(1,189,932)	100%	(1,192,232)	100%
Net Transfers	**(1,191,038)**	**(1,189,932)**	**100%**	**(1,191,038)**	**100%**
Net Operations	**(150,251)**	**450,797**	**-33%**	**(13,226)**	**1136%**
Capital					
Capital Outlay	(173,682)	(9,049)	1919%	(180,000)	96%
Non-Operating Revenue	-	46,056	0%	73,329	0%
Net Capital	**(173,682)**	**37,007**	**-469%**	**(106,671)**	**163%**
Fund Balance Inc (Dec)	**(323,934)**	**487,803**	**-66%**	**(119,897)**	**270%**
Food and Beverage Gross Margin	**372,589**	**540,687**	**69%**	**636,057**	**59%**
Food and Beverage Gross Margin %	**20.2%**	**25.8%**		**29.6%**	**-9%**
Full Time Employees - per Budget	**13.30**	**13.30**		**13.30**	
Excise Tax	**(415,209)**	**(451,128)**		**-**	
Fund Balance					
Beginning Fund Balance	6,069,250	5,581,447		6,069,250	
Fund Balance Inc (Dec)	(323,934)	487,803		(119,897)	
Ending Fund Balance	**5,745,316**	**6,069,250**		**5,949,353**	
Unrestricted Fund Balance	3,842,261	4,867,128		4,047,108	
Contingency	472,017			472,017	
Contingency for Renewal & Replacement	20,000	20,000		20,000	
Designated for Renewal & Replacement	20,000	-		20,000	
Designated for Phase 3	1,154,728	944,840		1,154,728	
Contingency for HQH (PERS Rsvr - Prior)	205,841			117,750	
Designated for PERS Reserve - Current	30,469				
Designated for PERS Reserve - Prior		237,282		117,750	
Restricted by Agreement - TLT					
Ending Fund Balance	**5,745,316**	**6,069,250**		**5,949,353**	
	-	-		-	
Strategic Goal (6 mo, debt)	**3,392,441**	**3,257,115**		**3,392,441**	
Available for Strategy Goal	4,334,278	4,887,128		4,539,125	
Excess (Gap)	**941,838**	**1,630,013**		**1,146,685**	

Metropolitan Exposition-Recreation Commission

MERC Statement of Activity with Annual Budget

Oregon Convention Center

June 2009

3rd Close Preliminary: 10-29-09

Excluding HQH

	Current Year to Date Actual	2007-08 Prior Actual	% of Prior Year	2008-09 Adopted Budget	% of Annual Budget
	June-09	June-08		June-09	100%
Operating					
Revenue	7,397,241	7,869,606	94%	7,444,246	99%
Revenue - Food and Beverage	7,796,996	8,992,501	87%	8,900,001	88%
Total Operating Revenue	**15,194,238**	**16,862,107**	**90%**	**16,344,247**	**93%**
Costs - Food and Beverage	(6,656,463)	(7,105,565)	94%	(6,961,152)	96%
Personal Services	(8,291,576)	(7,764,622)	107%	(8,741,296)	95%
Goods & Services	(3,366,553)	(3,114,513)	108%	(3,579,823)	94%
Marketing POVA	(3,037,088)	(2,621,997)	116%	(3,032,043)	100%
Total Operating Expenses	**(21,351,680)**	**(20,606,697)**	**104%**	**(22,314,314)**	**96%**
Net Operating Results	**(6,157,442)**	**(3,744,590)**	**164%**	**(5,970,067)**	**103%**
Non Operating					
Transient, Lodging Tax	8,800,202	9,115,656	97%	9,032,707	97%
Non-Operating Revenue	219,238	334,799	65%	267,288	82%
Non-Operating Expense	(6)	(3)	200%	-	-
	9,019,434	**9,450,452**	**95%**	**9,299,995**	**97%**
Support and Risk Management					
MERC Administration	(1,571,548)	(1,378,181)	114%	(1,571,548)	100%
Metro Support Services	(915,117)	(836,721)	109%	(995,114)	92%
Metro Risk Management	(312,944)	(309,680)	101%	(325,341)	96%
	(2,799,609)	**(2,524,582)**	**111%**	**(2,892,003)**	**97%**
Net Increase (Decrease)	**62,383**	**3,181,280**	**2%**	**437,925**	**14%**
Transfers	-				
Transfers from	6,446	-		6,446	100%
Debt Service	(17,548)	(18,349)	96%	(17,805)	99%
Net Transfers	**(11,102)**	**(18,349)**	**61%**	**(11,359)**	98%
Net Operations	**51,281**	**3,162,931**	**2%**	**426,566**	**12%**
			-		-
Capital			-		-
Capital Outlay	(669,397)	(585,976)	14%	(722,013)	93%
Non-Operating Revenue	4,743	72,157	-93%	50,863	9%
Transfers from	-	-	-	-	-
Net Capital	**(664,654)**	**(513,818)**	**29%**	**(671,150)**	**99%**
Fund Balance Inc (Dec)	**(613,373)**	**2,649,112**	**-123%**	**(244,584)**	**251%**
Food and Beverage Gross Margin	**1,140,534**	**1,886,936**	**60%**	**1,938,849**	**59%**
Food and Beverage Gross Margin %	**14.6%**	**21.0%**		**21.8%**	
Full Time Employees - per Budget	**110.30**	**107.30**		**110.30**	
Excise Tax	**(1,147,164)**	**(1,263,519)**		-	
Taxes as percent of revenue	**36.7%**	**35.1%**		**35.6%**	
Fund Balance					
Beginning Fund Balance	11,304,019	8,985,591		11,304,019	
Fund Balance Inc (Dec)	(613,373)	2,649,112		(244,584)	
Fund Balance Inc (Dec) for HQH	179,491	(330,685)		(226,000)	
Ending Fund Balance	**10,870,137**	**11,304,019**		**10,833,435**	
Unrestricted Fund Balance	3,195,981	8,872,514		3,187,557	
Contingency	904,337			904,337	
Contingency for Renewal & Replacement	250,000	225,000		250,000	
Designated for Renewal & Replacement	225,000			225,000	
Contingency for HQH	3,700,000			3,700,000	
Contingency for HQH (PERS Rsvr - Prior)	1,131,796			646,240	
Designated for PERS Reserve - Current	188,962				
Designated for PERS Reserve - Prior		1,320,120		646,240	
Restricted by Contract - Aramark	93,750	187,500		93,750	
Restricted by Agreement - TLT	1,180,311	698,885		1,180,311	
Ending Fund Balance	**10,870,137**	**11,304,019**		**10,833,435**	
	-	-		-	
Strategic Goal (3 mo)	**5,559,829**	**5,151,674**		**5,559,829**	
Available for Strategy Goal	4,350,318	9,097,514		4,341,894	
Excess (Gap)	**(1,209,511)**	**3,945,840**		**(1,217,935)**	

Metropolitan Exposition-Recreation Commission

MERC Statement of Activity with Annual Budget
Portland Center for the Performing Arts
June 2009
3rd Close Preliminary: 10-29-09

	Current Year to Date Actual June-09	2007-08 Prior Actual June-08	% of Prior Year	2008-09 Adopted Budget June-09	% of Annual Budget 100%
Operating					
Revenue	7,345,035	5,885,022	125%	6,776,667	108%
Revenue - Food and Beverage	1,917,205	1,576,709	122%	1,527,814	125%
Total Operating Revenue	**9,262,240**	**7,461,731**	**124%**	**8,304,481**	**112%**
Costs - Food and Beverage	(1,642,709)	(1,413,858)	116%	(1,313,085)	125%
Personal Services	(5,352,700)	(4,857,935)	110%	(5,751,698)	93%
Goods & Services	(2,024,921)	(1,914,971)	106%	(2,171,744)	93%
Total Operating Expenses	**(9,020,330)**	**(8,186,764)**	**110%**	**(9,236,527)**	**98%**
Net Operating Results	**241,909**	**(725,033)**	**-33%**	**(932,046)**	**-26%**
Non Operating					
Transient, Lodging Tax	1,858,351	1,996,400	93%	2,081,978	89%
Government Support City of Portland	734,709	711,375		737,449	100%
Non-Operating Revenue	228,102	345,436	66%	286,092	80%
Non-Operating Expense	(2,500)	(2,500)	100%	(2,500)	100%
	2,818,662	**3,050,710**	**92%**	**3,103,019**	**91%**
Support and Risk Management					
MERC Administration	(1,047,699)	(877,025)	119%	(1,047,699)	100%
Metro Support Services	(610,079)	(532,460)	115%	(663,408)	92%
Metro Risk Management	(171,258)	(169,402)	101%	(178,041)	96%
	(1,829,036)	**(1,578,887)**	**116%**	**(1,889,148)**	**97%**
Net Increase (Decrease)	**1,231,535**	**746,790**	**165%**	**281,825**	**437%**
Transfers					
Intrafund Transfers	-	-		-	-
Transfers from	4,297	-		4,297	100%
Net Transfers	**4,297**	**-**		**4,297**	**100%**
Net Operations	**1,235,832**	**746,790**	**165%**	**286,122**	**432%**
Capital					
Capital Outlay	(234,101)	(162,662)	144%	(435,000)	54%
Construction Management	-	-		-	-
Goods & Services	(8,075)	-		(225,000)	4%
Non-Operating Revenue	265,740	102,789	259%	643,480	41%
Net Capital	**23,564**	**(59,874)**	**-39%**	**(16,520)**	**-143%**
Fund Balance Inc (Dec)	**1,259,396**	**686,917**	**183%**	**269,602**	**467%**
Food and Beverage Gross Margin	**274,496**	**162,851**	**169%**	**214,729**	**128%**
Food and Beverage Gross Margin %	**14.3%**	**10.3%**		**14.1%**	
Full Time Employees - per Budget	**46.40**	**44.40**		**46.40**	
Taxes as percent of revenue	**16.7%**	**21.1%**		**20.0%**	
Fund Balance					
Beginning Fund Balance	7,785,999	7,099,082		7,785,999	
Fund Balance Inc (Dec)	1,259,396	686,917		269,602	
Ending Fund Balance	**9,045,395**	**7,785,999**		**8,055,601**	
Unrestricted Fund Balance	7,464,440	6,926,846		6,476,647	
Contingency	466,449			466,449	
Contingency for Renewal & Replacement	250,000	50,000		250,000	
Designated for Renewal & Replacement	50,000			50,000	
Designated for PERS Reserve - Current	105,126				
Designated for PERS Reserve - Prior	709,380	809,153		812,505	
Ending Fund Balance	**9,045,395**	**7,785,999**		**8,055,601**	
	-	-		-	
Strategic Goal (6 mo)	**4,618,264**	**4,093,382**		**4,618,264**	
Available for Strategy Goal	8,180,889	6,976,846		7,193,096	
Excess (Gap)	**3,562,625**	**2,883,464**		**2,574,832**	

Metropolitan Exposition-Recreation Commission

MERC Statement of Activity with Annual Budget

Convention Center Headquarter Hotel Project

June 2009

3rd Close Preliminary: 10-29-09

	Current Year to Date Actual June-09	2007-08 Prior Actual June-08	% of Prior Year	2008-09 Adopted Budget June-09	% of Annual Budget 100%
Operating					
Revenue	-	-	-	-	-
Personal Services	(21,949)	(28,748)	76%	(21,948)	100%
Goods & Services	(440,707)	(971,657)	45%	(846,196)	52%
Meetings Expense	*(85)*	*(541)*	16%	*(200)*	42%
Developer Agreement I	*(4,274)*	*(600,028)*	1%	*(50,000)*	9%
Developer Agreement II	-	-	-	-	-
Communications Consulting	*(73,758)*	*(56,424)*	131%	*(125,000)*	59%
Construction Consulting	*(35,684)*	-	-	*(100,000)*	36%
Financial Consulting	*(70,374)*	*(133,441)*	53%	*(210,000)*	34%
Legal Consulting	*(232,806)*	*(52,194)*	446%	*(296,000)*	79%
Management Consulting	-	*(8,836)*	0%	*(34,996)*	0%
Market Consulting	*(23,725)*	*(78,194)*	30%	*(30,000)*	79%
Project Management	-	*(41,999)*	0%	-	-
	(462,655)	**(1,000,405)**	**46%**	**(868,144)**	**53%**
Support and Risk Management					
Indirect Cost Metro Support	(104,000)	-		(104,000)	
MERC Administration	-	-	-	-	-
Metro Support Services	-	-	-	-	-
Metro Risk Management	-	-	-	-	-
	(104,000)	-		**(104,000)**	
Net Increase (Decrease)	**(566,655)**	**(1,000,405)**	57%	**(972,144)**	
Transfers					
Transfers from	746,146	669,720	111%	746,144	100%
Net Transfers	**746,146**	**669,720**	111%	**746,144**	100%
Net Operations	**179,491**	**(330,685)**	**-54%**	**(226,000)**	**-79%**

Metropolitan Exposition-Recreation Commission

MERC Statement of Activity with Annual Budget

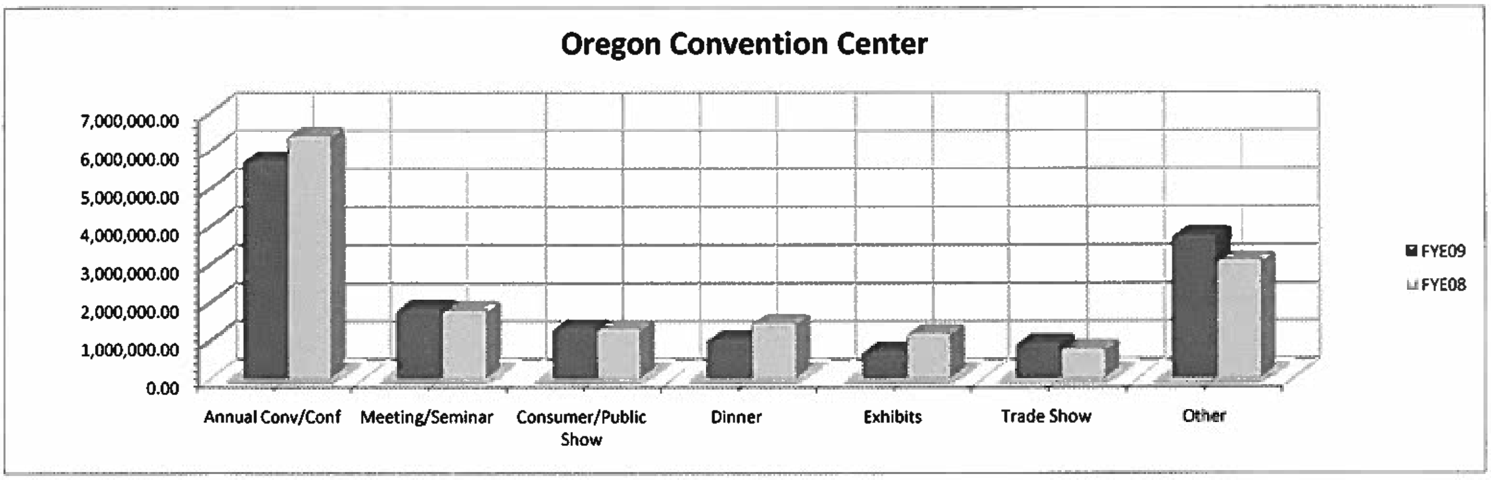
MERC Administration

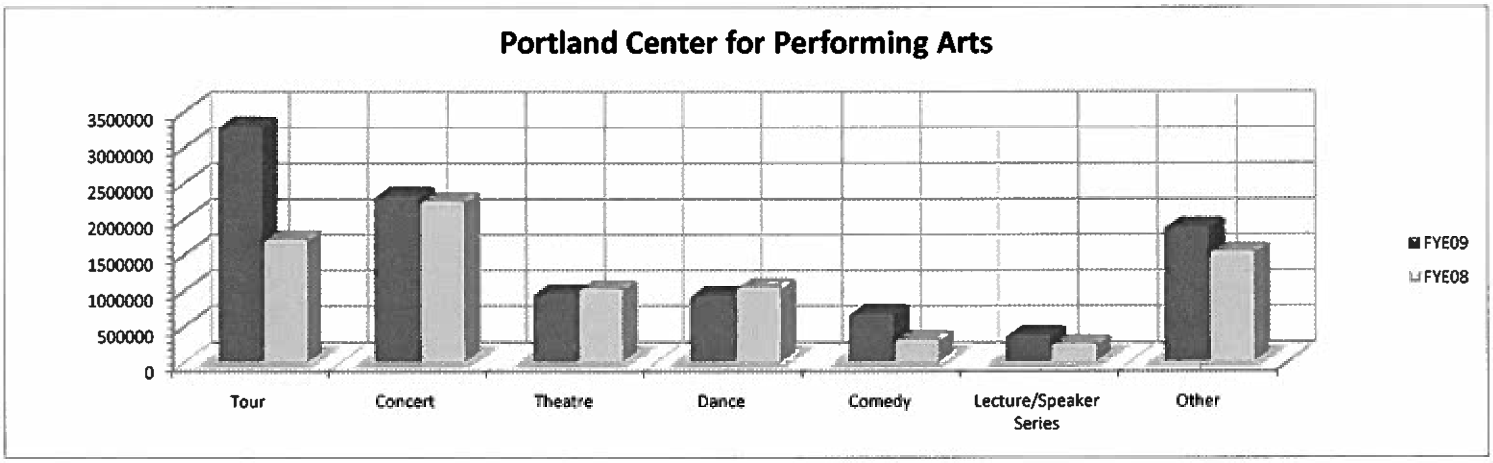
June 2009

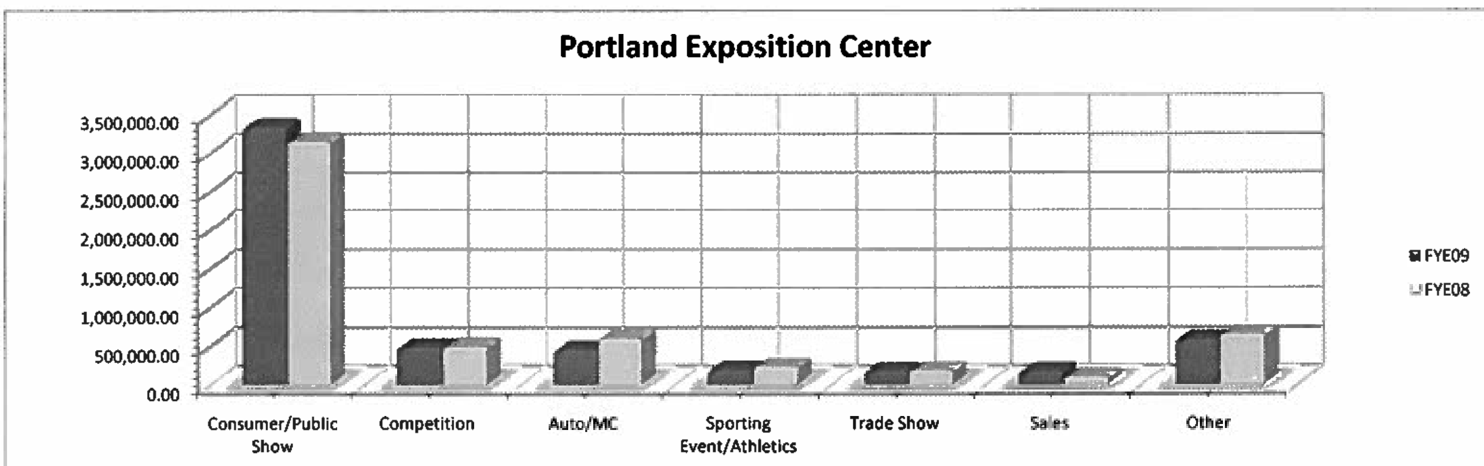
3rd Close Preliminary: 10-29-09

	Current Year to Date Actual	2007-08 Prior Actual	% of Prior Year	2008-09 Adopted Budget	% of Annual Budget
	June-09	June-08		June-09	100%
Operating					
Revenue	35,359	40,466	87%	38,500	92%
Personal Services	(2,357,686)	(1,720,397)	137%	(2,181,050)	108%
Goods & Services	(426,801)	(442,969)	96%	(652,477)	65%
Net Operating Expenses	**(2,749,128)**	**(2,122,900)**	**129%**	**(2,795,027)**	**98%**
Non Operating					
Non-Operating Revenue	44,089	38,049	116%	24,195	182%
Non-Operating Expense	-	-	-	-	-
	44,089	**38,049**	**116%**	**24,195**	**182%**
Support and Risk Management					
MERC Administration	2,910,274	2,505,784	116%	2,910,274	100%
	2,910,274	**2,505,784**	**116%**	**2,910,274**	**100%**
Net Increase (Decrease)	**205,235**	**420,934**	**49%**	**139,442**	**147%**
Net Transfers	-	-	-	-	-
Net Operations	**205,235**	**420,934**	**49%**	**139,442**	**147%**
Capital					
Capital Outlay	(157,601)	(196,388)	80%	(186,323)	85%
Non-Operating Revenue	-	1,861	0%	-	-
Net Capital	**(157,601)**	**(194,527)**	**81%**	**(186,323)**	**85%**
Fund Balance Inc (Dec)	**47,634**	**226,407**	**21%**	**(46,881)**	**-102%**
Full Time Employees - per Budget	**22.00**	**21.00**		**22.00**	
Excise Tax	**(1,181)**	**(1,542)**		**-**	
Fund Balance					
Beginning Fund Balance	910,754	684,346		910,754	
Fund Balance Inc (Dec)	47,634	226,407		(46,881)	
Ending Fund Balance	**958,388**	**910,753**		**863,873**	
Unrestricted Fund Balance	611,988	722,140		541,377	
Contingency	146,264			146,264	
Contingency for HQH (PERS Rsvr - Prior)	148,761	94,306		88,116	
Designated for PERS Reserve - Current	51,375				
Designated for PERS Reserve - Prior		94,307		88,116	
Ending Fund Balance	**958,388**	**910,753**		**863,873**	
	-	-		-	
Strategic Goal (6 mo)	**1,437,069**	**1,081,683**		**1,437,069**	
Available for Strategy Goal	758,252	722,140		687,641	
Excess (Gap)	**(678,817)**	**(359,543)**		**(749,428)**	

Revenue Comparison
Venue by Event Type







Lodging Taxes (Total MERC)
Monthly Receipts FY Ending June 30, 2009

Month	2005-06 FY Total	2006-07 FY Total	2007-08 FY Total	2008-09 FY Total	Net Change Difference
Sept	74,165	71,113	103,104	78,853	(24,251)
Oct	938,995	831,139	855,271	232,711	(622,560)
Nov	1,329,424	1,561,665	1,937,161	2,772,189	835,028
Dec	18,651	138,799	87,819	30,851	(56,968)
Jan	95,184	143,744	761,470	83,237	(678,233)
Feb	1,577,598	1,755,229	1,342,372	1,030,894	(311,478)
Mar	75,502	129,442	148,571	875,188	726,617
Apr	113,398	120,988	198,634	183,278	(15,356)
May	1,467,928	1,352,676	1,542,794	1,151,297	(391,497)
Jun	135,467	456,418	372,657	429,882	57,225
Jul	884,185	142,658	1,097,506	154,087	(943,419)
Aug	879,277	1,092,110	1,305,228	1,561,605	256,377
Aug	-	940,855	-	-	
Total	**7,589,774**	**8,736,836**	**9,752,587**	**8,584,072**	**(1,168,515)**

Year to Date Comparison

	2007-08 FY Total	2008-09 FY Total	Net Change Difference
Sept	103,104	78,853	(24,251)
Oct	855,271	232,711	(622,560)
Nov	1,937,161	2,772,189	835,028
Dec	87,819	30,851	(56,968)
Jan	761,470	83,237	(678,233)
Feb	1,342,372	1,030,894	(311,478)
Mar	148,571	875,188	726,617
Apr	198,634	183,278	(15,356)
May	1,542,794	1,151,297	(391,497)
June	372,657	429,882	57,225
July	1,097,506	154,087	(943,419)
Aug	1,305,228	1,561,605	256,377
Totals	**9,752,587**	**8,584,072**	**(1,168,515)**

YTD Percent changed **-11.982%**

Current Budget **$ 9,049,008**

YTD Variance **$ 464,936**

Quarterly Totals	2007-08 FY Total	2008-09 FY Total	Net Change Difference
1st Quarter	2,895,536	3,083,753	188,217
2nd Quarter	2,191,661	1,144,982	(1,046,679)
3rd Quarter	1,889,999	2,209,763	319,764
4th Quarter	2,775,391	2,145,574	(629,817)
Total 2008-09 Fiscal Year	**9,752,587**	**8,584,072**	**(1,168,515)**

H:\Lodging, Hotel, VDF Tax\TLT Fund\2008-09\Lodging Tax YTD Comparison.xlsxTotal MERC

Prepared by CHILL 9/4/2009

SEPTEMBER 2009
PRELIMINARY

FINANCIAL INFORMATION

For Management Purposes only

PORTLAND CENTER FOR THE PERFORMING ARTS
A SERVICE OF METRO

expo
A SERVICE OF METRO

OREGON CONVENTION CENTER
A SERVICE OF METRO

METROPOLITAN EXPOSITION RECREATION COMMISSION
A SERVICE OF METRO

Date: October 29, 2009

To:

Commissioner Ray Leary, Chair
Commissioner Elisa Dozono, Secretary-Treasurer
Commissioner Gary Conkling
Commissioner Yvonne McClain
Commissioner Judie Hammerstad
Commissioner Chris Erickson
Commissioner Cynthia Haruyama

Re: MERC Financial Information for the 3 months ended September 2009

This information summarizes the operating revenues and expenditures of the facilities managed by the Metro Exposition-Recreation Commission (MERC). These facilities include the Oregon Convention Center (OCC), the Portland Metropolitan Exposition Center (EXPO), and the Portland Center for the Performing Arts (PCPA). In addition, this report includes the cost of support services provided by MERC Administration. These reports omit substantially all disclosures required by generally accepted accounting principles. This report is intended solely for the information and use of the Commission and is not intended to be and should not be used by anyone other than the Commission.

Financial Highlights

Operating Results

- The year-to-date results indicate that the net F&B is less than budget by approximately 4%. While revenue and expenditures are slightly less than forecasted, the net result is approximately 8% better than budget.
- Highest event revenue generators for the period:
  - **Expo**
    - July: 12091 ~ America's Largest Antique & Collectible Show - $156k
      - F&B - $68k
    - Sept: 12159 ~ Portland Fall Home & Garden Show - $140k
      - F&B - $41k
    - July: 12092 ~ "Stumptown Cluster" – Portland Kennel Dog Show - $94k
      - Rent (Exhibit Hall, Meeting Room, & Outdoor space) - $38k
  - **OCC**
    - Aug: 7341 ~ '09 Farwest Show - $283k
      - Rent - $116k
    - July: 6918 ~ SCUP 44th Annual International Conference & Idea Marketplace - $275k
      - F&B - $189k
    - July: 6958 ~ '09 American Phytopathological Society Annual Meeting- $241k
      - F&B - $150k
  - **PCPA**
    - Aug: 11779 ~ Fiddler on the Roof - $236k
      - Admission & User Fee - $76k
    - Sept: 12518 ~ Association of Zoos & Aquariums Reception - $92k
      - F&B - $90k
    - July: 14753 ~ Moody Blues - $45k
      - Admission & User Fee - $10k

Non – Operating Revenue

- **Transient, Lodging Tax (TLT)** The September receipts were significantly greater than prior year due to residual 4th quarter collections and timing of remittance.

- **Expo Debt Service** is paid semi annually. Approximately 76% or $900 thousand of the annual payment is budgeted and paid during the first half of the fiscal year, the remaining 24% or $288 thousand in the later part of the fiscal year.

- **Metro Risk Management** expenses are in the first period of each quarter. Approximately 42% of the annual budget or $204 thousand year-to-date.

Metropolitan Exposition-Recreation Commission

MERC Statement of Activity with Annual Budget

All Departments

September 2009

As of October 29, 2009

	Current Month Actual September-09	Current Year to Date Actual September-09	Prior Year to Date Actual September-08	% of Prior Year	2009-10 Adopted Budget September-09	% of Annual Budget 25%
Operating						
Revenue	1,234,079	2,582,253	2,888,661	89%	17,892,339	14%
Revenue - Food and Beverage	811,769	2,023,366	2,609,006	78%	12,123,799	17%
Total Operating Revenue	**2,045,847**	**4,605,618**	**5,497,667**	**84%**	**30,016,138**	**15%**
Costs - Food and Beverage	(603,826)	(1,831,285)	(2,363,615)	77%	(9,579,028)	19%
Personal Services	(1,269,961)	(3,980,374)	(4,225,414)	94%	(18,534,604)	21%
Goods & Services	(436,525)	(1,300,352)	(1,293,188)	101%	(8,313,083)	16%
Marketing	(218,280)	(654,840)	(654,840)	100%	(3,032,043)	22%
Total Operating Expenses	**(2,528,592)**	**(7,766,851)**	**(8,537,057)**	**91%**	**(39,458,758)**	**20%**
Net Operating Results	**(482,745)**	**(3,161,233)**	**(3,039,390)**	**104%**	**(9,442,620)**	**33%**
Non Operating	-	-	-		-	
Transient, Lodging Tax	487,657	487,657	78,853	618%	10,930,634	4%
Government Support City of Portland	-	-	-	-	760,926	0%
Non-Operating Revenue	15,875	7,429	82,782	9%	619,618	1%
Non-Operating Expense	-	(2,503)	(2,503)	100%	(2,500)	100%
	503,533	**492,583**	**159,132**	**310%**	**12,308,678**	**4%**
Support and Risk Management						-
MERC Administration	-	-	-	-	-	-
Metro Support Services	(168,971)	(506,913)	(460,704)	110%	(2,027,654)	25%
Metro Risk Management	-	(203,572)	(242,818)	84%	(488,571)	42%
	(168,971)	**(710,485)**	**(703,522)**	**101%**	**(2,516,225)**	**28%**
Net Increase (Decrease)	**(148,183)**	**(3,379,135)**	**(3,583,780)**	**94%**	**349,833**	**-966%**
Transfers						
Transfers from	-	-	-	-	-	-
Debt Service	-	(8,694)	(8,968)	97%	(1,205,890)	1%
Net Transfers	-	**(8,694)**	**(8,968)**	**97%**	**(1,205,890)**	**1%**
Net Operations	**(148,183)**	**(3,387,829)**	**(3,592,748)**	**191%**	**(856,057)**	**396%**
	-	-	-		-	
Capital						
Capital Outlay	(94,198)	(427,691)	(177,229)	241%	(3,274,490)	13%
Goods & Services	-	-	(2,021)	0%	-	-
Non-Operating Revenue	1,500	218,425	(183)	-119280%	1,557,000	14%
Net Capital	**(92,698)**	**(209,266)**	**(179,433)**	**117%**	**(1,025,000)**	**20%**
Fund Balance Inc (Dec)	**(240,881)**	**(3,597,095)**	**(3,772,181)**	**95%**	**(1,881,057)**	**191%**
	-	-	-		-	
Food and Beverage Gross Margin	**207,943**	**192,081**	**245,391**		**2,544,771**	**8%**
Food and Beverage Gross Margin	**25.6%**	**9.5%**	**9.4%**		**21.0%**	
Full Time Employees			**192.0**		**195.0**	
Excise Tax	**(56,964)**	**(106,436)**	**(274,137)**			
Taxes as percent of revenue	**19%**	**10%**	**1%**		**27%**	

	Current Year to Date	Prior Year to Date
Fund Balance		
Beginning Fund Balance	22,297,841	26,070,022
Fund Balance Inc (Dec)	(3,597,095)	(3,772,181)
Ending Fund Balance	**18,700,746**	**22,297,841**
Unrestricted Fund Balance	6,115,432	10,773,268
Contingency	2,009,197	2,064,067
Contingency for Renewal & Replacement	970,000	520,000
Designated for Renewal & Replacement	815,000	295,000
Designated for Phase 3	1,339,841	1,154,728
Contingency for HQH	3,700,000	3,700,000
Contingency for HQH (PERS Rsvr - Prior)	1,486,398	1,704,212
Designated for PERS Reserve - Current	375,187	-
Designated for PERS Reserve - Prior	709,380	812,505
Restricted by Contract - Aramark	-	93,750
Restricted by Agreement - TLT	1,180,311	1,180,311
Ending Fund Balance	**18,700,746**	**22,297,841**
	-	-
Strategic Goal	**15,079,863**	**13,583,854**
Available for Strategy Goal	9,094,629	13,357,335
Excess (Gap)	**(5,985,234)**	**(226,518)**

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Metropolitan Exposition-Recreation Commission

MERC Statement of Activity with Annual Budget

Portland Exposition Center

September 2009

As of October 29, 2009

	Current Month Actual	Prior Month YTD Actual	Current Year to Date Actual	Prior Year to Date Actual	% of Prior Year	2009-10 Adopted Budget	% of Annual Budget
	September-09	August-09	September-09	September-08		September-09	25%
Operating							
Revenue	314,935	302,295	617,230	592,360	104%	3,705,306	17%
Revenue - Food and Beverage	82,901	130,076	212,977	260,951	82%	2,133,289	10%
Total Operating Revenue	**397,835**	**432,371**	**830,206**	**853,311**	**97%**	**5,838,595**	**14%**
Costs - Food and Beverage	(80,521)	(123,598)	(204,119)	(246,749)	83%	(1,570,435)	13%
Personal Services	(119,558)	(228,240)	(347,799)	(402,668)	86%	(1,545,827)	22%
Goods & Services	(67,172)	(136,853)	(204,025)	(219,758)	93%	(1,280,421)	16%
Total Operating Expenses	**(267,252)**	**(488,691)**	**(755,942)**	**(869,175)**	**87%**	**(4,396,683)**	**17%**
Net Operating Results	**130,584**	**(56,320)**	**74,264**	**(15,863)**	**-468%**	**1,441,912**	**5%**
Non Operating							
Non-Operating Revenue	(427)	(4,444)	(4,871)	16,955	-29%	148,734	-3%
Non-Operating Expense	-	-	-	-		-	-
	(427)	**(4,444)**	**(4,871)**	**16,955**	**-29%**	**148,734**	**-3%**
Support and Risk Management							
MERC Administration	(25,392)	(50,785)	(76,177)	(72,756)	105%	(304,707)	25%
Metro Support Services	(16,897)	(33,794)	(50,691)	(46,071)	110%	(202,766)	25%
Metro Risk Management	-	(29,477)	(29,477)	(33,075)	89%	(70,743)	42%
	(42,289)	**(114,056)**	**(156,345)**	**(151,902)**	**103%**	**(578,216)**	**27%**
Net Increase (Decrease)	**87,868**	**(174,820)**	**(86,951)**	**(150,810)**	**58%**	**1,012,430**	**-9%**
Transfers							
Transfers from	-	-	-	-	-	-	-
Debt Service	-	-	-	-	-	(1,188,632)	0%
Net Transfers	-	-	-	-	-	**(1,188,632)**	**0%**
Net Operations	**87,868**	**(174,820)**	**(86,951)**	**(150,810)**	**58%**	**(176,202)**	**49%**
Capital							
Capital Outlay	(7,295)	(50,851)	(58,146)	-	-	(367,500)	16%
Non-Operating Revenue	-	-	-	(183)	0%	187,500	0%
Net Capital	**(7,295)**	**(50,851)**	**(58,146)**	**(183)**	**31753%**	**(180,000)**	**32%**
Fund Balance Inc (Dec)	**80,573**	**(225,671)**	**(145,097)**	**(150,993)**	**96%**	**(356,202)**	**41%**
Food and Beverage Gross Margin	**2,380**	**6,478**	**8,858**	**14,202**		**562,854**	**2%**
Food and Beverage Gross Margin %	**2.9%**	**5.0%**	**4.2%**	**5.4%**		**26.4%**	
Full Time Employees				**13.3**		**13.3**	
Excise Tax	**(7,353)**	**(20,509)**	**(27,862)**	**(53,167)**		**-**	
Fund Balance							
Beginning Fund Balance			5,918,257	6,069,250			
Fund Balance Inc (Dec)			(145,097)	(150,993)			
Ending Fund Balance			**5,773,160**	**5,918,257**			
Unrestricted Fund Balance			3,918,387	4,016,012			
Contingency			218,622	472,017			
Contingency for Renewal & Replacement			20,000	20,000			
Designated for Renewal & Replacement			40,000	20,000			
Designated for Phase 3			1,339,841	1,154,728			
Contingency for HQH (PERS Rsvr - Prior)			205,841	235,500			
Designated for PERS Reserve - Current			30,469				
Designated for PERS Reserve - Prior							
Ending Fund Balance			**5,773,160**	**5,918,257**			
			-	-			
Strategic Goal (6 mo, debt)			**3,386,974**	**3,257,115**			
Available for Strategy Goal			4,157,009	4,508,029			
Excess (Gap)			**770,035**	**1,250,914**			

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Metropolitan Exposition-Recreation Commission

MERC Statement of Activity with Annual Budget

Oregon Convention Center

September 2009

As of October 29, 2009

	Current Month Actual	Excluding HQH Current Year to Date Actual	Prior Year to Date Actual	% of Prior Year	2009-10 Adopted Budget	% of Annual Budget
	September-09	September-09	September-08		September-09	25%
Operating						
Revenue	555,522	1,330,599	1,404,120	95%	8,006,117	17%
Revenue - Food and Beverage	554,872	1,513,928	1,955,134	77%	8,550,083	18%
Total Operating Revenue	**1,110,394**	**2,844,527**	**3,359,254**	**85%**	**16,556,200**	**17%**
Costs - Food and Beverage	(328,951)	(1,318,524)	(1,714,949)	77%	(6,744,807)	20%
Personal Services	(702,120)	(2,047,729)	(2,046,591)	100%	(9,183,993)	22%
Goods & Services	(233,568)	(687,732)	(602,591)	114%	(4,010,888)	17%
Marketing POVA	(218,280)	(654,840)	(654,840)	100%	(3,032,043)	22%
Total Operating Expenses	**(1,482,919)**	**(4,708,825)**	**(5,018,971)**	**94%**	**(22,971,731)**	**20%**
Net Operating Results	**(372,525)**	**(1,864,298)**	**(1,659,717)**	**112%**	**(6,415,531)**	**29%**
Non Operating						
Transient, Lodging Tax	412,655	412,655	66,726	618%	8,975,971	5%
Non-Operating Revenue	(1,030)	(5,780)	33,247	-17%	248,836	-2%
Non-Operating Expense	-	(3)	(3)	100%	-	-
	411,626	**406,873**	**99,969**	**407%**	**9,224,807**	**4%**
Support and Risk Management						
MERC Administration	(137,118)	(411,355)	(392,886)	105%	(1,645,421)	25%
Metro Support Services	(91,244)	(273,732)	(248,778)	110%	(1,094,933)	25%
Metro Risk Management	-	(114,597)	(135,559)	85%	(275,033)	42%
	(228,362)	**(799,684)**	**(777,223)**	**103%**	**(3,015,387)**	**27%**
Net Increase (Decrease)	**(189,262)**	**(2,257,110)**	**(2,336,971)**	**97%**	**(206,111)**	**1095%**
Transfers						
Transfers from	-	-	-	-	-	-
Debt Service	-	(8,694)	(8,968)	97%	(17,258)	50%
Net Transfers	-	(8,694)	(8,968)	97%	(17,258)	50%
Net Operations	**(189,262)**	**(2,265,804)**	**(2,345,939)**	**-3%**	**(223,369)**	**1014%**
Capital				-		-
Capital Outlay	(42,419)	(198,061)	(167,820)	118%	(2,244,990)	9%
Non-Operating Revenue	1,500	1,500	-	-	887,500	0%
Transfers from	-	-	-	-	692,490	0%
Net Capital	**(40,919)**	**(196,561)**	**(167,820)**	**117%**	**(665,000)**	**30%**
Fund Balance Inc (Dec)	**(230,181)**	**(2,462,365)**	**(2,513,759)**	**98%**	**(888,369)**	**277%**
Food and Beverage Gross Margin	**225,921**	**195,404**	**240,185**		**1,805,276**	**11%**
Food and Beverage Gross Margin %	**40.7%**	**12.9%**	**12.3%**		**21.1%**	
Full Time Employees			**110.3**		**112.3**	
Excise Tax	**(49,253)**	**(78,199)**	**(220,723)**		**-**	
Taxes as percent of revenue	**27%**	**13%**	**2%**		**35%**	

	Current Year to Date	Prior Year to Date
Fund Balance		
Beginning Fund Balance	8,711,783	11,304,019
Fund Balance Inc (Dec)	(2,462,365)	(2,513,759)
Fund Balance Inc (Dec) for HQH	-	(78,477)
Ending Fund Balance	**6,249,418**	**8,711,783**
Unrestricted Fund Balance	(1,882,818)	990,905
Contingency	1,206,167	979,337
Contingency for Renewal & Replacement	250,000	250,000
Designated for Renewal & Replacement	475,000	225,000
Contingency for HQH	3,700,000	3,700,000
Contingency for HQH (PERS Rsvr - Prior)	1,131,796	1,292,480
Designated for PERS Reserve - Current	188,962	
Designated for PERS Reserve - Prior		
Restricted by Contract - Aramark		93,750
Restricted by Agreement - TLT	1,180,311	1,180,311
Ending Fund Balance	**6,249,418**	**8,711,783**
	-	-
Strategic Goal (3 mo)	**5,742,933**	**5,151,674**
Available for Strategy Goal	(426,651)	2,220,242
Excess (Gap)	**(6,169,584)**	**(2,931,432)**

Metropolitan Exposition-Recreation Commission

MERC Statement of Activity with Annual Budget

Portland Center for the Performing Arts

September 2009

As of October 29, 2009

	Current Month Actual September-09	Current Year to Date Actual September-09	Prior Year to Date Actual September-08	% of Prior Year	2009-10 Adopted Budget September-09	% of Annual Budget 25%
Operating						
Revenue	363,392	627,606	888,020	71%	6,142,416	10%
Revenue - Food and Beverage	173,996	296,461	392,921	75%	1,440,427	21%
Total Operating Revenue	**537,388**	**924,067**	**1,280,942**	**72%**	**7,582,843**	**12%**
Costs - Food and Beverage	(194,354)	(308,642)	(401,917)	77%	(1,263,786)	24%
Personal Services	(374,854)	(1,097,409)	(1,244,295)	88%	(5,491,404)	20%
Goods & Services	(115,635)	(320,591)	(326,992)	98%	(2,169,579)	15%
Total Operating Expenses	**(684,843)**	**(1,726,642)**	**(1,973,204)**	**88%**	**(8,924,769)**	**19%**
Net Operating Results	**(147,455)**	**(802,575)**	**(692,262)**	**116%**	**(1,341,926)**	**60%**
Non Operating						
Transient, Lodging Tax	75,002	75,002	12,128	618%	1,954,663	4%
Government Support City of Portland	-	-	-	-	760,926	0%
Non-Operating Revenue	16,016	10,334	23,736	44%	192,048	5%
Non-Operating Expense	-	(2,500)	(2,500)	100%	(2,500)	100%
	91,018	**82,835**	**33,363**	**248%**	**2,905,137**	**3%**
Support and Risk Management						
MERC Administration	(91,412)	(274,237)	(261,924)	105%	(1,096,947)	25%
Metro Support Services	(60,830)	(182,490)	(165,855)	110%	(729,955)	25%
Metro Risk Management	-	(59,498)	(74,184)	80%	(142,795)	42%
	(152,242)	**(516,225)**	**(501,963)**	**103%**	**(1,969,697)**	**26%**
Net Increase (Decrease)	**(208,679)**	**(1,235,964)**	**(1,160,862)**	**106%**	**(406,486)**	**304%**
Transfers						
Transfers from	-	-	-	-	-	-
Net Transfers	-	-	-	-	-	-
Net Operations	**(208,679)**	**(1,235,964)**	**(1,160,862)**	**106%**	**(406,486)**	**304%**
Capital						
Capital Outlay	(44,254)	(112,454)	(9,409)	1195%	(512,000)	22%
Goods & Services	-	-	(2,021)	0%	-	-
Non-Operating Revenue	-	216,925	-	-	482,000	45%
Net Capital	**(44,254)**	**104,471**	**(11,430)**	**-914%**	**(30,000)**	**-348%**
Fund Balance Inc (Dec)	**(252,934)**	**(1,131,493)**	**(1,172,292)**	**97%**	**(436,486)**	**259%**
Food and Beverage Gross Margin	**(20,358)**	**(12,181)**	**(8,996)**		**176,641**	**-7%**
Food and Beverage Gross Margin %	**-11.7%**	**-4.1%**	**-2.3%**		**12.3%**	
Full Time Employees			**46.4**		**47.4**	
Taxes as percent of revenue	**12%**	**8%**	**1%**		**20%**	

	Current Year to Date	Prior Year to Date
Fund Balance		
Beginning Fund Balance	6,613,707	7,785,999
Fund Balance Inc (Dec)	(1,131,493)	(1,172,292)
Ending Fund Balance	**5,482,214**	**6,613,707**
Unrestricted Fund Balance	3,217,375	5,034,753
Contingency	451,078	466,449
Contingency for Renewal & Replacement	700,000	250,000
Designated for Renewal & Replacement	300,000	50,000
Designated for PERS Reserve - Current	104,381	
Designated for PERS Reserve - Prior	709,380	812,505
Ending Fund Balance	**5,482,214**	**6,613,707**
	-	-
Strategic Goal (6 mo)	**4,467,168**	**4,093,382**
Available for Strategy Goal	4,368,453	5,751,202
Excess (Gap)	**(98,715)**	**1,657,820**

Metropolitan Exposition-Recreation Commission

MERC Statement of Activity with Annual Budget

Convention Center Headquarter Hotel Project

September 2009

As of October 29, 2009

	Current Month Actual	Current Year to Date Actual	Prior Year to Date Actual	% of Prior Year	2009-10 Adopted Budget	% of Annual Budget
	September-09	September-09	September-08		September-09	25%
Operating						
Personal Services	-	-	(17,472)	0%	-	-
Goods & Services	-	-	(61,005)	0%	(200,000)	0%
Meetings Expense	-	-	-	-	-	-
Developer Agreement I	-	-	-	-	-	-
Developer Agreement II	-	-	-	-	-	-
Communications Consulting	-	-	(11,008)	0%	-	-
Construction Consulting	-	-	-	-	-	-
Financial Consulting	-	-	(13,493)	0%	-	-
Legal Consulting	-	-	(33,579)	0%	-	-
Management Consulting	-	-	-	-	(200,000)	0%
Market Consulting	-	-	(2,925)	0%	-	-
Project Management	-	-	-	-	-	-
	-	**-**	**(78,477)**	**0%**	**(200,000)**	**0%**
	-	-	-		-	
Net Operations	**-**	**-**	**(78,477)**	**0%**	**(200,000)**	**0%**

Metropolitan Exposition-Recreation Commission

MERC Statement of Activity with Annual Budget

MERC Administration

September 2009

As of October 29, 2009

	Current Month Actual September-09	Current Year to Date Actual September-09	Prior Year to Date Actual September-08	% of Prior Year	2009-10 Adopted Budget September-09	% of Annual Budget 25%
Operating						
Revenue	229	6,818	4,160	164%	38,500	18%
Personal Services	(73,428)	(487,438)	(514,387)	95%	(2,313,380)	21%
Goods & Services	(20,150)	(88,004)	(82,843)	106%	(652,195)	13%
Net Operating Expenses	**(93,349)**	**(568,624)**	**(593,070)**	**96%**	**(2,927,075)**	**19%**
Non Operating						
Non-Operating Revenue	1,316	7,745	8,844	88%	30,000	26%
Non-Operating Expense	-	-	-	-	-	-
	1,316	**7,745**	**8,844**	**88%**	**30,000**	**26%**
Support and Risk Management						
MERC Administration	253,923	761,769	727,566	105%	3,047,075	25%
	253,923	**761,769**	**727,566**	**105%**	**3,047,075**	**25%**
Net Increase (Decrease)	**161,890**	**200,890**	**143,340**	**140%**	**150,000**	**134%**
Net Transfers	-	-	-	-	-	-
Net Operations	**161,890**	**200,890**	**143,340**	**140%**	**150,000**	**134%**
Capital						
Revenue	-	-	-	-	-	-
Capital Outlay	(230)	(59,030)	-	-	(150,000)	39%
Construction Management	-	-	-	-	-	-
Goods & Services	-	-	-	-	-	-
Non-Operating Revenue	-	-	-	-	-	-
Net Capital	**(230)**	**(59,030)**	**-**	**-**	**(150,000)**	**39%**
Fund Balance Inc (Dec)	**161,660**	**141,860**	**143,340**	**99%**	**-**	**-**
Full Time Employees			22.0		22.0	
Excise Tax	(358)	(375)	(246)		-	

	Current Year to Date	Prior Year to Date
Fund Balance		
Beginning Fund Balance	1,054,094	910,754
Fund Balance Inc (Dec)	141,860	143,340
Ending Fund Balance	**1,195,954**	**1,054,094**
Unrestricted Fund Balance	862,488	731,598
Contingency	133,330	146,264
Contingency for HQH (PERS Rsvr - Prior)	148,761	176,232
Designated for PERS Reserve - Current	51,375	
Designated for PERS Reserve - Prior		
Ending Fund Balance	**1,195,954**	**1,054,094**
	-	-
Strategic Goal (6 mo)	**1,482,788**	**1,081,683**
Available for Strategy Goal	995,818	877,862
Excess (Gap)	**(486,970)**	**(203,821)**

Expo Center Event Analysis

September 2009		Consumer	Trade	Misc.	Conv.	# of Events	Event Days	I/O Days	Use %	Attendance	Rental	Equipment	Concessions	Catering	Utilities	Parking	Total
Portland Fall RV & Van Show	10-13	1				1	4	4		4,863	27,814		12,457		3,894	21,943	66,108
Portland Fall Home & Garden Show	10-13	1				1	4	4		5,709	41,420	230	27,728	1,023	11,208	40,124	121,733
Rose City Cat Fanciers - Annual Cat Show	12-13	1				1	2	1		151	4,400	300	946			1,294	6,940
2009 Sears Home Appliance Training	15-17			1		1	3	1		152	1,560	263		2,273	166	595	4,857
Design-2-Part Show	16-17	1				1	2	2		793	8,430		3,501	60	1,920	5,779	19,690
Rose City Gun and Knife Show	18-20	1				1	3	2		4,327	14,920	625	7,792	113	737	17,503	41,690
Rose City Live Model Horse Show	19			1		1	1	1		50	555			345		173	1,073
Islamic Center of Portland	20			1		1	1	3		4,000	2,200	540				10,322	13,062
Hardy Plant Society of Oregon Garden Fair	19-20	1				1	2	2		1,794	5,050	298	1,539	48	815	6,412	14,162
Northwest Quilting Expo	24-26	1				1	3	2		5,564	18,505	600	23,623	1,487	9,744	21,041	75,000
Just Between Friends Children's Consignment Sal	25-27	1				1	3	3		2,193	6,765		669		542	7,500	15,476
Silver Collector Car Auction	26	1				1	1	1		356	3,575		2,813		622	1,429	8,439
Seattle Cat Club	26	1				1	1	1		57	1,800	250	462			198	2,710
Marine Drive Work Session Meeting	30			1		1	1			30							
		10		**4**		**14**	**31**	**27**		**30,039**	**136,994**	**3,106**	**81,530**	**5,349**	**29,648**	**134,313**	**390,940**

FY 2009-10 Year to Date	Consumer	Trade	Misc.	Conv.	# of Events	Event Days	I/O Days	Use %	Attendance	Rental	Equipment	Concessions	Catering	Utilities	Parking	Total
July	3				3	10	7	27%	17,662	88,958	1,375	100,895	5,000	9,689	87,906	293,823
August	4		1		5	10	8	12%	10,179	27,600	1,483	32,861		2,080	33,667	97,691
September	**10**		**4**		**14**	**31**	**27**	**41%**	**30,039**	**136,994**	**3,106**	**81,530**	**5,349**	**29,648**	**134,313**	**390,940**
October																0
November																0
December																0
January																0
February																0
March																0
April																0
May																0
June																0
Total to Date	17		5		22	51	42	27%	57,880	253,552	5,964	215,286	10,349	41,417	255,886	782,454
Month to Month Comparison	**3**	**-1**	**0**	**0**	**2**	**31**	**27**	**-1%**	**8,596**	**16,847**	**-32**	**15,865**	**1,482**	**7,224**	**40,306**	**81,692**
Year to Date Comparison	**3**	**-1**	**1**	**0**	**0**	**27**	**25**	**-3%**	**5,428**	**-42,535**	**-4,647**	**-20,581**	**-34,588**	**6,153**	**46,743**	**-49,455**

FY 2008-09	Consumer	Trade	Misc.	Conv.	# of Events	Event Days	I/O Days	Use %	Attendance	Rental	Equipment	Concessions	Catering	Utilities	Parking	Total
July	4				4	13	10	29%	18,903	131,116	900	115,569	4,406	10,224	87,460	349,675
August	3				6	11	7	17%	12,106	44,824	6,573	54,633	36,664	2,616	27,676	172,986
September	**7**	**1**	**4**		**12**			**42%**	**21,443**	**120,147**	**3,138**	**65,665**	**3,867**	**22,424**	**94,007**	**309,248**
October	5	1	1		7	16	16	50%	30,675	134,225	1,840	115,458	11,234	31,287	137,523	431,567
November	8	1	1		10	29	25	66%	86,345	181,147	3,325	133,224	4,174	22,671	216,799	561,340
December	4		2		6	17	15	41%	36,513	94,245	1,550	126,758	1,171	11,024	133,049	367,797
January	6	1	7		14	32	15	90%	47,073	344,993	12,465	220,812	67,734	28,556	219,016	893,576
February	5		5		10	21	18	65%	80,093	186,992	2,260	411,629	27,557	49,936	290,688	969,062
March	7		3		10	23	16	53%	53,347	152,122	4,380	136,357	41,780	25,779	168,116	528,534
April	8	1	4		13	25	19	44%	48,604	164,993	2,970	252,183	46,830	10,754	86,341	564,071
May	5	1	3		9	16	14	22%	9,350	64,045	2,288	20,457	60,607	6,176	42,453	196,026
June	2	1	2		5	10	7	11%	9,456	32,885	2,854	25,799	2,205	2,088	32,130	97,961
Total to Date	64	7	32	0	106	213	162	44%	453,908	1,651,734	44,543	1,678,544	308,229	223,535	1,535,258	5,441,843

Monthly Event and Attendance Summary
July 1, 2008 - June 30, 2009

MONTH	KELLER		ASCH		NEWMARK		WINNINGSTAD		BRUNISH		LOBBY/OTHER		TOTALS	
	Events	Attendance	Events	Attendance	Events	Attendance	Events	Attendance	Events	Attendance	Events	Attendance	Events	Attendance
July	4	7,901	9	14,095	5	1,328	2	207	0	0	18	3,232	38	26,763
August	29	58,527	3	4,492	4	1,100	7	429	3	209	7	2,200	53	66,957
September	12	19,586	12	23,745	16	4,861	23	3,787	0	0	2	282	65	52,261
October													0	0
November													0	0
December													0	0
January													0	0
February													0	0
March													0	0
April													0	0
May													0	0
June													0	0
Total to Date	45	86,014	24	42,332	25	7,289	32	4,423	3	209	27	5,714	156	145,981

Other includes Main Street

Monthly Event and Attendance Summary
July 1, 2009 - June 30, 2010

Month	KELLER		ASCH		NEWMARK		WINNINGSTAD		BRUNISH		LOBBY/OTHER		TOTALS	
	Events	Attendance	Events	Attendance	Events	Attendance	Events	Attendance	Events	Attendance	Events	Attendance	Events	Attendance
July	0	0	2	4,169	13	1,806	4	547	0	0	11	2,282	30	8,804
August	8	23,049	2	2,864	8	3,897	2	102	2	101	11	2,697	33	32,710
September	5	6,449	7	14,112	13	6,080	22	3,614	1	124	3	1,732	51	32,111
October													0	0
November													0	0
December													0	0
January													0	0
February													0	0
March													0	0
April													0	0
May													0	0
June													0	0
Total to Date	13	29,498	11	21,145	34	11,783	28	4,263	3	225	25	6,711	114	73,625

Other includes Main Street

Total to Date Change														
Events	-32	-56,516	-13	-21,187	9	4,494	-4	-160	0	16	-2	997	-42	-72,356
Percentage	-71%	-66%	-54%	-50%	36%	62%	-13%	-4%	0%	8%	-7%	17%	-27%	-49.6%

PCPA MONTHLY ANALYSIS **SEPTEMBER 2009**

FACILITY NAME	DATE(S)	PRESENTER	EVENT	LOAD-IN/ LOAD-OUT DARK DAYS	NO. OF PERF.	TOTAL ATTEND.	PAID ATTEND.	% SOLD	GROSS TICKET SALES	RENT	CHARGES & REIMBURSE.	USER'S FEE	SOUVEN.	GROSS FOOD & BEV.	GROSS REVENUE EARNED
ASCH	9/12 to 9/13	Oregon Symphony	Cirque de la Symphonie (14087)	2	2	3,868	3,834	69%	$200,098	$1,690	$9,462	$1,916	$0	$4,937	$18,005
	9/23	Kaiser Permanente	Saward Lecture (15282)	0	1	2,381	0	0%	$0	$4,700	$2,839	$0	$153	$4,221	$11,913
	9/24	Portland Arts and Lectures	Wally Lamb (14194)	0	1	1,747	1,981	71%	$71,408	$1,855	$2,710	$4,574	$50	$854	$10,043
	9/25	Live Nation	Lewis Black (14653)	0	1	1,701	1,688	60%	$81,839	$6,176	$4,175	$4,635	$295	$6,816	$22,097
	9/26	Oregon Symphony	Bela, Edgar & Friends (14089)	0	1	2,476	2,501	90%	$134,997	$1,335	$6,968	$1,251	$911	$4,797	$15,262
	9/29	Destination Funny Entertainment	Carol Burnett (15280)	0	1	1,939	1,983	71%	$143,794	$10,500	$9,076	$8,907	$0	$2,313	$30,796
NEWMARK	9/3	OR College of Oriental Medicine	Graduation (13394)	0	1	626	0	0%	$0	$1,135	$1,878	$0	$0	$11,837	$14,850
	9/12	Portland Creative Conference	Keeping the Beat (15757)	0	1	378	0	0%	$0	$500	$4,475	$0	$0	$3,664	$8,639
	9/13	Live Nation	Patton Oswalt (15623)	0	1	784	761	83%	$19,193	$1,310	$1,744	$1,522	$0	$644	$5,220
	9/17 to 9/20	Reaction Marketing	Forbidden Broadway (15328)	1	5	776	589	13%	$26,840	$4,055	$7,625	$1,609	$0	$593	$13,882
	9/18 to 9/20	Portland Taiko	Lost and Found (12621)	2	3	1,075	892	34%	$19,722	$4,208	$7,545	$2,258	$0	$589	$14,600
	9/24 to 9/25	Square Peg	David Cross (15837)	0	2	1,794	1,800	97%	$63,024	$2,620	$5,857	$3,597	$163	$3,083	$15,320
	9/29	Standard Insurance	Benefit Talent Show (15474)	0	1	257	0	0%	$0	$1,700	$2,328	$0	$0	$628	$4,656
WINNINGSTAD	9/4 to 9/12	PICA	tba festival (13407)	10	16	3,426	2,422	50%	$28,625	$9,835	$22,893	$4,512	$180	$418	$37,838
	9/29	Matchstick Productions	In Deep The Skiing Experience (15516)	0	1	250	270	89%	$4,050	$735	$1,176	$540	$0	$0	$2,451
BRUNISH HALL	9/25	Schwabe Williamson Wyatt	Meeting (14815)	0	1	124	0	n/a	$0	$600	$815	$0	$0	$1,749	$3,164
A. HATFIELD HALL	9/14	Assoc. of Zoos/Aquariums	Reception (12518)	0	1	1,500	0	n/a	$0	$0	$1,428	$0	$0	$89,656	$91,084
MISCELLANEOUS	9/16	PCPA	Noontime Showcase-Portland Taiko (15820)	0	1	171	0	n/a	$0	$0	$0	$0	$0	$9	$9
	9/19	ArtBar	PDX Jazz - David Friessen Trio (15952)	0	1	61	0	n/a	$0	$0	$0	$0	$0	$951	$951
															$0
ArtBar														$20,094	$20,094
Keller Café														see Oct.	$0
PCPA Catering														$1,492	$1,492
		TOTALS		**15**	**42**	**25,334**	**18,721**	**48%**	**$793,590**	**$52,954**	**$92,994**	**$35,321**	**$1,752**	**$159,345**	**$342,366**

PCPA MONTHLY ANALYSIS SEPTEMBER 2008

FACILITY NAME	DATE(S)	PRESENTER	EVENT	LOAD-IN/ LOAD-OUT DARK DAYS	NO. OF PERF.	TOTAL ATTEND.	PAID ATTEND.	% SOLD	GROSS TICKET SALES	RENT	CHARGES & REIMBURSE.	USER'S FEE	SOUVEN.	GROSS FOOD & BEV.	GROSS REVENUE EARNED
KELLER	8/13 to 9/7	Live Nation	Phantom of the Opera	8	32	48,637	63,123	66%	$3,409,505	$203,501	$141,508	$189,369	$16,908	$127,808	$679,094
	9/6	FedEx	Reception	0	1	20	0		$0	$0	$0	$0	$0	$3,743	$3,743
Camerata Room	9/18	Key Bank	Reception	0	1	20	0		$0	$0	$0	$0	$0	$1,964	$1,964
ASCH	9/5	OSO/PICA	Antony Hegarty	2	1	2,215	2,140	77%	$66,885	$16,780	$6,981	$3,745	$0	$5,223	$32,729
	9/13	Oregon Symphony	Johnny Mathis	1	1	2,282	2,409	87%	$170,361	$9,150	$9,004	$4,216	$827	$2,704	$25,901
	9/14 to 16	Oregon Symphony	Auditions	3	0	0	0		$0	$15,600	$2,595	$0	$0	$0	$18,195
	9/17	World Affairs Council	Sandra Day O'Connor	0	1	1,974	1,954	70%	$64,243	$3,212	$3,087	$4,283	$0	$1,070	$11,652
	9/18	Portland Arts and Lec	Richard Russo	0	1	1,939	2,233	80%	$58,661	$1,855	$2,617	$4,144	$121	$746	$9,483
	9/20	Oregon Symphony	Michael Allen Harrison	2	1	1,732	1,662	56%	$52,023	$1,150	$4,669	$2,909	$510	$1,984	$11,222
	9/21	Oregon Symphony	Inside the Score	1	1	1,610	1,634	59%	$37,452	$725	$4,193	$2,859	$0	$526	$8,303
	9/24	White Bird	Alonzo King	1	1	2,577	2,548	92%	$79,668	$2,780	$14,692	$4,886	$0	$2,844	$25,202
	9/27 to 29	Oregon Symphony	Classical 1	3	3	6,698	5,962	62%	$244,818	$14,340	$13,858	$10,434	$0	$8,184	$46,816
	9/30	Live Nation	Jackson Browne	0	1	2,610	2,655	96%	$156,355	$8,500	$14,944	$8,850	$1,596	$10,661	$44,551
NEWMARK	9/5 to 6	Portland Creative Con	Portland Creative Conf.	1	1	253	0		$0	$0	$3,467	$0	$0	$3,083	$6,550
	9/10	Live Nation	Lindsay Buckingham	0	1	541	560	64%	$28,840	$1,270	$8,712	$1,481	$218	see ArtBar	$11,681
	9/13	Peacock Productions	Peacock After Dark	0	1	260	274	31%	$9,600	$1,135	$2,943	$616	$0	$2,288	$6,982
	9/16 to 21	Portland Taiko	Footsteps/Ancestors	2	4	1,328	1,148	33%	$26,187	$5,340	$9,982	$2,009	$0	$1,627	$18,958
	9/23	Standard Insurance	Benefit Talent Show	0	1	309	0		$0	$1,650	$2,188	$0	$0	$1,282	$5,120
	9/24 to 28	G4 Productions	Menopause/Mus. Wk 1	5	7	2,174	1,986	32%	$78,908	$7,557	$15,644	$4,617	$0	$1,155	$28,973
WINNINGSTAD	9/5 to 14	pica	tba festival	3	16	2,832	3,009	64%	$28,407	$6,235	$15,098	$5,266	$0	$181	$26,780
	9/18	RACC	Arts Partners	0	1	160	0		$0	$0	$521	$0	$0	see ArtBar	$521
	9/20	OR Midwifery Council	Birth	0	1	88	88	30%	$1,736	$650	$925	$154	$0	see ArtBar	$1,729
	9/21	Rasika	Dance of India	0	1	133	87	20%	$1,693	$650	$579	$97	$0	see ArtBar	$1,326
	9/25	NWBCA	Art of Leadership Wkshp	0	1	38	0		$0	$0	$269	$0		$406	$675
	9/26	PDX Jazz Orchestra	Remembering Coltrane	0	1	174	194	66%	$3,860	$650	$1,207	$340	$0	see ArtBar	$2,197
	9/28	Bravo Vancouver	Dubrovnik Symphony	0	1	102	115	39%	$2,825	$650	$821	$201	$0	see ArtBar	$1,672
A. HATFIELD HALL	9/18	PCPA	Art Spark	0	1	62	0		$0	$0	$0	$0	$0	$1,859	$1,859
	9/19	Oregon Symphony	Annual Meeting/Lunch	0	1	139	0		$0	$405	$305	$0	$0	$1,873	$2,583
MISCELLANEOUS	9/8	PCPA Volunteers	Noontime Showcase	0	1	143								$21	$21
AHH	September		Food and Beverage											$2,478	$2,478
ARTBAR	September		Food and Beverage											$17,998	$17,998
KELLER CAFÉ	September		Food and Beverage											$22,616	$22,616
		TOTALS		**32**	**85**	**81,050**	**93,781**	**59%**	**$4,522,027**	**$303,785**	**$280,809**	**$250,476**	**$20,180**	**$224,324**	**$1,079,574**

OCC EVENT ANALYSIS MONTHLY REVENUE REPORT
SEPTEMBER 2009

Event Name	Start Date	Actual Attend	Event Rank	Event Type	Event Class	Event Indicator	Occupied Sq Feet	Event Days	Travel Portland	OCC Actual Adver	OCC Actual Catering	OCC Actual Concess	OCC Actual Parking	OCC Actual Eq Rental	OCC Actual AV Eqip	OCC Actual Utilities	OCC Actual Phone	OCC Actual Booth Carpet Cln	OCC Actual Box Office	OCC Actual Misc	OCC Actual Rent	OCC Actual Labor	OCC Actual Total	OCC Ordered Rent
OCC SEP 2009 MISC NON-EVENT ACTIVITIES/BILLINGS	09/01/09	0	Accounting/Non-Event	Accounting/Non-event	Accounting/Non-Event		0	30		$0	$529	$654	$43,034	$0	$0	$0	$0	$0	$0	$3,498	$0	$0	$47,715	$0
NW Oregon Health Preparedness Organization - Training	09/02/09	30	New	Meeting/Seminar	Meeting	Regional	1,875	1		$0	$504	$0	$108	$80	$205	$0	$0	$0	$0	$0	$380	$0	$1,277	$380
La Femme Magnifique International Pageant - to crown the most glamorous female impersonator in the business	09/06/09	600	New	Competition	Food & Beverage/Catering	National	59,700	1		$0	$0	$6,548	$0	$820	$3,500	$959	$225	$0	$0	$539	$3,750	$1,208	$17,549	$3,750
Hoffman Corporation Quarterly Meeting	09/08/09	145	Repeat	Meeting/Seminar	Corporate	Local	1,875	1		$0	$652	$0	$0	$0	$255	$0	$0	$0	$0	$0	$545	$0	$1,452	$545
Spectrum 2009 - NW Property Management Conference	09/10/09	875	Repeat	Trade Show	Convention w/ Tradeshow	Local	206,503	1		$0	$33,137	$1,558	$0	$0	$3,385	$11,252	$396	$234	$0	$550	$7,334	$585	$58,430	$7,334
Hispanic Metropolitan Chamber - Hispanic Heritage Celebration	09/10/09	362	New	Dinner	Food & Beverage/Catering	Local	17,100	1		$0	$28,266	$1,100	$0	$0	$5,856	$0	$0	$0	$0	$165	$0	$1,715	$37,103	$0
PICC Luncheon	09/10/09	46	New	Lunch	Food & Beverage/Catering	Regional	1,818	1		$0	$1,270	$0	$0	$0	$35	$0	$0	$0	$0	$150	$0	$0	$1,455	$0
Weekend Super Sale	09/10/09	60	New	Trade Show	Consumer Public	Local	305,000	4		$0	$0	$0	$0	$0	$0	$2,602	$0	$0	$0	$750	$5,250	$0	$8,602	$5,250
Reliv Business Opportunity Meeting	09/11/09	70	Repeat	Meeting/Seminar	Meeting	Local	7,500	2		$0	$95	$0	$0	$30	$1,380	$79	$0	$0	$0	$0	$2,180	$125	$3,889	$2,180
Responder Life Tribute Dinner	09/11/09	373	New	Dinner	Food & Beverage/Catering	Local	12,600	1		$0	$15,840	$0	$0	$365	$3,611	$217	$0	$0	$0	$165	$0	$1,177	$21,375	$0
Oregon State Bar - All Day Power Play	09/11/09	240	Repeat	Meeting/Seminar	Meeting	State	12,600	1		$0	$5,795	$0	$32	$0	$455	$204	$365	$0	$0	$165	$2,600	$0	$9,616	$2,600
Association of Zoos & Aquariums 85th Annual Conference	09/14/09	1,600	New	Annual Convention/Conference	Convention w/ Tradeshow	National	746,379	4	TRUE	$0	$119,253	$11,253	$0	$423	$6,872	$16,351	$7,369	$2,105	$0	$1,475	$34,200	$4,943	$204,244	$34,200
Clean Pacific Conference & Exhibition	09/14/09	864	New	Annual Convention/Conference	Convention w/ Tradeshow	National	207,064	4	TRUE	$0	$33,748	$3,989	$0	$30	$11,574	$5,244	$747	$1,452	$0	$182	$11,280	$6,674	$74,919	$11,280
Millie Lewis AMTC Orientation & Workshop	09/12/09	30	Repeat	Meeting/Seminar	Meeting	Local	2,772	2		$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$810	$0	$810	$810
The B.U.L.L. Session Dinner & Auction	09/14/09	388	Repeat	Auction	Food & Beverage/Catering	Local	26,000	1		$0	$21,251	$0	$0	$420	$3,833	$129	$0	$0	$0	$165	$219	$1,003	$27,019	$219
2009 Northwest Apparel & Footwear Material Show	09/15/09	400	Repeat	Trade Show	Tradeshow	Regional	257,170	2		$0	$20,754	$4,876	$0	$0	$283	$2,031	$0	$642	$0	$910	$8,748	$830	$39,074	$8,748
Coastal America Learning Center Directors' Meeting	09/15/09	0	New	Meeting/Seminar	Meeting	National	756	1		$0	$599	$0	$0	$0	$30	$0	$0	$0	$0	$0	$180	$0	$809	$180
NW Oregon Health Preparedness Organization - Exercise	09/16/09	40	New	Meeting/Seminar	Meeting	Regional	3,750	1		$0	$781	$0	$150	$120	$540	$79	$142	$0	$0	$0	$760	$0	$2,572	$760

OCC EVENT ANALYSIS MONTHLY REVENUE REPORT
SEPTEMBER 2009

Susan G. Komen for the CURE Health Expo 2009	09/18/09	15,000	Repeat	Annual Convention/Conference	Tradeshow	Local	198,462	2		$0	$203	$6,101	$0	$0	$0	$2,535	$621	$326	$0	$850	$12,700	$1,365	$24,701	$12,700
Trekking Through the Legal Jungle - On Safari with Barran Liebman	09/17/09	630	Repeat	Meeting/Seminar	Meeting	Local	34,200	1		$0	$14,606	$0	$0	$540	$3,090	$462	$0	$0	$0	$165	$6,675	$303	$25,841	$6,675
National Association of County Agricultural Agents - 2009 Annual Meeting & Professional Improvement Conference (NACAA)	09/20/09	1,150	New	Annual Convention/Conference	Convention w/ Tradeshow	National	512,129	6	TRUE	$0	$76,114	$5,037	$0	$340	$36,570	$4,722	$4,104	$0	$0	$550	$41,380	$17,940	$186,756	$41,380
Portland VegFest	09/19/09	3,500	New	Consumer/Public Show	Consumer Public	Local	95,668	1		$0	$1,800	$0	$0	$0	$475	$3,206	$0	$0	$0	$395	$3,350	$887	$10,113	$3,350
Oregon Law Institute - 2009 Workers' Compensation Update	09/18/09	70	Repeat	Meeting/Seminar	Meeting	State	1,818	1		$0	$868	$0	$72	$0	$170	$79	$0	$0	$0	$0	$520	$0	$1,709	$520
The Oregon Small Business Fair - 16th Annual	09/19/09	800	Repeat	Community Event	Tradeshow	State	10,584	1		$0	$0	$1,775	$0	$0	$180	$650	$0	$0	$0	-$151	$3,090	$0	$5,544	$3,090
Medicine Begins With Me	09/19/09	80	New	Meeting/Seminar	Meeting	Local	8,210	2		$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$1,480	$0	$1,480	$1,480
Primerica Financial Independence Seminar	09/19/09	1,000	New	Meeting/Seminar	Meeting	Local	18,900	1		$0	$0	$0	$0	$45	$2,325	$416	$0	$0	$0	$165	$4,125	$130	$7,206	$4,125
Home Improvement Show 2009	09/24/09	3,508	Repeat	Consumer/Public Show	Consumer Public	Local	1,065,596	4		$0	$0	$10,056	$0	$0	$81	$14,042	$275	$2,150	$551	$0	$67,000	$5,587	$99,741	$67,000
ADA volunteer meeting	09/22/09	10	Repeat	Meeting/Seminar	Meeting		0	1		$0	$358	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$358	$0
IN-HOUSE: OCC Selling Daily Parking Passes	09/23/09	1	Accounting/Non-Event	Accounting/Non-event	Miscellaneous/Other	Local	0	5		$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0
Bead Fest Portland 2009	09/24/09	2,545	Repeat	Consumer/Public Show	Convention w/ Tradeshow	Local	467,100	4	TRUE	$0	$111	$11,320	$0	$0	$15	$9,035	$675	$0	$165	$530	$33,460	$5,267	$60,578	$33,460
Metro Management All Staff Workshop	09/23/09	90	Repeat	Meeting/Seminar	Meeting	Local	4,005	1		$0	$0	$0	$0	$0	$539	$0	$0	$0	$0	$0	$650	$0	$1,189	$650
MED Week Kick-off Celebration Party	09/23/09	72	New	Reception	Food & Beverage/Catering	Local	4,105	1		$0	$2,684	$0	$0	$0	$180	$129	$0	$0	$0	$150	$0	$100	$3,243	$0
OEN Tom Holce Awards for Entrepreneurship 2009	09/24/09	650	Repeat	Dinner	Food & Beverage/Catering	Local	25,500	1		$0	$24,946	$2,617	$0	$120	$605	$341	$0	$0	$0	$275	$2,200	$1,643	$32,747	$2,200
Oregon State Bar - Advising Nonprofit Organizations	09/24/09	140	Repeat	Meeting/Seminar	Meeting	Local	4,700	1		$0	$2,537	$0	$40	$0	$196	$167	$0	$0	$0	$25	$1,200	$0	$4,165	$1,200
ULI - Central City Commercial Development Symposium II	09/24/09	120	New	Breakfast	Food & Beverage/Catering	Regional	6,300	1		$0	$3,785	$0	$0	$0	$631	$0	$0	$0	$0	$0	$250	$0	$4,666	$250
Travel Portland - Internet Reseach Marketing	09/24/09	70	New	Meeting/Seminar	Meeting	Local	3,750	2		$0	$485	$0	$0	$0	$860	$113	$1,305	$0	$0	$0	$0	$0	$2,763	$0
Oregon Law Institute - 22nd Annual Family Law Seminar	09/25/09	140	Repeat	Meeting/Seminar	Meeting	State	3,204	1		$0	$1,389	$0	$112	$0	$250	$88	$0	$0	$0	$0	$925	$0	$2,764	$925
American Diabetes Association - Annual Practice Update	09/25/09	441	New	Meeting/Seminar	Meeting	Local	18,900	1		$0	$18,605	$0	$96	$480	$825	$0	$0	$0	$0	$0	$1,600	$523	$22,129	$1,600
2009 Pacific Northwest SAS Users Group Conference	09/26/09	115	New	Meeting/Seminar	Meeting	Regional	45,384	5		$0	$19,150	$0	$0	$0	$2,141	$1,374	$1,912	$0	$0	$650	$8,158	$300	$33,684	$8,158

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Miss Latin Look International Pageant	09/26/09	250	New	Fashion Show/Pageant	Miscellaneous/Other	Local	22,111	1		$0	$0	$2,334	$0	$360	$650	$634	$0	$0	$0	$345	$2,400	$625	$7,348	$2,400
USA Pears	09/28/09	26	New	Meeting/Seminar	Meeting		1,563	1		$0	$473	$0	$0	$0	$205	$0	$0	$0	$0	$0	$360	$0	$1,038	$360
Northwest Human Resources Management Association 2009 Annual Conference	09/30/09	569	New	Annual Convention/Conference	Convention w/ Tradeshow	Regional	126,347	3	TRUE	$0	$79,378	$5,393	$0	$276	$14,543	$3,417	$2,186	$130	$0	$505	$10,260	$4,123	$120,211	$10,260
Kaiser Permanente Dental Program All Staff Meeting	09/29/09	625	Repeat	Meeting/Seminar	Meeting	Local	25,200	1		$0	$37,782	$193	$1,728	$0	$8,147	$0	$0	$0	$0	$165	$2,225	$2,530	$52,770	$2,225
Federal Highway Administration	09/29/09	48	New	Meeting/Seminar	Meeting	State	2,754	2		$0	$605	$0	$0	$150	$700	$0	$0	$0	$0	$0	$800	$0	$2,255	$800
CE International - Osteoporosis	09/30/09	47	Repeat	Meeting/Seminar	Meeting	Local	2,457	1		$0	$65	$0	$0	$15	$90	$79	$0	$0	$0	-$54	$720	$0	$915	$720
Association of Christian Schools 2009 Conference and Tradeshow (ACSI)	10/01/09	600	Repeat	Annual Convention/Conference	Convention w/ Tradeshow	Regional	130,266	2	TRUE	$0	$1,091	$2,809	$0	$0	$7,738	$2,330	$450	$0	$0	$802	$9,480	$1,115	$25,815	$9,480
Minority Enterprise Development Week	09/30/09	375	Repeat	Lunch	Food & Beverage/Catering	Local	20,428	1		$0	$15,486	$0	$0	$0	$133	$113	$0	$0	$0	$345	$1,630	$575	$18,282	$1,630
OSCPA Career Showcase 2009	09/30/09	250	New	Job Fair	Tradeshow	State	37,800	1		$0	$4,151	$0	$312	$405	$0	$172	$0	$0	$0	$43	$2,750	$0	$7,833	$2,750
Metro RCR Strategic Planning	09/30/09	35	Repeat	Meeting/Seminar	Meeting		937	1		$0	$126	$0	$0	$0	$30	$0	$0	$0	$0	$0	$110	$0	$266	$110
		39,080					**4,768,840**	**116**		**$0**	**$589,271**	**$77,614**	**$45,684**	**$5,018**	**$123,183**	**$83,251**	**$20,772**	**$7,039**	**$715**	**$14,468**	**$297,733**	**$61,269**	**$1,326,017**	**$297,733**

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SEPTEMBER 2008 - HISTORICAL COMPARISON

Event Name	Start Date	Actual Attend	Event Rank	Event Type	Event Class	Event Indicator	Occupied Sq Feet	Event Days	Travel Portland	OCC Actual Adver	OCC Actual Catering	OCC Actual Concess	OCC Actual Parking	OCC Actual Eq Rental	OCC Actual AV Eqip	OCC Actual Utilities	OCC Actual Phone	OCC Actual Booth Carpet Cln	OCC Actual Box Office	OCC Actual Misc	OCC Actual Rent	OCC Actual Labor	OCC Actual Total	OCC Ordered Rent
OCC SEP 2008 MISC NON-EVENT ACTIVITIES/BILLINGS	09/01/08	1	Accounting/Non-Event	Accounting/Non-event	Accounting/Non-Event		0	30		$0	$2,033	$5,740	$13,136	$0	$0	$0	$0	$0	$0	$3,248	$0	$0	$24,158	$0
ULI Oregon /SW Washington - Central City Commercial Development Symposium	09/04/08	187	New	Breakfast	Food & Beverage/Catering	Regional	4,105	1		$0	$3,060	$0	$8	$0	$663	$0	$0	$0	$0	$0	$0	$0	$3,731	$0
Oregon Club of Portland - Big Green Benefit Dinner	09/05/08	206	Repeat	Dinner	Food & Beverage/Catering	Local	17,100	1		$0	$21,702	$0	$378	$0	$2,573	$578	$200	$0	$0	$0	$0	$1,198	$26,628	$0
Oregon State Bar - All Day Power Play	09/05/08	310	Repeat	Meeting/Seminar	Meeting	State	12,600	1		$0	$7,550	$0	$8	$0	$155	$0	$0	$0	$0	$66	$2,600	$0	$10,379	$2,600
The B.U.L.L. Session Dinner & Auction	09/08/08	420	Repeat	Auction	Food & Beverage/Catering	Local	21,300	1		$0	$24,268	$0	$0	$420	$3,940	$129	$0	$0	$0	$0	$0	$1,358	$30,114	$0
Oregon Health Fund Board Public Meeting	09/08/08	250	New	Meeting/Seminar	Meeting	State	4,000	1		$0	$130	$0	$0	$0	$1,790	$0	$0	$0	$0	$0	$1,050	$165	$3,135	$1,050
2008 Northwest Apparel & Footwear Material Show	09/09/08	1,000	Repeat	Trade Show	Tradeshow	Regional	137,510	2		$0	$19,269	$4,539	$0	$0	$100	$1,192	$0	$244	$0	$635	$8,424	$353	$34,757	$8,424
Quixtar/Amway National Spotlight	09/12/08	3,592	New	Trade Show	Tradeshow	Local	736,402	2		$0	$15,692	$0	$0	$0	$27,006	$12,800	$9,025	$0	$0	$881	$13,800	$9,516	$88,720	$13,800
High Performers International - Jason Womack	09/09/08	205	Repeat	Lecture/Speaker Series	Meeting	Local	4,700	1		$0	$454	$0	$0	$0	$990	$0	$0	$0	$0	$0	$1,200	$0	$2,644	$1,200
FR Seminar	09/09/08	70	New	Meeting/Seminar	Meeting	Local	1,875	1		$0	$1,699	$0	$0	$30	$520	$0	$0	$0	$0	$0	$545	$0	$2,794	$545
Fidelity National Financial	09/09/08	300	Repeat	Meeting/Seminar	Meeting	Regional	27,162	3		$0	$14,981	$0	$984	$0	$4,040	$0	$0	$0	$0	$107	$4,305	$0	$24,418	$4,305
Ascending to Leadership	09/09/08	6	Repeat	Meeting/Seminar	Meeting	Local	1,622	2		$0	$302	$0	$0	$0	$0	$0	$0	$0	$0	$0	$470	$0	$772	$470
Northwest Organization of Nurse Executives: NWONE Fall Retreat 2008	09/10/08	200	New	Annual Convention/Conference	Convention w/ Tradeshow	Regional	75,600	3	TRUE	$0	$31,027	$1,620	$0	$35	$4,183	$1,880	$1,145	$125	$0	$705	$7,600	$1,700	$50,019	$7,600
The Knit & Crochet Show Fall 2008	09/11/08	2,613	New	Trade Show	Tradeshow	National	263,680	4	TRUE	$0	$6,778	$12,342	$0	$0	$613	$2,625	$725	$0	$138	$550	$15,115	$3,415	$42,301	$15,115
Hispanic Metropolitan Chamber - Hispanic Heritage Dinner	09/10/08	403	New	Dinner	Food & Beverage/Catering	Local	17,100	1		$0	$21,665	$1,054	$60	$0	$5,512	$0	$0	$0	$0	$165	$0	$1,880	$30,336	$0
Fred Pryor Seminars & CareerTrack	09/12/08	90	New	Meeting/Seminar	Meeting	Local	1,818	1		$0	$65	$0	$0	$0	$75	$0	$0	$0	$0	$10	$420	$0	$570	$420
CHAO Fall Forum	09/12/08	185	Repeat	Meeting/Seminar	Meeting	State	8,900	1		$0	$9,268	$0	$0	$0	$1,283	$0	$0	$0	$0	$0	$2,300	$100	$12,950	$2,300
Rapport Leadership International - Power Communication	09/12/08	21	Repeat	Meeting/Seminar	Meeting	Local	18,198	3		$0	$108	$0	$0	$0	$0	$79	$0	$0	$0	$64	$1,650	$0	$1,901	$1,650
Fred Pryor Seminars & CareerTrack	09/15/08	80	New	Meeting/Seminar	Meeting	Local	2,801	1		$0	$65	$0	$0	$0	$135	$0	$0	$0	$0	$10	$545	$0	$755	$545
Western Star Trucks - Selling and Building a Stellar Product	09/16/08	40	Repeat	Automotive / Motorcycle	Tradeshow	Regional	90,000	1		$0	$2,333	$0	$0	$40	$2,468	$0	$0	$0	$0	$275	$2,750	$440	$8,306	$2,750

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Event Name	Start Date	Actual Attend	Event Rank	Event Type	Event Class	Event Indicator	Occupied Sq Feet	Event Days	Travel Portland	OCC Actual Adver	OCC Actual Catering	OCC Actual Concess	OCC Actual Parking	OCC Actual Eq Rental	OCC Actual AV Eqip	OCC Actual Utilities	OCC Actual Phone	OCC Actual Booth Carpet Cln	OCC Actual Box Office	OCC Actual Misc	OCC Actual Rent	OCC Actual Labor	OCC Actual Total	OCC Ordered Rent
Oregon Health Forum-Health Policy Conference	09/16/08	190	Repeat	Annual Convention /Conferenc	Convention	State	25,200	1		$0	$11,145	$17	$0	$255	$3,149	$158	$0	$0	$0	$0	$3,200	$1,118	$19,040	$3,200
Hoffman Corporation-Quarterly Meeting	09/16/08	100	Repeat	Meeting/Seminar	Meeting	Local	1,875	1		$0	$612	$0	$0	$0	$255	$0	$0	$0	$0	$0	$375	$0	$1,242	$375
Franklin Covey "FOCUS: Achieving Your Highest Priorities"	09/16/08	27	New	Meeting/Seminar	Meeting	Local	1,818	1		$0	$477	$0	$0	$20	$30	$23	$0	$0	$0	$39	$520	$0	$1,109	$520
Freddie Mac Meeting	09/16/08	120	New	Meeting/Se	Meeting	Local	1,923	1		$0	$1,800	$0	$0	$40	$930	$0	$0	$0	$0	$25	$485	$0	$3,280	$485
Knowledge Learning Corporation Team Meeting	09/17/08	650	Repeat	Meeting/Seminar	Meeting	Local	12,600	1		$0	$3,426	$0	$0	$250	$1,730	$645	$0	$0	$0	$165	$3,200	$0	$9,416	$3,200
Spectrum 2008 - NW Property Management Conference	09/18/08	950	Repeat	Trade Show	Convention w/ Tradeshow	Local	209,503	1		$0	$24,341	$0	$0	$40	$4,772	$10,676	$1,291	$150	$0	$550	$6,565	$314	$48,699	$6,565
Susan G. Komen for the CURE Health Expo	09/19/08	5,000	Repeat	Trade Show	Tradeshow	Local	199,040	2		$0	$65	$0	$0	$0	$0	$1,943	$1,773	$100	$0	$1,039	$12,700	$924	$18,543	$12,700
OEN Tom Holce Awards for Entrepreneurship 2008	09/18/08	750	Repeat	Dinner	Food & Beverage/Catering	Local	42,900	1		$0	$47,513	$1,430	$0	$165	$1,545	$1,975	$0	$0	$0	$275	$400	$1,265	$54,567	$400
VIP Send Off for Bill Stringer	09/17/08	50	New	Reception	Food & Beverage/Catering	Local	0	1		$0	$600	$304	$0	$0	$0	$0	$0	$0	$0	$0	$0	$100	$1,004	$0
Oregon Convention Center -- turning on lights for outdoor photo shoot	09/17/08	1	New	Film/Photo shoot	Miscellaneous/Other	Local	30,000	1		$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$500	$0	$500	$500
Metro/MERC September Service Award Luncheon	09/18/08	30	In-house	Lunch	Food & Beverage/Catering	Local	1,458	1		$0	$317	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$317	$0
Kaiser Permanente Broker Forum	09/18/08	250	Repeat	Breakfast	Meeting	Local	17,316	1		$0	$7,463	$0	$462	$0	$0	$256	$0	$0	$0	$0	$0	$0	$8,181	$0
American Arbitration Association Labor Advocacy Meeting	09/18/08	25	New	Meeting/Seminar	Meeting	Local	2,916	2		$0	$2,662	$2,665	$0	$40	$0	$0	$0	$0	$0	$25	$470	$0	$5,861	$470
DPI Fall Food Service Show	09/18/08	150	New	Trade Show	Tradeshow	State	7,297	1		$0	$1,588	$0	$560	$780	$196	$1,032	$0	$0	$0	$165	$2,115	$100	$6,536	$2,115
United Way: Community Partners Breakfast 2008	09/18/08	488	Repeat	Breakfast	Food & Beverage/Catering	Local	27,123	1		$0	$14,740	$0	$0	$60	$4,243	$0	$0	$0	$0	$165	$560	$360	$20,128	$560
The Big Event	09/19/08	301	New	Lunch	Food & Beverage/Catering	State	16,705	1		$0	$11,973	$0	$0	$240	$4,032	$143	$275	$0	$0	$0	$0	$928	$17,591	$0
US Bank Luncheon	09/19/08	580	Repeat	Lunch	Meeting	Local	17,100	1		$0	$18,028	$0	$822	$0	$1,881	$0	$0	$0	$0	$252	$0	$138	$21,120	$0
Oregon State Bar - Dispute Resolution from the Experts	09/19/08	120	Repeat	Meeting/Seminar	Meeting	State	10,405	1		$0	$3,423	$0	$56	$0	$283	$0	$0	$0	$0	$25	$1,300	$0	$5,086	$1,300
Oregon Law Institute Seminar - Workers' Compensation News: The Latest from WOLI	09/19/08	80	Repeat	Meeting/Seminar	Meeting	State	2,881	1		$0	$1,144	$0	$104	$0	$230	$0	$0	$0	$0	$0	$840	$0	$2,318	$840

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The Oregon Small Business Fair - 15th Annual	09/20/08	750	Repeat	Community Event	Tradeshow	State	10,584	1		$0	$0	$1,344	$0	$0	$180	$264	$0	$0	$0	$165	$3,090	$0	$5,043	$3,090
Susan G. Komen for the CURE Survivor Luncheon	09/20/08	1,000	Repeat	Lunch	Food & Beverage/Catering	Local	34,200	1		$0	$24,254	$3,289	$50	$0	$11,521	$79	$0	$0	$0	$275	$0	$2,063	$41,530	$0
Pacific NW Institute on Special Education & the Law 2008 PO#407598	09/22/08	550	New	Meeting/Seminar	Convention	Regional	92,768	3		$0	$45,588	$0	$0	$132	$12,105	$167	$722	$0	$0	$762	$17,680	$1,813	$78,968	$17,680
Home Improvement and Remodeling Show - 2008	09/25/08	6,468	Repeat	Consumer/Public Show	Consumer Public	Local	1,057,904	4		$0	$0	$21,045	$0	$0	$2,848	$23,456	$1,445	$2,610	$1,103	$1,125	$68,750	$11,253	$133,635	$68,750
Simpson Strong-Tie Company Workshop	09/23/08	100	New	Meeting/Seminar	Meeting	Local	8,000	1		$0	$4,685	$0	$0	$60	$520	$0	$0	$0	$0	$0	$400	$0	$5,665	$400
OCC - Meeting Facilitation Training	09/22/08	20	In-house	Meeting/Seminar	Meeting	Local	1,458	1		$0	$26	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$26	$0
Miller Nash LLP Employment Law Spotlight Series	09/23/08	110	Repeat	Meeting/Seminar	Meeting	Local	5,683	1		$0	$2,727	$0	$760	$0	$1,473	$0	$0	$0	$0	$0	$1,485	$0	$6,445	$1,485
Kaiser Permanente Dental Program All Staff Meeting	09/23/08	550	Repeat	Meeting/Seminar	Meeting	Local	17,100	1		$0	$26,610	$0	$1,720	$0	$7,997	$0	$0	$0	$0	$165	$2,225	$1,050	$39,767	$2,225
Legacy/Epic Evaluation Sessions	09/23/08	300	New	Training	Meeting	Local	44,463	3		$0	$5,094	$0	$0	$240	$8,543	$0	$2,475	$0	$0	$108	$7,500	$1,350	$25,309	$7,500
Barran Liebman Annual Labor & Employment Seminar 2008	09/25/08	620	Repeat	Meeting/Seminar	Meeting	Local	34,200	1		$0	$20,117	$0	$0	$840	$3,061	$204	$0	$0	$0	$165	$6,225	$248	$30,860	$6,225
Aramark Concessions Ratification Vote	09/25/08	15	New	Meeting/Seminar	Meeting	Local	783	1		$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$200	$0	$200	$200
Oregon Auto Dealers Association - Fundraising Breakfast 2008	09/25/08	6	Repeat	Fundraiser	Meeting	State	1,377	1		$0	$181	$0	$32	$20	$0	$0	$750	$0	$0	$0	$0	$0	$983	$0
Kaiser Permanente - Leadership Development Institute	09/25/08	370	New	Meeting/Seminar	Meeting	Local	25,200	1		$0	$22,440	$0	$1,320	$0	$75	$0	$0	$0	$0	$0	$4,000	$0	$27,835	$4,000
ICCC Reception	09/26/08	186	New	Dinner	Food & Beverage/Catering	National	0	1	TRUE	$0	$8,929	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$8,929	$0
Oregon Law Institute Seminar - The Changing Face of Commercial Litigation	09/26/08	40	Repeat	Meeting/Seminar	Meeting	State	2,712	1		$0	$711	$0	$72	$0	$230	$0	$0	$0	$0	$0	$790	$0	$1,803	$790
Team INA Fall Leadership	09/27/08	325	Repeat	Meeting/Seminar	Meeting	Local	25,200	2		$0	$280	$0	$0	$730	$490	$495	$0	$0	$0	$258	$5,200	$203	$7,656	$5,200
US Bank Development Network	09/29/08	480	Repeat	Meeting/Seminar	Meeting	Local	12,600	1		$0	$11,065	$0	$1,386	$0	$370	$0	$0	$0	$0	$165	$1,600	$0	$14,586	$1,600
		31,931					3,448,765	107		$0	$506,471	$55,387	$21,918	$4,437	$128,732	$60,799	$19,826	$3,229	$1,242	$12,629	$215,149	$43,346	$1,073,164	$215,149

MERC Commission Meeting

November 4, 2009
12:30 pm

5.0 - Consent Agenda

Authorization to Represent MERC/METRO on Trade-Promotion Mission; Fact-Finding Mission; Economic Development Activity; or Negotiation (Food Travel, Lodging Expenses Approved in Advance- exception (H))

In accordance with ORS 244.020(5)(b)(H), the following public officials: **all current MERC Commissioners, MERC Interim General Manager, MERC Director of Communications and Strategic Development, and the OCC Executive Director,** are hereby authorized to represent Metro/MERC in an official capacity; and

The MERC Commission hereby approves in advance, the receipt of reasonable expenses for food, travel, and lodging for the above-named public officials and his/her accompanying relative, household member, or staff member, for attendance at (*check one*):

XX trade-promotion mission;
__ fact-finding mission;
XX economic development activity;
OR
__ negotiation;

as follows *(describe date and type of event)*:

> A Portland executive familiarization tour ("fam tour") where meals will be paid for by Travel Portland (formerly "POVA"), to familiarize potential meeting planners and association executives with Portland and with the Oregon Convention Center, and to facilitate Oregon and Portland tourism and economic development, which activity(ies) will take place in Portland from November 5-7, 2009, per the attached.

Being approved by the MERC Commission, at its regular meeting on November 4, 2009, the above activity is hereby officially sanctioned by MERC.

____
MERC Commission Chair

Note: the Metro Councilors/MERC Commissioners are required to keep detailed accounting of the expenses paid and shall report same to the Ethics Commission as required by law.

travel PORTLAND

1000 S.W. BROADWAY, STE. 2300 | PORTLAND, OR 97205 | 503.275.9750 TEL | TRAVELPORTLAND.COM

October 8, 2009

Dear Travel Portland Board of Directors, City of Portland Commissioners, Multnomah County Commissioners, Metro Councilors and MERC Commissioners:

Travel Portland will be hosting a convention "Familiarization Trip" to Portland over the dates of Nov. 5-8, 2009. This fam is a little different than our typical fams. We will be hosting the American Council of Learned Societies (ACLS) Conference of Administrative Officers (CAO) Fall Meeting. The CAO is composed of approximately 65 executive directors of national professional organizations in the humanities and social sciences that constitute the ACLS.

In conjunction with their Annual Meeting, ACLS will also be here to review Portland as a possible future convention site. These clients range from Oregon Convention Center users to multiple and single-hotel users.

Familiarization trips have been very successful in the past. Historically, fifty percent of customers attending previous trips have eventually chosen Portland as a meeting site, resulting in millions of dollars of business for the community. We feel this remarkable response can largely be attributed to the support, friendliness and sincerity of the Oregonians our visitors meet during their stay.

It is important that we show these valued clients that we appreciate the economic importance of their meetings. The presence of community leaders can make a huge impact, and we sincerely hope your schedule will allow you to attend your choice of the following events as our guests.

THURSDAY **Nov. 5, 2009**	**FRIDAY** **Nov. 6, 2009**	**SATURDAY** **Nov. 7 , 2009**	
6:15-7:15 p.m. Reception Portland Marriott Downtown Waterfront 1401 S.W. Naito Parkway **7:30-9:15 p.m.** Dinner Portland City Grill 111 S.W. Fifth Ave. Dress: Business	**6:30-7:15 p.m.** Reception Gerding Theater at the Armory 128 N.W. 11th Ave. Dress: Business	**12:15-1:30 p.m.** Lunch Doubletree Hotel Portland 1000 N.E. Multnomah St. Dress: Business Casual	**7-9 p.m.** Reception/Dinner Portland Art Museum 1219 S.W. Park Ave. Dress: Business Casual

These functions offer the best opportunities and the most convenient times for you to meet our guests. I hope we will have the pleasure of your company. Please mark your calendars now and **RSVP by Thursday, Oct. 29,** to Jackie Harper, CMP (503.275.9290 or jackie@travelportland.com), if you are able to join us.

Again, your continued support of our industry is highly valued.

Sincerely,

Jeff Miller

Jeff Miller
President & CEO

METROPOLITAN EXPOSITION-RECREATION COMMISSION

Resolution No. 09-17

For the Purpose of Authorizing a Modification of Office Lease between MERC and Clarus Property Ventures

WHEREAS, Metro, by and through MERC, leases to Clarus Property Ventures, Inc. ("Clarus" or "Tenant"), approximately one thousand seven hundred ninety eight (1,798) square feet of space (the "Premises") located on the fifth floor of the Portland Center for the Performing Arts ("PCPA") property located at 1111 SW Broadway, Portland Oregon 97205, one of the Commission's facilities ("Lease"); and

WHEREAS, the Initial Term of the Clarus Lease was a three-year term that commenced on August 15, 2007, and is set to expire on August 14, 2010, with Tenant having a one-time option to renew the Lease for a two-year Extension Term at an increased rate as set out in the Lease; and

WHEREAS, Tenant is having financial difficulties including difficulties in meeting their monthly rent rate as set forth in the Lease; and

WHEREAS, Tenant is a desirable tenant and the Premises are small and difficult to rent, and it is the Staff's judgment, after consulting with commercial real estate leasing sources, that the current rent charged to Tenant under the Lease is higher than market, and that PCPA would have difficulty locating a desirable Tenant for these Premises at the current lease rental rate; and

WHEREAS, PCPA would like to modify the Lease to reduce the monthly rent set forth therein by 50% in the first 6 months of their 3rd contract year, and back to full price in the second half, and to renegotiate the rental rate in the Extension Term based on market rates at that time; and

WHEREAS, contracts for the lease or use of the convention, trade, and spectator buildings and facilities operated by MERC are "special procurements" under Metro Code 2.04.053 (9) and are thereby exempt from the public bidding requirements of ORS Chapter 279B; and

WHEREAS, the Staff recommends that the Commission approve this lease modification;

BE IT THEREFORE RESOLVED AS FOLLOWS:

1. The Metropolitan Exposition-Recreation Commission approves the modification of the Clarus Lease to reduce the monthly rent set forth therein by 50% in the first 6 months of their 3rd contract year, and back to full price in the second half, and to renegotiate the rental rate in the Extension Term based on market rates at that time;

2. The Metropolitan Exposition-Recreation Commission authorizes the MERC Interim General Manager to execute a lease amendment consistent with this resolution, in a form approved by legal counsel.

Passed by the Commission on November 4, 2009.

____
Chair

Approved as to Form:

____
Alison Kean Campbell,
Deputy Metro Attorney

____
Secretary-Treasurer

MERC STAFF REPORT

Agenda Item/Issue: For the Purpose of Authorizing a Modification of Office Lease between MERC and Clarus Property Ventures.

Resolution No.: 09-17

Date: November 4th, 2009 **Presented by:** Robyn Williams

Background/Analysis:

PCPA had 1,798 square feet of office space on the 5th floor of Antoinette Hatfield Hall that became available for lease upon the departure of Portland Center Stage in 2007. PCPA entered into an agreement with a leasing agent to lease this space. In August 2007 the commission approved a lease with Clarus Property Ventures, Inc. for a term of three years-expiring in August 2010-with an option for an additional two years. Clarus Property Ventures is a full service Real Estate Asset Company, specializing in acquiring, operating, and disposing of multi-unit residential real estate assets.

Clarus is experiencing financial difficulties due to the down economy. They desire to remain at PCPA, however current cash flow issues are making it difficult to continue residency at the current rate and have asked for some relief for the first 6 months of this 3rd year of the contract. Clarus believes a new business initiative they have recently begun will positively impact their cash flow problems and they will be in a position to return to the original lease payment in February-the second half of this 3rd contract year. Clarus has also expressed interest in exercising their option to renew the lease for the two-year extension term.

The space that Clarus is occupying is small and was difficult to rent. After consulting with commercial real estate sources, PCPA was told that the current rent is higher than market and that finding a tenant for such a challenging space would be extremely difficult. These sources encouraged PCPA to try to keep this tenant.

As Clarus has been an excellent tenant and always prompt on their lease payments, PCPA would like to modify the Lease as follows:

- Reduce the monthly rent by 50% in the first 6 months of their 3rd contract year and return to full price in the second half
- Renegotiate the rental rate in the Extension Term based on market rates at that time.

Fiscal Impact:

PCPA budgeted $27,903 in revenue for this fiscal year. The 50% reduction will result in a decrease in revenues of $6,366.30, for a net total revenue of $21,536.70 this fiscal year

Recommendation:

Staff recommends approval of Resolution 09-17 for the Purpose of Authorizing a Modification of Office Lease between MERC and Clarus Property Ventures.

AMENDMENT TO
OFFICE LEASE

THIS AMENDMENT (the "Amendment") is effective November 4, 2009 ("Amendment Date"), by and between METRO, a municipal corporation organized under the laws of the State of Oregon and the Metro Charter, by and through the METROPOLITAN EXPOSITION RECREATION COMMISSION ("MERC") (METRO and MERC jointly referred to herein as "Landlord") and CLARUS PROPERTY VENTURES, INC., a Delaware corporation ("Tenant") whose principal place of business is 1111 SW Broadway, Portland, Oregon 97205-2913.

RECITALS

WHEREAS, Landlord and Tenant entered into an Office Lease (the "Lease") dated August 15, 2007, wherein Landlord leased to Tenant and Tenant leased from Landlord, upon the terms and conditions set forth therein, certain premises consisting of approximately one thousand seven hundred ninety eight (1,798) square feet of space (the "Premises") located on the fifth (5th) floor of the PCPA; and

WHEREAS, the parties wish to amend the Lease and the amendment has been authorized by the MERC Commission via MERC Resolution No. 09-17 on November 4, 2009; and

NOW THEREFORE, in consideration of the mutual agreements set forth herein and for other good and valuable consideration, Seller and Metro hereby agree to amend the Agreement as follows:

1. Section 3(a) of the Lease is amended to change the rental rate for Year 3 of the Initial Lease Term, as follows [underlined is new]:

    a. Monthly Rent. The monthly base rent (the "Base Rent") for the first six months of Year 3 in the Initial Lease Term, i.e. August 15, 2009 through February 15, 2010, shall be One Thousand Sixty One Dollars and Five Cents ($1,061.05) per month; and the Base Rent for the last six months of Year 3 in the Initial Lease Term (i.e. February 15, 2010 through August 14, 2010) shall be Two Thousand One Hundred Twenty-Two Dollars and Ten Cents ($2,122.10) per month.

    If the Option is exercised by Tenant, the Base Rent for the fourth (4th) year after the Rent Commencement Date, or the first (1st) year of the Extension Term, shall be Two Thousand One Hundred Eighty-Five 76/100 Dollars ($2,185.76) per month. The Base Rent for the fifth year after the Rent Commencement Date, or the second (2nd) year of the Extension Term, shall be Two Thousand Two Hundred Fifty-One and 33/100 ($2,251.33) per month.

2. Landlord and Tenant hereby ratify and confirm these modifications to the terms of the Agreement. All other terms of the Agreement shall remain in full force and effect.

This Agreement may be executed in any number of counterparts, each of which shall be an original, but all of which together shall constitute one instrument.

In witness whereof, duly authorized representatives of Landlord and Tenant have executed this Lease on the Effective Date.

METROPOLITAN EXPOSITION RECREATION COMMISSION

By:__________________________________
Cheryl Twete
Interim MERC General Manager

Date: ________________________________

PORTLAND CENTER FOR THE PERFORMING ARTS

By:__________________________________
Robyn Williams
Executive Director

Date: ________________________________

CLARUS PROPERTY VENTURES, INC.

By: __________________________________

Name: ________________________________

Title: ________________________________

Date: ________________________________

MERC Commission Meeting

November 4, 2009
12:30 pm

6.0 - MERC Action Agenda

METROPOLITAN EXPOSITION RECREATION COMMISSION

Resolution No. 09-14

Approving the selection of ARAMARK/Giacometti Joint Venture Partnership ("ARAMARK/Giacometti") to provide contracted services under a Food and Beverage Operations Agreement for the Oregon Convention Center, Portland Center for the Performing Arts and the Portland Metropolitan Exposition Center facilities.

Whereas, all MERC Facilities have major food and beverages operations in their building and such operations need expertise to manage the day to day sales and service aspects of the food and beverages needed at the facility for clients, exhibitors and attendees, and;

Whereas, ARAMARK/Giacometti have extensive experience in Food and Beverage Management in many similar facilities across the country and have exhibited the experience and expertise in their proposal response, and;

Whereas, Staff completed an extensive Request for Proposal process, received 2 qualified proposals, interviewed both Proposers and selected ARAMARK/Giacometti as the most qualified and responsive proposal, and;

Whereas, the Commission has the Authority to enter into contracts for such management and operation services for the facilities it manages.

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

1. Approves the selection of ARAMARK/Giacometti as the exclusive Food and Beverage provider through a Food and Beverage Operations Agreement for all MERC managed facilities.
2. Delegates authority to the MERC Interim General Manager to negotiate the final terms of the Food and Beverage Operations Agreement subject to the approval of the Office of Metro Attorney and execute the Agreement on behalf of MERC for a term of five years with an extension option for an additional five years in substantially the form attached hereto as Exhibit A.

Passed by the Commission on November 4, 2009.

____
Chair

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

____
Secretary/Treasurer

By: ______________________________
Nathan A. Schwartz Sykes
Senior Attorney

MERC STAFF REPORT

Agenda Item/Issue: Approving Aramark/Giacometti Partners contract to provide exclusive Food and Beverage Management Services at all three MERC facilities for a period of 5 years.

Resolution No. **09-14**

Presented By: Jeffrey A. Blosser

Date: November 4, 2009

Background: The Food Service Operations at all of the MERC facilities is multifaceted with concession sales, catering services, staff management, product purchases, inventory control, labor negotiations and day to day management needs for sales and operations. These services are integral to all of the MERC facilities; operations supply 30% - 40% of our revenues on an annual basis. Selecting the right contractor is paramount to our success in this area of the service we provide.

Staff created an RFP for such services and advertised the release of the RFP locally and through National Channels. MERC conducted a mandatory pre-proposal meeting and four companies participated; three national companies and one regional company. Two proposals were received from Ovations and ARAMARK/Giacometti Partners. Both companies met the minimum qualifications and were selected to be interviewed. The interview panel consisted of the Interim General Manager, the three facility Executive Directors, MERC COO and two outside participants from the Oregon Zoo and the Executive Chef of the Double Tree Hotel. All participants scored the proposals and scored the interviews with final scoring being 6-1 in favor of ARAMARK/Giacometti Partners as the most responsive. Deal points of the contract are attached for your convenience and review. The contract was negotiated with the help of Metro attorney Marvin Fjordbeck and the Interim General Manager and three facility Executive Directors. ARAMARK/Giacometti Partners has provided the Food and Beverage Management Services for the MERC Facilities for the last ten years.

Fiscal Impact: Food and Beverage Revenue and expenses are budgeted and approved by the Commission annually. The profit margin is where the net impact is to each facility and it too, is part of the annual budget discussion.

Recommendation: Staff recommends that the Metropolitan Exposition Recreation Commission approve the selection of ARAMARK/Giacometti Partners as the most responsive proposer for the Food and Beverage Management Services and directs the Interim General Manager to negotiate final contract terms and execute the Management Services Agreement on behalf of MERC and its facilities.

MERC/ARAMARK/Giacometti Partnership Deal Points

We are in final negotiations with ARAMARK .

Contract Term is for a 5 year period with one 5 year renewal period at the discretion of the MERC Commission.

1. MERC shall receive $2 million in capital investment dollars to be spent on Food and Beverage related needs in all of the three buildings.
2. MERC receives credits through ARAMARK/Giacometti Partners Natural Vendor Discounts against cost of sales.
3. This contract gives ARAMARK/Giacometti Partners exclusive rights to all food and beverage service to be provided in the three buildings except as excluded at the PCPA facilities.
4. ARAMARK/Giacometti Partners are responsible for carrying out all management related duties as spelled out in paragraph 5 in the Agreement to include staff management, labor negotiations, sales efforts, food purchasing, all health and safety related practices and permits, provide high level quality food and service, incorporate the new branding Culture, Nature Nurture, comply with generally accepted accounting procedures, advise MERC on operational issues as well as capital improvements, marketing plan development, preparing annual budgets, comply with MERC FOTA/MWESB programs, comply with MERC sustainable programs.
5. ARAMARK/Giacometti Partners is a joint venture with 12% minority partnership; will provide quarterly reports on these outcomes of FOTA/MWESB hires and purchasing; is responsible for creating the Leg UP Program to reach out to economically disadvantaged individuals for a training venture and management program to create capacity building in the food and beverage business arena; and to comply with other MERC Commission requirements related to FOTA/MWESB. MERC and Contractor will establish target for FOTA and MWESB requirements annually.
6. Commission has final determination on all operating policies, pricing of services and food items and brands of product to be served.
7. Final determination of the annual budget to be used at each facility related to Food Service operations.
8. The power to approve or disapprove the Group Manager, facility specific General Manager, Executive Chef and the Controller provided by contractor.
9. Final approval of the spending of the 5% reserve account monies annually.
10. Financial deal is as follows:
    a. ARAMARK/Giacometti Partners shall receive:
        - 3.25% of Net Gross Receipts each year
        - 10% of Net Profits generated each year
        - 1% of Net Profits of $3,600.000 is exceeded in any year
        - Up to 2.5% of Net Profits in any year depending upon the qualitative incentives scores as outlined in the contract

11. Excise Tax of 7.5% is imposed on all gross dollars generated by ARAMARK/Giacometti Partners at the OCC and the EXPO Centers.
12. A 5% Reserve Account shall be established at each facility from Net Gross Receipts to be used for Marketing, Maintenance, Capital Projects, and off set of Utility Costs.
13. ARAMARK/Giacometti Partners will use the MERC EMBS system, for their operation as well as budgeting reporting for the life of the contract.
14. ARAMARK/Giacometti Partners will provide MERC a performance bond of not less than $1 million dollars to assure compliance of contractor with all provisions of this Agreement
15. ARAMARK/Giacometti Partners will provide insurance in the sum of $10,000,000; comprehensive commercial liability covering bodily injury, property damage, product liability, premises operations, owner and contractor protective liability, liquor legal liability, fire legal liability and contractual liability coverage
16. Termination/Breach provisions are included for Material Breach, Loss of Essential License, Extraordinary Breach, and Unsatisfactory Performance with Notice and Cure Periods.
17. MERC and ARAMARK/Giacometti Partners will meet quarterly to discuss the Culture/Nature/Nuture process and how it is being put into practice with quality of food served, sustainability requirements of products and operation and FOTA/MWESB targets.

These are the major deal points of the Agreement for your review and questions.

Food and Beverage Operations Agreement

This agreement is made and entered into on this _____day of _______________, 2009, by and between the Metropolitan Exposition Recreation Commission ("MERC", or "the 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.

In consideration of the mutual covenants of the parties hereto, and upon the express terms and conditions hereinafter set forth, it is agreed by and between them as follows:

1. Definitions

The following terms are defined as follows:

A. "**Accounting Year**" means the period commencing November 5, 2009 and ending June 30, 2010; thereafter "**Accounting Year**" means the period commencing July 1 and ending June 30 of the following year, consisting of 12 accounting periods at MERC Facilities.

B. "**Accounting Period**" means the monthly accounting period used by MERC and is 12 different monthly accounting periods.

C. "**Catering Gratuities Collected For Employees**" means the percentage of service fees invoiced to clients reduced by Metro Excise Tax, sales and use tax or any tax of a similar nature for catered events requiring labor as part of the desired service level.

D. "**Concessions**" means the sale and all activities supporting, related to, or necessarily incidental to such sale (including catering) of food, beverages (alcoholic and non-alcoholic), candy, and similar products to patrons of events, including restaurants, bars, and coffee shops, at the Expo, PCPA, and the Convention Center, in an efficient and courteous manner and in a clean and appealing environment. "Concessions" excludes the sale of food, beverages, candy, and similar products through the use of back-of-house vending machines.

E. "**Concessions Products**" means all food, beverages, candy, and similar products that MERC directs or allows the Contractor to sell to patrons of events at the Expo, PCPA and Convention Center, excluding vending machines.

F. "**Contractor's Employees**" means only employees of the Contractor who are engaged exclusively in the management and operation of the concessions or catering, including contracted services, and who have no other responsibility on behalf of the Contractor.

G. "**Convention Center**" means the Oregon Convention Center located 777 NE Martin Luther King, Jr. Blvd., Portland, Oregon.

H. "**Culture/Nature/Nurture**" means the new branding strategies for all of the marketing, sales efforts, quality of service and performance approaches outlined from the Contractor to the food and beverage management services at the MERC Facilities as set forth in Exhibit 10.

I. **"Direct Operating Costs"** means the following costs incurred in performing the functions and activities described in the Scope of Work for the Food & Beverage Operations Agreement.

Costs of goods purchased less the amounts of any applicable National Volume Discounts;

Direct labor, including any applicable taxes, worker's compensation costs, and fringe benefits for employees devoting their full efforts to the Food & Beverage Operations Agreement;

Direct expenses, including but not limited to supplies and applicable taxes, licenses and fees;

Accruals of the Reserve Cost described below;

The salary, insurance, payroll taxes and fringe benefits for the following positions devoting full-time work to provide service under the Food & Beverage Operations Agreement: MERC Group Manager, Assistant General Managers, Director of Sales and Sales Managers; and

The salary, insurance, bonus, payroll taxes and fringe benefits for the following: MERC Group Manager, Assistant General Managers, Director of Sales and Sales Managers, devoting full-time work to provide service under the Food & Beverage Operations Agreement.

"Direct Operating Costs" excludes corporate expenditures and costs such as but limited to: corporate supervision and support services, including without limitation accounting and payroll services, corporate bonuses; corporate Facilities planning and design services unless such planning or design services are requested by MERC and approved in advance, internal auditing services, legal services; insurance costs other than those costs directly attributable to providing the insurance coverage required by the Food & Beverage Operations Agreement; bonding costs, purchasing services; personnel and training costs other than those attributable to the MERC Facilities management needs; and public relations services. "Direct operating costs" also excludes corporate taxes, other general corporate administrative and overhead expenses, and all attorneys' fees unless such attorney's fees are incurred in providing services directly to MERC and are approved in advance by MERC.

J. "**EBMS**" means the Event Business Management System software program used to account for all Food and Beverage revenues, expenditures and budgets associated with this contract; to track the financial performance of the parties to this contract; and to support and record all transactions associated with this contract, including, without limitation, work orders, service orders, client agreements, and client invoices.

K. "**Expo**" means the Portland Metropolitan Exposition Center located on Marine Drive bordered by I-5 and Portland International Raceway.

L. "**First Opportunity Target Area program**" ("FOTA") means the MERC policy of providing first opportunity for available jobs to economically disadvantaged residents living in economically distressed neighborhoods and purchasing from businesses as specified and directed by the Commission.

M. "**General Manager**" means the individual staff member appointed by Metro and having responsibility for the management of all MERC Facilities, or the General Manager's designee.

N. "**Gross Revenues**" means the total amount received, accruing from, or realized by the sale of Concessions Products for cash or credit pursuant to the terms of this Agreement. "Gross Revenues" does not include sales and use tax or any tax of a similar nature or any catering gratuities collected for and on behalf of concessions employees.

O. "**Metro**" means the metropolitan service district formed pursuant to ORS Chapter 268 and the Metro Charter.

P. "**Metro Excise Tax**" means the Metro Excise Tax applicable to all food and beverage revenue at the Expo and Convention Center but excluding PCPA at which excise tax does not apply. However, if the Metro Excise Tax becomes applicable to PCPA and/or to food and beverage revenue, it shall be applied in calculating Net Gross Receipts.

Q. "**MERC Facilities**" means, collectively, the Expo, the Convention Center and the PCPA.

R. "**National Volume Discounts**" means discounts received by ARAMARK for specified items purchased by ARAMARK, which discounts are credited to MERC through each Facility's Cost of Sales.

S. **"Net Gross Receipts"** means the total amount received, accruing from, or realized by the sale of food and beverage services at each Facility for cash or credit pursuant to the Food & Beverage Operations Agreement, excluding any applicable Metro Excise Tax, and also sales tax, use tax or other similar tax, or any catering gratuities collected for and on behalf of any of proposer's employees.

T. **"Net Profits"** means the sum remaining after deducting from "Net Gross Receipts" the "Direct Operating Costs" and "Reserve Cost" described herein.

U. **"PCPA"** means the Portland Center for the Performing Arts at 1111 SW Broadway, with the Arlene Schnitzer Concert Hall at 1037 SW Broadway, Hatfield Hall at 1111 SW Broadway and the Keller Auditorium at 222 SW Clay, in Portland, Oregon.

V. **"Reserve Cost"** means a sum equal to five percent (5%) of Net Gross Receipts for each Facility covered by the Food & Beverage Operations Agreement.

2. Term of the Agreement

A. The term of this Agreement shall be from November 5, 2009 through June 30, 2014.

B. MERC shall have the right at the end of the initial five-year term of this Agreement to extend this Agreement for one additional five year term, based on the same conditions applicable to the initial term. MERC shall have the right to renegotiate the terms of any renewal agreement to accommodate changes in operations, circumstances or industry practice; provided that any changes resulting from such renegotiations are acceptable to both parties. Sixty (60) days written notice to the Contractor by MERC prior to the expiration date of the initial term of the Agreement shall be sufficient to exercise the renewal option. MERC may condition any such notice upon renegotiation as provided herein.

3. Contractor's Engagement for Exclusive Concessions & Catering Rights; Exceptions

Subject to the terms of this Agreement and the direction of MERC's General Manager or such other MERC personnel as the General Manager may designate, the Contractor shall manage and operate the Concessions at MERC Facilities. This engagement is further subject to the relevant terms and conditions or any existing and subsequent use agreements between MERC and users of the PCPA, Expo, and Convention Center. The parties acknowledge that the number of Facilities managed and operated by MERC is subject to change. In the event the Convention Center, Expo or the PCPA ceases to operate under the management of MERC or Metro, MERC shall reimburse Contractor for the depreciated value of capital invested in that Facility only by the Contractor as provided in Article 8, and this Agreement shall cease to apply to that Facility. New Facilities may be included under this Agreement by mutual written agreement of the parties.

A. Subject to the provisions of this Agreement, MERC shall grant to the Contractor the exclusive right to manage, operate and sell in MERC Facilities, all food, alcoholic and non-alcoholic beverages, candy, and other similar products as the General Manager of MERC may from time to time approve for sale. In any case where it is determined by the General Manager that items other than food and beverages should be sold through the Contractor, the Contractor shall conduct such sales.

   The exclusive rights granted under the Contract shall not be construed so as to prevent or prohibit MERC or licensee or lessee of MERC from engaging in or contracting for, with MERC's approval, outside catering service privileges, *e.g.* for certain special dietary or religious events, as approved. However, the Contractor shall be considered the exclusive catering service, and MERC will recommend the Contractor as first choice for all catered events, provided the Contractor demonstrates the required catering abilities. Use of MERC's Facilities shall not include the use of any Contractor's occupied areas or equipment other than the service corridors unless otherwise agreed by Contractor and MERC.

B. The exclusive rights granted under this Agreement shall not be construed so as to prevent or prohibit MERC to continue existing PCPA features and client programs as follows:

   1. ASCH – Heathman Mezzanine Linkage: The passage door between the Concert Hall and Heathman Hotel shall be recognized as an existing feature; it shall be allowed to be open in conjunction with performances by the Oregon Symphony (the "OS") consistent with past practice. OS patrons shall be allowed to pass into the Heathman Mezzanine for refreshments as negotiated and agreed by MERC and OS.

   2. Open Catering: As a consequence of its position as Contractor for MERC Facilities, Contractor shall be recognized as an approved caterer and added to the listing of authorized providers distributed to users of the Facilities. The financial terms for Contractor catering activity shall be the same as providing services at MERC Facilities. Contractor shall cooperate with outside caterers as they perform services for clients of the Facilities, as approved by MERC.

      Exclusive sales rights granted herein include but are not limited to the following areas of concessions and catering sales in all MERC Facilities:

      a. Permanent concession stands

      b. Portable concession stands

      c. Permanent specialty concession stands

d. Concessions hawking in seating areas

e. Press box lounges

f. Banquet rooms, meeting room and exhibit halls

g. Lobby areas

h. All outdoor areas including but not limited to: parking lots, plazas, docks, etc.

i. Existing permanent restaurants, lounges, unless otherwise agreed to by both parties.

C. The exclusive sales right granted herein to the Contractor shall not include the following:

1. Parking rental concessions which are reserved exclusively by MERC.

2. Advertising sales which are reserved exclusively by MERC.

3. Facility user and tenant novelty souvenirs and program sales.

4. Free distribution of food, beverage or merchandise samples by a trade or consumer show exhibitor which are the normal sales projects of the exhibitor or sale of food or beverage products by exhibitors for consumption off MERC premises.

5. "Back-of-house" vending machine sales, subject to the requirements of ORS 346.510 et seq.

6. Business services, including but not limited to faxes, copies, parcel storage, coat check and other similar services.

D. Additional areas of concession and catering sales in MERC's Facilities may be added at the discretion of MERC's General Manager.

E. The exclusive sales right shall be extended to the sale of alcoholic beverages in the appropriate concessions and catering areas, provided however that the Contractor may be required to obtain and maintain all necessary licenses and permits in connection with the sale of such alcoholic beverages. Presently, MERC and ARAMARK jointly hold the liquor licenses in the name of MERC and ARAMARK as designee. The sale of alcoholic beverages shall be permitted in the approved concessions and catering areas only and at other locations as licensed or as are approved in advance by MERC's General Manager.

F. All food and beverage products prepared on MERC premises must remain and be sold exclusively on MERC premises unless otherwise authorized in advance by MERC's General Manager. Notwithstanding the foregoing, the Contractor may transfer food and/or beverages prepared at one MERC Facility to another Facility otherwise managed by the Contractor under this Agreement or another contract with MERC without prior consent of MERC.

G. Off-premise catering will be permitted with the approval of the General Manager. All expenses or revenues associated with the off-premise catering shall be entered into EBMS system in the same manner all associated revenues and expenses were coded to the Facility at which the food was prepared.

4. Relationship of the Parties

MERC and the Contractor have entered into this Agreement for the purpose of establishing an independent contractor relationship between MERC and the Contractor. It is further understood and agreed by and between the parties that nothing herein shall constitute or be construed to be an employment, partnership, joint venture, or joint employer relationship between MERC, its successors or assigns on the one part, and the Contractor, its successors or assigns on the other part. It is further agreed that the Contractor will provide its own workers' compensation insurance or self-insurance program as permitted under Oregon statutes. The Contractor shall, subject to the terms and provisions of this Agreement, have complete and independent control and discretion over the operation of the Concessions. It is expressly understood that neither Contractor nor MERC has the right to control, direct, or influence the labor relations policies or activities of the other, and that
neither shall be considered to be the labor relations agent or representative of the other, and that, neither shall be responsible for the acts of the other's agents, employees or representatives which affect either party's respective employees.

Contractor shall be solely liable for, and shall independently undertake to defend, any and all unfair labor practice charges, grievances, judicial actions, or other employee or union claims, as well as general liability and personal liability, based on conduct alleged to have been committed by its employees, agents, or supervisors at any time. However, MERC and the Contractor will cooperate in good faith in the investigation and defense of any unfair labor practice charge, grievance, judicial action or other employee or union claim which may be filed against any one of them, jointly or separately.

5. Duties of the Contractor

For the exclusive sales rights granted in Article 5 and the management fee consideration provided by in Article 9 hereof, the Contractor shall be responsible for providing skillful and commercially effective management and operation of the Concessions and shall use its best efforts to obtain the most efficient and highest quality operation possible. The Contractor is charged with preparing and delivering high quality food and beverage services at all functions for MERC clients at every venue opportunity consistent in every respect with the Culture/Nature/Nurture branding strategy. The Contractor shall be responsible for performing satisfactorily all functions, duties, activities outlined in this Agreement and any incidental activities required to successfully accomplish said functions and duties. The Contractor must manage and operate the Concessions in a professional and efficient manner, which will be conducive to providing first-class, high quality services and products to MERC Facilities' patrons in a clean and appealing environment.

The Contractor shall be responsible for performing, without limitation, the following duties and functions:

A. Employ a highly skilled, professional, on-site concessions and catering management team who possesses the necessary experience and expertise to provide the overall management capability for a first-class concessions and a high quality catering operation. Contractor will specify management structure at each Facility as well as for the group of Facilities if a manager is to be shared between MERC Facilities.

B. Subject to review and approval of the MERC General Manager or designee, develop and implement all necessary policies and procedures for food and beverage services. Such policies and procedures shall not be subject to MERC review with respect to labor relations.

C. Employ and train all employees necessary for the successful operation of food and beverage services, including but not limited to training the concepts and policies of a first-class concession and high quality catering operation, superior customer service skills, alcohol management training, and proper use and maintenance of all equipment.

D. Pay all employment related expenses and taxes required by law.

E. Design and prepare specifications for the purchase of uniforms for concession and catering employees to be worn at all MERC events, subject to the prior approval of the MERC GM or designee.

F. Provide for retail sale of food, beverages, candy, and similar products at all appropriate concession and catering areas. Recommend, for approval, all pricing associated with such retail sales for all Facilities and types of services to be rendered.

G. Order, purchase, receive delivery of, and store all consumable supplies and products necessary for the operation of the concessions and catering operation, using the inventory control process described in Exhibit 1.

H. Assist MERC with selection, purchase, receipt, inspection and storage of capital equipment, rolling stock, small wares and other equipment necessary for the ongoing operation of concessions and catering. Such purchases will be paid through the Reserve Account or as part of the Facilities Capital Investment.

I. Consult with MERC concerning and require any affiliates to consult with MERC concerning enhancement of food and beverage preparation Facilities, concession stands, and any related Facilities or service requirements.

J. Upon approval of MERC's GM or designee, shall procure such signage, small wares, renovations, furniture and equipment for all MERC Facilities in accordance with Facility needs, event schedules, and related matters. Such purchases will be paid through the Reserve Account or as part of the Facilities Capital Investment.

K. Prepare all food and beverage products for sale or distribution.

L. Advise and make recommendations to MERC concerning all operational phases of food and beverage products including but not limited to the kind, quality, brand and price of products, use of portable specialty stands and the sale of products. Contractor shall purchase locally produced products whenever possible to showcase Pacific Northwest produce, meats, beers, wines and organic options, and shall operate in the most sustainable fashion possible, in the sole opinion of MERC.

M. Contractor shall at all times operates consistently with the MERC branding image known as "Culture, Nature, Nurture" and shall purchase products locally to operate consistently with such branding image. A detailed description of the elements that will be used to implement the Culture, Nature, Nurture brand is attached to this Agreement as set forth in Exhibit 10, which is incorporated by reference as it is set forth in full. No later than March 31, 2010, MERC and ARAMARK shall negotiate a binding agreement to implement fully the Culture, Nature, Nurture Brand. Such agreement shall require Contractor to balance local purchasing with NVD purchases to maximize profitability while maintaining local brand identity, including FOTA and MWESB purchases.

N. Contractor shall meet with MERC no less than once per quarter on a regular basis, to review culinary performance, quality of services and product rendered at each Facility. Such discussions shall also address, without limitation, seasonal menus, review of customer comments about food quality, new service techniques, concession stand food service and food quality, and efforts directed toward improving the culinary experience at all of the MERC Facilities.

O. Comply with all existing laws and regulations relating to the preparation, handling, sale and waste disposal or other processing of Food and Beverage Service Products. Procure and maintain at all times the necessary permits and licenses required by any laws and regulations for operations of Food and Beverage Services.

P. Provide to MERC within 30 days of receipt all reports of any inspections of MERC Facilities related to risk management, risk of liability, safety, sanitation or cleanliness, including, without limitation reports from any government health or safety regulator, any government Health Department, the federal Occupation Safety & Health Administration, the Oregon Occupation Safety & Health Administration, and the Oregon Workers Compensation Division.

Q. At all times maintain all related food and beverage service office, storage, kitchens, service, and retail sales areas in a clean and sanitary condition. Contractor shall also clean and remove waste from all food and beverage service areas, including seating areas to be specified by Facility, building and location (and excluding any spectator seating bowl areas) specific for food service needs to assigned Facility compactors.

Contractor shall also procure necessary pest control to ensure the highest standards of cleanliness and sanitary conditions in the food and beverage service areas. Pest control will be paid from the Reserve Account.

R. Subject to prior approval by MERC's GM or designee, arrange for all repairs and maintenance to the food and beverage service areas and equipment through MERC Staff or outside vendors or providers. All costs related to the repair and maintenance will be paid out of the Reserve Account.

S. Subject to prior written approval by MERC's GM or designee, arrange for replacement or modification of food and beverage areas. All costs related to the replacement or modification of food and beverage areas will be paid out of the Reserve Account.

T. Pay all excise tax, sales tax, business and occupational taxes and other similar taxes required by law related to the operation of food and beverage service areas.

U. Pay all catering gratuities collected for and on behalf of the Contractor employees in a fair and equitable manner and record payments in an account in EBMS.

V. Develop, with the prior approval of MERC's GM or designee, such accounting procedures for the Food and Beverage Services that:

1. Provide all required and necessary levels of financial reporting and accountability to MERC in a form acceptable to it, including all items set forth as SCOPE OF WORK Exhibit 2 – Accounting Procedures & Duties, which Exhibit is incorporated by this reference as if set forth in full; and

2. Make use of the MERC Event Business Management System ("EBMS") to include work orders, service orders, client invoices, license agreements or any other comprehensive agreements with MERC clients that include

Facilities, food and beverage; requirements and deposit schedules, reserve purchases, and accounting for all Food and Beverage revenues, expenditures and budgets.

3. Support by original invoices for goods and services actually received for all Food and Beverage expenses, including the allowable corporate expenses listed on Exhibit 9 attached hereto.

W. Prepare and submit to MERC an annual operating budget for each accounting year and provide as required an updated forecast of annual results to MERC's GM or designee. The Contractor will enter monthly budget amounts by Facility into EBMS.

X. Negotiate all collective bargaining agreements relative to the Contractor's employees and maintain effective day-to-day working relationships with appropriate union representatives.

Y Provide all necessary food and beverage related setup for concessions and catering events in MERC Facilities as determined by MERC's GM or designee.

Z. Provide for and arrange annual programs for aggressive advertising, marketing, and promotion of food and beverage products services for and at MERC and Facilities, including menu or electronic menu and marketing production to be paid out of the Reserve Account.

AA. Comply with all recycling and sustainability policies and procedures at all MERC Facilities and any such regulations passed and adopted by MERC, Metro, or any governmental agencies. Contractor is expected to participate fully in MERC's recycling, composting, and sustainability plans at each designated Facility.

BB. Provide all necessary reports, scheduling information, sales and operating procedures as directed by the specific MERC Facility Director or designee, using the EBMS in addition to corporate management systems, including but not be limited to; Sustainability results, FOTA hiring and numbers of staff in the FOTA areas, MWESB reporting of use by Contractor for operations, services and sub - contractors, Marketing and Sales Program of Work for each Facility. MERC and Contractor agree that by June 30, 2010, they will establish appropriate FOTA Target Levels and shall consider and, if necessary, update such target levels no later than June 30 of each subsequent year thereafter.

CC. Shall comply with all MERC FOTA and MWESB policies and programs as approved by MERC for hiring and purchasing, and shall submit reports at least quarterly reporting on all payments made to all FOTA participants, excluding any payments made to any joint venture partner of any party to this contract. The FOTA/MWESB/local designations for purchasing will reside in EBMS and ARAMARK will use the data in the EBMS system to provide specialized purchasing reports as needed. No later than March 31, 2010, Contractor shall propose a form of contract to MERC implementing elements of the Leg-Up program as set forth in Exhibit 11. No later than June 30, 2010, the parties shall reach agreement on the form of contract, which shall be effective as of July 1, 2010.

6. Responsibilities of MERC

MERC shall use its best efforts to obtain the most efficient and high quality operation possible and shall be responsible for performing the following duties and functions:

A. MERC shall render any compensation of and consideration to Contractor in accordance with the provisions set forth in Article 9.

B. MERC at its sole expense, except such capital investment as called for in this Agreement, shall construct, furnish and equip the physical Facilities of MERC Facilities, including office space, computer equipment, storage areas, kitchens/pantries, which it deems necessary for the Contractor to operate within MERC Facilities.

C. MERC shall furnish the Contractor estimated attendance for all events at all MERC Facilities for which the Contractor is providing food and beverage service, not less than thirty (30) days in advance, to assist the Contractor in accomplishing its accounting responsibilities, allowing Contractor to accurately forecast events. MERC sales personnel will support Contractor's forecasting requirements by providing the most current information available.

D. MERC shall prohibit the selling and distributing of any Concessions Products or services in MERC Facilities and on its premises by anyone except the Contractor, subject to the exclusions provided for in Articles 5 and 8 of this Agreement.

E. MERC shall cooperate with the Contractor in obtaining all necessary licenses and permits.

F. MERC shall conduct business with the Contractor in an efficient and professional manner.

7. Powers Reserved to MERC

The Contractor shall, subject to the approval of MERC and all of the terms and provisions of this Agreement, have complete control and discretionary authority with respect to the operation of the Concessions, including the use of the premises, labor relations policies, including wage rates, the hiring, promotion and discharge of its employees, the establishment of the wages, hours and other terms and conditions of employment, and with respect to all other phases of operation, except as otherwise herein expressly limited or provided for in this Agreement. In the event of a dispute between the Contractor and MERC, the decision of MERC concerning the operation or management of the Concessions shall be final and binding on both parties. By way of illustration and not limitation, the reserved powers of MERC are as follows:

A. The final determination of all policies and procedures relative to the operation and management of Concessions.

B. Final determination on the kinds, brands, quality and retail prices of all Concessions Products and services. Unless otherwise approved in advance by MERC's General Manager, the product purchased by the Contractor shall meet the minimum requirements as laid out in Exhibit 3 to this Agreement.

C. Final determination on the design, layout and location of all physical Facilities and equipment for the Concessions operation and any future changes or modifications thereto.

D. Final determination on the use, number and location of portable concessions stands, permanent specialty stands and other Facilities used in the concessions and catering operation. Product availability and said retail sales areas shall be determined by the General Manager of MERC or his designee.

E. Final determination and approval of the annual operating budget to be implemented each Accounting Year for the Concessions operation. Contractor may recommend to MERC amendments to the budget as it may deem necessary. MERC reserves the right to amend or alter said annual budget at any time during the course of the year if deemed necessary and appropriate by MERC.

F. Final determination on which specific Concessions Products will be sold at particular events in MERC Facilities.

G. Sole discretion to cancel, terminate or interrupt any MERC event, and cause the patrons to be dismissed, or to stop the sale of any product by the Contractor during any event. MERC shall not be liable to the Contractor for any loss or cost occasioned by any such determination or action by the General Manager of MERC taken in good faith for the benefit or protection of MERC and the public generally or MERC Facilities.

H. The power to have access to any concessions areas at any time.

I. The power to approve or disapprove the Group Manager, Facility specific General Manager and Chef and Controller provided by the Contractor at any time during the term of this Agreement, and to require the Contractor to replace such personnel within thirty (30) days of receipt of written notice by MERC's General Manager regarding dissatisfaction with the Manager's performance.

J. Contractor will employ only competent and orderly employees who will keep themselves neat and clean and accord courteous and competent treatment and service to all patrons. Whenever MERC notifies the Contractor or its manager that any employee is deemed by it to be incompetent, disorderly or unsatisfactory, the Contractor will investigate the matter thoroughly, and if good cause, as determined by the Contractor, exists the 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 the Contractor and a union or any Oregon or federal employment law or regulations.

K. Implement and manage at the sole discretion of MERC all Equal Opportunity and FOTA programs and participation.

L. The power to terminate this Agreement for acts of default by the Contractor in accordance with Article 15 hereof.

M. The final determination of the prices of which Concessions Products will be sold by the Contractor.

N. The determination of acceptable levels of performance in striving to achieve the most economical and efficient operation of the Concessions.

O. The power to approve the salaries of on-site concessions manager and any other on-site management employees of the Contractor. The amounts of any salaries in excess of those approved by MERC shall not be counted in the distribution and calculation of net profits.

P. The power to establish, maintain, manage and provide for an effective recycling and sustainability program for the clients and attendees at all MERC Facilities and use by Contractor.

8. **<u>Contractor's Payment of Facilities Capital Investment</u>**

A. Within ten days after the parties' execution of this Agreement, Contractor shall deposit the sum of $2,000,000.00 (TWO MILLION DOLLARS) in a segregated account controlled by MERC to be used for food and beverage capital acquisitions, proposed by Contractor and approved by MERC pursuant to subparagraph 8.B., below. MERC shall be the sole owner of these funds.

B. MERC and Contractor hereby agree to the proposed Facilities Capital Investment set forth on the Attached Exhibit 4 totaling the sum of $2,000,000 (TWO MILLION DOLLARS) which proposal may be revised by mutual agreement of the parties. Upon approval of MERC's General Manager or the General Manager's designee, Contractor, on behalf of MERC, shall procure such signage, smallwares, renovations, furniture and equipment for all MERC Facilities in accordance with Facility needs, and event schedules. MERC shall pay the cost of procuring all such items from the sum Contractor provides pursuant to this section.

9. **Contractor's Compensation: Distribution of Net Gross Revenues, Net Profits & Other Funds**

A. Effective November 5, 2009, and as the sole consideration to the Contractor for management and operations of the Concessions, the Contractor shall receive the following:

1. 3.25% of Net Gross Receipts in any Accounting Year;

2. 10% of Net Profits in any Accounting Year; and

3. 1% of Net Profits, if total Net Profits for all MERC Facilities in any Accounting Year exceed $3,600,000 (the "Total Profit Threshold"). At the beginning of each accounting year, MERC General Manager shall allocate the Total Profit Threshold among MERC Facilities. The General Manager shall determine the method of allocating the Total Profit Threshold in his or her sole discretion, in consultation with Contractor in conjunction with the annual budget process. If the Total Profit Threshold is not exceeded in an Accounting Year, and any of the Facilities exceeds their individual profit threshold, the Contractor shall receive 1% of the net profits of each of the individual Facilities that exceed their individual profit threshold.

4. 2.5% of Net Profits of each Facility in any Accounting Year if the Contractor meets the Qualitative Incentives, which shall be set annually as follows:

Effective as of November 5, 2009, the qualitative incentive payment requirements attached as Exhibit 5 shall be used to determine the qualitative incentive payment Contractor shall receive for the first Accounting Year of the contract. Contractor shall receive the same percentage of the incentive payment as the percentage it receives of its overall qualitative score for each Facility.

Commencing at the start of the second Accounting Year of the Contract, Contractor shall submit its proposed qualitative goals to MERC for review and comment no later than May 1. Thereafter, such qualitative goals shall be mutually determined by MERC and the Contractor annually prior to each Accounting Year of the Agreement. Such qualitative goals will be developed for each MERC Facility individually and shall detail how the Qualitative Goals will be graded and at what levels the Contractor must perform to receive the Qualitative Incentive. The parties shall meet periodically during each Accounting Year to review and discuss interim assessments and updates of Contractor's progress toward the Qualitative Incentives. Following the end of each Accounting Year, MERC shall submit to Contractor the assessment of the Contractor's attainment of the Qualitative Goals, by Facility, for the just ended Accounting Year. Any dispute over the terms of the annual Qualitative Goals will be submitted to mediation by a mutually acceptable third party before the provisions of Article 20 are invoked. The Qualitative Incentive, if any, earned by the Contractor in any Accounting Year shall be paid to the Contractor by the MERC within thirty (60) days following the end of each Accounting Year.

B. For each Accounting Period, the parties shall distribute the following funds to Contractor and MERC according to the procedures in this subparagraph:

1. Contractor's compensation, in accordance with the percentages outlined in Paragraph 9.A. of this Agreement, shall be distributed to Contractor;

2. Excise taxes of seven and one-half percent (7.5%), or such other amount as may be imposed by the Metro Code, of Gross Revenues shall be distributed to MERC for payment of excise taxes;

3. Five percent (5%) of Net Gross Receipts shall be distributed to MERC for deposit in the Reserve Account (defined below); and

4. All funds due to MERC under this Agreement shall be distributed to MERC within five (5) days of the parties reaching agreement on the amounts to be distributed to each party. Losses occurring in an Accounting Period will be carried forward and recovered in future Accounting Periods, provided sufficient Gross Revenues are available therefore. Any loss that remains unrecovered upon the expiration of the term will be recovered from available Net Profits from prior Accounting Periods. The Accounting Period distributions shall be made after the Accounting Period operating statement specified in Article 11 of the Agreement is completed in accordance with the payment procedures outlined in Paragraph 9.A. of this Agreement.

5. No later than ten business days after the end of each Accounting Period, Contractor shall record in EBMS the detail transactions for the period and generate a comprehensive financial statement of the revenues and expenses for the Accounting Period based on the EBMS data. No later than fifteen business days after the end of each Accounting Period, Contractor and MERC shall agree upon the amount to be distributed to Contractor and the amount to be distributed to MERC. If the parties do not agree on the amounts to be distributed, such disagreement shall be submitted to arbitration in accordance with Article 20 hereof.

6. No later than August 31 of each year, MERC shall determine the amount of any additional compensation due to Contractor under the formulas set forth in Paragraph 9.B. of this Agreement. In the event that Contractor's compensation requires a redistribution from MERC's account, Contractor shall submit an invoice to MERC. MERC shall pay the invoice from MERC's account.

7. Contractor shall distribute its compensation only after MERC approves and signs a written itemization of the distributions. Contractor shall make distributions under this paragraph only by written check.

C. Upon completion of the approval process described in paragraph 1) below, Contractor shall deposit daily all revenue from Concession stands into a separate commercial account for each MERC Facility, or with MERC's approval, a single commercial account with subaccounts for each MERC Facility, (hereinafter "Contractor's Accounts") established by Contractor at a bank approved by MERC. Contractor shall not use any other accounts for the daily deposit of revenues from the catering and concessions operations at MERC Facilities. The Contractor's Accounts shall be subject to the following restrictions:

1. Contractor shall not deposit any funds into Contractor's Accounts until Contractor has provided MERC with a comprehensive description of its accounting and cash handling methods and procedures for concessions and catering operations at MERC, and MERC has approved such methods and procedures. Contractor and MERC shall agree upon Contractor's accounting and cash handling procedures no later than December 1, 2009.

2. After Contractor has deposited the daily revenues into Contractor's Accounts, Contractor may transfer the funds into its own corporate accounts.

3. If Contractor fails to comply with any of the requirements of this Amendment, or if Contractor Corporation's corporate debt rating is downgraded below investment grade by any major rating agency, MERC shall have the right to demand that Contractor immediately thereafter deposit all revenues from concessions operations at MERC Facilities into a separate commercial account established and controlled by MERC. If MERC makes such a demand, Contractor shall make no withdrawals from Contractor's Accounts other than to transfer all funds into MERC account, which transfer Contractor shall make within 24 hours after MERC's demand. Contractor shall immediately notify MERC if any major rating agency lowers the rating on Contractor Corporation's corporate debt below investment grade. MERC shall reimburse Contractor for its operating expenses from such account.

4. Contractor shall exercise fiduciary responsibility for the safeguarding, accounting, and control of all funds deriving from concessions operations at MERC. Contractor accepts full responsibility and liability for these funds. Contractor shall be responsible for any losses from these funds prior to the time they are deposited into an account controlled by MERC, and shall immediately replace any such losses upon demand from MERC. Under no circumstances will MERC be responsible for any losses of funds under the control of Contractor that derived from catering and concessions operations at MERC.

D. A Reserve Account shall be established in EBMS for each Facility to account for the five percent (5%) of Net Gross. Reserve Funds will be used for improvements to the food and beverage Facilities, including capital improvements, equipment, smallwares, marketing the Facility, electronic marketing, utilities expenses, pest control and repairs and maintenance. Contractor, after approval from MERC, shall enter requests into EBMS to spend Reserve Account funds. The request is entered as a Requisition into EBMS. After the request is approved by the Facility Director, a purchase order shall be generated by MERC. All transactions from the Reserve Account shall require an approved, valid purchase order. Goods and services shall be entered into EBMS as received against the purchase order. MERC shall issue payment to the vendors consistent with the approved purchase order and the actual goods and services received. At the end of the Accounting Year, any funds left in the Reserve Account shall be credited as Net Profits to be distributed pursuant to Section 9.A. above.

E. In the event the number of Facilities comprising MERC Facilities increases or decreases, or any single MERC Facility permanently expands or is reduced in size, the Profit Threshold will be adjusted on an equitable basis to account for such increase or decrease, taking into account, among such other factors as are deemed appropriate by the parties, the event levels, event mix, attendance and comparative profitability of the affected MERC Facility or Facilities.

F. The Contractor shall not be entitled to any other remuneration from MERC for the performance of the Contractor's duties, obligations and activities pursuant to this Agreement. Further, in the event of termination of the Agreement before the end of the term prescribed in Article 2 of this Agreement, the Contractor shall have no claim against MERC for any Net Profits which might have been distributed to it for periods after the date of the termination or for any other amount not otherwise payable to Contractor upon termination in accordance with the terms of this Agreement.

10. <u>Business Practices of the Parties</u>.

The parties agree to employ the following business practices in the implementation and performance of this contract:

A. Both parties shall use EBMS to document all transactions at any MERC Facility, including, without limitation, service and work orders, budgets, vendor payment, Contractor payments, payroll entries and accounting transactions.

B. All management, sales and accounting staff shall be trained and knowledgeable in EBMS. Contractor's Controller shall be intimately familiar with the operation of EBMS, and shall be capable of providing EBMS training to all the Contractor's employees.

C. Notwithstanding any result in use of EBMS for accounting purposes, the relationship between the parties remains as provided in Section 4 of the Agreement.

D. MERC shall retain and maintain both the EBMS and MS SQL databases on its servers.

E. MERC shall collect all catering deposits and payments on behalf of Contractor as recorded in EBMS. Contractor shall submit all client billing for deposits and final payments to MERC into EBMS. MERC shall bill the clients directly for the deposits and final payments. Contractor shall pay MERC all final payments and deposits from clients pursuant to paragraph J below.

1. Contractor shall collect and deposit all concession stand revenue and deposit in their accounts at the bank in accordance with procedures listed above in paragraph 9C above.

2. MERC clients shall make all payments directly to MERC for services provided by the Contractor.

3. MERC shall be responsible for the collections of all aged or associated bad debts from the Food and Beverage catering services provided by the Contractor. If MERC is unable to collect on any debt, the bad debt expense shall be charged to the operating statement and subject to the profit split in accordance with the terms of the Agreement. If any disputes with Clients occur regarding Contractor service, MERC shall freeze any payments to Contractor in regard to the disputing client until the dispute is resolved.

When Contractor incurs an expense for a direct operating cost by MERC pursuant to this Agreement, Contractor shall pay such expense directly to the vendor or provider. Contractor shall pay all vendors and providers with written checks or electronic payment. Contractor shall not pay vendors and providers in cash from cash receipts. When paying expenses, Contractor shall take into account any discounts or credits received by Contractor or any related affiliate or parent company. No later than 10 business days after the end of each month, Contractor shall provide to MERC documentation of every expense paid by Contractor for the prior month, such documentation to be in a form consistent with the requirements of this Agreement, and which substantiates that Contractor has received the good, product, item or services, and the exact amount of the cost incurred by Contractor and taking into account any discounts or credits received by Contractor or any related affiliate or parent company. Expenses without supporting documentation will not be considered direct operating payment under this Agreement.

F. All clients shall be entered into the EBMS system by MERC or at MERC discretion, by Contractor.

G. MERC shall provide the terms of payment in the License Agreement with all Clients. The parties have agreed to the applicable terms which are set forth in the License Agreement, attached as Exhibit 6 to this Addendum. MERC reserves the right to change the terms of the License Agreement in the regular course of business at its sole discretion.

H. MERC shall manage all requests for credit and shall establish deposit minimums. MERC shall approve or deny credit applications at its sole discretion.

I. Contractor shall make all purchases and expenses. All expenses shall be supported by original source documents, payroll register reports or other documentation approved in advance by MERC. All expenses not properly supported will be disallowed and not considered an appropriate expense under this contract.

J. MERC shall transfer all funds collected for Food and Beverage catering services to Contractor once per week on such day as the parties mutually agree. On the same day, MERC shall invoice Contractor for disallowed expenses, if any. A list of allowed corporate expenses is set forth on Exhibit 9 to this Agreement. The invoice shall have reasonably sufficient detail that ARAMARK can identify the expenses.

Contractor shall collect and deposit all concession stand revenue and deposit in their accounts at the bank in accordance with procedures listed above in paragraph 8B.

K. MERC shall monitor all Food and Beverage receipts through EBMS on all days that MERC offices are open for business.

L. MERC shall provide access to all EBMS reports and client information including, without limitation, all aging and past due information, only to designated Contractor and MERC employees.

M. Contractor may generate an EBMS report, which may be exported as an electronic spreadsheet, to provide Contractor's corporate office with transaction data. With advance approval of MERC, the Contractor may extract data from EBMS in order to electronically transfer Contractor transactions to the Contractor's corporate office. The parties shall work together to finalize and implement reporting procedures within six months after the execution date of this agreement.

N. If requested, MERC shall provide Contractor with forecasts of monthly and annual Food and Beverage revenues.

11. **Financial Reporting and Accountability**

A. In addition to properly utilizing EBMS, Contractor shall maintain at all times independent accurate computerized accounting records on the operation of the Concessions for Contractor's records and accounts. The form and substance of the accounting system shall be subject to the determination by MERC and shall include, but not be limited to, the following:

1. Separate financial records for each of MERC Facilities, except that consolidated operations of MERC's Facilities financial reports will be required monthly and be made available to the Commission. MERC acknowledges that certain of Contractor's financial functions, such as payroll accounts, are maintained on a consolidated basis; provided that records are maintained of the transactions pertaining to each individual MERC Facility.

2. Complete financial system which conforms to generally accepted accounting principles and practices and includes annual line item budgeting for expenditure and revenue accounting, accounts segregating, and identifying assets, liabilities, and net worth.

3. Documentation supporting all entries into the financial accounting system to include all expenditure invoices, payroll summaries and copies of payroll tax returns, revenue and bank deposit receipts, bank statements and all other such related documentation, copies of which are to be submitted monthly if not previously provided to support request for payment.

4. Complete inventories of concession and catering equipment to be taken not less than annually and other capital assets and expendable and consumable supplies maintained continuously at MERC Facilities not less than annually. Recording of capital inventory will be maintained and automated into EBMS by MERC, and inventory of equipment will be conducted by ARAMARK.

5. Complete event inventory control records before and after each MERC event and actual cash count of each event's sales receipts.

6. Any other specific accounting information related to the Concessions which is determined by MERC to be meaningful and necessary.

7. Discrepancies between the Contractor's records and MERC's records, including but not limited to EBMS, will be the responsibility of Contractor to reconcile and document.

B. All accounting records, documents, books, inventories and other such related information shall be made available for MERC inspection at any time during the term of this Agreement. In addition, Contractor shall retain all accounting records for a period of six years from the end of the Contract Year in which the record was made or such longer period as is required by law. In addition to the right of inspection, MERC shall have the right at any time during the term of this Agreement and during the three-year period following completion of the Agreement to conduct a full audit, including a certified audit by an independent accounting firm, on the financial records and business activities of the Contractor relating to performance of this Agreement.

C. Contractor shall make a good faith effort to establish and operate an integrated computer system satisfactory to MERC that will control point-of-sale devices that are PCI-compliant as certified by a third party; offer computer assistance to the Contractor's management staff; and provide electronic interfaces between EBMS and other applications and sources, including Contractor's account applications, bank accounts, point-of-sale equipment, and inventory systems. Such interfaces may include electronic upload and download of data in support of collecting line item detail in EBMS.

D. The Contractor shall provide a financial operating statement within three (3) business days after MERC closes the EBMS accounting period which details on an accrual basis, all gross revenues, direct operating costs and Net Profits resulting from the Concessions for the preceding accounting period. Such report shall provide the basis from which distribution of Net Profit is made in accordance with Article 9 hereof. ARAMARK will work with MERC to create a yield management tool to help determine profit margin for key events. To the extent there are any additional costs associated with providing such reports, the additional costs will be Direct Operating Costs. If there are any costs associated with such reports, ARAMARK staff will review the costs with Facility Directors prior to incurring the costs or providing the reports.

E. For each Accounting Year during the term of this Agreement, the Contractor shall develop and submit to MERC's General Manager, or his designee, for approval an annual line-item operating budget for the Concessions. The form and substance of the annual budget shall be determined by MERC and shall include day-to-day operating costs, revenues, capital purchase, and capital repair, maintenance and replacement costs. The Contractor shall be responsible for operating within the established budgetary limits at all times, unless otherwise approved in writing by MERC. MERC reserves the right to reasonably alter or change such annual budget at any time it is deemed necessary or appropriate.

F. It shall be the responsibility of the Contractor to take reasonable steps to assure compliance by any of its subcontractors, suppliers, and other such agents with the record-keeping requirements of this Article. Failure of Contractor to comply with accounting procedures requested by MERC, failure of Contractor to correct any material accounting deficiency discovered by MERC, or failure by the Contractor to establish and implement procedures to safeguard, control and account for funds received or held by it pursuant to this Agreement shall be cause for termination of this Agreement by MERC if, after notice of such deficiency, Contractor has not taken steps to cure such deficiency within 10 days or such longer period as is reasonable under the circumstances.

12. Audits; Financial Safeguards.

A. Within 10 days of the execution of this Agreement, Contractor shall provide to MERC a comprehensive description of its accounting and cash handling methods and procedures for concessions and catering operations at MERC. MERC shall have the right to approve all such methods and procedures. Contractor shall implement only those accounting and cash handling methods that have been approved by MERC.

B. MERC shall conduct an annual audit, or similar review, of Contractor's records, books, and accounts related to matters covered by this Agreement. The audit shall be conducted by an outside accounting firm selected by MERC. The cost of the annual audit will be treated as an operating expense under the Agreement.

C. MERC may conduct annual performance audits, or similar reviews, of Contractor's business process, internal controls, compliance to Contractor's policies and procedures and compliance to MERC's policies and procedures, as applied to Contractor and Contractor's employees. If any such performance audits identify deficiencies in Contractor's operations, Contractor shall provide to MERC within ten (10) days a written plan outlining how Contractor will correct the deficiencies. Failure by Contractor to correct the deficiencies may be considered by MERC, at MERC's reasonable discretion, to be a material breach of the Agreement in accordance with paragraph 15(A).

D. MERC shall have the right to conduct unannounced cash audits or other spot checks of food service activities, including but not limited to conducting surprise cash counts, observing Contractor's employees' cash handling methods, and observing product inventory counts. If any such cash audits or spot checks identify deficiencies in Contractor's operations, within ten days Contractor shall provide to MERC a written plan outlining how Contractor will correct the deficiencies. Failure by Contractor to correct the deficiencies may be considered by MERC, at MERC's sole discretion, to be a material breach of the Agreement in accordance with Paragraph 15(A).

E. Contractor shall notify MERC when any internal audit or review of its operations at MERC is taking place. Contractor shall provide to MERC a copy of any informal and formal audit or review reports as soon as the reports are completed. If an audit identifies deficiencies in Contractor's operations, within ten days Contractor shall provide to MERC a written plan outlining how Contractor will correct the deficiencies. Failure by Contractor to correct the deficiencies may be considered by MERC, at MERC's sole discretion, to be a material breach of the Agreement in accordance with Paragraph 15(A).

F. Contractor shall require its bank to provide directly to MERC original monthly bank statements for Contractor's Accounts as soon as the bank statements are available.

G. Contractor shall ensure that all equipment (such as safes and lock boxes) and forms are appropriate for the proper and reliable handling of cash in an operation the size and complexity of the concessions and catering operation at MERC. MERC shall have the right to demand that Contractor employ different or additional equipment and forms if MERC, in its sole discretion, determines that different or additional equipment and forms are appropriate. Contractor shall immediately and fully comply with any such demands. The direct operating costs incurred by Contractor to comply with such a demand by MERC shall be treated as Direct Operating Costs.

H. Contractor shall limit access to financial records, bank statements, deposit slips, and similar account-related documents for Contractor's Accounts to a limited group of Contractor's employees having a business need to have access to such records.

I. Contractor shall assign an employee approved by MERC to reconcile daily concession stand receipts to daily bank deposits at each concession stand in operation to ensure that all deposits are complete and that all Contractor's financial documents are complete, accurate, and legible.

J. Contractor shall obtain armored car services with a firm acceptable to MERC. When it is reasonable and prudent to do so, Contractor shall schedule extra pick-ups of cash from MERC Facilities.

K. Contractor shall exercise reasonable care to ensure that no more than the minimum amount of cash necessary remains in MERC Facilities after business hours and during weekends.

13. Performance Bond

Within three business days following the execution of this contract, Contractor shall provide a performance bond in the form attached as Exhibit 7 to MERC in an amount of not less than $1,000,000 (ONE MILLION DOLLARS) made out to the Metropolitan Exposition Recreation Commission for operations to assure compliance of the Contractor with all provisions of this Agreement, including those related to the financial obligations of the Contractor. Said performance bond shall be conditioned upon faithful performance of Contractor's payment of moneys due or obligations owing to MERC and to all suppliers, materialmen and employees of Contractor or its subcontractors.

14. Indemnification and Insurance

A. It is understood and agreed that, to the fullest extent permitted by law, the Contractor shall indemnify, defend and hold harmless MERC and its agents and employees from and against all claims, damages, actions, losses, and expenses, including but not limited to attorneys' fees and court costs, arising out of, resulting from or in any way connected with any acts or omissions in performance of this Agreement by the Contractor, its employees and subcontractors, excluding any claims, damages, actions, losses or expenses resulting from the sole negligence or willful misconduct of MERC, its agents or employees. The Contractor will not bring any action against MERC due to MERC's execution of its right to cancel any event. In addition, in any and all claims against MERC, the indemnification obligations set forth herein shall not be limited in any way by any limitation in the amount of types of insurance obtained by Contractor in accordance with this Agreement.

B. Contractor may charge an allocated charge as a Direct Operating Cost for the cost of providing the following insurance coverages for which Contractor and MERC shall review annually the amount of the allocated charge:

1. Comprehensive commercial liability insurance covering bodily injury and property damage, with automatic coverages for premises operations and product liability, owners and contractors protective liability, product/completed operations liability (including food and drink), liquor legal liability, fire legal liability and contractual liability coverage.

2. Automobile bodily injury and property damage liability insurance coverage, including coverage for owned, non-owned, hired or borrowed vehicles.

Certificates evidencing the foregoing insurance policy or policies shall:

1. Include Metro and MERC, and, if required by law or regulation, the Oregon Liquor Control Commission, as additional insureds.

2. Apply as primary insurance on behalf of Metro and MERC, regardless of what insurance MERC may maintain.

3. Provide for not less than thirty (30) days' advance written notice to MERC regarding cancellation of the policy.

4. Include limits of protection as follows:

a. For commercial general liability insurance, a minimum of $10,000,000 combined, single-limit, bodily injury and property damage coverage, including loss of use coverage, with automatic coverage for premises, operation and product liability.

b. For automobile bodily injury and property liability insurance coverage, a minimum of $1,000,000 per occurrence.

C. Contractor, its subcontractors, and all employees working under this Agreement that are subject employers under the Oregon Workers' Compensation Law shall comply with ORS 656.017, which requires them to provide Workers' Compensation coverage for all their subject workers. Contractor shall provide MERC with certification of Workers' Compensation insurance including employer's liability.

D. A true copy of the insurance certificates, including all of the required coverages and endorsements shall be provided to MERC prior to commencement of work under this Agreement.

E. In the event that concessions and/or catering Facilities are destroyed by an act of God, fire, vandalism, etc., to the extent that continued operation thereof is not feasible, MERC will be under no obligation to replace them.

F. MERC shall keep and maintain property insurance on all real and personal property owned by MERC and waives subrogation for all losses except those in excess of MERC's self insured deductible or any amounts not reimbursed by MERC's property insurance.

G. The Contractor must provide property insurance for all real and personal property owned by the Contractor and its agents, employees, or contractors and waives all rights of subrogation for any loss or damage to property that Contractor may sustain incidental to or in any way related to its negligent acts or omissions in its operation under the Agreement. Such waiver shall not apply to losses arising solely out of the negligent acts or omissions of MERC, its agents, employees, or invitees.

H. Contractor shall take all necessary precautions for the safety of employees and others in the vicinity of the services being performed and shall comply with all applicable provisions of federal, state and local safety laws and building codes, including the acquisition of any required permits.

I. The Contractor shall be required to strictly adhere to, coordinate with MERC and document full compliance with the policies and procedures of the Oregon Occupational Health and Safety Code, OAR Chapter 437, Division 155, Hazard Communication.

Therefore, the Contractor and all subcontractors and suppliers within their control shall notify Metro MERC and all parties to the Agreement as to:

- Hazardous materials to which they may be exposed on site;
- Employees measures to lessen the possibility of exposure;
- Contractor measures to reduce the risk
- Procedures to follow if exposed.

The Contractor shall provide MERC with all Material Safety data sheets (MSDS) prior to delivery or introduction of the material on site.

J. Any other insurance deemed necessary by the Contractor to its operations shall be obtained at its own expense.

K. The parties shall review annually the terms and requirements of this Article and which may be modified upon mutual written agreement between MERC and Contractor.

15. Termination or Breach by Contractor

A. Material Breach

Any actions by the Contractor or any failure by Contractor to perform any material obligation hereunder which directly or indirectly impairs or interferes with the cleanliness, safety, profitability, operational capacity, or favorable public image or reputation of MERC Facilities shall be a material breach and shall entitle MERC to terminate this Agreement. In the event that Contractor shall default in the obligations or conditions set forth in this and other subsections of this agreement, and such default shall continue unremedied and no action taken to correct for three (3) days after written notice of said default to the Contractor (or such longer period as is reasonably necessary to effectuate a cure under the circumstances, provided, that Contractor commences such cure within such three (3) day period and then diligently completes same), thereupon, at MERC's option, this Agreement may be terminated upon thirty (30) days' written notice. Nothing herein shall preclude MERC or its agents from taking any immediate necessary action to remedy dangerous or unsafe conditions, regardless of the impact upon the Contractor. The parties agree that MERC shall retain the right to determine whether any action or failure of Contractor constitutes a material breach hereunder (except as to the factual determination whether such action or failure has occurred) and any such determination shall be conclusive and shall be binding upon the parties hereto.

B. Loss of Essential Licenses-Extraordinary Breach

The parties agree that the loss by Contractor of any license or permit necessary to legal performance of its duties and obligations hereunder shall constitute an extraordinary breach of this Agreement and, if not cured within sixty (60) days by the restoration of the license or permit, shall be grounds for termination by MERC. This provision shall apply specifically but not exclusively to the licenses or permits issued by the Oregon State Liquor Control Commission to allow sale of alcoholic beverages under the terms hereof, to the extent held by Contractor. This provision shall apply irrespective of the reason for loss or revocation of any necessary license or permit, except if such loss is due solely to the actions or wrongdoing of MERC.

C. Unsatisfactory Performance

The parties agree that MERC shall retain the right to demand performance which is reasonably satisfactory to it, and that MERC shall retain the exclusive right to determine, on a good faith basis, whether performance is or is not satisfactory. In the event Contractor's performance hereunder is deemed unsatisfactory, MERC shall notify Contractor of the deficiency with specificity and the improvements required to achieve satisfactory performance. Contractor must, within 10 days of receipt of such notice, present an action plan to correct the deficiency for MERC's approval. If performance remains unimproved for a period of thirty (30) days following approval of the action plan, MERC shall have the right to terminate this Agreement and all rights and obligations hereunder except those obligations which, by their nature, survive the termination of this Agreement. Notice of termination under this subsection shall provide such time for termination, discontinuance of operations and vacation of Facilities as deemed appropriate by MERC's General Manager.

D. Termination Accounting

1. In the event of termination under this Article, each party shall have full access to the other's financial records and accounts related to its performance under this Agreement to facilitate a determination of the financial obligations of each to the other. If the parties cannot agree, such disagreement shall be submitted to arbitration in accordance with Article 20 hereof. The parties agree that in any event, and regardless of the inability of the parties to agree as to the financial obligations of each to the other, MERC shall be entitled to exclusive, free and unobstructed use and

possession of the concessions and catering Facilities, equipment and supplies immediately after the period for termination notice as provided for above has passed.

2. Immediately upon notice of termination hereunder, all products, food or equipment for which Contractor is entitled to claim for reimbursement shall automatically become the property of MERC and shall automatically come into custody and possession of MERC, subject only to Contractor's right to be reimbursed therefore at its cost.

3. Upon termination, MERC shall reimburse Contractor for the depreciated value of capital invested by the Contractor. Simple straight line depreciation shall be used, with a five year life assumed for all furniture, equipment and smallwares and a five year life for physical building improvements over the life of the Agreement.

4. Upon termination, Contractor shall provide MERC with termination accounting including, but not limited to, the following:

   a. Accounts payable closed at sixty (60) days after termination;

   b. Accounts receivable closed at forty-five (45) days after termination;

   c. Accounts receivable uncollected at sixty (60) days after termination will be written off and the management fee for those accounts will be subtracted from the final payment to Contractor;

   d. A copy of the most recent annual inventory (conducted in June of each year);

   e. A final inventory on smallware conducted seven (7) days prior to termination;

   f. A final inventory on consumables conducted one (1) day prior to termination;

   g. All other accounting and contract close-out procedures shall be finalized no later than sixty (60) days following termination.

5. Upon termination, MERC shall reimburse Contractor for the undepreciated value of the $2,000,000 capital investment paid by the Contractor, using simple straight line depreciation and assumes a five-year life commencing on the effective date of this contract for all furniture, equipment, smallwares and physical building improvements.

16. MERC's Remedies If Contractor Becomes Insolvent

The parties agree that if Contractor is insolvent, is dissolved, files for Bankruptcy, is adjudged bankrupt, or makes a general assignment for the benefit of creditors, or if a receiver is appointed for the benefit of its creditors, or if a receiver is appointed on account of its insolvency, such could impair or frustrate Contractor's performance of this Agreement. Accordingly, it is agreed that upon the occurrence of any such event, MERC shall be entitled to request of Contractor or its successor in interest, adequate assurance of future performance in accordance with the terms and conditions hereof. Failure of Contractor and surety to comply with such request within ten (10) calendar days of service upon both Contractor and Surety of a written request from MERC for such assurances shall entitle MERC to terminate or suspend Contractor's performance of the Agreement. MERC shall not be bound to the Agreement by an insolvent Contractor's trustee or receiver.

Nothing in this Article and no actions taken pursuant to this Article shall constitute a waiver or surrender of any rights, remedies, claims or causes of action MERC may have against Contractor or its Surety under any other provision of this Agreement or any provision(s) of law.

17. Assignment of Contractual Obligation or Change of Control of Contractor

A. Both parties fully understand and agree that the highly skilled and professional management and operation of the concessions and catering in MERC Facilities are of paramount importance and that this agreement would not be entered into by MERC except for its confidence in, and assurances provided for, the character, management abilities, and financial stability of the Contractor. The Contractor, therefore, shall not sell, assign, sublet, transfer, or in any manner encumber the rights and privileges granted herein, nor allow such assignment, subletting, transfer, or any other encumbrance to occur by operation of law or otherwise. In addition, Contractor shall not permit any change of control of the joint venture formed to perform this Agreement. The parties agree, further, that any occurrence, whether within or beyond the control of Contractor, which renders Contractor incapable of performing all duties required hereunder shall constitute a material breach hereunder and shall give MERC the option of terminating this Agreement. Notwithstanding the foregoing, any transaction which results in the shares of a corporate parent of ARAMARK being publicly owned and traded shall not be deemed an assignment or other enumerated transaction, and shall not require the consent of MERC.

B. The transactions set forth in Paragraph 17.A. shall require prior written notice to and prior consent of MERC.

C. If any such transaction occurs without prior written notice to MERC or the prior consent of MERC, such change shall constitute a material breach of this Agreement and MERC, in its sole discretion, may terminate this Agreement for such breach.

In determining whether to approve or disapprove a request by the Contractor for such transaction, MERC may take the following criteria into consideration:

1. Whether the proposed purchaser is of sufficient size to perform the obligations required in the Agreement.

2. Whether the proposed purchaser has sufficient financial resources to fill the operational and financial guarantees specified in the Agreement.

3. Whether the proposed purchaser has sufficient favorable experience providing services similar to those required in the Agreement.

4. The nature of any other commitments which the proposed purchaser may have in related food service management either nationally or within the Metro service area.

D. MERC shall within thirty days (30) of receipt of a request to enter into the transaction either approve or disapprove the request, provided such approval shall not be unreasonably withheld. If MERC requests information regarding the above criteria such thirty (30) day time period shall begin upon satisfactory response by the Contractor to MERC.

E. Contractor shall deliver to MERC a true and correct copy of the executed Joint Venture Agreement between ARAMARK Sports and Entertainment Services, LLC and Giacometti Partners, Ltd. Contractor shall notify MERC, in writing, of any changes in the respective ownership in, control over or responsibilities with regard to the Contractor on the part of Contractor. No such changes will be made without the prior written approval of MERC, unless expressly provided for in the initial Joint Venture Agreement.

F. In the event that the powers and authority granted to MERC by Metro, an Oregon metropolitan service district, under Chapter 6.01 of the Metro Code are changed or modified so that the duties and obligations set forth in this Agreement become that of Metro, or of any other governmental body, this Agreement may be assigned to Metro or to such other governmental body.

19. Force Majeure

In the event that a party is unable, wholly or in part, to perform any obligation under this Agreement because such performance is rendered impossible or financially impractical due to acts of God, inability to obtain necessary materials, products, and services, civil commotion, fire, unavoidable casualty, or similar causes beyond the control of either MERC or the Contractor, such party's obligation, to the extent affected by such occurrence, shall be suspended during the continuation of such occurrence. Each party agrees to notify the other promptly upon the occurrence of an event or condition that will, or that is likely to, give rise to a claim under this Article. The failure to give prompt notice as herein required shall act as a waiver of any claim under this Article.

20. Arbitration

Both parties shall, in good faith, attempt to negotiate resolutions to all disputes arising out of this Agreement. Any controversy or claim arising out of or relating in any way to this Agreement or the breach or alleged breach thereof, including but not limited to claims arising or sounding in tort, shall be settled by binding arbitration in Portland, Oregon under the laws of the state of Oregon, in accordance with the rules of the Arbitration Service of Portland, Inc.; provided, however, that the requirements, (including but not limited to notice requirements) limitations, and exclusions of the Oregon Tort Claims Act, ORS 30.260 *et seq.* shall apply in any arbitration of claims falling under the purview of that Act. The parties shall mutually agree on a single arbitrator, and, if they cannot agree, then an arbitrator shall be appointed by the Presiding Judge of the Circuit Court of the State of Oregon, County of Multnomah. The award may include the costs of arbitration, but shall not include attorney fees. The award may be entered in any Court, state or federal, having jurisdiction thereof. Any action to commence, conduct or enforce such arbitration proceedings, or for any other purpose, shall be brought in Portland, Oregon.

21. Miscellaneous Provisions

A. Validity

MERC and Contractor each represents and warrants to the other its respective authority and power to enter into this Agreement, acknowledges the validity and enforceability of this Agreement, and waives any future right of defense based on claim of illegality, invalidity or unenforceability of any nature. MERC and Contractor each hereby represents, warrants and covenants to the other that the undersigned officers have been duly authorized to execute this Agreement such that this Agreement has been validly entered into by the respective party, and that this Agreement constitutes a legal, valid and binding contract enforceable against the respective party in accordance with the terms hereof.

B. Ambiguities

The parties agree and warrant that they have had the benefit of consultation with legal counsel prior to entering into this Agreement, such that all language herein shall be construed equally against the parties, and such that Contractor waives any right, claim, argument or defense that any language of this Agreement should be construed strictly against MERC.

C. Compliance with Applicable Laws

The Contractor shall strictly comply with all county, state and federal laws and regulations applicable to the operation, including but not limited to all applicable

OSHA and ADA requirements and shall procure all necessary licenses and permits, which shall be displayed in an appropriate location on MERC premises as designated by MERC.

D. Waiver of Subrogation

Contractor hereby releases MERC from any and all liability or responsibility, by way of subrogation or otherwise for any loss or damage to property which Contractor may sustain incidental to or in any way related to its negligent acts or omissions in its operation under this Agreement. Contractor shall exercise its best and good faith efforts to obtain a similar release in all agreements with any subcontractor. Such waivers shall not apply to losses arising out of the negligent acts or omissions of MERC, its agents, employees, or invitees.

E. Labor Disputes

In the event Contractor cannot perform its obligations under this Agreement because of a labor dispute, such non-performance will not be considered a default, provided, however, that the Commission may take control of and perform the operation in whole or in part until the labor dispute is settled. During such period of operation by MERC, MERC shall be entitled to use all Facilities, smallwares and equipment at MERC premises and any supplies and inventory of Contractor on hand. Contractor shall receive no profits or fees in connection with such operation. In the event said labor dispute remains unresolved in excess of thirty (30) consecutive days, MERC may terminate this Agreement upon thirty (30) days' written notice.

F. Non-Waiver and Severability

No waiver of any provision of this Agreement shall be effective unless in writing and signed by the party against whom it is asserted. Any such waiver shall be applicable only to the specified instance to which it relates and shall not be deemed a continuing or future waiver. The provisions of this Agreement are declared by the parties to be severable.

G. Entire Agreement

This agreement constitutes the entire Agreement and understanding between MERC and the Contractor. No provision of this Agreement may be changed or eliminated unless mutually agreed to in writing by MERC and the Contractor.

Contractor shall be jointly and severally liable for all performance due under this Agreement.

H. Notices

All notices relative to this Agreement shall be in writing and shall be mailed by certified mail or delivered in person to MERC or the Contractor. Said notices shall be addressed to the following:

ARAMARK Sports and Entertainment Services, LLC 1101 Market Street Philadelphia, PA 19107 Attn: President Attn: Vice President and Associate General Counsel, Sports and Entertainment	MERC 777 NE Martin Luther King Jr. Blvd. Portland, Oregon 97232 Attn: MERC General Manager Attn: MERC General Counsel Attn: OCC Director

I. Additional Miscellaneous Provisions

This Agreement is made in accordance with the laws of the State of Oregon, which shall be controlling in any dispute which arises under this agreement.

The situs of this Agreement is Portland, Multnomah County, Oregon.

The underlined titles of the various Articles of this Agreement are for reference only. No meaning shall be ascribed to them, and they shall not be used in construing this Agreement.

The parties agree that this Agreement has no value. The parties agree that the performance of Contractor has no value except insofar as Contractor's completed performance is entitled to compensation hereunder.

IN WITNESS WHEREOF, the parties hereto have executed this document as of the day and year first above written.

ARAMARK/Giacometti Joint Venture Partnership	**METROPOLITAN EXPOSITION RECREATION COMMISSION**
By:______________________	By:______________________
Name:____________________	Name:____________________
Title:_____________________	Title:_____________________
Date:_____________________	Date:_____________________

Exhibit 1
Inventory Procedures & Duties

A. **Perpetual Warehouse Inventories**

1. The computer or manual system has the ability to maintain a current, accurate perpetual inventory balance of any item in the warehouse as long as ALL transactions which affect the balance are entered into the system, promptly and accurately. This means that:

   a. Every time the item is received from a supplier, the Receiving record is entered.

   b. Every time the item is transferred to any other location (point-of-sale, kitchen, another warehouse) an Inventory Transfer is entered.

   c. Every time the item is returned to the warehouse from any other location and put back into stock, an Inventory Transfer is entered.

B. **Period-End Physical Inventories**

1. Policy - Every Department is responsible for taking a complete and accurate physical inventory of all product cost and specified supplies accounts after the close of business of each accounting period, following the procedures specified below. Each Department Manager is responsible for supervising each month's inventory-taking and for verifying the reasonableness of the inventory counts.

2. Preparations For Inventory-Taking

   a. The assignments for taking inventory are defined by the Department Manager. The Manager/Supervisory employee is normally made responsible for taking the inventory at each specified location or group of locations.

   b. The assigned supervisor should review the physical condition of the inventory a day or two before the actual inventory counting is scheduled. Where necessary, employees should be instructed to place the stock in proper condition to facilitate inventory-taking.

   c. Making sure that the product or shelf is marked with the Item Number, to facilitate locating and recording the item on the Inventory Worksheet.

   d. Consolidating the inventory, whenever possible, so that the entire stock of an item is together. When it is not possible to have the entire stock in one place, the shelf location should contain a note telling where the remainder of the stock is located.

C. Inventory Worksheets

1. Computer-printed Inventory Worksheets are used to record the physical inventory counts in all warehouses and other inventory locations (such as kitchens) which do not use Stand Sheets. The Worksheets lists the items on file in Item Number sequence within each product cost or supplies account.

2. Stand Sheets may be used to record the physical inventory at points of sale which use them. The Stand Sheet to be used for physical inventory must include all non-chargeable food and beverage products as well as those supplies items which by local policy must be counted.

3. Inventory Worksheets (including Stand Sheets) must be signed and accounted for after the physical inventory has been taken by the Department Manager.

D. Cut-Off Of Receiving At Inventory Time

1. Each location must make a clearly defined Cut-off of Receiving prior to each Physical Inventory.

2. All shipments which arrive prior to the Cut-off must be received, placed in stock and entered into the system before inventory counting is begun.

3. When entering the last shipment received before cut-off into the system enter "Received Before Inventory." It will enable the office to make a proper period cut-off of Accounts Payable.

4. All shipments which arrive after the Cut-off must be put aside in a designated area and clearly marked "Received After Inventory." Once again enabling the office to make a proper period cut-off of Accounts Payable.

E. Inventory-Taking Procedure - Warehouse/Kitchens

1. Use two people to take inventory, one counter and one recorder. The counter will announce the item number, description and unit to the recorder. While the recorder is locating the item on the Inventory Worksheet and verifies that the unit is correct, the counter counts the item. When the recorder is ready, the counter announces the item, count and unit to the recorder. The recorder repeats the information and records the count in the Actual column for that location in Pen not Pencil.

2. Count the items in the sequence in which they are stored, moving from left to right across each shelf and from top to bottom, so that nothing is omitted. When one section is completed, move on to the adjacent section.

F. Period-End Physical Inventories

1. Inventory-Taking Procedure - Warehouse/Kitchens

2. Inventory must be entered directly on to the Inventory Worksheets. Use of separate sheets entails the risk that a sheet(s) may be lost or transcribed incorrectly.

3. Weigh meats, poultry, dried fruits and vegetables, shortenings, sugar, flour, etc. and report to the nearest pound.

4. Do not inventory opened cans, packages, jars, or spices in use. It is also not cost effective to count insignificant quantities of supplies such as straws, napkins and foil.

5. List as inventory only items which have actually been counted. Do not set "par values" for spices, condiments, produce, etc.

6. Liquor bottles should be inventoried by weighing them or by estimating their content to the nearest tenth of a bottle. The procedure used for routine accountability should be followed.

7. Draft Beer - Partial kegs must be inventoried to the nearest quarter of a keg, using a consistent method each month.

8. If a deposit is charged for beer kegs, the kegs must be listed separately on the Stand Sheet or Inventory Worksheet and counted each period. The count must include all full, partial and empty kegs on hand.

G. Inventory Entry and Review

1. After the Inventory count has been completed, the inventory counts for each location are keyed into the system.

2. For the Warehouse(s) on which a perpetual inventory is maintained, a report is run showing the perpetual balance, physical inventory and variance for each item.

3. When there is a variance, the physical count is to be checked to make sure that the original count was accurate and that no stock has been overlooked. For any physical counts that are found to be in error, the correct amounts are re-entered.

4. The unresolved variances are reviewed by management to evaluate the effectiveness of control over product in the warehouse. If the conclusion is reached that there is a control problem, efforts are made to determine whether the variances were caused by poor warehouse security or failure to record transactions or a combination of the two.

5. Before running the Close procedure, which precludes any further changes to Physical Inventory counts, the following steps are performed:

   a. A Cost of Sales Analysis report for the period is prepared using the Ending Inventory amounts from the above report.

   b. The Percentages by Account from the Potential and Actual Cost of Sales Analyses are compared. When there is a significant difference, the detailed inventory results are reviewed to see if errors or omissions can be identified and corrected.

6. After all corrections to the inventory have been entered, the Monthly Close program is run. It replaces the perpetual inventory counts with the final physical counts, resets the system in preparation for the new Accounting Period and produces the Inventory Book report.

Exhibit 2
SCOPE OF WORK – Accounting Procedures & Duties

Contractor shall provide all required and necessary levels of financial reporting and accountability to MERC on each and every one of the following matters:

A. **Accounting Procedures**

1. Contractor shall record in EBMS all transactions for invoicing, purchasing and summary payroll.

2. Contractor will directly enter data into EBMS and maintain Resource Master and Price List.

3. Clients receive a single invoice from MERC for all charges including Food & Beverage ("F&B"). All client deposits and payments will be received by MERC and deposited into MERC accounts.

4. Service orders, invoices, client payments will be recorded in EBMS.

5. Contractor enters all Reserve account purchases and purchase order into EBMS.

6. Vendor Payments will be processed by Contractor.

7. Inventory accounting may reside in EBMS or in another appropriate automated system

8. Payroll will be processed by the contractor and summary information posted into EBMS

B. **Purchasing/Contracting & Vendor Payments Procedures**

1. Contractor will comply with MERC purchasing/contracting policy/procedures for Reserve account purchases.

2. Contractor will follow best practices of internal control of Receiving and Inventory, including original invoice and receiving documentation.

3. Contractor will comply and track information regarding First Opportunity Target Area ("FOTA") and Minority, Women, Emerging Small Business ("MWESB").

4. Contractor will follow best practice of process Vendor Payables and payments.

5. Contractor will not pay for purchases that are on backorder or partial shipments.

6. Contractor will transfer to MERC the benefits of National Volume Discounts ("NVDs").

C. **Management Fee & Payroll Payment Procedures**

1. Contractor will submit supporting documents or invoice for the following:

   a. Payroll (based upon Payroll dates) including summary level information

   b. Corporate Allocations and Charges (monthly)

   c. Other ancillary charges such as expense reports

2. MERC may choose to require use of MERC's purchase cards for reserve purchases.

D. **Compliance Procedures of Accounting Process, Internal Controls**

1. Compliance with MERC policy and procedure will be determined by GM, or designee. Prior written approval is required for modifications and deviations from policy or procedures

2. Requests may be presented and discussed at monthly meetings with the General Manager, Facility Directors, the Deputy General Manager and the MERC Controller.

E. **Procedures For Analysis & Audit Of Various F&B Transactions**

1. Contractor will be subject to annual audit by MERC's external auditors.

2. Contractor will be subject to audit by the Metro Auditor, at her discretion

3. Contractor will be subject to performance internal audits, at MERC's discretion, but at least bi-annually

4. Contractor will provide copies of internal audits performed by the Contractor within a reasonable time, but no later than 30 days

5. Contractor will notify MERC of any issues or findings that indicate a lack of internal control, such as difficulty reconciling with corporate ledgers, unusual cash overages or shortages, significant inventory variances

F. **Audited Financial Reports**

Contractor shall provide Contractor's annual audited financial statements within 30 days of issue, including management letter findings that may impact Contractor's ability to perform this contract.

Exhibit 3
Minimum Purchase Specification Requirements

BEEF	Heifer or Steer	
	Grade	USDA Top Choice
	Yield	3 or under
	Condition	Fresh or frozen
	Ground Beef	Chuck, 20% fat content
PORK	Grade	U.S. No. 1
	Yield	1
	Condition	Fresh or frozen
VEAL	Calf	
	Grade	USDA Choice
LAMB	Under one year old	
	Grade	USDA Choice
	Condition	Fresh or frozen
POULTRY	Grade	USDA Inspected Grade A
	Condition	Hens - Fresh or frozen
		Fryers - Fresh or frozen
		Duckling - Fresh or frozen
		Turkey Breast - Fresh or frozen
CANNED VEGETABLES	Grade	US Grade A or Fancy
DRY GOODS	Rice	Fancy or US No. 1
	Beans	Grade A
BAKED PRODUCTS	At Commission's Approval	

Exhibit 4
Facilities Capital Investment

Following are the proposed initial capital projects as of the commencement date of the Agreement. Projects may be added or deleted by the mutual agreement of MERC and ARAMARK.

Oregon Convention Center	**$1,350,000**
• Kitchen Equipment	$800,000
• Smallwares	$300,000
• Concession Refresh	$150,000
• Community Café Investment	$75,000
• Uniforms	$25,000
Portland Center for the Performing Arts	**$325,000**
• Keller Orchestra South Refresh	$150,000
• Hawker Carts	$25,000
• Portable Bars	$65,000
• New Menu Boards for Keller	$25,000
• Smallwares	$50,000
• Uniforms	$10,000
Portland Expo Center	**$325,000**
• Retail food locations enhancement	$150,000
• "We Proudly Brew" Espresso Kiosk In Hall E Lobby	$100,000
• Seating Area Furniture Near Concession Stands	$25,000
• Espresso Portable	$35,000
• Uniforms	$15,000

Exhibit 5

Food & Beverage Qualitative Goals

Quality Criteria			Expo		OCC		PCPA	
			Maximum	Score	Maximum	Score	Maximum	Score
Customer Service and Food Quality								
	Line Level Staff/Daily Operations		10		10		10	
	Quality of Food/Menu		5		5		10	
	Customer Surveys/Comments		10	-	10	-	5	-
		Rating	**25**	**-**	**25**	**-**	**25**	**-**
Safety, Sanitation and Sustainability								
	Health Inspections/Sanitation		5		5		5	
	Safety		5		5		5	
	Recycling and Sustainability		10	-	10	-	10	-
		Rating	**20**	**-**	**20**	**-**	**20**	**-**
Management								
	Management		10		10		10	
	Communications/Meetings		5	-	5	-	5	-
		Rating	**15**	**-**	**15**	**-**	**15**	**-**
Accounting and Reporting								
	Transactions in EBMS		5		5		5	
	Financial Analysis/Reports		5	-	5	-	5	-
		Rating	**10**	**-**	**10**	**-**	**10**	**-**
Marketing and Sales								
	Marketing and Sales		10	-	10	-	10	-
		Rating	**10**	**-**	**10**	**-**	**10**	**-**
FOTA/MWESB								
	Purchasing		5		5		10	
	Employees/Hiring		10		10		5	
	Outreach		5	-	5	-	5	-
		Rating	**20**	**-**	**20**	**-**	**20**	**-**
		Overall Rating	**100**	**-**	**100**	**-**	**100**	**-**

Exhibit 6
License Agreement

To be attached

Exhibit 7
Form of Bond

To be attached

Exhibit 8
Concessions/Catering
Sample Operating Expense Classifications

Copy Machine Rental
Vehicle Rental
Vehicle Maintenance
Vehicle Repair
Equipment Rental\Bank Charges
Outside Security/Alcohol Monitors/Temporary Labor
Membership Dues
Freight\Linen/Uniforms
Supplies\Cleaning Supplies\Miscellaneous
Employment Fees
Professional Services
Road Expense/Manager
Stationery & Printing
Books and Subscriptions
Telephone/Fax
Armored Car and Alarm
Catering Expense\Credit Card and Check Card Fee Expense
Travel/Entertainment
Business Conference Expenses
Computer Supplies
Recruitment Expense
Flowers and Decorations
Menu Expense
Office Supplies
Franchise Fees (including Starbucks)

Exhibit 9
Allowable Corporate Expenses

(to be approved by MERC either annually or on a case-by-case basis)

Licenses & Permits
Postage
Legal Fees
Software Fees (requires prior approval)
Bank Fees
Insurance
Employee Welfare (requires prior approval)
Audit Accrual
Vacation Accrual
Corporate Training/ Expense (requires prior approval)

Exhibit 10
CULTURE/NATURE/NURTURE

These three elements come together as the foundation for an incredible and unique experience in food and beverage. Created with extensive consideration for MERC's vision and mission, ***Culture/Nature/Nurture*** is more than a tagline, it is a BRAND and way of life, meant to help strengthen MERC's position in the local, national and international marketplace. Below is a summary of our strategy. All funding for proposed and agreed upon marketing initiatives will be sourced from the Reserve Account.

<u>Approach</u>

ARAMARK's sustainable culinary experience program is an evolutionary approach that promotes authenticity, community, and responsibility. We believe these are the critical success factors in the current competitive market environment. Our fundamental values are trust in the customer and trust in our vision of a sustainable environment and society. Our sustainable approach for providing the food and beverage services uses local Portland resources to produce long-term business value and continued mutual growth.

<u>Brand Strategy & Communication</u>

We trust that ***Culture/Nature/Nurture*** will be a strong brand that is invaluable as the competition for customers intensifies day by day. Our brand will be the source of a promise to our consumers and the foundational piece in our marketing communications. The following are examples of the communication initiatives:

- Greg Robeson Communications Partnership- local firm to assist in development and deployment of brand strategy as well as marketing and communication initiatives. Will provide continual insight while driving the processes to assure alignment with consumers and the local Portland community.

- Website - ***Culture/Nature/Nurture*** as the brand identity will be fully integrated into the web re-design for the food and beverage department. Understanding that the web is our key point of contact with our consumers, it is important that our brand is the common thread. Components such as custom graphic interface design and branding, content *(to include: menu, services, upgraded services, philosophy, local suppliers, partnerships, specials, news, meet the team, etc.)*, navigation, and usability testing will be included in process. In addition, "green web design" will be considered during this process *(green web design means being equally accessible to all, therefore minimizing the use of others to manage).*

- Menu Collateral Design- ARAMARK proposes electronic menu marketing collateral as the main source of food and beverage offering communication. A complete customizable and easy to navigate .pdf file will be developed. This would be easily accessible through the website as well as e-mail. Despite the prediction of its demise, printed marketing collateral is still necessary for traditional consumers. The printed material will be produced using recycled post-consumer materials and renewable energy sources. In addition, we will use firms who will accommodate "low run printing" to reduce over-production and waste.

<u>Additional Brand/ Marketing Initiatives</u>

- *Source List* for local produce- in partnership with our local produce companies a comprehensive source list will be developed to assure that our menus and sales process maximize the opportunity for the inclusion of local produce. This would be an active list to include seasonal crop rotation and available quantities.

- *STIR Concept and Awareness*- create additional awareness of recently launched STIR concept which features local Portland spirits. Create "grand opening" event to introduce STIR to the community. High visibility on web and print materials. Introduce social media marketing such as Facebook and Twitter. Create e-blast for local and convention customers. Participate/host community social events. Launch local PR campaign with news release and promotional offers.

- Leverage ARAMARK marketing and communications departments to gain more local and national PR surrounding MERC's ***Culture/Nature/Nurture*** brand promise and launch.

It is our mission to mix traditional marketing methods with our new sustainable approach and brand to fully embody ***Culture/Nature/Nurture***. Our thought process and initiatives are developed to go beyond branding. We want a better understanding of our customers, their values, emotions, and buying behavior. With this we will have an opportunity to influence them in building sustainable, restorative relationships with their families, their communities, ARAMARK, MERC and the earth.

Exhibit 11
Leg-Up Program

Goal

Provide entrepreneurial opportunities throughout the food and beverage sector to economically disadvantaged individuals within the FOTA and to MWESB.

Plan

Work to assemble community resources, provide and support the training and mentoring that program participants require such as the Community Café Project, which would utilize existing space at the Metro offices (provided space is available and all permits can be secured).

Recruit individuals into the two-year program, who will work in all facets of the MERC food and beverage operation, including six months as a General Manager in the Community Café Project as a requirement of program completion.

Plan roll out to be finalized by March 31, 2010.

Responsibilities of the Organizations Involved

Metro - Parent organization

- Lease project space of MERC
- Contribute lease hold improvements
- Utilizes services

MERC - Owns and sponsors the project

- Contribute a portion of the margin for seed money

ARAMARK - Administers the project for MERC

- Provide the working capital for the Community Café operation (as part of the F & B capital investment
- Provide administrative support
- Employ, supervise, train, and mentor project participants

Giacometti Partners - Provide additional mentorship opportunities

- Businesses, organization, and professional individuals within the FOTA
- Schools
- Banks
- Community Advocates
- Other Community Professionals (Accountants, Lawyers, SBA)

METROPOLITAN EXPOSITION-RECREATION COMMISSION

RESOLUTION NO. 09-16

Accepting Curtis Restaurant Equipment as the lowest responsive and responsible bidder in accordance with the MERC Contracting and Purchasing Rules, and authorizing the MERC Interim General Manager to execute a contract with Curtis Restaurant Equipment for the Dishwasher and Scrapper Table at the Oregon Convention Center.

WHEREAS, in the public interest, for the purpose of necessary operational cleaning for the food service operation at the Oregon Convention Center; and

WHEREAS, the approved FY 09-10 MERC Capital Budget includes provisions for the Oregon Convention Center Kitchen Remodel Project with funds from transient lodging taxes and the proposed new capital contribution from the Food and Beverage Operations Agreement under consideration by the Commission at is November 4, 2009 meeting; and

WHEREAS, staff completed a formal solicitation of bids culminating with a bid opening on October 7, 2009; and

WHEREAS, MERC staff has evaluated the bids and the lowest responsive and responsible Bidder was Curtis Restaurant Equipment with a bid of $152,750; and

WHEREAS, Sections 3(B) and 4(D)(c)(2) of MERC's Contracting and Purchasing Rules, effective March 1, 2005, require the Commission to select the lowest responsive and responsible bidder, approve the contract award, and approve the written contract by resolution; and

WHEREAS, this bid is within the project budget previously set.

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

1. Accepts the bid of Curtis Restaurant Equipment for the dishwasher and scrapper table purchase and installation at the Oregon Convention Center.

2. Authorizes the MERC Interim General Manager to execute the contract in substantially the same form as attached as Exhibit A to this resolution with Curtis Restaurant Equipment for the amount of $152,750.00 for the performance of work in accordance with the Bid Documents contingent upon receipt of funds through the Food and Beverage Operations Agreement.

Passed by the Commission on November 4, 2009.

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

By:____________________________
Nathan A. Schwartz Sykes, Senior Attorney

____
Chairman

____
Secretary/Treasurer

MERC STAFF REPORT

Agenda Item/Issue: Acceptance of Curtis Restaurant Equipment bid for the Dishwasher/Scrapper Table purchase and installation at the Oregon Convention Center.

Resolution No: **09-16**

Date: **November 4, 2009** **Presented by:** Jeff Blosser

BACKGROUND: In order to keep the food service program at the Oregon Convention Center effective and efficient staff determined that an additional dishwashing station is necessary. The current dishwasher set-up does not include a necessary scrapping station and is currently used for all plates, flatware and glassware. The new dishwasher and scrapping station will be used for plates and flatware only, while the existing dishwasher will remain and be used for glassware and also serve as a backup if necessary. The dishwasher and scrapper table was previously budgeted and included in the 2009–2010 adopted budget reflected in the Oregon Convention Center Kitchen Remodel Project. This contract is for the purchase of a commercial dishwasher and scrapper table with delivery tentatively scheduled for the end of December 2009 while the main kitchen in the Oregon Convention Center is not scheduled for any events.

On September 21, 2009 MERC Staff issued a Request for Bids for the Dishwasher/Scrapper Table at the Oregon Convention Center. The Request for Bids was published in the Daily Journal of Commerce and the Oregonian and complied with MERC's formal contracting and purchasing policies as well as the ORS and any and all applicable Bureau of Labor and Industries Prevailing Wage Rate law and requirements. On Wednesday, September 30, 2009 a site walk was held for all interested bidders.Four (4) firms attended. Bids were received on October 7, 2009. Four (4) firms submitted bids ranging from $152,750 to $157,658. Of the four (4) bids received, none of the firms were Certified M/W/ESB or FOTA, however all firms were local. The lowest responsive bidder was Curtis Restaurant Equipment of Tualatin, Oregon for the amount of $152,750.

FISCAL IMPACT: This Project was budgeted at $220,000 which is sufficient to cover the bid amount.

RECOMMENDATION: Staff recommends that the Metropolitan Exposition-Recreation Commission accept Curtis Restaurant Equipment as the lowest bidder and authorize the MERC Interim General Manager to become signatory to a Contract with Curtis Restaurant Equipment in the amount of $152,750 for the dishwasher and scrapper table at the Oregon Convention Center.

Goods & Supplies Contract

For Public Contracts Greater than $50,000 Contract No. ______________

This Contract is entered into between Metropolitan Exposition-Recreation Commission ("MERC"), whose address is 777 NE Martin Luther King, Jr. Blvd., Portland, Oregon 97232-2742, and **Curtis Restaurant Equipment, Inc. - (CCB #70780)** whose address is **10655 SW Manhasset Dr, Tualatin, OR 97062**, hereinafter referred to as the "CONTRACTOR." Contact is for work to be performed at the Oregon Convention Center, located at 777 NE MLK Jr. Blvd, Portland, OR 97232.

TERM OF CONTRACT
The term of this Contract shall be for the period commencing **November 4, 2009**, through and including, **February 28, 2010**, with substantial completion by December 24, 2009 unless terminated or extended as provided in this Contract.

CONTRACT SUM AND TERMS OF PAYMENT
MERC shall compensate the CONTRACTOR for goods or services supplied as described in the Scope of Work. MERC shall not be responsible for payment of any materials or services, expenses or costs other than those which are specifically included in Scope of Work in an amount not to exceed (written amount) **One Hundred Fifty-Two Thousand, Seven Hundred Fifty dollars and no/100 ($152,750.00).** Payment shall be on a unit price only for those goods or services received in a condition or manner acceptable to MERC. CONTRACTOR'S invoice shall include an itemized statement of items purchased or services provided, and shall be sent to MERC, Attention: Accounts Payable, 777 NE Martin Luther King, Jr. Blvd., Portland, Oregon 97232-2742. MERC will pay Contractor within 30 days of receipt of an approved invoice.

SCOPE OF WORK
Scope of work includes all labor, equipment and materials complete work as specified below and as per Curtis Restaurant Equipment Quote #JB1117, dated October 16, 2009 (*Attachment "A"), and as per OCC – Dishwasher/Scrapper Table RFB Documents.*

Contactor shall provide all services and materials necessary to complete the work described below in a professional manner, in compliance with applicable building codes and per industry standards and practices as specified below which is incorporated into this Agreement by reference. All services and materials shall be provided by CONTRACTOR in accordance with the Scope of Work in a competent and professional manner and be completed in compliance with the Owner's schedule. Contractor may be subject to liquidated damages if work not in compliance with Contractor's quote (*Attachment "A")* and Contract Agreement.

Contractor to provide and install a new Hobart Model FT924D Dual Rinse Dishwasher and an Aerowerks SBC/ST Soiled Breakdown System; and a Salvajor S419 Trough Collector. Dishwasher and scrapper table are to be installed in the dishroom of the kitchen area of the Oregon Convention Center. Dishroom is located on the east side of the building on the first floor. Equipment can be delivered to the Oregon Convention Center prior to installation if scheduled with the venue staff. Dishwasher and scrapper table will be set in place and commissioned by a factory certified installer. Location of dishwasher and scrapper table in room is to be per Attachment "B". Final utility connections will be made by licensed trade professionals provided by OCC. Scheduling of utility connection to be coordinated with MERC Project Manager.

Additional Requirements

CONTRACTOR must provide to MERC:

- **A written Workplace Safety Program and Drug Policy prior to start of Work.**
- **A copy of Contractor's Certificate of Insurance as specified in Article III below.**
- **A copy of Contractor's W-9**

- **A written Work Schedule to be approved by Owner 48 hours prior to start of work. Work must be performed without causing any disruptions to scheduled events. The Owner will make every effort to keep construction areas off limits to the public to accommodate the Contractor's work plan.**

Contractor must coordinate all work with MERC Project Manager.

Installation will be scheduled in accordance with the building's events schedule. Building events schedule will be provided as a part of this contract along with areas open for contractor work and availability. A formal project schedule is to be provided by the Contractor in accordance with the building event schedule and coordinated with the Project Manager prior to the start of any work. Due to the nature of the Public Events Facility Industry, it will be necessary for the contractor to work closely with the Project Manager to coordinate day-to-day logistical requirements for the benefit of the Contractor and to afford Owner staff the necessary time to perform event or non-event related functions. Owner will provide Contractor access to all areas as necessary to complete the work and access to on-site parking. Contractor shall be responsible for all of Contractor's equipment, tools and materials at all times, Owner shall not be held responsible for any theft.

Contractor shall coordinate all work with MERC Project Manager and schedule his work so as to minimize any disruption to the ongoing operations of the Oregon Convention Center. Generally, Contractor will be able to conduct work activities at any time as long as those activities do not impact or impede events in progress by noise, dust or construction material blocking access routes to events or facilities. Specific utilization of the areas on a day-to-day basis will be coordinated by the Project Manager or his designee and the Contractor Representative. Contractor will be working in an occupied functioning building and could expect to perform work in some areas prior to the building opening at 8:00 AM. It may be possible for the Contractor to work on weekends if the area is available and scheduled with the owner in advance and at no additional cost to the Owner. Safety for Contractor as well as general public and staff is a major concern. Contractor is to coordinate work with Project Manager and building staff and be prepared to section off and sign work areas as appropriate.

ALL TERMS ON THE REVERSE SIDE OF THIS DOCUMENT AND OTHER PROCUREMENT DOCUMENTS ARE HEREBY INCORPORATED AS PART OF THIS CONTRACT.

CONTRACTOR

Signature:______________________

Printed Name______________________

Date:______________________

Company: Curtis Restaurant Equipment, Inc.

Address: 10655 SW Manhassett Dr

Tualatin, OR 97062

Telephone/Fax: 503-691-1872/503-691-9806

Tax I.D. or SS#:______________________

CCB # CCB #130936

METROPOLITAN EXPOSITION-RECREATION COMMISSION

Signature:______________________

Printed Name______________________

Date:______________________

Title:______________________

Signature:______________________

Printed Name Heather Peck

Title: Division Manager

Division: Construction/Capital Projects

Project Manager: Josh Lipscomb

Telephone/Fax: 503-731-7947 / 503-731-7870

Copy 1 – MERC Contracts *Copy 2 – Facility* *Copy 3 – Contractor*

THE PARTIES AGREE AS FOLLOWS:

ARTICLE I: LIABILITY AND INDEMNITY

CONTRACTOR is an independent contractor and assumes full responsibility for its performance and assumes full responsibility for all liability for bodily injury or physical damage to persons or property arising out of or related to this Contract, Contractor shall indemnify, defend and hold harmless MERC, its appointed officials, officers, employees and agents, from any and all claims, demands, damages, actions, losses, and expenses, including attorney's fees, whether before the commencement of litigation at trial or on appeal, arising out of or in any way connected with its performance of this Contract. CONTRACTOR is solely responsible for paying CONTRACTOR's subcontractors and nothing contained herein shall create or be construed to create any contractual relationship between any subcontractor(s) and MERC. CONTRACTOR is solely responsible for the acts and omissions of its agents, employees, subcontractors, and/or representatives and for all claims.

ARTICLE II: TERMINATION

MERC may terminate this Contract upon giving CONTRACTOR seven (7) days' written notice. In the event of termination, CONTRACTOR shall be entitled to payment for goods received prior to the date of termination. MERC shall not be liable for any indirect or consequential damages, or any other damages whatsoever. Termination by MERC shall not waive any claim or remedies it may have against CONTRACTOR.

ARTICLE III: INSURANCE

CONTRACTOR shall purchase and maintain at CONTRACTOR's expense the following types of insurance covering the CONTRACTOR, its employees and agents. Insurance coverage shall be a minimum of $1,000,000 per occurrence.

A. Broad form comprehensive general liability insurance covering personal injury, property damage, and bodily injury with automatic coverage for premises and operation and product liability. The policy must be endorsed with contractual liability coverage. <u>MERC, its appointed officials, departments, employees, and agents shall be named as an ADDITIONAL INSURED.</u>

B. Automobile bodily injury and property damage liability insurance. <u>MERC, its appointed officials, departments, employees, and agents shall be named as an ADDITIONAL INSURED</u>.

This insurance as well as all Workers' Compensation coverage for compliance with ORS 656.017 must cover CONTRACTOR'S operations under this Contract, whether such operations are by CONTRACTOR or by any subcontractor or anyone directly or indirectly employed by either of them.

CONTRACTOR shall provide MERC with a certificate of insurance complying with this article and naming MERC as an additional insured within fifteen (15) days of execution of this Contract or twenty-four (24) hours before services under this Contract commence, whichever date is earlier. Notice of any material change or policy cancellation shall be provided to MERC thirty days (30) prior to the change.

ARTICLE IV: PUBLIC CONTRACTS

All applicable provisions of ORS Chapters 187 and 279A & B, and all other terms and conditions necessary to be inserted into public contracts in the State of Oregon, are hereby incorporated as if such provision were a part of this Agreement including, but not limited to, ORS 279B.220 to 279B.235.

For public work subject to ORS 279C.800 to 279C.870, the contractor shall pay Prevailing Wage Rates as per the *Oregon Bureau of Labor and Industries (BOLI) "Prevailing Wage Rates for Public Contract Works Contracts in Oregon - Effective July 1, 2009"*, pursuant to the administrative rules established by the Commissioner of Labor and Industries. Contractor must provide a written schedule to employees showing the number of hours per day and days per week the employee may be required to work; and must pay daily, weekly, weekend and holiday overtime in accordance with, and as required by ORS 279C.520. Contractors must promptly pay, as due, all persons supplying to such contractor labor or material used in this contract. If the contractor fails to pay for labor or services, the contracting agency can pay and withhold these amounts due the contractor. Additionally, if the contractor or first-tier subcontractor fails, neglects, or refuses to make payment to a person furnishing labor or materials in connection with the public contract for a public improvement within 30 days after receipt of payment from the public contracting agency or a contractor, the contractor or first-tier subcontractor shall owe the person the amount due plus shall pay interest in accordance with ORS 279C.515. If the contractor or first-tier subcontractor fails, neglects, or refuses to make payment, to a person furnishing labor or materials in connection with the public contract, the person may file a complaint with the Construction Contractors Board, unless payment is subject to a good faith dispute as defined in ORS 279C.580. Contractor must promptly pay for any medical services they have agreed to pay in accordance with ORS 279C.530. Contractor must pay any and all contributions and amounts due to the Industrial Accident Fund from contractor or subcontractor and incurred in the performance of the contract.

Contractor and every subcontractor must have a Public Works Bond filed with the Construction Contractors Board prior to starting work on the Contract, unless exempt, in accordance with ORS 279C.830(3). Contractors are required to pay the Department of Revenue all sums withheld from employees pursuant to ORS 316.167.

No liens or claims are permitted to be filed against MERC on account of any labor or material furnished.

CONTRACTOR shall meet MERC Bonds and Bid Security requirements as follows:

1. Bid Security not exceeding 10 percent of the amount bid for the contract is required unless the contract is for $50,000 or less.

2. For public improvements, a labor and material bond and a performance bond, both in the amount equal to 100 percent of the contract price are required for contracts over $50,000.

3. Bid security, labor and material bond and performance bond may be required even though a contract is of a class not identified above, if the General Manager determines it is in the public interest.

CONTRACTOR shall meet the Metro "Good Faith Efforts" Requirement for Construction Projects as below:

For construction contracts of $100,000 or more, the Commission adopts in principle, policy, and content, the "Good Faith Effort" program established by Metro Code§ 2.04.100 through 2.04.190 (Metro Minority Business Enterprise, Women Owned Business, and Emerging Small Business Program) as they apply to contracts of the Commission. This adoption includes any and all ordinances subsequently adopted by the Metro Council relating to Metro's Minority Business Enterprise, Women Owned Business and Emerging Small Business Program. The General Manager shall designate MERC staff to perform the functions of the Liaison Officer to carry out the MBE/WBE/ESB program as it relates to MERC contracting activities.

For public improvement work all contractors must demonstrate that an employee drug-testing program is in place.

ARTICLE V: QUALITY OF GOODS AND SERVICES

Unless otherwise specified, all materials shall be new and both workmanship and materials shall be of the highest quality. All workers and subcontractors shall be skilled in their trades. CONTRACTOR guarantees all work against defects in material or workmanship for a period of one (1) year from the date of acceptance or final payment by MERC, whichever is later. All guarantees and warranties of goods furnished to CONTRACTOR or subcontractors by any manufacturer or supplier shall be deemed to run to the benefit of MERC.

In addition to any express warranties provided by the CONTRACTOR, all implied warranties covered by ORS Chapter 72 shall apply to any goods provided under this Contract, and are hereby expressly not disclaimed.

ARTICLE VI: SAFETY

If services of any nature are to be performed in connection with the provision of goods pursuant to this Contract, CONTRACTOR shall take all necessary precautions for the safety of employees and others in the vicinity of the services being performed and shall comply with all applicable provisions of federal, state and local safety laws and building codes, including the acquisition of any required permits. All applicable Material Safety Data (MSD) sheets shall accompany the goods.

ARTICLE VII: RIGHT TO WITHHOLD PAYMENTS

MERC shall have the right to withhold from payments due CONTRACTOR such sums as necessary, in MERC's sole opinion, to protect MERC against any loss, damage or claim which may result from CONTRACTOR's performance or failure to perform under this agreement or the failure of CONTRACTOR to make proper payment to any suppliers or subcontractors.

If a liquidated damages provision is contained in the Scope of Work and if CONTRACTOR has, in MERC's opinion, violated that provision, MERC shall have the right to withhold from payments due CONTRACTOR such sums as shall satisfy that provision. All sums withheld by MERC under this Article shall become the property of MERC and CONTRACTOR shall have no right to such sums to the extent that CONTRACTOR has breached this Contract.

ARTICLE VIII: COMPLIANCE

CONTRACTOR shall comply with federal, state, and local laws, statutes, and ordinances related to the execution of the work. This requirement includes, but is not limited to, non-discrimination, safety and health, environmental protection, waste reduction and recycling, fire protection, permits, fees and similar subjects.

ARTICLE IX: OWMERSHIP OF DOCUMENTS

Unless otherwise provided herein, all documents, instruments and media of any nature produced by Contractor pursuant to this agreement are Work Products and are the property of MERC, including but not limited to: drawings, specifications, reports, scientific or theoretical modeling, electronic media, computer software created or altered specifically for the purpose of completing the Scope of Work, works of art and photographs. Unless otherwise provided herein, upon MERC request, Contractor shall promptly provide MERC with an electronic version of all Work Products that have been produced or recorded in electronic media. MERC and Contractor agree that all work Products are works made for hire and Contractor hereby conveys, transfers, and grants to MERC all rights of reproduction and the copyright to all such Work Products.

ARTICLE X: INTEGRATION OF CONTRACT DOCUMENTS

All of the provisions of any bidding documents including, but not limited to, the Advertisement for Bids, General and Special Instructions to Bidders, Proposal, Scope of Work, and Specifications which were utilized in conjunction with the bidding of this Contract are hereby expressly incorporated by reference. Otherwise, this Contract represents the entire and integrated agreement between MERC and CONTRACTOR and supersedes all prior negotiations, representations or agreements, either written or oral. This Contract may be amended only by written instrument signed by both MERC and CONTRACTOR. The law of the state of Oregon shall govern the construction and interpretation of this Contract.

ARTICLE XI: ASSIGNMENT

CONTRACTOR shall not assign any rights or obligations under or arising from this Contract without prior written consent from MERC, which consent shall not be unreasonable withheld.

CURTIS... RESTAURANT EQUIPMENT Since 1963

Foodservice Equipment - Design - Supplies

OCT 16,2009

QUOTATION

Project:
MERCCapitalConstruction Div.
Oregon Convention Center
777 NE MLK Jr. Blvd.
Portland, OR 97232-0000
(503) 731-7927

From:
Jerry Bunn
Curtis Rest. Equip. -Tualatin
10655 SW Manhasset Dr.
Tualatin, OR 97062
(503) 691-1872 x104 Fax: (503) 691-9806

To:
Josh Lipscomb
MERCCapital/Construction Div.
Oregon Convention Center
777 NE MLK Jr. Blvd.
Portland, OR 97232
(503) 731-7947

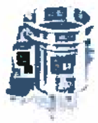
Important to verify all electrical voltages before ordering equipment

Item	Qty	Description	Sell Each	Sell Total
1	1 ea	DISHWASHER, FLIGHT TYPE Hobart Model No. FT900D+BUILDUP Flight Type Continuous Racking Automatic Conveyor Dishwasher, up to 14,316 dishes/hour, 90 gallon/hour w/Opti-Rinse, S/S Pumps and impellers, Variable Speed Conveyor, Insulated Doors, No Int. Piping, Controls at Both Ends		
	1 ea	FT900D-ELE0CD 480/60/3 Hobart Model No. ELE0CD480/60/3 ELE0CD 480/60/3		
	1 ea	FT900D-HTEELE ELECTRIC HEAT 62 KW Hobart Model No. HTEELE ELEC HEAT HTEELE Electric Heat 62 KW	1,525.00	1,525.00

Curtis Rest. Equip. -Tualatin

Item	Qty	Description	Sell Each	Sell Total
	1 ea	FT900D-PRS0NO W/O STM PRESSURE Hobart Model No. PRS0NO W/O STM PRS0NO W/o Stm Pressure		
	1 ea	FT900D-VLV0NO W/O ELECTRICALLY OPER VALVE Hobart Model No. VLV0NO VLV0NO Electrically Oper Valve		
	1 ea	FT900D-DIR0RL RIGHT TO LEFT OPERATION Hobart Model No. DIR0RL DIR0RL Right to Left Operation		
	1 ea	FT900D-LDS005 5' LOAD SECTION Hobart Model No. LDS005 5" LOAD LDS005' Load Section	15,439.00	15,439.00
	23 ea	BASIC ASSEMBLY FEE FOR FT900D Hobart Model No. ASSEMBLE FEE Basic Assembly Fee for FT900D--Note-If the customr location is beyond 50 miles of the local Hobart office, please contact the Branch Manager or Agenf for more specific quote. Any additional training required by the Customer for Flight-Type assembly will be at an additional charge to the customer	70.00	1,610.00
	1 ea	FT900D-CTRSTD 8' CENTER SECTION Hobart Model No. CTRSTD 8' CENTER CTRSTD 8' Center Section	37,055.00	37,055.00
	1 ea	FT900D-UNL11S 11' UNLOAD SECTION-SPLIT Hobart Model No. UNL11S 11' UNLD UNL11S 11' Unload Section-Split	28,213.00	28,213.00
	1 ea	FT900D-HGTSTD STD HEIGHT Hobart Model No. HGTSTD STD HT HGTSTD standard Height		
	1 ea	FT900D-DRY0NO W/O BLOWER DRYER Hobart Model No. DRY0NO W/O BLDRY DRY0NO w/o Blower Dryer		
	1 ea	FT900D-PTC0NO W/O PREWASH TEMP CONTROL Hobart Model No. PTC0NO W/O PREW PTC0NO w/o Prewash Temp Control		
	1 ea	FT900D-DRN0LD DRAIN TO LOAD SECTION Hobart Model No. DRN0LD DRAIN DRN0LD Drain to Load Section		

Item	Qty	Description	Sell Each	Sell Total
	1 ea	FT900D-DORHNG HINGED DOORS Hobart Model No. DORHNG HING DOOR DORHNG Hinged Doors		
	1 ea	FT900D-BST024 24 KW ELECTRIC BOOSTER Hobart Model No. BST024 BOOSTER BST024 24 KW Electric Booster	4,330.00	4,330.00
	1 ea	FT900D-CBREHN CKT BKR, ELEC, HI V, W/O BD Hobart Model No. CBREHN CKT BKR CBREHN ckt bkr, Elec, Hi v, w/o BD	4,584.00	4,584.00
	1 ea	FT900D-CNVTBB TYPE BB CONVEYOR Hobart Model No. CNVTBB CONVEYOR CNVTBB Type BB Conveyor		
		1. Salvajor S419 Collector quoted seperately 2. Seperate quote for field connections and install of Trough Collector to Aerowerks Trough. Seperate quote to install gusher nozzles. 3. Aerowerks Conveyor to be quote seperately.		
2	1 ea	BREAKDOWN TABLE PER DRAWING P082343-01 REV C Aerowerks Model No. P082343-01REVC Soiled Breakdown table per drawing P082343-01 Rev C to include: A. Soiled Dishtable, c/w waste trough, perforated s/s ledges, hip switches, hose clean up station, electrical control panel and flange cutout for Salvajor waste collector-Qty 1 B. double Slant Belt Dishwasre Accumulation Conveyor, model Aerowerks SBC, c/w remote start/strop station and accumulation swithc-Qty 1 C. Undercounter Mobile Soak Sink-Qty 2	43,410.00	43,410.00
	1 lt	FREIGHT Aerowerks Model No. FREIGHT Freight. Equipment to be shipped LTL gound with one drop point at OCC.	1,818.00	1,818.00
	1 lt	INSTALL AEROWERKS BREAKDOWN TABLE Aerowerks Model No. INSTALL AEROWERK Install Aerowerks Breakdown Table: A. Install portion of this equipment is based on one field joint B. Aerowerks Factory Technicina will arrive at jobsite to field weld, polish and interconnect Aerowerks equipment. This will cover all inter electrical and plumbing connection of Aerowerks componets. C. Does not include Electrical and plumbing connections from and to building	3,838.00	3,838.00

Item	Qty	Description	Sell Each	Sell Total
3 	1 ea	COLLECTOR/SCRAPPER, FOOD WASTE Salvajor Model No. S419 Trough Collector, trough conveyor & collecting system (widely accepted in areas where disposers are restricted), w/trough diffuser, salvage basin & silverware trap, 3/4 HP corrosion-resistant pump, stainless steel construction, start/stop pushbutton control panel, w/safety line disconnect	5,099.00	5,099.00
	1	208v/60hz/3-ph, 3.2 amps		
	3 ea	988001 Gusher head assembly for TVL, TVR and S419	103.00	309.00
		Extended Total for Item No. 3 5,408.00		
4	1 lt	INSTALL HOBART FT924D, AEROWERKS, & SALVAJOR Pacific Stainless Products Model No. INSTALLATION Have specified Hobart, Aerowers, and Salvajor Collector delivered to Oregon Convention Center prior to install dates of December 21-24. Provide, at prevailing wages, labor to uncrate and set in place all equipment. Local Hobart office to install the dishwasher and Aerowerks to install the clean and soiled dishtables with utility connections by OCC/MERC. Includes removing all dunnage from site.	2,525.00	2,525.00
5	1 ea	BOND Curtis Rest. Equipment Model No. BOND Performance Bond Through Curtis Restaurant Equipment Company	2,995.00	2,995.00
			Total	152,750.00
			Grand Total	152,750.00

Acceptance: ______________________

Date: ______________________

Curtis Rest. Equip. -Tualatin

ATTACHMENT A

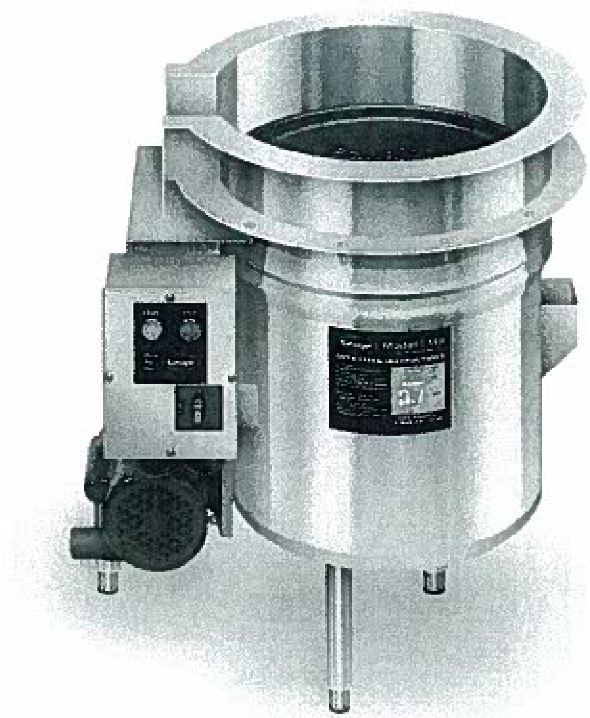
Salvajor®

Job: ____________________ **Item No.:** ____________

Trough Collector
Model S419

A Trough Conveying and Food Waste Collecting System

Widely accepted in areas that restrict the use of food waste disposers.



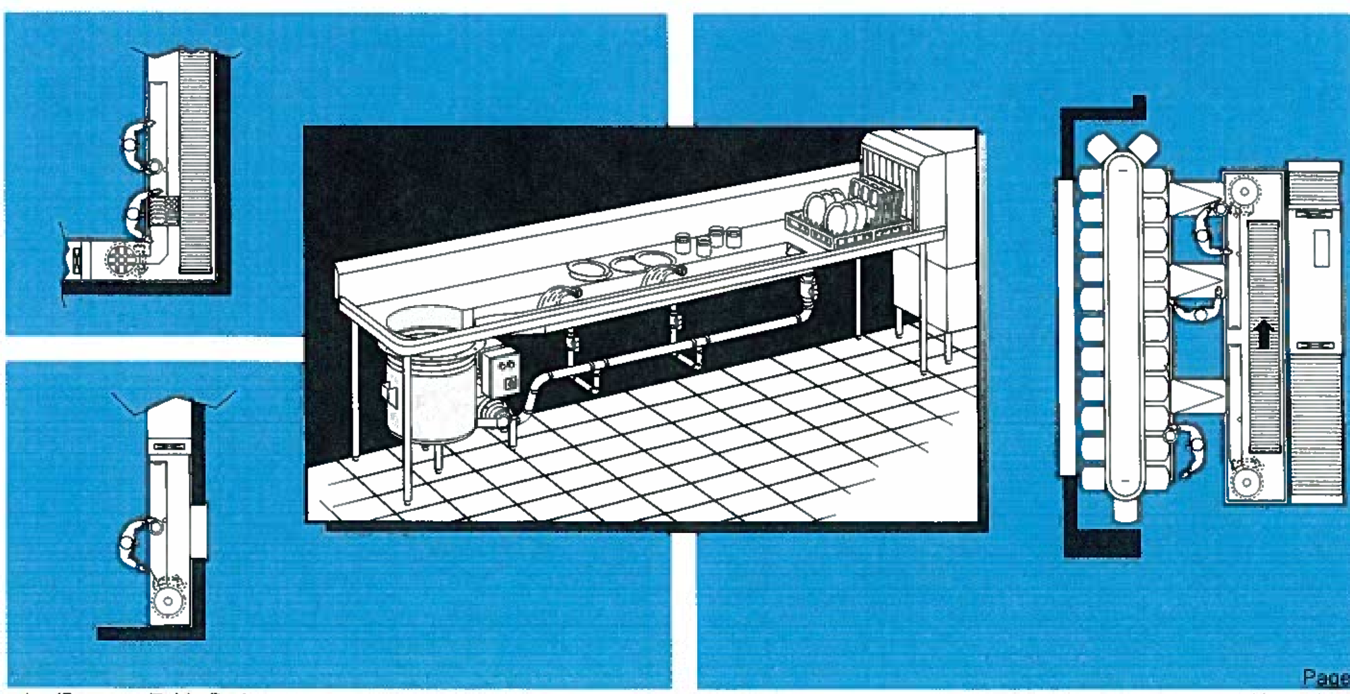
Recirculated Water used for scrapping typically reduces water and sewer costs dramatically. The Trough Collector consumes only 2 gallons of new water per minute.

Trough Water Velocity with the Trough Collector is 70 gallons per minute.
This velocity swiftly propels food waste down the trough and into the Collector with no additional hand movement, leaving both hands free for high-volume scrapping.
The Trough Collector will let you keep up with large conveyor or flight dishmachines.

Design Flexibility is offered by the Collector as troughs can turn one or more corners and have wider troughs for soaking problem dishes.

Wider and Longer Troughs can be designed because of the Collectors high water velocity which allows you to soak problem dishes or add gusher heads to pre-rinse compartmental trays.

TYPICAL INSTALLATIONS

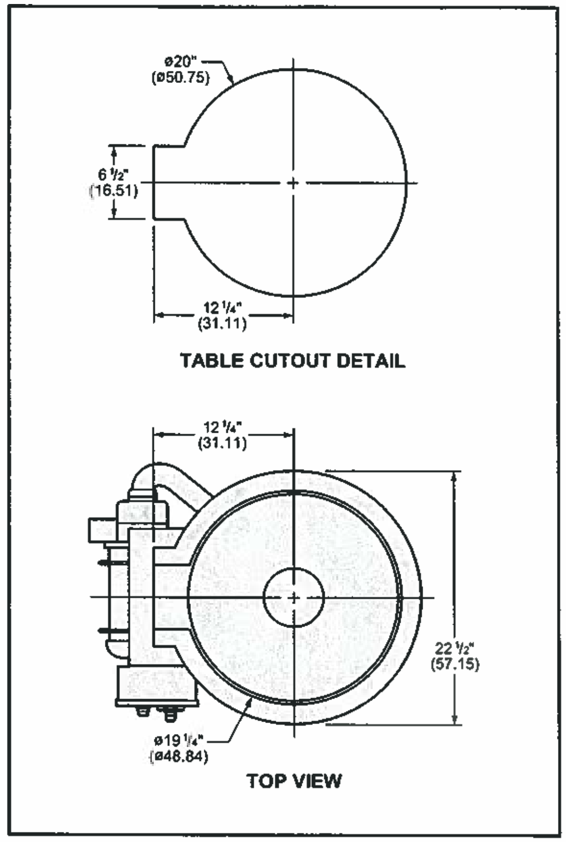


ATTACHMENT A

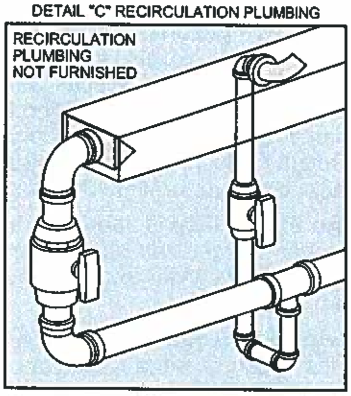
Salvajor® Trough Collector Model S419

Trough Collector Legend

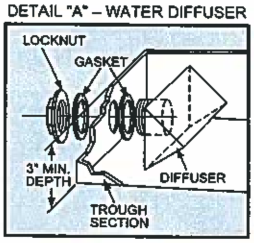
- (A) Tank drain 2" NPT
- (B) 1/2" conduit knockout electrical connection
- (C) Hot/cold shutoff valves 1/2" NPT
- (D) Removable Top



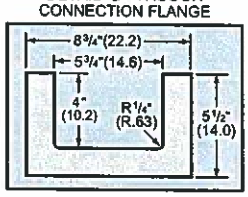
DETAIL "C" RECIRCULATION PLUMBING

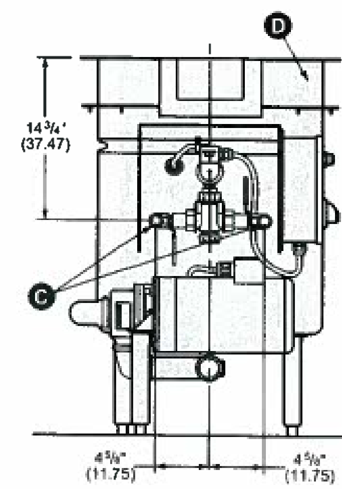


DETAIL "A" – WATER DIFFUSER

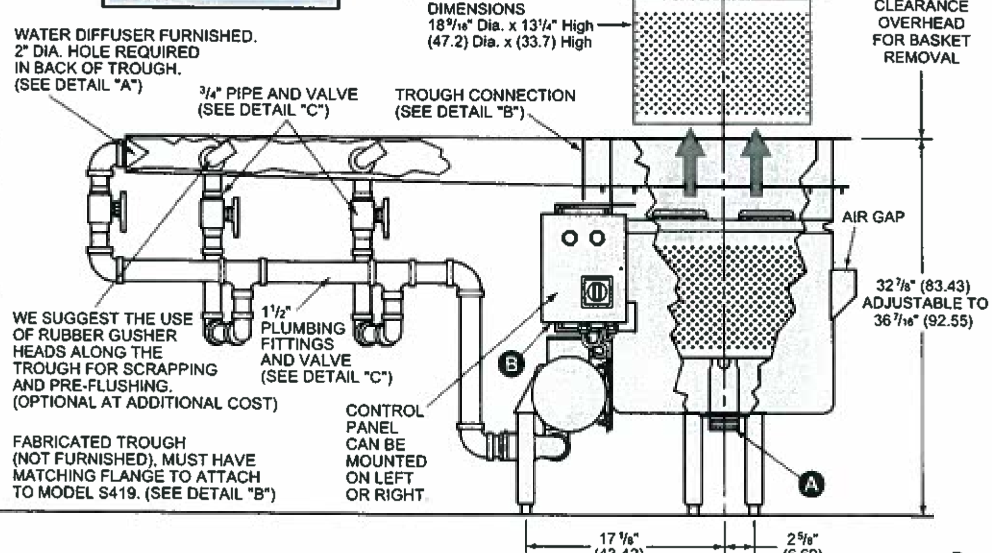


DETAIL "B"-TROUGH CONNECTION FLANGE





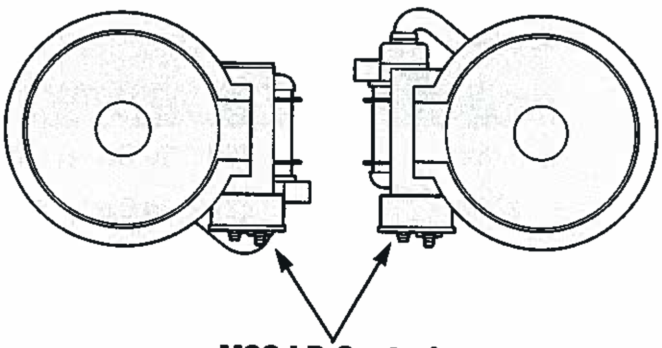
LEFT SIDE VIEW



FRONT VIEW

ATTACHMENT A

Salvajor® Trough Collector Model S419

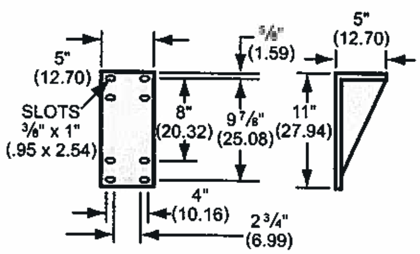


MSS-LD Control

The MSS-LD control can be mounted on either side of the Collector with existing fasteners, mounting holes and wiring for left or right hand operation.

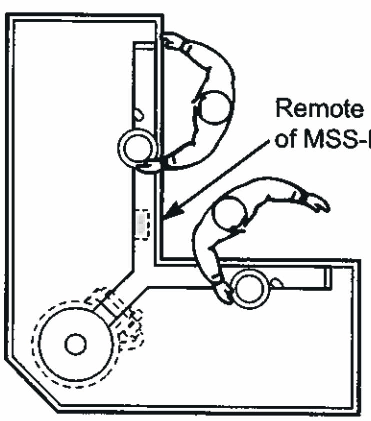
#980104

MSS-LD Mounting Bracket

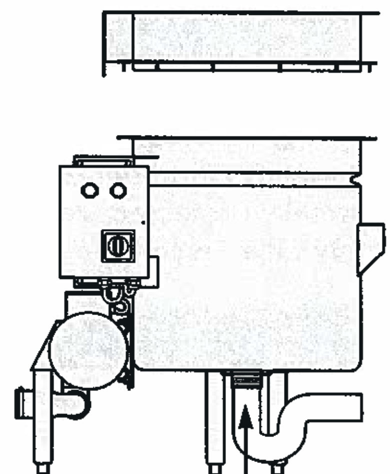


The control can be mounted remotely using optional mounting bracket.

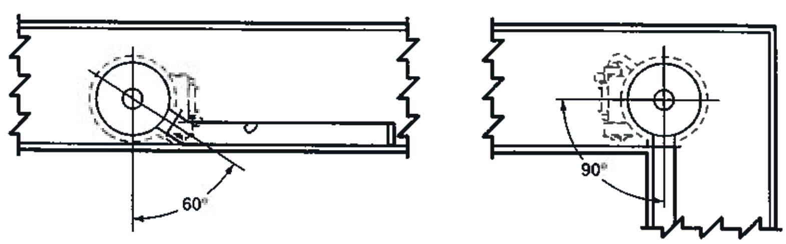
Note: additional field wiring is necessary.



Upon request, the Collector top may be shipped separately to an alternate location for fabrication.



ALL CONNECTIONS ARE TO BE MADE BY QUALIFIED PERSONNEL WHO WILL OBSERVE ALL LOCAL AND NATIONAL CODES.



The Trough Collector top can be rotated in 15 degree increments to ease common installations as well as improve design flexability without the need of costly tank modifications.

NOTE: Dimensions in parenthesis are in centimeters

Salvajor Trough Collector

ATTACHMENT A

MODEL S419

S P E C I F I C A T I O N S

CONSTRUCTION

- Tank - 2 Piece Stainless Steel
- Adjustable Legs - Stainless Steel
- Control Panel - Stainless Steel
- Salvage Basin - High Impact Polymer
- Scrap Basket - High Impact Polymer

ELECTRICAL

- Pre-wired NEMA 4 Control Panel
- Watertight Conduit/Fittings
- Separate Component Grounding
- Thermally Protected Motor
- Safety Line Disconnect

PLUMBING

- Corrosion Resistant Components
- Automatic Water Blender
- Solenoid Valve
- Unions
- Check Valves
- Incoming Water Valves
- Non-clogging Pump Design
- Backflow Prevention Device

OPTIONS

- ☐ Remote Start-Stop
- ☐ Remote Mounting Bracket
- ☐ Prison Package
- ☐ MSS-LD Mounting Bracket
- ☐ Additional Scrap Basket

VOLTAGES AVAILABLE

(SPECIFY EXACT OPERATING VOLTAGE)

☐ 115V ☐ 208V ☐ 230V, 60 Cycle, 1 Phase

☐ 208V ☐ 230V ☐ 460V, 60 Cycle, 3 Phase

Pump Motor 3/4 HP

FULL LOAD AMPS

(SPECIFY EXACT OPERATING VOLTAGE)

1 PHASE			3 PHASE		
115V	208V	230V	208V	230V	460V
11	5.5	5.5	3.2	3	1.5

UTILITIES REQUIRED

1. Electric service
2. 3/4" hot and cold water supply and reduce to 1/2" at connection.
3. 2" tank drain.

(Specifications subject to change without notice.)

SAMPLE SPECIFICATIONS

Unit shall be a Salvajor Trough Collector, a complete scrapping, pre-flushing and food waste collecting system with recirculating water as manufactured by Salvajor.

Model S419 Trough Collector
____Volts, 60Hz, ___Phase.

Furnished with a pre-wired control panel and stainless steel NEMA 4 watertight enclosure.

The Salvajor Company 4530 East 75th Terrace Kansas City, Missouri 64132-2081, USA
1-800-821-3136 (816) 363-1030 FAX: 1-800-832-9373
www.salvajor.com Email: sales@salvajor.com service@salvajor.com
Manufacturers of Commercial Food Waste Disposing Systems since 1944

Printed in USA
Form No.S419-5-BH

ATTACHMENT B

LEGEND: AFF - ABOVE FINISH FLOOR

- E1 ELECTRIC CONNECTION, DETERGENT AND RINSE FEEDERS (MACHINE SERVICE VOLTAGE). 1/2" CONDUIT. 78-7/8" AFF.
- E2 ELECTRIC CONNECTION, VENT FAN CONTROL (SWITCH CONTACTS) 1/2" CONDUIT. 79-3/8" AFF.
- E8 ELECTRIC CONNECTION, ELECTRIC TANK HEAT, MOTORS, CONTROLS AND AUXILIARY RINSE TANK HEAT (WITH CIRCUIT BREAKERS). 2" CONDUIT: 78-1/8" AFF.
- E9 ELECTRIC CONNECTION, 24.0 KW ELECTRIC BOOSTER. 2" CONDUIT. 24,000 WATTS W/ CIRCUIT BREAKER 18-3/4" AFF.
- P3 COMMON DRAIN CONNECTION, DRAIN TO LOAD END: 2" FPT. 4-1/2" AFF.
- P6 COMMON HOT WATER CONNECTION, (AUTOMATIC FILL) ELECTRIC BOOSTER: 1" FPT. 140° WATER MINIMUM. 7-6/16" AFF**,****
- P7 HOT WATER RELIEF VALVE, ELECTRIC BOOSTER. MUST BE PIPED TO OPEN DRAIN RECEIVER IN THE FLOOR. 3/4" FPT; 4-1/2" AFF.
- V CUSTOMER'S VENT CONNECTION, MUST FIT INSIDE 18" DIAMETER VENT STACK, 750 CFM (AT STANDARD AIR CONDITIONS) EXHAUST REQUIRED. 78-3/4" AFF***

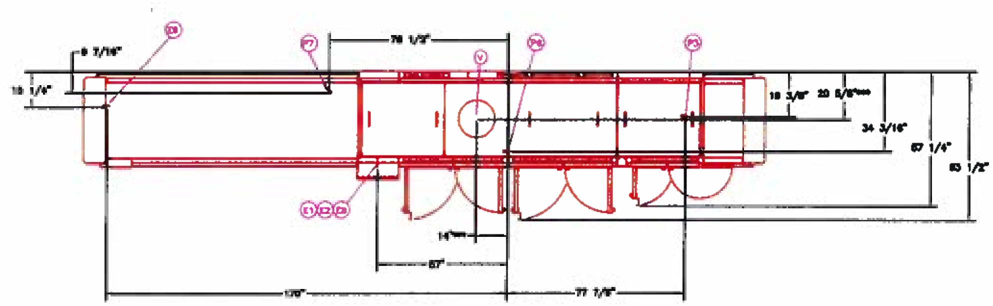
MOTORS	FT900D
PREWASH	3 H.P.
POWER WASH	3 H.P.
POWER RINSE	3 H.P.
CONVEYOR	1/2 H.P.
AUXILIARY RINSE	1/8 H.P.

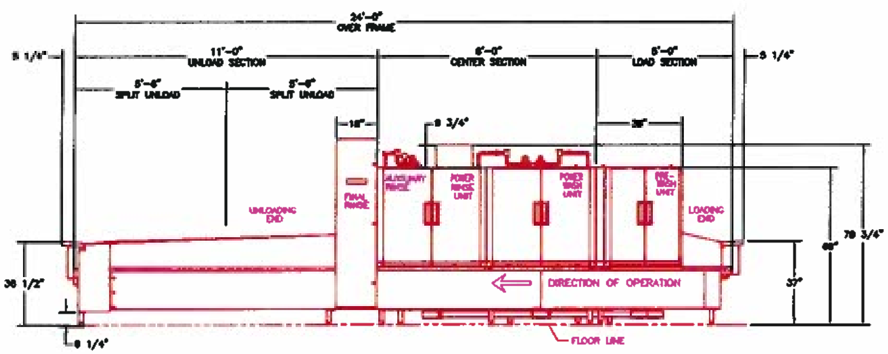
CIRCUIT BREAKER INCLUDES: MOTORS, CONTROLS, TANK HEAT AND AUXILIARY RINSE TANK HEAT ONE (1) SERVICE CONNECTION AS SHOWN BELOW

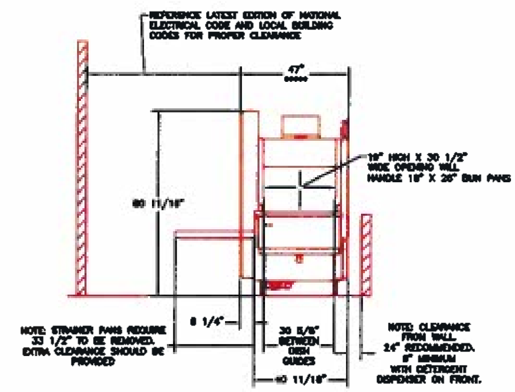
ELEC. SPECS.	RATED AMPS	MINIMUM SUPPLY CIRCUIT CONDUCTOR AMPACITY	MAXIMUM PROTECTIVE DEVICE
480/60/3	104.0	125	125

24.0 KW BOOSTER WITH CIRCUIT BREAKER (1) SERVICE CONNECTION AS SHOWN BELOW

ELEC. SPECS.	RATED AMPS	MINIMUM SUPPLY CIRCUIT CONDUCTOR AMPACITY	MAXIMUM PROTECTIVE DEVICE
480/60/3	28.8	40	40







WARNING:

ELECTRICAL AND GROUNDING CONNECTIONS MUST COMPLY WITH THE APPLICABLE PORTIONS OF THE NATIONAL ELECTRICAL CODE AND/OR OTHER ELECTRICAL CODES.

SERVICE WIRE TEMPERATURE RATING: 60°C.

PLUMBING CONNECTIONS MUST COMPLY WITH APPLICABLE SANITARY, SAFETY, AND PLUMBING CODES.

GENERAL NOTES:

WITH BACK PANEL AND END CAPS REMOVED, CONTROL PANEL HINGED BACK AND ALL REAR PIPING REMOVED, OVERALL WIDTH OF MACHINE IS 39-1/8"

FOR CONVENIENCE WHEN CLEANING, CUSTOMER SHOULD INSTALL WATER TAP NEAR MACHINE WITH 30 FT. OF HEAVY DUTY HOSE WITH SQUEEZE VALVE.

ALL DIMENSIONS TAKEN FROM THE FLOOR LINE MAY INCREASE 2-1/2" OR DECREASE 1/2" WITH LEG ADJUSTMENT.

RECOMMENDED WATER HARDNESS TO BE 3 GRAINS OR LESS PER GALLON FOR BEST RESULTS.

THIS DRAWING IS SUPPLIED AS A REFERENCE FOR CONNECTION INFORMATION ONLY. IT WILL NOT BE UTILIZED FOR MANUFACTURING OF UNIT.

***** THE CONTROL BOX IS ATTACHED TO THE CENTER SECTION, AND THE CONTROL BOX IS ROTATED 90 DEGREES ALLOWING THE CENTER SECTION TO FIT THROUGH A 42" WIDE X 7' TALL DOOR OPENING.

**** WATER HAMMER ARRESTOR (MEETING ASSE-1010 STANDARD OR EQUIVALENT) TO BE SUPPLIED (BY OTHERS UNLESS SPECIFIED OTHERWISE) IN FINAL RINSE WATER SUPPLY LINE AT SERVICE CONNECTION.

*** THIS DIMENSION IS SUBJECT TO NORMAL SHEET METAL TOLERANCES

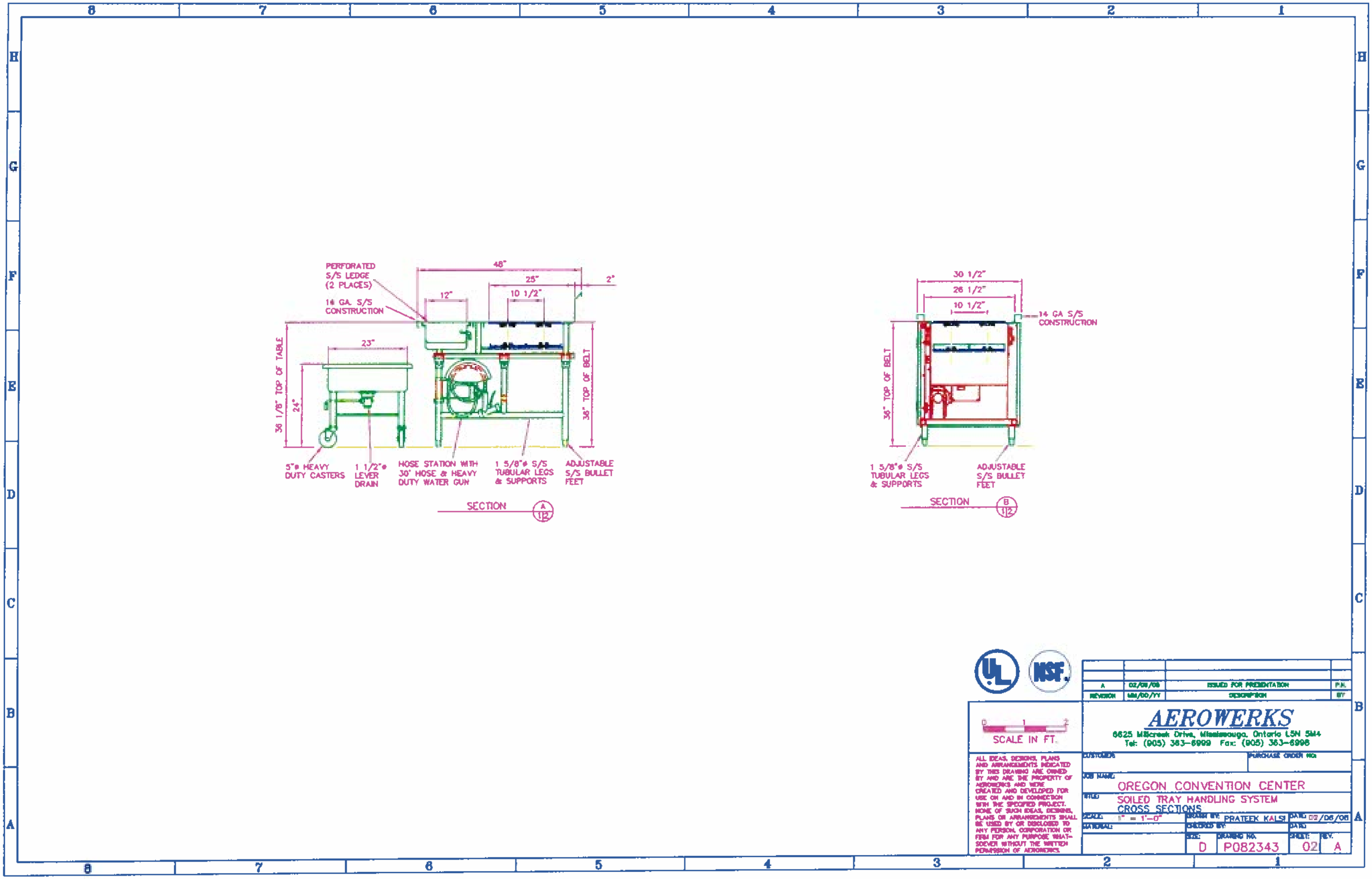
** RECOMMENDED BUILDING FLOWING WATER PRESSURE TO THE DISHWASHER IS 20-25 PSI. IF PRESSURES HIGHER THAN 25 P.S.I. ARE PRESENT A PRESSURE REGULATING VALVE WITH INTERNAL THERMAL EXPANSION BYPASS, MUST BE SUPPLIED (BY OTHERS) IN THE WATER LINE TO THE DISHWASHER.

* NOTE FOR STEAM HEATED UNITS: IF STEAM PRESSURE IS UNDER 15 P.S.I. AT THE DISHWASHER, CONTACT TECHNICAL SUPPORT GROUP AT 937-332-2716

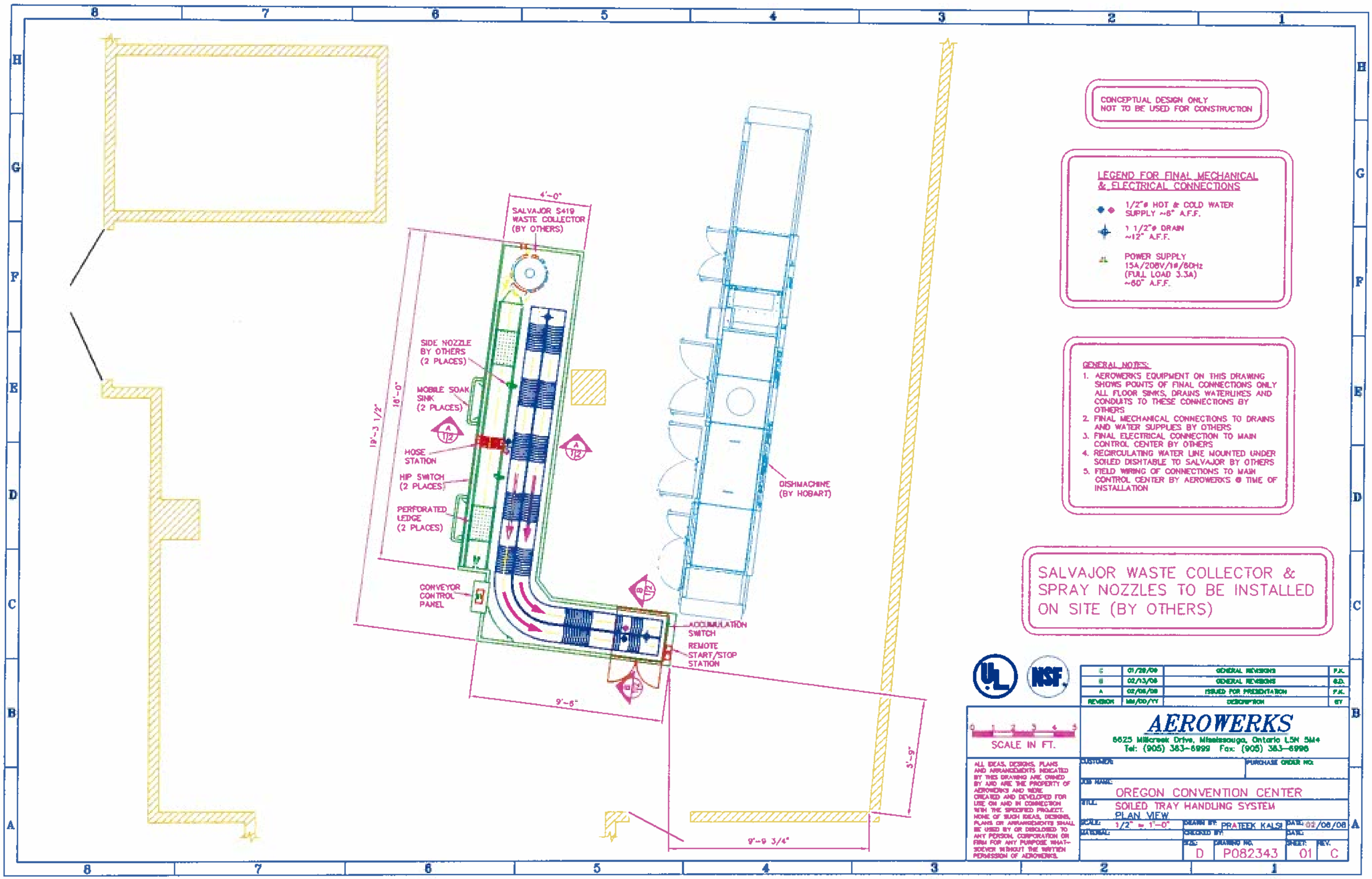
NOTE:

CUSTOMER CARE, IN TROY, OHIO, MUST BE NOTIFIED OF ANY CHANGES.
1-800-333-7447
hobartfoodservice@hobartcorp.com

SEF & ACCESSORIES	OREGON CONVENTION CENTER PORTLAND, OR	
	H.O. # PROJECT # 34063 QUOTE # KM57R1	MODEL FT-924-D DIRECTION R-L VOLTAGE 480/60/3 DRAWN BY: DIANE CANAN DATE: 1/28/09 DRAWING # Z-FT09-0043 REV. SHEET 1 OF 1
	THIS UNIT WILL BE SHIPPED IN 4 SECTIONS AS FOLLOWS: LOAD 5' CENTER 6' UNLOAD (2) 5.5'	HOBART


PERFORATED S/S LEDGE (2 PLACES)
14 GA. S/S CONSTRUCTION
48"
25"
2"
12"
10 1/2"
23"
36 1/8" TOP OF TABLE
24"
36" TOP OF BELT
5"ø HEAVY DUTY CASTERS
1 1/2"ø LEVER DRAIN
HOSE STATION WITH 30' HOSE & HEAVY DUTY WATER GUN
1 5/8"ø S/S TUBULAR LEGS & SUPPORTS
ADJUSTABLE S/S BULLET FEET
SECTION A 1/2
30 1/2"
26 1/2"
10 1/2"
14 GA S/S CONSTRUCTION
36" TOP OF BELT
1 5/8"ø S/S TUBULAR LEGS & SUPPORTS
ADJUSTABLE S/S BULLET FEET
SECTION B 1/2
SCALE IN FT.
ALL IDEAS, DESIGNS, PLANS AND ARRANGEMENTS INDICATED BY THIS DRAWING ARE OWNED BY AND ARE THE PROPERTY OF AEROWERKS AND WERE CREATED AND DEVELOPED FOR USE ON AND IN CONNECTION WITH THE SPECIFIED PROJECT. NONE OF SUCH IDEAS, DESIGNS, PLANS OR ARRANGEMENTS SHALL BE USED BY OR DISCLOSED TO ANY PERSON, CORPORATION OR FIRM FOR ANY PURPOSE WHATSOEVER WITHOUT THE WRITTEN PERMISSION OF AEROWERKS.
A 02/08/08 ISSUED FOR PRESENTATION P.K.
REVISION MM/DD/YY DESCRIPTION BY
AEROWERKS
6625 Millcreek Drive, Mississauga, Ontario L5N 5M4
Tel: (905) 363-6999 Fax: (905) 363-6998
CUSTOMER:
PURCHASE ORDER NO.
JOB NAME:
OREGON CONVENTION CENTER
TITLE:
SOILED TRAY HANDLING SYSTEM
CROSS SECTIONS
SCALE: 1" = 1'-0"
DRAWN BY: PRATEEK KALSI
DATE: 02/06/08
CHECKED BY:
DATE:
MATERIAL:
SIZE: D
DRAWING NO. P082343
SHEET: 02
REV. A

ATTACHMENT B



METROPOLITAN EXPOSITION RECREATION COMMISSION

Resolution No. 09-15

Approving the selection of SunEdison and the Solar Power and Services Agreement between the Metropolitan Exposition Recreation Commission and SunEdison Origination 3, LLC for the purchase of electricity for a minimum 20 year term.

Whereas, in the public interest for the purpose of providing renewable energy purchase options for the Oregon Convention Center Operation, and;

Whereas, this agreement fits into the sustainable practices of the Oregon Convention Center and;

Whereas, staff has completed a thorough Request for Proposal process, interviewed and selected the most qualified respondent, and negotiated an agreement for the requested services to the satisfaction of both partners, and;

Whereas, the Commission has the authority to enter into contracts for the Oregon Convention Center, and;

Whereas, this project will have a positive impact on the budget of the Oregon Convention Center, and;

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

1. Approves the selection of SunEdison as the most responsive proposer to the Oregon Convention Center Solar Energy Project.

2. Delegates the authority to the MERC Interim General Manager to execute the Solar Power and Services Agreement in substantially the form attached as Exhibit A with SunEdison to design, finance, install, build, operate and maintain a 1.25 megawatt grid connected Photovoltaic System on the Southern portion of the roof of the Oregon Convention Center for the sale of electricity to the Oregon Convention Center for a minimum 20 year term.

Passed by the Commission on November 4, 2009.

Approved as to form: Daniel B. Cooper, Metro Attorney	______________________________ Chair
By:______________________________ Nathan A. Schwartz Sykes, Senior Attorney	______________________________ Secretary/Treasurer

MERC STAFF REPORT

Agenda Item/Issue: Approval of Solar Power and Services Agreement with Sun Edison.

Resolution No. **09-15**

Presented By: Jeffrey A. Blosser

Date: November 4, 2009

Background: As part of the Oregon Convention Center's sustainability program and continued review of reducing costs to the operation, a Request for Proposals went out April 10, 2009 to install solar panels and provide renewable energy to the Oregon Convention Center. Six proposals were received on April 5, 2009 and three companies were interviewed. The proposal addressed installation and operation of the system, costs to OCC for energy purchase, ability to finance this project, experience and meeting the timeline in the proposal. OCC/MERC solicited help form the City of Portland Planning and Sustainability Department and from Hoffman Construction to evaluate and interview potential respondents. The Evaluation Committee was unanimous in its selection of Sun Edison as the most responsive bidder. Contract negotiations began with Sun Edison in August of 2009 and have concluded with the Solar Power and Services Agreement that is attached.

Major aspects of the deal are as follows:
**SunEdison is the owner of the system, providing all capital costs and will be selling electrical power to the OCC.
**SunEdison is leasing the space through the cost of the power being purchased by OCC for a 20 year term.
**OCC is getting a rate that is lower than currently being charged by Pacific Power with a guaranteed escalator per year.
**MERC has the ability to purchase the system per the agreement if it so desires in the future.

Fiscal Impact: This project will provide OCC with a lower guaranteed electrical rate for 1.25 Megawatts of power over 20 years. This translates into an average saving of $72,000 per year. All capital costs, construction, management and maintenance will be provided by Sun Edison, schedule of fees and savings are attached for your review.

Recommendation: Staff recommends that the Metropolitan Exposition Recreation Commission approve the Solar Power and Services Agreement with Sun Edison for the installation of 1.25 megawatt grid connected Photovoltaic system and to sell power through this Power Purchase Agreement to the Oregon Convention Center as outlined in the attached Agreement.

SOLAR POWER & SERVICES AGREEMENT

This Solar Power & Services Agreement is made and entered into as of this ____ day of October, 2009 (the "Effective Date"), between SunEdison Origination3, LLC, a Delaware limited liability company ("Provider"), and Metropolitan Exposition Recreation Commission, a commission appointed by the regional elected body, Metro, with business offices located at 777 NE Martin Luther King, Jr. Blvd., Portland, OR 97232 ("Purchaser"; and, together with Provider, each, a "Party" and together, the "Parties").

WITNESSETH:

WHEREAS, Purchaser desires that Provider install and operate a solar photovoltaic system at the Premises (as hereafter defined) for the purpose of providing Solar Services (as hereafter defined), and Provider is willing to do the same;

WHEREAS, Provider and Purchaser acknowledged those certain General Terms and Conditions of Solar Power & Services Agreement dated as of October __, 2009 ("General Conditions"), which are incorporated by reference as set forth herein; and

WHEREAS, the terms and conditions of this Solar Power & Services Agreement, excluding the General Conditions incorporated herein, constitute the "Special Conditions" referred to in the General Conditions.

NOW THEREFORE, in consideration of the mutual promises set forth below, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

1. Incorporation of General Conditions. The General Conditions are incorporated herein as if set forth in their entirety, except as modified in Section 2 of these Special Conditions.

2. Modifications to General Conditions.

2.1 Section 3.1 of the General Conditions are modified to add the following sentence as the first sentence of the section:

Provider acknowledges that the System will be the first phase of a two-phase solar installation on the Premises. Provider agrees to use commercially reasonable efforts to design, engineer, and install the System in a manner that facilitates the second phase of Purchaser's solar installation.

2.2 The following provision is added as section 4.4 to the General Conditions:

4.4 System Monitoring. Provider shall provide Purchaser with an online portal and account that will allow Purchaser to monitor System production, performance, and environmental benefits data on a reasonably continuous basis. No later than 90 days following the Commercial Operation Date, Provider shall ensure that such online portal can be accessed and viewed on Purchaser's existing displays at the Premises, as set forth in Schedule VI as part of the promotional program described in Section 15.3(b).

2.3 The following provision is added as section 15.3(b) to the General Terms:

15.3 (b) Onsite Promotion. Provider shall collaborate with Purchaser to develop an onsite promotional program to publicize the System and Purchaser's solar program, including enabling the access of system production information on Purchaser's existing displays pursuant to Section 4.4 (the "Promotional Program"); provided, however, that Provider's collaboration and financial contribution to the eh Promotional Program shall be limited to $75,000.

3. Schedules. The following Schedules hereto are the respective Schedules to the Special Conditions referenced in the General Conditions:

Schedule 1	Description of the Premises & System
Schedule 2	kWh Rate
Schedule 3	Early Termination Fee
Schedule 4	Estimated Annual Production
Schedule 5	Notice Information

IN WITNESS WHEREOF and in confirmation of their consent to the terms and conditions contained in this Agreement and intending to be legally bound hereby, Provider and Purchaser have executed this Agreement as of the Effective Date.

SUNEDISON ORIGINATION3, LLC

By: SUN EDISON LLC

By:__________________________
Name:
Title:
Date:

METROPOLITAN EXPOSITION RECREATION COMMISSION

By:__________________________
Name:
Title:
Date

SCHEDULES

I. Schedule 1: Description of Premises and System

Solar System Premises:	777 NE Martin Luther King Jr. Blvd Portland, OR 97232
Anticipated Rebate or Subsidy	$ 230,000
Solar System Size:	1,182 kW (DC)
Scope:	Design and supply grid-interconnected, ground mounted or roof-top solar electric (PV) system.
Module:	Sanyo 210 or equivalent
Inverter:	IEEE 1547 qualified

II. Schedule 2 - - kWh Rate

The kWh Rate with respect to the System under the Agreement shall be in accordance with the following schedule:

Year of System Term	kWh Rate[*] ($/kWh)	Year of System Term	$/kWh Rate[*] ($/kWh)
1	$0.0621	11	$0.0827
2	$0.0639	12	$0.0850
3	$0.0658	13	$0.0875
4	$0.0677	14	$0.0901
5	$0.0696	15	$0.0927
6	$0.0716	16	$0.0954
7	$0.0737	17	$0.0981
8	$0.0759	18	$0.1010
9	$0.0781	19	$0.1039
10	$0.0803	20	$0.1069

[*Calculated based on the year 1 kWh Rate multiplied by 2.9% inflation factor each year.]

III. Schedule 3 – Early Termination Fee

The Early Termination Fee with respect to the System under the Agreement shall be calculated in accordance with the following:

Early Termination Occurs in Year:	Column 1 Early Termination Fee where Purchaser does not take Title to the System ($/Wdc including costs of removal)	
1*	$	7.09
2	$	6.65
3	$	5.69
4	$	4.74
5	$	4.33
6	$	3.93
7	$	2.81
8	$	2.80
9	$	2.79
10	$	2.78
11	$	2.77
12	$	2.76
13	$	2.75
14	$	2.74
15	$	2.73
16	$	2.72
17	$	2.68
18	$	2.67
19	$	2.66
20	$	2.65

Purchase Date Occurs on the 91st day following : (Each "Anniversary" below shall refer to the anniversary of the Commercial Operation Date)	Column 2 Early Termination Fee where Purchaser takes Title to the System ($/Wdc, does not include costs of removal)*	
	--	
	--	
	--	
	--	
	--	
5th Anniversary	$	3.43
6th Anniversary	$	2.31
7th Anniversary	$	2.30
8th Anniversary	$	2.29
9th Anniversary	$	2.28
10th Anniversary	$	2.27
11th Anniversary	$	2.26
12th Anniversary	$	2.25
13th Anniversary	$	2.24
14th Anniversary	$	2.23
15th Anniversary	$	2.22
16th Anniversary	$	2.18
17th Anniversary	$	2.17
18th Anniversary	$	2.16
19th Anniversary	$	2.15

At Expiration (the end of the Initial Term), the amount in Column 1 shall be deemed to be zero (0).
*Includes Early Termination prior to the Commercial Operation Date.

IV. Schedule 4 – Estimated Annual Production

Estimated Annual Production commencing on the Commercial Operation Date with respect to System under the Agreement shall be as follows:

Year of System Term	Estimated Production (kWh)	Year of System Term	Estimated Production (kWh)
1	1,275,168	11	1,218,920
2	1,268,792	12	1,206,761
3	1,262,448	13	1,200,727
4	1,256,136	14	1,194,724
5	1,249,255	15	1,188,750
6	1,243,606	16	1,182,806
7	1,237,388	17	1,176,892
8	1,231,201	18	1,171,008
9	1,225,045	19	1,165,153
10	1,128,920	20	1,159,327

The values set forth in the table above are estimates (and not guarantees), of approximately how many kWhs are expected to be generated annually by the System.

V. **Schedule 5 – Notice Information**

Purchaser:

Executive Director
Oregon Convention Center
PO BOX 2746
Portland, Oregon 97208-2746
Tel. 503-731-7800
Fax 503-731-7870

With a copy to:

Metro Attorney
Metro
600 NE Grand Avenue
Portland, OR 97232
Tel. 503-797-1530
Fax 503-797-1792

Provider:

Service Manager
SunEdison Origination3, LLC
c/o Sun Edison LLC
12500 Baltimore Avenue
Beltsville, MD 20705
1-888-786-3347

With a copy to

General Counsel
12500 Baltimore Avenue
Beltsville, MD 20705-6375
Tel. (443) 909-7200
Fax (443) 909-7121

Financing Party:
[To be provided by Provider when known]

CONFIDENTIAL AND PROPRIETARY

***

GENERAL TERMS AND CONDITIONS OF

SOLAR POWER & SERVICES AGREEMENT

These General Terms and Conditions ("General Conditions") are dated as of ____ day of October, 2009 and are witnessed and acknowledged by SunEdison Origination3, LLC ("SunEdison") and the *Metropolitan Exposition Recreation Commission ("Party B"), as evidenced by their signature on the last page of this document. These General Conditions are intended to be incorporated by reference into Solar Power & Services Agreements that may be entered into between SunEdison and Party B or between their respective affiliates. Except to the extent SunEdison or Party B becomes a party to a Solar Power & Purchase Agreement that incorporates these General Conditions, these General Conditions shall have no binding effect upon SunEdison or Party B.*

1. DEFINITIONS.

1.1 Definitions. In addition to other terms specifically defined elsewhere in the Agreement, where capitalized, the following words and phrases shall be defined as follows:

"Actual Monthly Production" means the amount of energy recorded by Provider's metering equipment during each calendar month of the Term, pursuant to Section 4.2.

"Affiliate" means, with respect to any specified Person, any other Person directly or indirectly controlling, controlled by or under common control with such specified Person.

"Agreement" means, the Solar Power & Services Agreement.

"Applicable Law" means, with respect to any Person, any constitutional provision, law, statute, rule, regulation, ordinance, treaty, order, decree, judgment, decision, certificate, holding, injunction, registration, license, franchise, permit, authorization, guideline, Governmental Approval, consent or requirement of any Governmental Authority having jurisdiction over such Person or its property, enforceable at law or in equity, including the interpretation and administration thereof by such Governmental Authority.

"Assignment" has the meaning set forth in Section 13.1.

"Bankruptcy Event" means with respect to a Party, that either:

(i) such Party has (A) applied for or consented to the appointment of, or the taking of possession by, a receiver, custodian, trustee or liquidator of itself or of all or a substantial part of its property; (B) admitted in writing its inability, or be generally unable, to pay its debts as such debts become due; (C) made a general assignment for the benefit of its creditors; (D) commenced a voluntary case under any bankruptcy law; (E) filed a petition seeking to take advantage of any other law relating to bankruptcy, insolvency, reorganization, winding up, or composition or readjustment of debts; (F) failed to controvert in a timely and appropriate manner, or acquiesced in writing to, any petition filed against such Party in an involuntary case under any bankruptcy law; or (G) taken any corporate or other action for the purpose of effecting any of the foregoing; or

(ii) a proceeding or case has been commenced without the application or consent of such Party in any court of competent jurisdiction seeking (A) its liquidation, reorganization, dissolution or winding-up or the composition or readjustment of debts or, (B) the appointment of a trustee, receiver, custodian, liquidator or the like of such Party under any bankruptcy law, and such proceeding or case has continued undefended, or any order, judgment or decree approving or ordering any of the foregoing shall be entered and continue unstayed and in effect for a period of sixty (60) days.

"Business Day" means any day other than Saturday, Sunday or any other day on which banking institutions in New York, NY are required or authorized by Applicable Law to be closed for business.

"Commercial Operation Date" has the meaning set forth in Section 3.3(b).

"Confidential Information" has the meaning set forth in Section 15.1.

"Covenants, Conditions and Restrictions" or "CCR" means those requirements or limitations related to the Premises as may be set forth in a lease, if applicable, or by any association or other organization, having the authority to impose restrictions.

"Disruption Period" has the meaning set forth in Section 4.3(b).

"Early Termination Date" means any date on which the Agreement terminates other than by reason of expiration of the then applicable Term.

"Early Termination Fee" means the fee payable by Purchaser to Provider under the circumstances described in Section 2.2, Section 2.3, Section 4.3(a) or Section 11.2.

"Effective Date" has the meaning set forth in the Special Conditions.

"Environmental Attributes" shall mean, without limitation, carbon trading credits, renewable energy credits or certificates, emissions reduction credits, emissions allowances, green tags, tradable renewable credits, or Green-e® products.

"Estimated Remaining Payments" means as of any date, the estimated remaining Solar Services Payments to be made through the end of the then-applicable Term, as reasonably determined by Provider.

"Estimated Annual Production" has the meaning set forth in Section 5.2.

"Expiration Date" means the date on which the Agreement terminates by reason of expiration of the Term.

"Fair Market Value" means, with respect to any tangible asset or service, the price that would be negotiated in an arm's-length, free market transaction, for cash, between an informed, willing seller and an informed, willing buyer, neither of whom is under compulsion to complete the transaction. Fair Market Value of the System will be determined pursuant to Section 2.4.

"Financing Party" means, as applicable (i) any Person (or its agent) from whom Provider (or an Affiliate of Provider) leases the System, or (ii) any Person (or its agent) who has made or will make a loan to or otherwise provider financing to Provider (or an Affiliate of Provider) with respect to the System.

"Force Majeure Event" has the meaning set forth in Section 10.1.

"General Conditions" means these Terms and Conditions.

"Governmental Approval" means any approval, consent, franchise, permit, certificate, resolution, concession, license, or authorization issued by or on behalf of any applicable Governmental Authority.

"Governmental Authority" means any federal, state, regional, county, town, city, or municipal government, whether domestic or foreign, or any department, agency, bureau, or other administrative, regulatory or judicial body of any such government.

"Host" means Purchaser.

"Indemnified Persons" means the Purchaser Indemnified Parties or the Provider Indemnified Parties, as the context requires.

"Initial Term" has the meaning set forth in Section 2.1.

"Installation Work" means the construction and installation of the System and the start-up, testing and acceptance (but not the operation and maintenance) thereof, all performed by or for Provider at the Premises.

"Invoice Date" has the meaning set forth in Section 6.2.

"kWh Rate" means the price per kWh set forth in Schedule 2 of the Special Conditions.

"Liens" has the meaning set forth in Section 7.1(e).

"Local Electric Utility" means the local electric distribution owner and operator providing electric distribution and interconnection services to Purchaser at the Premises.

"Losses" means all losses, liabilities, claims, demands, suits, causes of action, judgments, awards, damages, cleanup and remedial obligations, interest, fines, fees, penalties, costs and expenses (including all attorneys' fees and other costs and expenses incurred in defending any such claims or other matters or in asserting or enforcing any indemnity obligation).

"MERC" means the Metropolitan Exposition Recreation Commission, which is a commission appointed by the regional elected body, Metro.

"Option Price" has the meaning set forth in Section 2.3.

"Party" or "Parties" has the meaning set forth in the preamble to the Solar Power & Services Agreement.

"Person" means an individual, partnership, corporation, limited liability company, business trust, joint stock company, trust, unincorporated association, joint venture, firm, or other entity, or a Governmental Authority.

"Premises" means the premises described in Schedule 1 of the Special Conditions. For the avoidance of doubt, the Premises includes the entirety of any structures and underlying real property located at the address described in Schedule 1 of the Special Conditions.

"Provider" has the meaning set forth in the Special Conditions.

"Provider Default" has the meaning set forth in Section 11.1(a).

"Provider Indemnified Parties" has the meaning set forth in Section 16.2.

"Purchase Date" means such Business Day that occurs on the date that is ninety one (91) days after each successive annual anniversary of the Commercial Operation Date, provided, however, that no Purchase Date shall occur prior to such date that is five (5) years and ninety one (91) days after the Commercial Operation Date.

"Purchaser" has the meaning set forth in the Special Conditions.

"Purchaser Default" has the meaning set forth in Section 11.2(a).

"Purchaser Indemnified Parties" has the meaning set forth in Section 16.1.

"Renewal Term" has the meaning set forth in Section 2.1.

"Representative" has the meaning set forth in Section 15.1.

"Security Agreement" has the meaning set forth in Section 8.2.

"Solar Incentives" means any accelerated depreciation, installation or production-based incentives, investment tax credits and subsidies including, but not limited to, the subsidies in Schedule 1 of the Special Conditions and all other solar or renewable energy subsidies and incentives.

"Solar Insolation" or "Insolation" means the amount of solar kWh per square meter falling on a particular location, as specified by Provider.

"Solar Power & Services Agreement" means the Solar Power & Services Agreement (including the Schedules and Exhibits attached thereto) and these General Conditions (including the Exhibits attached hereto) to the extent incorporated therein.

"Solar Services" means the supply of electrical energy output from the System and any associated reductions in Purchaser's peak demand from its Local Electric Utility.

"Solar Services Payment" has the meaning set forth in Section 6.1.

"Special Conditions" means the Solar Power and Services Agreement, excluding these General Conditions.

"Stated Rate" means a rate per annum equal to the lesser of (a) the "prime rate" (as reported in The Wall Street Journal) plus two percent (2%) and (b) the maximum rate allowed by Applicable Law.

"System" means the integrated assembly of photovoltaic panels, mounting assemblies, inverters, converters, metering, lighting fixtures, transformers, ballasts, disconnects, combiners, switches, wiring devices and wiring, more specifically described in Schedule 1 of the Special Conditions.

"System Operations" means the Provider's operation, maintenance and repair of the System performed in accordance the requirements herein.

"Term" has the meaning set forth in Section 2.1.

"Transfer Time" has the meaning set forth in Section 4.3(a).

1.2 Interpretation. The captions or headings in these General Conditions are strictly for convenience and shall not be considered in interpreting the Agreement. Words in the Agreement that impart the singular connotation shall be interpreted as plural, and words that impart the plural connotation shall be interpreted as singular, as the identity of the parties or objects referred to may require. The words "include", "includes", and "including" mean include, includes, and including "without limitation" and "without limitation by specification." The words "hereof", "herein", and "hereunder" and words of similar import refer to the Agreement as a whole and not to any particular provision of the Agreement. Except as the context otherwise indicates, all references to "Articles" and "Sections" refer to Articles and Sections of these General Conditions.

2. TERM AND TERMINATION.

2.1 Term. The term of the Agreement shall commence on the Effective Date and shall continue for twenty (20) years from the Commercial Operations Date ("Initial Term"), unless and until terminated earlier pursuant to the provisions of the Agreement. After the Initial Term, MERC may renew, at its option, the Agreement for an additional five (5) year term (a "Renewal Term"), with written notice of renewal to Provider at least one hundred and eighty (180) days prior to the expiration of the Initial Term or then applicable Renewal Term. The Initial Term and the subsequent Renewal Term, if any, are referred to collectively as the "Term." During any Renewal Term, either Party may, subject to Section 2.3, terminate the Agreement upon one hundred and eighty (180) days' prior written notice to the other Party.

2.2 Early Termination. Purchaser may terminate the Agreement prior to any applicable Expiration Date for any reason upon sixty (60) days' prior written notice. In such event, Purchaser shall pay, as liquidated damages, the Early Termination Fee set forth on Schedule 3, Column 1 of the Special Conditions, and Provider shall cause the System to be disconnected and removed from the Premises. Upon Purchaser's payment to Provider of the Early Termination Fee, the Agreement shall terminate automatically.

2.3 Purchase Option. On any Purchase Date, so long as a Purchaser Default shall not have occurred and be continuing, Purchaser has the option to purchase the System for a purchase price (the "Option Price") equal to the greater of (a) the Fair Market Value of the System as of the Purchase Date, or (b) the Early Termination Fee as of the Purchase Date, as specified in Schedule 3, Column 2 of the Special Conditions. To exercise its purchase option, Purchaser shall, not less than one hundred and eighty (180) days prior to the proposed Purchase Date, provide written notice to Provider of Purchaser's intent to exercise its option to purchase the System on such Purchase Date. Within thirty (30) days of receipt of Purchaser's notice, Provider shall specify the Option Price, and Purchaser shall then have a period of thirty (30) days after notification to confirm or retract its decision to exercise the purchase option or, if the Option Price is equal to the Fair Market Value of the System, to dispute the determination of the Fair Market Value of the System. In the event Purchaser confirms its exercise of the purchase option in writing to Provider (whether before or after any determination of the Fair Market Value determined pursuant to Section 2.4), (i) the Parties shall promptly execute all documents necessary to (A) cause title to the System to pass to Purchaser on the Purchase Date, free and clear of any Liens, and (B) assign all vendor warranties for the System to Purchaser, and (ii) Purchaser shall pay the Option Price to Provider on the Purchase Date, such payment to be made in accordance with any previous written instructions delivered to Purchaser by Provider or Provider's Financing Party, as applicable, for payments under the Agreement. Upon execution of the documents and payment of the Option Price, in each case as described in the preceding sentence, the Agreement shall terminate automatically. For the avoidance of doubt, payment of the Option Price shall be in lieu of and instead of any payments as described in Section 2.2 hereof. In the event Purchaser retracts its exercise of, or does not timely confirm, the purchase option, the provisions of the Agreement shall be applicable as if the Purchaser had not exercised any option to purchase the System.

2.4 Determination of Fair Market Value. If the Option Price indicated by Provider in accordance with Section 2.3 is equal to the Fair Market Value (as determined by Provider) and Purchaser disputes such stated Fair Market Value within thirty (30) days of receipt of such notice from Provider, then the Parties shall mutually select an independent appraiser with experience and expertise in the solar photovoltaic industry. Such appraiser shall act reasonably and in good faith to determine Fair Market Value and shall set forth such determination in a written opinion delivered to the Parties. The valuation made by the appraiser shall be binding upon the Parties in the absence of fraud or manifest error. The costs of the appraisal shall be borne by Purchaser if such appraisal results in a value equal or greater than the value provided by Provider pursuant to Section 2.3. The cost of the appraisal shall be borne by Provider if the value is less than the value provided by the Provider.

2.5 Removal of System at Expiration. Subject to Purchaser's exercise of its purchase option under Section 2.3, upon the expiration or earlier termination of the Agreement, Provider shall, at Provider's expense, remove all of its tangible property comprising the System from the Premises on a mutually convenient date but in no case later than sixty (60) days after the Expiration Date. The Premises shall be returned to its original condition except for ordinary wear and tear. If the System is to be located on a roof, then in no case shall Provider's removal of the System affect the integrity of Purchaser's roof, which shall be as it was prior to removal of System (other than ordinary wear and tear). For purposes of Provider's removal of the System, Purchaser's covenants pursuant to Section 7.2 shall remain in effect until the date of actual removal of the System. Provider shall leave the Premises in neat and clean order. If Provider fails to remove or commence substantial efforts to remove the System by such agreed upon date, Purchaser shall have the right, at its option, to remove the System to a public warehouse and restore the Premises to its original condition (other than ordinary wear and tear) at Provider's reasonable cost including any reasonable attorney's fees for enforcing this provision.

2.6 Conditions of the Agreement Prior to Installation. In the event that any of the following events or circumstances occur prior to the Commercial Operation Date, Provider may (at its sole discretion) terminate the Agreement, in which case neither Party shall have any liability to the other except for any such liabilities that may have accrued prior to such termination:

(a) Both parties agree that the Premises, as is, is insufficient to accommodate the System.

(b) There exist site conditions (including environmental conditions) or construction requirements that were not known as of the Effective Date and that could reasonably be expected to materially increase the cost of Installation Work or would adversely affect the electricity production from the System as designed.

(c) There is a material adverse change in the regulatory environment, incentive program or federal or state tax code (including the expiration of any incentive program or tax incentives in effect as of the Effective Date) that could reasonably be expected to adversely affect the economics of the installation for Provider and its investors.

(d) Provider is unable to obtain financing for the System on terms and conditions satisfactory to it. Provider must provide proof of such financing within one hundred and eighty days of the effective date.

(e) Provider has not received a fully executed (i) license in the form of Exhibit A of these General Conditions from the owner of the Premises, and (ii) such other documentation as may be reasonably requested by Provider to evidence Purchaser's ability to meet its obligations under Section 7.2(d)(ii) to ensure that Provider will have access to the Premises throughout the Term, provided that Purchaser shall not be obligated to incur out-of-pocket expenses in obtaining such documentation.

(f) There has been a material adverse change in the rights of Purchaser to occupy the Premises or Provider to construct the System on the Premises.

(g) Purchaser has not received evidence reasonably satisfactory to it that interconnection services will be available with respect to energy generated by the System.

(h) Purchaser has determined that there are easements, CCRs or other liens or encumbrances that would materially impair or prevent the installation, operation, maintenance or removal of the System.

(i) There has been a material adverse change in Purchaser's credit-worthiness.

3. CONSTRUCTION, INSTALLATION AND TESTING OF SYSTEM.

3.1 Installation Work. Provider will cause the System to be designed, engineered, installed and constructed substantially in accordance with Schedule 1 of the Special Conditions and Applicable Law. Purchaser shall have the right to review and approve all construction plans including engineering evaluations of the impact of the System on (i) the structural integrity and strength of the roof of the Premises and (ii) the then current Local Electric Utility's equipment and service, such review and approval not to be unreasonably conditioned, delayed, or withheld. Installation will be scheduled in accordance with the Premises' events schedule. A formal project schedule is to be provided to MERC by the Provider prior to start of Installation Work and weekly thereafter until the Commercial Operation Date. Due to the nature of the public events facility industry, it may be necessary for the Provider to perform work before 8:00 a.m., after 5:00 pm and on the weekends. It will also be necessary for the Provider to work closely with Purchaser's Operations Manager identified in Schedule 5 of the Special Conditions and applicable building staff to coordinate day-to-day logistical requirements for the benefit of the Provider and to afford Purchaser's staff the necessary time to perform event or non-event related functions. Provider will be responsible for all tools, equipment, and material necessary to perform the described work. Purchaser will provide Provider access to all areas as necessary to complete the work.

3.2 Approvals; Permits. Purchaser shall reasonably assist Provider in obtaining all necessary approvals and permits including but not limited to those related to the Local Electric Utility, any Governmental Authority, and any waivers, approvals or releases required pursuant to any applicable CCR provided that Provider is responsible for obtaining all necessary approvals or permits and any associated costs for such approvals and permits.

3.3 System Acceptance Testing

(a) Provider shall conduct testing of the System in accordance with such methods, acts, guidelines, standards and criteria reasonably accepted or followed by photovoltaic solar system integrators in the United States.

(b) If the results of such testing indicate that the System is capable of generating electric energy for four (4) continuous hours, using such instruments and meters as have been installed for such purposes, and the System has been approved for interconnected operation by the Local Electric Utility, then Provider shall send a written notice to Purchaser to that effect, and the date of such notice shall be the "Commercial Operation Date."

3.4 Diversity in Employment and Contracting

The Parties agree that Provider shall make good faith efforts to achieve diversity in both its employment and contracting opportunities. In accordance with Metro Code 2.04.100 full participation by minorities, women and emerging small businesses in public contracts is essential to the local economy.

To the extent that Provider seeks to hire individuals for positions with respect to the Agreement, Provider shall employ practices that ensure workforce diversity by advertising and outreach to ethnic minorities and women. These efforts shall include at least one of the following: advertising in employment opportunities in student newspapers, minority business publications, and attendance and job fairs that promote minorities and women. Such policies and practices shall be made available to MERC upon request.

Provider shall first consider the use of Oregon state-certified minority, women and emerging small businesses (MWESB) for all contracts and purchases related to performance of this Agreement. A list of qualified contractors is available from the Office of Minority Women and Emerging Small Business or by contacting the Metro Procurement Office at 503-797-1816. Only if qualified MWESB contractors and suppliers are not available or practicable upon terms and conditions that are directly competitive with qualified non-MWESB contractors and suppliers shall Provider purchase from or contract with a non-MWESB firm. Upon MERC's request, Provider shall report to MERC its use of MWESB contractors and suppliers.

4. SYSTEM OPERATIONS.

4.1 Provider as Owner and Operator. The System will be owned by Provider or Provider's Financing Party and will be operated and maintained and, as necessary, repaired by Provider at its sole cost and expense; provided, that any repair or maintenance costs incurred by Provider as a result Purchaser's negligence or breach of its obligations hereunder shall be reimbursed by Purchaser.

4.2 Metering. Provider shall install and maintain a utility grade kilowatt-hour (kWh) meter for the measurement of electrical energy provided by the System and may, at its election, install a utility grade kilowatt-hour (kWh) meter for the measurement of electrical energy delivered by the Local Electric Utility and consumed by Host at the Premises. All metering shall be approved by the Local Electricity Utility if required by Oregon law.

4.3 System Disruptions.

(a) Substitution of Premises. If, for reasons other that Provider's breach of its obligations hereunder, Provider ceases to have access rights to the Premises as necessary to operate the System prior to the Expiration Date, then Purchaser shall either (i) provide Provider with a mutually agreeable substitute premises in a location with similar Solar Insolation, or (ii) terminate the Agreement pursuant to Section 2.2. Purchaser shall provide at least one hundred and eighty (180) days' written notice prior to the date on which it desires to effect such substitution. In connection with such substitution, Purchaser and Provider shall amend the Agreement to specify the substitute premises. Purchaser shall also provide any new owner, lessor, or mortgagee consents or releases required by Provider's Financing

Party in connection with the substitute Premises. If Purchaser is unable to obtain such consents and releases for a substitute Premises, the substitution shall not be allowed and Purchaser shall terminate the Agreement pursuant to Section 2.2. Purchaser shall pay all costs associated with relocation of the System including all costs and expenses incurred by or on behalf of Provider in connection with removal of the System from the existing Premises and repair or maintenance of the Premises, if applicable, and installation and testing of the System at such substitute premises and all applicable interconnection fees and expenses at the substitute premises, as well as costs of new title search and other out of pocket expenses connected to preserving and refiling the security interest of Provider's Financing Party in the System. Provider shall make commercially reasonable efforts to remove all of its tangible property comprising the System from the vacated Premises prior to the termination of Purchaser's rights to use such Premises. Upon removal of the tangible property comprising the System from the Premises, the Premises shall be returned to its original condition, except for incidental hardware or other support structures and ordinary wear and tear. If the System is to be located on a roof, then in no case shall Provider's removal of the System affect the integrity of the roof of the Premises, which shall be as leak proof as it was prior to removal of System. In connection with any substitution of Premises, Purchaser shall continue to make all payments for the Solar Services, and Purchaser shall reimburse Provider for any lost revenue during any transfer or construction time period (the "Transfer Time"), including any lost revenue associated with Solar Services Payments, any reduced sales of Environmental Attributes and any reduced Solar Incentives during the Transfer Time. For the purpose of calculating Solar Services Payments and lost revenue for such Transfer Time, Solar Services shall be deemed to have been produced at the average rate over the preceding twelve (12) months (or, if the substitution occurs within the first twelve (12) months of operation, the average over such period of operation).

(b) Malfunctions and Emergencies.

(i) Malfunctions. Purchaser and Provider each shall notify the other within twenty-four (24) hours following their discovery of any material malfunction in the operation of the System or of their discovery of an interruption in the supply of Solar Services.

(ii) Emergencies. Provider and Purchaser each shall notify the other Party upon the discovery of an emergency condition in the System. If an emergency condition exists, Provider shall promptly dispatch the appropriate personnel immediately to perform the necessary repairs or corrective action in an expeditious and safe manner.

(iii) Personnel. For routine and emergency repairs, Purchaser shall contact Provider with contacts for each listed in attached Schedule 5 of the Special Conditions. Provider and Purchaser shall each designate personnel and establish procedures such that each Party may provide notice of emergency conditions, as contemplated in Section 4.2(b), requiring Provider's repair or alteration at all times, twenty-four (24) hours per day, including weekends and holidays.

(c) Roof Repair and Other System Disruptions. In the event that (x) the owner or lessee of the Premises repairs the Premises' roof for any reason not directly related to damage caused by the System, and such repair requires the partial or complete temporary disassembly or movement of the System, or (y) any act or omission of Purchaser or Purchaser's employees, Affiliates, agents or subcontractors (collectively, a "Purchaser Act") results in a disruption or outage in System production, then, in either case, Purchaser shall (i) pay Provider for all work required by Provider to disassemble or move the System and (ii) continue to make all payments for the Solar Services during such period of System disruption (the "Disruption Period"), and (iii) reimburse Provider for any other lost revenue during the Disruption Period, including any lost revenue associated with any reduced sales of Environmental Attributes and any reduced Solar Incentives during the Disruption Period. For the purpose of calculating Solar Services Payments and lost revenue for such Disruption Period, Solar Services shall be deemed to have been produced at the average rate over the preceding twelve (12) months (or, if the disruption occurs within the first twelve (12) months of operation, the average over such period of operation).

5. DELIVERY OF SOLAR SERVICES.

5.1 Purchase Requirement. Purchaser agrees to purchase one hundred percent (100%) of the Solar Services generated by the System and made available by Provider to Purchaser during each relevant month of the Term. While the Solar Services are calculated and billed on a per kWh basis as set forth in Schedule 2 of the Special Conditions, they represent a package of services and benefits, including reduction in the Purchaser's peak demand from the Local Electric Utility.

5.2 Estimated Annual Production. The annual estimate of Solar Services with respect to the System for any given year as determined pursuant to this Section shall be the "Estimated Annual Production." The Estimated Annual Production for each year of the Initial Term is set as forth in Schedule 4 of the Special Conditions.

5.3 Environmental Attributes and Solar Incentives. Purchaser's purchase of Solar Services does not include Environmental Attributes or Solar Incentives, each of which shall be owned by Provider or Provider's Financing Party for the duration of the System's operating life. Purchaser disclaims any right to Solar Incentives or Environmental Attributes based upon the installation of the System at the Premises, and shall, at the request of Provider, execute any document or agreement reasonably necessary to fulfill the intent of this Section 5.3. To avoid any conflicts with fair trade rules regarding claims of solar or renewable energy use and to help ensure that Environmental Attributes will be certified by Green-e® or a similar organization, Purchaser, shall submit to SunEdison for approval any press releases regarding Purchaser's use of solar or renewable energy from the System and shall not submit for publication any such releases without the prior written approval of Provider. Provider will provide Purchaser with reasonable assistance with Leadership in Energy and Environmental Design ("LEED") certification requirements related to the existence and operation of the System on the Premise. Without limiting Provider's other rights hereunder, in the event that Purchaser breaches its obligations under this Section 5.3 and, as a result thereof, the value of the Environmental Attributes generated by the System is reduced, Purchaser shall pay to Provider the value of such reduction.

5.4 Title to System. Throughout the duration of the Agreement, Provider or Provider's Financing Party shall be the legal and beneficial owner of the System at all times, and the System shall remain the personal property of Provider or Provider's Financing Party and shall not attach to or be deemed a part of, or fixture to, the Premises. The System shall at all times retain the legal status of personal property as defined under Article 9 of the Uniform Commercial Code. Purchaser covenants that it will use reasonable commercial efforts to place all parties having an interest in or lien upon the real property comprising the Premises on notice of the ownership of the System and the legal status or classification of the System as personal property. If there is any mortgage or fixture filing against the Premises which could reasonably be construed as attaching to the System as a fixture of the Premises, Purchaser shall provide, at Provider's request, a disclaimer or release from such lien holder. If Purchaser is the fee owner of the Premises, Purchaser consents to the filing by Provider, on behalf of Purchaser, of a disclaimer of the System as a fixture of the Premises in the office where real estate records are customarily filed in the jurisdiction of the Premises. If Purchaser is not the fee owner, Purchaser will, at Provider's request, use commercially reasonable efforts to obtain such consent from such owner.

5.5 System Maintenance. Provider's operation and maintenance of the System shall include the following services, performed by or for Provider on an annual basis, or more often as Provider deems necessary to ensure that the System operates to provide Solar Services on a reasonably continuous basis: (i) cleaning of solar modules; (ii) mechanical service of System, including inspection for cracked or damaged modules, loose or damaged wires, and loose conduit connectors; and (iii) electrical service of System, including verification of proper operation of inverter and inspection of all electrical connections. Provider shall monitor the System and respond to and correct any defaults or malfunctions within a commercially reasonable time.

5.6 Replacement of Photovoltaic Modules Due to Significant Technological Advances. If photovoltaic modules become commercially available for building applications that would result in a significant increase in technical performance of the System (e.g., an increase in electrical generation of greater than 50 percent over actual historical generation), and it is mutually advantageous for both the Parties to employ the new modules, then the Provider may replace the existing photovoltaic modules with the new higher efficiency modules as economically feasible and beneficial for both Parties.

6. PRICE AND PAYMENT.

6.1 Consideration. Purchaser shall pay to Provider a monthly payment (the "Solar Services Payment") for the Solar Services generated by the System during each calendar month of the Term equal to the product of (x) Actual Monthly Production for the System for the relevant month multiplied by (y) the kWh Rate. In the event that Host is a municipality or other Governmental Authority, if sufficient funds to provide for payment(s) owed by Purchaser under this Agreement are not appropriated, the Purchaser may terminate this Agreement upon notice in writing to Provider in accordance with the terms of Section 2.2, including, without limitation, the payment to Provider of the Early Termination Fee.

6.2 Invoice. Provider shall invoice Purchaser on or about the first day of each month (each, an "Invoice Date"), commencing on the first Invoice Date to occur after the Commercial Operation Date, for the Solar Services Payment in respect of the immediately preceding month. The last invoice shall include production only through the Expiration Date of this Agreement.

6.3 Time of Payment. Purchaser shall pay all undisputed amounts due hereunder within fifteen (15) days after the date of the applicable Invoice Date.

6.4 Method of Payment. Purchaser shall make all payments under the Agreement by electronic funds transfer in immediately available funds to the account designated by Provider from time to time. All payments that are not paid when due shall bear interest accruing from the date becoming past due until paid in full at a rate equal to the Stated Rate. All payments made hereunder shall be non-refundable, be made free and clear of any tax, levy, assessment, duties or other charges and not subject to reduction, withholding, set-off, or adjustment of any kind.

6.5 Disputed Payments. If a *bona fide* dispute arises with respect to any invoice, Purchaser shall not be deemed in default under the Agreement and the Parties shall not suspend the performance of their respective obligations hereunder, including payment of undisputed amounts owed hereunder. If an amount disputed by Purchaser is subsequently deemed to have been due pursuant to the applicable invoice, interest shall accrue at the Stated Rate on such amount from the date becoming past due under such invoice until the date paid.

7. GENERAL COVENANTS.

7.1 Provider's Covenants. Provider covenants and agrees to the following:

(a) Notice of Damage or Emergency. Provider shall (x) promptly notify Purchaser if it becomes aware of any damage to or loss of the use of the System or that could reasonably be expected to adversely affect the System, (y) immediately notify Purchaser it becomes aware of any event or circumstance that poses an imminent risk to human health, the environment, the System or the Premises.

(b) System Condition. Provider shall take all actions reasonably necessary to ensure that the System is capable of providing Solar Services at a commercially reasonable continuous rate.

(c) Governmental Approvals. While providing the Installation Work, Solar Services, and System Operations, Provider shall obtain and maintain and secure all Governmental Approvals required to be obtained and maintained and secured by Provider and to enable Provider to perform such obligations.

(d) Health and Safety. Provider shall take all necessary and reasonable safety precautions with respect to providing the Installation Work, Solar Services, and System Operations that shall comply with all Applicable Laws pertaining to the health and safety of persons and real and personal property.

(e) Liens. Other than a Financing Party's security interest in or ownership of the System, Provider shall not directly or indirectly cause, create, incur, assume or suffer to exist any mortgage, pledge, lien (including mechanics', labor or materialman's lien), charge, security interest, encumbrance or claim of any nature ("Liens") on or with respect to the Premises or any interest therein, in each case to the extent such Lien arises from or is related to Provider's performance or non-performance of its obligations hereunder. If Provider breaches its obligations under this Section, it shall (i) immediately notify Purchaser in writing, (ii) promptly cause such Lien to be discharged and released of record without cost to Purchaser, and (iii) defend and indemnify Purchaser against all costs and expenses (including reasonable attorneys' fees and court costs at trial and on appeal) incurred in discharging and releasing such Lien.

7.2 Purchaser's Covenants. Purchaser covenants and agrees as follows:

(a) Notice of Damage or Emergency. Purchaser shall (x) promptly notify Provider if it becomes aware of any damage to or loss of the use of the System or that could reasonably be expected to adversely affect the System, (y) immediately notify Provider it becomes aware of any event or circumstance that poses an imminent risk to human health, the environment, the System or the Premises.

(b) Liens. Purchaser shall not directly or indirectly cause, create, incur, assume or suffer to exist any Liens on or with respect to the System or any interest therein. If Purchaser breaches its obligations under this Section, it shall immediately notify Provider in writing, shall promptly cause such Lien to be discharged and released of record without cost to Provider, and shall indemnify Provider against all costs and expenses (including reasonable attorneys' fees and court costs at trial and on appeal) incurred in discharging and releasing such Lien.

(c) Consents and Approvals. Subject to the approval of MERC, Purchaser shall ensure that any authorizations required of Purchaser under this Agreement are provided in a timely manner. To the extent that only Purchaser is authorized to request, obtain or issue any necessary approvals, permits, rebates or other financial incentives, Purchaser shall cooperate with Provider to obtain such approvals, permits, rebates or other financial incentives.

(d) Access to Premises, Grant of License. Purchaser hereby grants to Provider a commercial license coterminous with the Term, containing all the rights necessary for Provider to use and occupy portions of the Premises for the installation, operation and maintenance of the System pursuant to the terms of this Agreement, including ingress and egress rights to the Premises for Provider and its employees, contractors and subcontractors and access to electrical panels and conduits to interconnect or disconnect the System with the Premises' electrical wiring. The cost of such commercial license is included in the kWh rate charged to Purchaser under this Agreement.

(i) Purchaser hereby covenants that (x) Provider shall have access to the Premises and System during the Term of this Agreement and for so long as needed after termination to remove the System pursuant to the applicable provisions herein, and (y) except in the event of an emergency situation where persons and/or property are in eminent physical danger, neither Purchaser nor Purchaser's landlord will interfere or handle any Provider equipment or the System without written authorization from Provider; provided, however, that Purchaser and Purchaser's landlord shall at all times have access to and the right to observe the Installation Work or System removal Except in the event of an emergency, Provider will provide 48 hour notice to the Purchaser prior to its employees accessing Purchaser's property.

(ii) If Purchaser is a lessee of the Premises, Purchaser further covenants that it shall deliver to Provider, a license from Purchaser's landlord in substantially the form attached hereto as Exhibit A of these General Conditions.

(e) Temporary storage space during installation or removal. Purchaser shall use commercially reasonable efforts to obtain an agreement, including a specified location, for sufficient space at the Premises for the temporary storage and staging of tools, materials and equipment and for the parking of construction crew vehicles and temporary construction trailers and facilities reasonably necessary during the Installation Work, System Operations or System removal, and access for rigging and material handling.

(f) Sunlight Easements. Purchaser will use commercially reasonable efforts to prevent other buildings, structures or flora from overshadowing or otherwise blocking access of sunlight to the System, including but not limited to such actions as may be reasonably necessary to obtain a solar access easement for such purpose.

8. REPRESENTATIONS & WARRANTIES.

8.1 Representations and Warranties Relating to Agreement Validity. In addition to any other representations and warranties contained in the Agreement, each Party represents and warrants to the other as of the Effective Date that:

(a) it is duly organized and validly existing and in good standing in the jurisdiction of its organization;

(b) it has the full right and authority to enter into, execute, deliver, and perform its obligations under the Agreement;

(c) it has taken all requisite corporate or other action to approve the execution, delivery, and performance of the Agreement;

(d) the Agreement constitutes its legal, valid and binding obligation enforceable against such Party in accordance with its terms, except as may be limited by applicable bankruptcy, insolvency, reorganization, moratorium, and other similar laws now or hereafter in effect relating to creditors' rights generally;

(e) there is no litigation, action, proceeding or investigation pending or, to the best of its knowledge, threatened before any court or other Governmental Authority by, against, affecting or involving any of its business or assets that could reasonably be expected to adversely affect its ability to carry out the transactions contemplated herein; and

(f) its execution and performance of the Agreement and the transactions contemplated hereby do not constitute a breach of any term or provision of, or a default under, (i) any contract or agreement to which it or any of its Affiliates is a party or by which it or any of its Affiliates or its or their property is bound, (ii) its organizational documents, or (iii) any Applicable Laws.

8.2 Representations Regarding Security Interest. Purchaser has been advised that part of the collateral securing the financial arrangements for the System may be the granting of a first priority perfected security interest (the "Security Interest") in the System to a Financing Party. In connection therewith, Purchaser represents and warrants as follows:

(a) To Purchaser's knowledge, the granting of the Security Interest will not violate any term or condition of any covenant, restriction, lien, financing agreement, or security agreement affecting the Premises.

(b) Purchaser is aware of no existing lease, mortgage, security interest or other interest in or lien upon the Premises that could attach to the System as an interest adverse to Provider's Financing Party's Security Interest therein.

(c) To Purchaser's knowledge, there exists no event or condition which constitutes a default, or would, with the giving of notice or lapse of time, constitute a default under this Agreement.

Any Financing Party shall be an intended third-party beneficiary of this Section 8.2.

8.3 EXCLUSION OF WARRANTIES. EXCEPT AS EXPRESSLY SET FORTH IN SECTIONS 3.1, 4.1, AND 7.1 AND THIS SECTION 8, THE INSTALLATION WORK, SYSTEM OPERATIONS, AND SOLAR SERVICES PROVIDED BY PROVIDER TO PURCHASER PURSUANT TO THIS AGREEMENT SHALL BE "AS-IS WHERE-IS." PURCHASER ACKNOWLEDGES THAT ALL EQUIPMENT, MANUFACTURER, AND OTHER WARRANTIES ASSOCIATED WITH THE SYSTEM OR ITS COMPONENTS ARE SOLELY FOR THE BENEFIT OF PROVIDER AND/OR THE FINANCING PARTY AS THE OWNER OR OPERATOR OF THE SYSTEM. NO OTHER WARRANTY TO PURCHASER OR ANY OTHER PERSON, WHETHER EXPRESS, IMPLIED OR STATUTORY, IS MADE AS TO THE INSTALLATION, DESIGN, DESCRIPTION, QUALITY, MERCHANTABILITY, COMPLETENESS, USEFUL LIFE, FUTURE ECONOMIC VIABILITY, OR FITNESS FOR ANY PARTICULAR PURPOSE OF THE SYSTEM, THE SOLAR SERVICES OR ANY OTHER SERVICE PROVIDED HEREUNDER OR DESCRIBED HEREIN, OR AS TO ANY OTHER MATTER, ALL OF WHICH ARE EXPRESSLY DISCLAIMED BY PROVIDER.

9. TAXES AND GOVERNMENTAL FEES.

9.1 Purchaser Obligations. Purchaser shall reimburse and pay for any documented taxes, fees or charges imposed or authorized by any Governmental Authority and paid by Provider due to Provider's sale of the Solar Services to Purchaser (other than income taxes imposed upon Provider). Provider shall notify Purchaser in writing with a detailed statement of such amounts, which shall be invoiced by Provider and payable by Purchaser. Purchaser shall timely report, make filings for, and pay any and all sales, use, income, gross receipts or other taxes, and any a nd all franchise fees or similar fees assessed against it due to its purchase of the Solar Services. This Section 9.1 excludes taxes specified in Section 9.2.

9.2 Provider Obligations. Subject to Section 9.1 above, Provider shall be responsible for all income, gross receipts, ad valorem, personal property or real property or other similar taxes and any and all franchise fees or similar fees assessed against it due to its ownership of the System. Provider shall not be obligated for any taxes payable by or assessed against Purchaser based on or related to Purchaser's overall income or revenues.

10. FORCE MAJEURE.

10.1 Definition. "Force Majeure Event" means any act or event that prevents the affected Party from performing its obligations in accordance with the Agreement, if such act or event is beyond the reasonable control, and not the result of the fault or negligence, of the affected Party and such Party had been unable to overcome such act or event with the exercise of due diligence (including the expenditure of reasonable sums). Subject to the foregoing conditions, "Force Majeure Event" shall include without limitation the following acts or events: (i) natural phenomena, such as storms, hurricanes, floods, lightning, volcanic eruptions and earthquakes; (ii) explosions or fires arising from lightning or other causes unrelated to the acts or omissions of the Party seeking to be excused from performance; (iii) acts of war or public disorders, civil disturbances, riots, insurrection, sabotage, epidemic, terrorist acts, or rebellion; (iv) strikes or labor disputes (except strikes or labor disputes caused solely by employees of a Party or its subcontractors or as a result of such party's failure to comply with a collective bargaining agreement); (v) action by a Governmental Authority, including a moratorium on any activities related to the Agreement; and (vi) the inability for one of the Parties, despite its reasonable efforts, to obtain, in a timely manner, any Governmental Approval necessary to enable the affected Party to fulfill its obligations in accordance with the Agreement, provided that the delay or non-obtaining of such Governmental Approval is not attributable to the Party in question and that such Party has exercised its reasonable efforts to obtain such Permit. A Force Majeure Event shall not be based on the economic hardship of either Party.

10.2 Excused Performance. Except as otherwise specifically provided in the Agreement, neither Party shall be considered in breach of the Agreement or liable for any delay or failure to comply with the Agreement (other than the failure to pay amounts due hereunder), if and to the extent that such delay or failure is attributable to the occurrence of a Force Majeure Event; provided that the Party claiming relief under this Section 10 shall immediately (i) notify the other Party in writing of the existence of the Force Majeure Event, (ii) exercise all reasonable efforts necessary to minimize delay caused by such Force Majeure Event, (iii) notify the other Party in writing of the cessation or termination of said Force Majeure Event and (iv) resume performance of its obligations hereunder as soon as practicable thereafter; provided, however, that Purchaser shall not be excused from making any payments and paying any unpaid amounts due in respect of Solar Services delivered to Purchaser prior to the Force Majeure Event performance interruption.

10.3 Termination in Consequence of Force Majeure Event. If a Force Majeure Event shall have occurred that has affected Provider's performance of its obligations hereunder and that has continued for a continuous period of one hundred eighty (180) days, then Purchaser shall be entitled to terminate the Agreement upon ninety (90) days' prior written notice to Provider. If at the end of such ninety (90) day period such Force Majeure Event shall still continue, the Agreement shall automatically terminate. Upon such termination for a Force Majeure Event, neither Party shall have any liability to the other (other than any such liabilities that have accrued prior to such termination), and the provisions of Section 2.2 (Early Termination) shall be inapplicable.

11. DEFAULT.

11.1 Provider Defaults and Purchaser Remedies.

(a) Provider Defaults. The following events shall be defaults with respect to Provider (each, a "Provider Default"):

(i) A Bankruptcy Event shall have occurred with respect to Provider;

(ii) Provider fails to pay Purchaser any undisputed amount owed under the Agreement within thirty (30) days from receipt of notice from Purchaser of such past due amount; and

(iii) Provider breaches any material term of the Agreement and (A) if such breach can be cured within thirty (30) days after Purchaser's written notice of such breach and Provider fails to so cure, or (B) Provider fails to commence and pursue a cure within such thirty (30) day period if a longer cure period is needed.

(b) Purchaser's Remedies. If a Provider Default described in Section 11.1(a) has occurred and is continuing, in addition to other remedies expressly provided herein, and subject to Section 12, Purchaser may terminate the Agreement and exercise any other remedy it may have at law or equity or under the Agreement.

(c) No Early Termination Fee. Section 2.2 of the Agreement shall not apply to any termination of the Agreement by Purchaser pursuant to this Section 11.1.

11.2 Purchaser Defaults and Provider's Remedies.

(a) Purchaser Default. The following events shall be defaults with respect to Purchaser (each, a "Purchaser Default"):

(i) A Bankruptcy Event shall have occurred with respect to Purchaser;

(ii) Purchaser breaches any material term of the Agreement if (A) such breach can be cured within thirty (30) days after Provider's notice of such breach and Purchaser fails to so cure, or (B) Purchaser fails to commence and pursue said cure within such thirty (30) day period if a longer cure period is needed; and

(iii) Purchaser fails to pay Provider any undisputed amount due Provider under the Agreement within thirty (30) days from receipt of notice from Provider of such past due amount.

(b) Provider's Remedies. If a Purchaser Default described in Sections 11.2(a) has occurred and is continuing, in additional to other remedies expressly provided herein, and subject to Section 12, Provider may terminate this Agreement and upon such termination, (A) Provider shall be entitled to receive from Purchaser the Early Termination Fee pursuant to Section 2.2, and (B) Provider may exercise any other remedy it may have at law or equity or under the Agreement.

11.3 Removal of System. Upon any termination of the Agreement pursuant to this Section 11, Provider will remove the System pursuant to Section 2.5 hereof, absent any purchase of the System by Purchaser pursuant to Section 2.2 hereof.

12. LIMITATIONS OF LIABILITY.

12.1 Except as expressly provided herein, neither Party shall be liable to the other Party or its Indemnified Persons for any special, punitive, exemplary, indirect, or consequential damages, losses or damages for lost revenue or lost profits, whether foreseeable or not, arising out of, or in connection with the Agreement.

12.2 A Party's maximum liability to the other Party under the Agreement, shall be limited to the aggregate Estimated Remaining Payments as of the date of the events giving rise to such liability, provided, however, the limits of liability under this Section 12.2 shall not apply with respect to (i) indemnity obligations hereunder in respect of personal injury, intellectual property infringement claims and (iii) any obligation of Purchaser to pay Solar Service Payments or the Early Termination Fee.

13. ASSIGNMENT.

13.1 Assignment by Provider. Provider shall not sell, transfer or assign (collectively, an "Assignment") the Agreement or any interest therein, without the prior written consent of Purchaser, which shall not be unreasonably withheld, conditioned or delayed; provided, however, that, without the prior consent of Purchaser, Provider may (i) assign this Agreement to an Affiliate of Provider; (ii) assign this Agreement as collateral security in connection with any financing of the System (including, without limitation, pursuant to a sale-leaseback transaction). In the event that Provider identifies such secured Financing Party in Schedule 5 of the Special Conditions, or in a subsequent notice to Purchaser, then Purchaser shall comply with the provisions set forth in Exhibit B of these General Terms and Conditions. Any Financing Party shall be an intended third-party beneficiary of this Section 13.1. Any assignment by Provider without any required prior written consent of Provider shall not release Purchaser of its obligations hereunder.

13.2. Acknowledgment of Collateral Assignment. In the event that Provider identifies a secured Financing Party in Schedule 5 of the Special Conditions, or in a subsequent notice to Purchaser, then Purchaser hereby:

(a) acknowledges the collateral assignment by Provider to the Financing Party, of Provider's right, title and interest in, to and under the Agreement, as consented to under Section 13.1 of the Agreement.

(b) acknowledges that the Financing Party as such collateral assignee shall be entitled to exercise any and all rights of lenders generally with respect to the Provider's interests in this Agreement.

(c) acknowledges that it has been advised that Provider has granted a first priority perfected security interest in the System to the Financing Party and that the Financing Party has relied upon the characterization of the System as personal property, as agreed in this Agreement in accepting such security interest as collateral for its financing of the System.

Any Financing Party shall be an intended third-party beneficiary of this Section 13.2.

13.3 Assignment by Purchaser. Purchaser shall not assign the Agreement or any interest therein, without Provider's prior written consent, which consent shall not be unreasonably withheld, conditioned or delayed. Any assignment by Purchaser without the prior written consent of Provider shall not release Purchaser of its obligations hereunder.

14. NOTICES.

14.1 Notice Addresses. Unless otherwise provided in the Agreement, all notices and communications concerning the Agreement shall be in writing and addressed to the other Party (or Financing Party, as the case may be) at the addresses set forth in Schedule 6 of the Special Conditions, or at such other address as may be designated in writing to the other Party from time to time.

14.2 Notice. Unless otherwise provided herein, any notice provided for in the Agreement shall be hand delivered, sent by registered or certified U.S. Mail, postage prepaid, or by commercial overnight delivery service, or transmitted by facsimile and shall be deemed delivered to the addressee or its office when received at the address for notice specified above when hand delivered, upon confirmation of sending when sent by facsimile (if sent during normal business hours or the next Business Day if sent at any other time), on the Business Day after being sent when sent by overnight delivery service (Saturdays, Sundays and legal holidays excluded), or five (5) Business Days after deposit in the mail when sent by U.S. mail.

14.3 Address for Invoices. All invoices under the Agreement shall be sent to the address provided by Purchaser. Invoices shall be sent by regular first class mail postage prepaid.

15. CONFIDENTIALITY.

15.1 Confidentiality Obligation.

(a) If either Party provides confidential information, including business plans, strategies, financial information, proprietary, patented, licensed, copyrighted or trademarked information, and/or technical information regarding the financing, design, operation and maintenance of the System or of Purchaser's business ("Confidential Information") to the other or, if in the course of performing under the Agreement or negotiating the Agreement a Party learns Confidential Information regarding the facilities or plans of the other, the receiving Party shall (a) protect the Confidential Information from disclosure to third parties with the same degree of care accorded its own confidential and proprietary information, and (b) refrain from using such Confidential Information, except in the negotiation and performance of the Agreement. Notwithstanding the above, a Party may provide such Confidential Information to its officers, directors, members, managers, employees, agents, contractors and consultants, and Affiliates, lenders, and potential assignees of the Agreement or acquirers of Provider or its Affiliates (provided and on condition that such potential assignees be bound by a written agreement restricting use and disclosure of Confidential Information) (collectively, "Representatives"), in each case whose access is reasonably necessary. Each such recipient of Confidential Information shall be informed by the Party disclosing Confidential Information of its confidential nature and shall be directed to treat such information confidentially and shall agree to abide by these provisions. In any event, each Party shall be liable (with respect to the other Party) for any breach of this provision by any entity to whom that Party improperly discloses Confidential Information. All Confidential Information shall remain the property of the disclosing Party and shall be returned to the disclosing Party or destroyed after the receiving Party's need for it has expired or upon the request of the disclosing Party.

(b) Provider acknowledges that Purchaser is a "public body" as defined by Oregon Revised Statutes section 192.410, subject to the provisions of Title 19, Chapter 192 of the Oregon Revised Statutes ("Public Records Policy"). To the extent that anything in this Article 15 conflicts with Purchaser's duties under the Public Records Policy, the Public Records Policy shall prevail; provided, however, that if Purchaser receives a request for the disclosure of Provider's Confidential Information, Purchaser shall make commercially reasonable efforts to promptly notify Provider of such request and provide Provider with an opportunity to contest the disclosure.

15.2 Permitted Disclosures. Notwithstanding any other provision herein, neither Party shall be required to hold confidential any information that:

(a) becomes publicly available other than through the receiving Party;

(b) is required to be disclosed by a Governmental Authority, under Applicable Law or pursuant to a validly issued subpoena or required filing, but a receiving Party subject to any such requirement shall promptly notify the disclosing Party of such requirement;

(c) is independently developed by the receiving Party; or

(d) becomes available to the receiving Party without restriction from a third party under no obligation of confidentiality.

15.3 Goodwill and Publicity.

(a) Mutual Right of Approval. Neither Party shall use the name, trade name, service mark, or trademark of the other Party in any promotional or advertising material without the prior written consent of such other Party. The Parties shall coordinate and cooperate with each other when making public announcements related to the execution and existence of the Agreement, and each Party shall have the right to promptly review, comment upon, and approve any publicity materials, press releases, or other public statements by the other Party that refer to, or that describe any aspect of, the Agreement; provided that no such publicity releases or other public statements (except for filings or other statements or releases as may be required by Applicable Law) shall be made by either

Party without the prior written consent of the other Party. At no time will either Party acquire any rights whatsoever to any trademark, trade name, service mark, logo or other intellectual property right belonging to the other Party. Notwithstanding the foregoing, Purchaser agrees that Provider may, at its sole discretion, take photographs of the installation process of the System and/or the completed System, and Provider shall be permitted to use such images (regardless of media) in its marketing efforts, including but not limited to use in brochures, advertisements, websites and news outlet or press release articles. The images shall not include any identifying information without Purchaser permission and the installation site shall not be disclosed beyond the type of establishment (such as "Retail Store," "Distribution Center," or such other general terms), the city and state.

15.4 Enforcement of Confidentiality Obligation. Each Party agrees that the disclosing Party would be irreparably injured by a breach of this Article by the receiving Party or its Representatives or other Person to whom the receiving Party discloses Confidential Information of the disclosing Party and that the disclosing Party may be entitled to equitable relief, including injunctive relief and specific performance, in the event of any breach of the provisions of this Article. To the fullest extent permitted by Applicable Law, such remedies shall not be deemed to be the exclusive remedies for a breach of this Article, but shall be in addition to all other remedies available at law or in equity.

16. INDEMNITY.

16.1 Provider's Indemnity. Subject to Section 12, Provider agrees that it shall indemnify and hold harmless Purchaser, its permitted successors and assigns and their respective directors, officers, members, shareholders and employees (collectively, the "Purchaser Indemnified Parties") from and against any and all Losses incurred by the Purchaser Indemnified Parties to the extent arising from or out of the following: (a) any claim for or arising out of any injury to or death of any Person or loss or damage to property of any Person to the extent arising out of Provider's licensed use of the property, negligence or willful misconduct or (b) any infringement of patents or the improper use of other proprietary rights by Provider or its employees or representatives that may occur in connection with the performance of the Installation Work, System Operations or Solar Services and the ownership and use of the System. Provider shall not, however, be required to reimburse or indemnify any Purchaser Indemnified Party for any Loss to the extent such Loss is due to the sole negligence or willful misconduct of any Purchaser Indemnified Party.

16.2 Purchaser's Indemnity. Subject to Section 12, Purchaser agrees that it shall indemnify and hold harmless Provider, its permitted successors and assigns and their respective directors, officers, members, shareholders and employees (collectively, the "Provider Indemnified Parties") from and against any and all Losses incurred by the Provider Indemnified Parties to the extent arising from or out of any claim for or arising out of any injury to or death of any Person or loss or damage to property of any Person to the extent arising out of Purchaser's willful misconduct. Purchaser shall not, however, be required to reimburse or indemnify any Provider Indemnified Party for any Loss to the extent such Loss is due to the negligence or willful misconduct of any Provider Indemnified Party.

17. INSURANCE.

17.1 Generally. Purchaser and Provider shall each maintain the following insurance coverages in full force and effect throughout the Term either through insurance policies or acceptable self-insured retentions: (a) Workers' Compensation Insurance as may be from time to time required under applicable federal and state law, (b) Commercial General Liability Insurance with limits of not less than $2,000,000 general aggregate, $1,000,000 per occurrence, and (c) automobile insurance with commercially reasonable coverages and limits. Additionally, Provider shall carry adequate property loss insurance on the System which need not be covered by the Purchaser's property coverage. The amount and terms of insurance coverage will be determined at Provider's sole discretion.

17.2 Certificates of Insurance. Each Party, upon request, shall furnish current certificates evidencing that the insurance required under Section 17.1 is being maintained. Each Party's insurance policy provided hereunder shall contain a provision whereby the insured agrees to give the other Party thirty (30) days' written notice before the insurance is cancelled or materially altered.

17.3 Additional Insureds. Each Party's insurance policy shall be written on an occurrence basis and shall include the other Party as an additional insured as its interest may appear.

17.4 Insurer Qualifications. All insurance maintained hereunder shall be maintained with companies either rated no less than A- as to Policy Holder's Rating in the current edition of Best's Insurance

Guide (or with an association of companies each of the members of which are so rated) or having a parent company's debt to policyholder surplus ratio of 1:1.

18. MISCELLANEOUS.

18.1 Integration; Exhibits. The Agreement, together with the Exhibits and Schedules attached thereto and hereto, constitute the entire agreement and understanding between Provider and Purchaser with respect to the subject matter thereof and supersedes all prior agreements relating to the subject matter hereof, which are of no further force or effect. The Exhibits and Schedules attached thereto and hereto are integral parts hereof and are made a part of the Agreement by reference. In the event of a conflict between the provisions of these General Conditions and any applicable Special Conditions, the provisions of the Special Conditions shall prevail.

18.2 Amendments. This Agreement may only be amended, modified or supplemented by an instrument in writing executed by duly authorized representatives of Provider and Purchaser.

18.3 Industry Standards. Except as otherwise set forth herein, for the purpose of the Agreement the normal standards of performance within the solar photovoltaic power generation industry in the relevant market shall be the measure of whether a Party's performance is reasonable and timely. Unless expressly defined herein, words having well-known technical or trade meanings shall be so construed.

18.4 Cumulative Remedies. Except as set forth to the contrary herein, any right or remedy of Provider or Purchaser shall be cumulative and without prejudice to any other right or remedy, whether contained herein or not.

18.5 Sovereign Immunity. To the extent permitted by Applicable Law, Purchaser hereby waives any defense of sovereign immunity that Purchaser might otherwise have in connection with any action taken by Provider to enforce its rights against Purchaser under this Agreement.

18.6 Limited Effect of Waiver. The failure of Provider or Purchaser to enforce any of the provisions of the Agreement, or the waiver thereof, shall not be construed as a general waiver or relinquishment on its part of any such provision, in any other instance or of any other provision in any instance.

18.7 Survival. The obligations under Sections 2.2 (Early Termination), 2.5 (Removal of System), Section 7.1(d) (Provider Covenant), Sections 7.2(d), (e), (f) and (g) (Purchaser Covenants), Section 8.3 (Exclusion of Warranties), Article 9 (Taxes and Governmental Fees), Article 12 (Limitation of Liability), Article 14 (Notices), Article 15 (Confidentiality), Article 16 (Indemnity), Article 18 (Miscellaneous), or pursuant to other provisions of this Agreement that, by their sense and context, are intended to survive termination of this Agreement shall survive the expiration or termination of this Agreement for any reason.

18.8 Governing Law. This Agreement shall be governed by and construed in accordance with the domestic laws of the State of Oregon. The Parties agree that the courts of the State of Oregon and the Federal Courts sitting therein shall have jurisdiction over any action or proceeding arising under the Agreement to the fullest extent permitted by Applicable Law.

18.9 Severability. If any term, covenant or condition in the Agreement shall, to any extent, be invalid or unenforceable in any respect under Applicable Law, the remainder of the Agreement shall not be affected thereby, and each term, covenant or condition of the Agreement shall be valid and enforceable to the fullest extent permitted by Applicable Law and, if appropriate, such invalid or unenforceable provision shall be modified or replaced to give effect to the underlying intent of the Parties and to the intended economic benefits of the Parties.

18.10 Relation of the Parties. The relationship between Provider and Purchaser shall not be that of partners, agents, or joint ventures for one another, and nothing contained in the Agreement shall be deemed to constitute a partnership or agency agreement between them for any purposes, including federal income tax purposes. Provider and Purchaser, in performing any of their obligations hereunder, shall be independent contractors or independent parties and shall discharge their contractual obligations at their own risk.

18.11 Successors and Assigns. This Agreement and the rights and obligations under the Agreement shall be binding upon and shall inure to the benefit of Provider and Purchaser and their respective successors and permitted assigns.

18.12 Counterparts. This Agreement may be executed in one or more counterparts, all of which taken together shall constitute one and the same instrument

18.13 Facsimile Delivery. This Agreement may be duly executed and delivered by a Party by execution and facsimile or electronic, "pdf" delivery of the signature page of a counterpart to the other Party.

18.14 Attorneys' Fees. If any legal action, arbitration, or other proceeding is brought for the enforcement of the Agreement or because of an alleged dispute, default, misrepresentation, or breach in connection with any of the provisions of the Agreement, except as expressly excluded in the Agreement, the successful or prevailing Party shall be entitled to recover reasonable attorneys' fees, expenses expert witness fees, and other costs incurred in that action or proceeding in addition to any other relief to which it may be entitled.

18.15 Liquidated Damages Not Penalty. Purchaser acknowledges that the Early Termination Fee constitutes liquidated damages, and not penalties, in lieu of Provider's actual damages resulting from the early termination of the Agreement. Purchaser further acknowledges that Provider's actual damages may be impractical and difficult to accurately ascertain, and in accordance with Purchaser's rights and obligations under the Agreement, the Early Termination Fee constitutes fair and reasonable damages to be borne by Purchaser in lieu of Provider's actual damages.

[Remainder of page intentionally left blank.]

These General Terms and Conditions are witnessed and acknowledged by SunEdison and Party B below. For the avoidance of doubt, neither SunEdison nor Party B shall have any obligations or liability resulting from its witnessing and acknowledging these General Terms and Conditions.

"SUNEDISON": SUNEDISON ORIGINATION3, LLC

By: ______________________________

Name: ______________________________

Title: ______________________________

Date: ______________________________

"PARTY B":

MEXPOSITION RECREATION COMMISSION

By: ______________________________

Name: ______________________________

Title: ______________________________

Date: ______________________________

Exhibit A
of General Conditions

[PURCHASER'S LETTERHEAD]

[Landlord's Address]
Attn: Authorized Representative

Re: Proposed Solar Power Installation at [Address of Premises]

Lease dated [ ] between [PURCHASER] and [LANDLORD] (the "Lease")

Dear Authorized Representative:

As has been discussed with you, [PURCHASER] and an affiliate of SunEdison Origination___, LLC ("SunEdison") have entered into a Solar Power & Services Agreement, pursuant to which SunEdison will install, finance, operate, and maintain a solar photovoltaic system at the above-referenced premises which [PURCHASER] leases from you pursuant to the Lease. By signing below and returning this letter to us, you confirm that:

1. The solar photovoltaic system and the renewable energy (including environmental credits and related attributes) produced by the system are personal property, and shall not be considered the property (personal or otherwise) of [LANDLORD] upon installation of the system at the premises.

2. SunEdison or its designee (including finance providers) shall have the right without cost to access the premises in order to install, operate, inspect, maintain, and remove the solar photovoltaic system. [LANDLORD] will not charge Purchaser or Provider any rent for such right to access the premises.

3. [LANDLORD] has been advised that the finance providers for the solar photovoltaic system have a first priority perfected security interest in the system. SunEdison and the finance providers for the solar photovoltaic system (including any system lessor or other lender) are intended beneficiaries of [LANDLORD]'s agreements in this letter.

4. [LANDLORD] will not take any action inconsistent with the foregoing.

We thank you for your consideration of this opportunity and we look forward to working with you in our environmental campaign to increase the utilization of clean, renewal energy resources.

Very truly yours,

[PURCHASER]

By:______________________________
Name:
Title: Authorized Representative

Acknowledged and agreed by:

[LANDLORD]
By: ______________________
Name:
Title: Authorized Representative

Exhibit B
of General Conditions

Certain Agreements for the Benefit of the Financing Parties

Purchaser acknowledges that Provider will be financing the installation of the System either through a lessor, lender or with financing accommodations from one or more financial institutions and that the Provider may sell or assign the System and/or may secure the Provider's obligations by, among other collateral, a pledge or collateral assignment of this Agreement and a first security interest in the System. In order to facilitate such necessary sale, conveyance, or financing, and with respect to any such financial institutions of which Provider has notified Purchaser in writing Purchaser agrees as follows:

(a) Consent to Collateral Assignment. Purchaser consents to either the sale or conveyance to a lessor or the collateral assignment by Provider to the a lender that has provided financing of the System, of the Provider's right, title and interest in and to this Agreement.

(b) Notices of Default. Purchaser will deliver to the Financing Party, concurrently with delivery thereof to Provider, a copy of each notice of default given by Purchaser under the Agreement, inclusive of a reasonable description of Provider default. No such notice will be effective absent delivery to the Financing Party. Purchaser will not mutually agree with Provider to terminate the Agreement without the written consent of the Financing Party.

(c) Rights Upon Event of Default. Notwithstanding any contrary term of this Agreement:

i. The Financing Party, as collateral assignee, shall be entitled to exercise, in the place and stead of Provider, any and all rights and remedies of Provider under this Agreement in accordance with the terms of this Agreement and only in the event of Provider's or Host's default. the Financing Party shall also be entitled to exercise all rights and remedies of secured parties generally with respect to this Agreement and the System.

ii. The Financing Party shall have the right, but not the obligation, to pay all sums due under this Agreement and to perform any other act, duty or obligation required of Provider thereunder or cause to be cured any default of Provider thereunder in the time and manner provided by the terms of this Agreement. Nothing herein requires the Financing Party to cure any default of Provider under this Agreement or (unless the Financing Party has succeeded to Provider's interests under this Agreement) to perform any act, duty or obligation of Provider under this Agreement, but Purchaser hereby gives it the option to do so.

iii. Upon the exercise of remedies under its security interest in the System, including any sale thereof by the Financing Party, whether by judicial proceeding or under any power of sale contained therein, or any conveyance from Provider to the Financing Party (or any assignee of the Financing Party) in lieu thereof, the Financing Party shall give notice to Host of the transferee or assignee of this Agreement. Any such exercise of remedies shall not constitute a default under this Agreement.

iv. Upon any rejection or other termination of this Agreement pursuant to any process undertaken with respect to Provider under the United States Bankruptcy Code, at the request of the Financing Party made within ninety (90) days of such termination or rejection, Host shall enter into a new agreement with the Financing Party or its assignee having the same terms and conditions as this Agreement.

(d) Right to Cure.

i. Purchaser will not exercise any right to terminate or suspend this Agreement unless it shall have given the Financing Party prior written notice by sending notice to the Financing Party (at the address provided by Provider) of its intent to terminate or suspend this Agreement, specifying the condition giving rise to such right, and the Financing Party shall not have caused to be cured the condition giving rise to the right of termination or suspension within thirty (30) days after such notice or (if longer) the periods provided for in this Agreement. The

Parties respective obligations will otherwise remain in effect during any cure period; provided that if such Provider default reasonably cannot be cured by the Financing Party within such period and the Financing Party commences and continuously pursues cure of such default within such period, such period for cure will be extended for a reasonable period of time under the circumstances, such period not to exceed additional ninety (90) days.

ii. If the Financing Party (including any purchaser or transferee), pursuant to an exercise of remedies by the Financing Party, shall acquire title to or control of Provider's assets and shall, within the time periods described in Sub-section (c)(i). above, cure all defaults under this Agreement existing as of the date of such change in title or control in the manner required by this Agreement and which are capable of cure by a third person or entity, then such person or entity shall no longer be in default under this Agreement, and this Agreement shall continue in full force and effect.

***

METROPOLITAN EXPOSITION-RECREATION COMMISSION

Resolution No. 09-18

For the Purpose of Authorizing a Rent Adjustment for the Period of November 1, 2009 through October 31, 2014 for the New Theater Building Land Lease with the First Congregational Church

WHEREAS, the Portland Center for the Performing Arts ("PCPA"), one of the Commission's facilities, leases the land underlying the New Theater Building from the First Congregational Church ("Church") pursuant to a 99-year ground lease agreement dated November 1, 1984 between the City of Portland and the First Congregational Church entitled "Ground Lease, Parking Rights Agreement and Agreement to Lease Space" ("Ground Lease"), wherein the PCPA has been assigned the City's rights as to the lease rights for the New Theater Building, and wherein the Church subleases back a small portion of the leased space ("Church Space"); and

WHEREAS, the Ground Lease provides for a periodic rental rate adjustment every five (5) years on each November 1 of each calendar year of the Term when such calendar year ends in a "9" or a "4;" for both the Lease from the Church to PCPA and also from PCPA to the Church for the subleased Church Space,; and

WHEREAS, rather than go through the costly appraisal process provided for in the Ground Lease, legal counsel for the PCPA and the Church have negotiated a nominal net increase for this five-year term of $50/month from PCPA to the Church, which does not break down the gross rental increase from the PCPA to the Church or the gross increase from the Church to the PCPA for the Church Space, but instead the parties agreed to a net nominal increase of $50/month from the PCPA to the Church, which represents an increase of .00394% for the upcoming five years; and

WHEREAS, this results in a net payment from PCPA to the Church of $11,234.50 per month after sublease set-off; and

WHEREAS, Staff recommends that the Commission approve this nominal rental increase;

BE IT THEREFORE RESOLVED AS FOLLOWS:

1. The Metropolitan Exposition-Recreation Commission approves the rental adjustment of $50/month for an annual gross rent of $152,600, which results in a gross payment from PCPA to the Church of $12,717 per month prior to sublease setoff;

2. The Metropolitan Exposition-Recreation Commission authorizes the MERC Interim General Manager to execute a lease amendment consistent with this resolution, in a form approved by legal counsel.

Passed by the Commission on November 4, 2009.

____
Chair

Approved as to Form:

______________________________ ______________________________

Alison Kean Campbell,
Deputy Metro Attorney

Secretary-Treasurer

MERC STAFF REPORT

Agenda item: For the purpose of Authorizing a Rent Adjustment for the period of November 1, 2009 through October 31, 2014 for the Antoinette Hatfield Hall Land Lease with the First Congregational Church.

Resolution No.: 09-18

Date: November 4, 2009 **Presented by:** Robyn Williams

Background:

The land on which Hatfield Hall was constructed was leased for 99 years beginning November 1, 1984. The original ground lease agreement was between the City of Portland and the Church, and the City assigned all its rights and obligations regarding this lease via the December 18, 1989 Agreement Regarding Consolidation of Regional Convention, Trade, Spectator and Performing Arts Facilities Owned and operated by the City of Portland and the Metropolitan Service District.

The Lease Agreement provides that the rent shall be adjusted at 5 year intervals on each November 1 when the calendar year ends in a "9" or a "4". The rental rate for the land is required to be based on Fair Market Value of the 20,000/sf site and the Fair Rate of Return. In addition it is provided that First Congregational Church shall lease back the identified 3000/sf Church Space in Hatfield Hall (located at the corner of Broadway and Madison).

Legal Counsel for PCPA and the Church have negotiated a nominal increase for this five-year term of $50/month net increase, which results in a gross payment of $12,717 per month prior to sublease setoff and a net monthly payment of $11,234.50 after sublease setoff.

Fiscal Impact:

The adopted PCPA budget for FY10 provides for annual rent at $135,000. Actual expense will be $134,614.

Recommendation:

Staff recommends that the Commission approve Resolution No. 09-18 for the purpose of Authorizing a Rent Adjustment for the period of November 1, 2009 through October 31, 2014 for the Antoinette Hatfield Hall Land Lease with the First Congregational Church

METROPOLITAN EXPOSITION RECREATION COMMISSION

Resolution No. 09-19

For the purpose of approving and transmitting a budget amendment to the MERC Fund for fiscal year 2009-10

WHEREAS, Metro Code 6.01.050 provides that the Commission shall annually prepare and approve an annual budget which shall, to the maximum extent permitted by law, consist of one commission-wide series of appropriations; and

WHEREAS, Metro Code 6.01.050(d) further provides that once the Commission's budget has been adopted by the Metro Council, any changes in the adopted appropriations must be ratified in advance by the Metro Council; and

WHEREAS, the Commission previously approved and transmitted to the Metro Council the fiscal year 2009-10 budgets for the MERC Fund; and

BE IT THEREFORE RESOLVED, that the Metropolitan Exposition Recreation Commission approves a budget amendment to the MERC Fund as described in Exhibit A and the attached Staff Report for the fiscal year beginning July 1, 2009 and ending June 30, 2010 for inclusion as part of the total Metro budget for this period.

Passed by the Commission on November 4, 2009

____
Chair

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

By:______________________________
Nathan A. Schwartz Sykes,
Senior Attorney

____
Secretary-Treasurer

Exhibit A
Resolution 09-19

ACCT	DESCRIPTION	Current Budget FTE	Current Budget Amount	Revision FTE	Revision Amount	Amended Budget FTE	Amended Budget Amount
Metro Exposition Recreation Commission Fund							

MERC Fund

ACCT	DESCRIPTION	Current Budget FTE	Current Budget Amount	Revision FTE	Revision Amount	Amended Budget FTE	Amended Budget Amount
	Resources						
BEGBAL	*Beginning Fund Balance*						
	* Prior year ending balance		25,702,261		0		25,702,261
	* Oregon Convention Center		325,000		0		325,000
	* Portland Center for the Performing Arts		47,500		0		47,500
GRANTS	*Grants*						
4125	Local Grants - Indirect		0		216,925		216,925
LGSHRE	*Local Gov't Share Revenues*						
4130	Hotel/Motel Tax		10,930,634		0		10,930,634
4142	Intergovernment Misc. Revenue		43,955		0		43,955
4145	Government Contributions		760,926		0		760,926
CHGSVC	*Charges for Service*						
4500	Admission Fees		1,439,332		0		1,439,332
4510	Rentals		7,201,549		0		7,201,549
4550	Food Service Revenue		12,123,799		0		12,123,799
4560	Retail Sales		22,000		0		22,000
4575	Advertising		25,500		0		25,500
4580	Utility Services		1,516,818		0		1,516,818
4590	Commissions		682,300		0		682,300
4620	Parking Fees		2,603,350		0		2,603,350
4645	Reimbursed Services		3,152,282		0		3,152,282
4647	Reimbursed Services - Contract		460,747		0		460,747
4650	Miscellaneous Charges for Svc		289,880		0		289,880
INTRST	*Interest Earnings*						
4700	Interest on Investments		586,518		0		586,518
DONAT	*Contributions from Private Sources*						
4750	Donations and Bequests		307,000		0		307,000
4755	Capital Donations and Bequests		1,250,000		0		1,250,000
4760	Sponsorship Revenue		365,500		0		365,500
MISCRV	*Miscellaneous Revenue*						
4805	Financing Transaction		81,126		0		81,126
4890	Miscellaneous Revenue		36,100		25,000		61,100
4891	Refunds and Reimbursements		5,000		0		5,000
EQTREV	*Fund Equity Transfers*						
4970	Transfer of Resources						
	* from General Fund		692,490		0		692,490
TOTAL RESOURCES			**$70,651,567**		**$241,925**		**$70,893,492**
	Total Personal Services	**194.00**	**$18,534,604**	**0.00**	**$0**	**194.00**	**$18,534,604**
	Materials & Services						
GOODS	*Goods*						
5201	Office Supplies		223,555		0		223,555
5205	Operating Supplies		297,086		0		297,086
5210	Subscriptions and Dues		90,896		0		90,896
5214	Fuels and Lubricants		17,970		0		17,970
5215	Maintenance & Repairs Supplies		584,175		0		584,175
5225	Retail		9,000		0		9,000
SVCS	*Services*						
5240	Contracted Professional Svcs		1,273,843		260,000		1,533,843
5245	Marketing Expense		2,619,362		0		2,619,362
5247	POVA Pass-Through		412,681		0		412,681
5251	Utility Services		2,584,520		0		2,584,520

Exhibit A
Resolution 09-19

ACCT	DESCRIPTION	Current Budget FTE	Current Budget Amount	Revision FTE	Revision Amount	Amended Budget FTE	Amended Budget Amount
	Metro Exposition Recreation Commission Fund						
	MERC Fund						
5255	Cleaning Services		33,260		0		33,260
5260	Maintenance & Repair Services		836,943		0		836,943
5265	Rentals		591,388		0		591,388
5270	Insurance		28,060		0		28,060
5280	Other Purchased Services		420,448		0		420,448
5281	Other Purchased Services - Reimb		390,913		0		390,913
5291	Food and Beverage Services		9,431,528		0		9,431,528
5292	Parking Services		292,357		0		292,357
IGEXP	*Intergov't Expenditures*						
5300	Payments to Other Agencies		235,379		306,564		541,943
5310	Taxes (Non-Payroll)		11,500		0		11,500
5320	Government Assessments		0		0		0
OTHEXP	*Other Expenditures*						
5450	Travel		164,625		0		164,625
5455	Staff Development		221,665		0		221,665
5490	Miscellaneous Expenditures		5,500		0		5,500
Total Materials & Services			**$20,776,654**		**$566,564**		**$21,343,218**
	Capital Outlay						
CAPCIP	*Capital Outlay (CIP Projects)*						
5710	Improve-Oth thn Bldg		75,000		0		75,000
5720	Buildings & Related		3,123,490		(18,075)		3,105,415
5740	Equipment & Vehicles		56,000		0		56,000
5750	Office Furniture & Equip		170,000		0		170,000
Total Capital Outlay			**$3,424,490**		**($18,075)**		**$3,406,415**
	Debt Service						
LOAN	*Loan Payments*						
5610	Loan Payments-Principal		10,280		135,000		145,280
5615	Loan Payments-Interest		6,978		0		6,978
Total Debt Service			**$17,258**		**$135,000**		**$152,258**
Total Interfund Transfers			**$3,704,857**	**0.00**	**$0**		**$3,704,857**
	Contingency and Ending Balance						
CONT	*Contingency*						
5999	Contingency						
	* General Contingency		2,009,197		(683,489)		1,325,708
	* Renewal and Replacement		970,000		0		970,000
	* Prior Year PERS Reserve		1,486,398		0		1,486,398
	* Reimbursable HQH Contingency		3,700,000		0		3,700,000
	* Contingency for Capital (TL TAX)		640,310		0		640,310
UNAPP	*Unappropriated Fund Balance*						
5990	Unappropriated Fund Balance						
	* Restricted Fund Balance (User Fees)		1,339,841		0		1,339,841
	* Ending Balance		12,148,391		241,925		12,390,316
	* Renewal & Replacement		815,000		0		815,000
	* Current Year PERS Reserve		375,187		0		375,187
	* Prior Year PERS Reserve		709,380		0		709,380
Total Contingency and Ending Balance			**$24,193,704**		**($441,564)**		**$23,752,140**
TOTAL REQUIREMENTS		**194.00**	**$70,651,567**	**0.00**	**$241,925**	**194.00**	**$70,893,492**

Exhibit B
Resolution 09-16
Schedule of Appropriations

	Current Appropriation	Revision	Revised Appropriation
MERC FUND			
MERC	42,735,748	548,489	43,284,237
Non-Departmental			
Debt Service	17,258	135,000	152,258
Interfund Transfers	3,704,857	0	3,704,857
Contingency	8,805,905	(683,489)	8,122,416
Unappropriated Balance	15,387,799	241,925	15,629,724
Total Fund Requirements	**$70,651,567**	**$241,925**	**$70,893,492**

MERC Staff Report

Agenda Item/Issue

Resolution No: 09-19 **Presented By: Cynthia Hill**

Date: November 4, 2009

Background and Analysis: Resolution 09-19 approves the proposed budget amendment for submission to the Metro Council.
.
This resolution requests a modification to the FY 2009-10 MERC budget for four items as described below.

1. In FY 2008-09 MERC received a $225,000 contribution from the City of Portland for Architectural and Urban Design for the Arlene Schnitzer Concert Hall (ASCH) Renovation and Main Street Project. About $216,925 will carry forward to FY 2009-10 for this project. An additional $43,075 will be reallocated from the unspent ASCH Rigging capital project, which is delayed until FY 2010-11, and funded from the Friends of the PCPA donation. This action requests an increase of $260,000 in professional services to provide for continuation of the project.

2. MERC is required to pay a Local Improvement District (LID) assessment made by the City of Portland on the PCPA for the Portland Mall Revitalization project. The total assessment is $310,025. MERC is responsible for $306,564 and the First Congregational Church is responsible for $3,461 of the assessment because of their ownership of 1126 SW Park St. Although financing options are available through the City of Portland, the most cost effective alternative is to make payment in full when due. This action requests the transfer of $306,564 from the MERC contingency to pay the assessment.

3. In 2002, the Oregon Convention Center was required to pay a Local Improvement District (LID) assessment to the City of Portland for the Steel Bridge improvements. MERC chose to finance this payment over a 20 year period. The loan carries an interest rate of 5.32 percent. Under the current market conditions it is most cost effective to pay off this loan in full. Retiring this debt now will save approximately $50,000 in future interest payments over the remaining life of the loan. This action requests the transfer of $135,000 from the MERC contingency to retire this debt. The original amount of the LID was $205,588 issued in January 2002.

4. During the Oregon Convention Expansion project an insurance reserve account was funded for potential outstanding workers' compensation claims. This account will be closed and the final balance of $25,000 will be released to the Oregon Convention Center. These funds are required to be used for capital projects. MERC is reinvesting this revenue in the renovation of a portion of the Oregon Convention food service facility known as the Stir Lounge. The request, although initially funded from contingency, will be offset by a declaration of $25,000 in miscellaneous revenue. The Adopted Budget included $275,000 for the Stir Project.

Budget Impacts: This ordinance authorizes a net reduction in contingency of $683,489 to make payment to the City of Portland, retire an outstanding loan and continue projects at PCPA and the Oregon Convention Center. Additional revenue of $241,925 will be recognized or received to offset the contingency reduction.

R**ecommendation:** Staff recommends that the Metropolitan Exposition Recreation Commission adopt Resolution 09-19.

MERC Commission Meeting

November 4, 2009
12:30 pm

7.0 - Metro COO Comments

600 NE Grand Ave.
Portland, OR 97232-2736

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Commissioners,

We would like to share our sincere appreciation for your leadership and guidance as we embark on improving the structure and relationship between the Commission and the Metro Council. We felt that the discussion during our retreat was critical to moving forward and that your questions and suggestions offered insightful direction.

In response to our discussion about proposed changes to Metro code, we have updated the Title VI Revisions Matrix for your review and for subsequent discussion at the Commission meeting this Wednesday.

This matrix addresses issues that are specific to the code revision proposal. There is significant work still ahead, through the amendment of the bylaws, to address how the Commission communicates within its self, how staff will most effectively support the Commission and how to maximize a collaborative relationship with the Metro Council to ensure the greatest success of these regional facilities.

We look forward to our upcoming discussions and building on the good work completed thus far.

Sincerely,

Michael Jordan

Cheryl Twete

Title VI revision summary

Topic	Current	Proposed change	Proposed Operations Adjustments	Questions from retreat	Responses
6.01.010: Commission Purpose	The Commission is responsible and accountable for managing day to day operations of the facilities independently.	Yes	The commission will give policy direction to the COO, provide oversight and industry advisement. The COO will be responsible and accountable for managing day to day operations.	*How will "policy direction" be defined and practiced? What is the degree of authority of the Commission?*	*Policy direction will need to be defined as MERC moves forward, perhaps in a revision of bylaws. In regards to the Code, the level of authority will not change unless proposed below in specific areas of the code.*
6.01.030 (d): Commission Created	The Council President will accept nominations to the commission as follows: (1) The County Commissions of Clackamas, Multnomah and Washington counties each shall nominate one candidate. (2) The City Council of the City of Portland shall nominate one candidate for each of two positions. (3) Two nominees shall be at the sole discretion of the Council President.	No		*The nomination process (i.e. jurisdictions nominate but Metro appoints) should be stated explicitly.*	*The nomination process is explicit in the code (see column two in this row) there are no proposed changes to this nomination process.*
6.01.030: Commission Created	There is no formal participation by Metro Council at Commission meetings.	Yes	One Metro councilor will be appointed to serve as an ex- officio non-voting member of the commission.	*Is the ex-officio role structured to be supportive of / of value to MERC or is it really a watchdog? Where is the most supportive opportunity for Commission-Council engagement? (Note: Reliance on chairs didn't work, as illustrated in the debrief graphic).*	*The appointment of the ex-officio member will be executed by the Council President in consultation with the MERC Commission. The designated ex-officio will facilitate communication between the Commission and the Council. The Metro Council should be brie fed on topics of concern being addressed by the Commission, and the Commission should be advised of the direction and expectations set by Council.*
6.01.040 Powers (a & b): Managing facilities	The Commission renovates, manages and maintains facilities while operating and marketing the use of those facilities.	Yes	The Commission will continue to oversee the management of the facilities through the COO by adoption of operating standards, labor agreements, rates and marketing policies. The COO will make recommendations to the Commission on such issues.	*At what monetary level will contracts come before MERC (Currently any contract over $100k goes to MERC)? Does "marketing policies" include entering into contracts?*	*1.There is no proposed change to MERC's authority to enter into contracts. 2. Marketing policies can be considered as strategies on event mix, customer targets, and how to keep the venues busy with the expected use. Examples would be : What is the right balance between uses at the PCPA which are local companies (non-profits such as Ballet, Opera etc) and commercial companies that result in higher profits for the buildings? How much of the OCC mix is "heads in beds" and how much are local shows that generate fewer visitors?*
6.01.040 Powers (c, d & e): Owning property	The Commission acquires, disposes of and maintains real and personal property.	Yes	The Commission will give policy direction to the COO in regards to procurement and sale of property.	*How will the overall MERC appropriations process be affected?*	*The MERC appropriations process is addressed within MERC internal policies, there are no proposed changes.*
6.01.040 Powers (f & g): Use of buildings	The commission has power and authority to lease, rent and authorize use of facilities.	No			
6.01.040 Powers (h & i): Personnel agreements	The Commission employs, manages and terminates personnel.	Yes	This part of Title VI has been amended by Metro Council such that the COO employs, manages and terminates personnel.	*How will the Commission participate in general manager selection ? Does the COO employ all personnel or the GM/executive staff only?*	*The COO is ultimately responsible for the selection of executive staff. The selection of executive staff will be made with consultation by the Commissio n. The COO will then delegate responsibility to subordinate staff when necessary.*

Topic	Current	Proposed change	Proposed Operations Adjustments	Questions from retreat	Responses
6.01.040 Powers (j, k &l): Enter into Contracts	The Commission enters into contracts and intergovernmental agreements and accepts gifts and donations and contracts for and receive federal and other aid and assistance.	No			
6.01.040 Powers (m): Services required	The Commission determines levels of business services necessary and may chose to use Metro services or other as deems necessary.	Yes	The operations of MERC facilities have not and should not be completely separate from Metro operations, in particular to auditing and accounting functions as required by law to be unified within Metro.		*While not to be included in the code, there is currently a business review process underway that includes the GM and the facilities directors, as well as Metro directors and associated staff. The purpose is to determine best practices between the two agencies and to ensure the needs of the facilities are fully met.*
6.01.040 Powers (n): Rate setting; general obligation and revenue raising measures	The Commission recommends to the Metro Council, and other public facility owners, long term financial needs of facilities.	No			
6.01.040 Powers (o & p): Adoption of Ordinance and exercise of powers	The Commission recommends to the Metro Council the adoption of ordinances carrying criminal and civil penalties for their violation, but the commission may not adopt such ordinances itself; to do all other acts necessary to the exercise of the powers of the commission.	No			
Proposed Addition : 6.01.040 Powers : Personnel agreements	There is no formal section regarding the performance review of the COO.	N/A	MERC will act as a major stakeholder in the performance review of the COO conducted by the Metro council.	*The commission would like to designate and hold the COO accountable to create meaningful Council/Commission interface.*	*MERC and the Council will meet for at least one annual joint meeting in which the office of the COO will be responsible for scheduling. Additionally, quarterly reports will be developed by the COO and shared with the Commission and the Council.*
6.01.050: MERC budget	The commission accounts are kept in conformity with generally accepted accounting practices.	No			
6.01.060: Commission meetings	The commission conducts meetings in accordance to Oregon law	No			
6.01.070: Delegation of authority	The commission may delegate to its employees any power and authority of the commission.	Yes	All delegation should be done so through the COO.		*While not to be codified, further discussion about delegation to the COO and staff must take place; possibly to amend the Commission bylaws.*

Topic	Current	Proposed change	Proposed Operations Adjustments	Questions from retreat	Responses
6.01.080: Legislative responsibilities	The commission with file resolutions with the Metro Council clerk and resolutions of the commission shall be effective upon adoption.	No			
6.01.100: Business plans	The commission is required on an annual basis to set goals and benchmarks for the facilities.	Yes	MERC shall meet at least once a year with Council to establish goals and benchmarks for the facilities.	*Does MERC set goals and benchmarks within a Metro policy framework ("Receive or set direction") or does MERC have autonomy to set goals based on business opportunities ? 2. There should be a structure to foster greater communication between the Council and Commission, including an ongoing communication mechanism, and provides for at least one session with both bodies per year.*	*Yes, MERC goals and polices are to be set in the context of the overall Metro policy framework set by the council. This is currently accomplished through the budget process. 2. The annual business plan goal setting process necessitates one annual joint meeting in which the Office of the COO is accountable for scheduling. Additional communication should be facilitated by the COO and the ex-officio through quarterly reports and other forms of formal and informal communication.*
ADDITIONAL QUESTIONS				*What happens when the two bodies disagree?*	*It will be the COO (and delegated management) responsibility to indentify conflict and facilitate in the reconciliation of disagreements.*
				Is there still an expectation that MERC will have an entrepreneurial culture, and how does that fit with the redefined relationship with Metro?	*There are no proposed changes to the code that would inhibit an entrepreneurial culture. The expectation continues that MERC will have an entrepreneurial culture.*
				Better ground rules for working with Metro, with officers of the Commission and among commissioners should be established. Who appoints the MERC chair and officers?	*Working with Metro, see 6.01.030. Within the commission, not applicable for Title 6, but should be addressed in bylaws or other Commission agreement.*