

METROPOLITAN EXPOSITION-RECREATION COMMISSION

RESOLUTION NO. 32

Authorizing the Chairman and Secretary/Treasurer to enter into a Concessions and Catering Service Agreement with Fine Host Corporation to manage and operate the Commission's concessions and catering facilities at the Oregon Convention Center for the period October 1, 1989, through June 30, 1995.

The Metropolitan Exposition-Recreation Commission finds:

1. On March 14, 1989, the Commission appointed a Selection Committee.
2. On April 26, 1989, by Resolution No. 27, the Commission authorized release of a Request for Proposals for Concessions and Catering Management.
3. After receiving and considering proposals from seven parties, the Selection Committee interviewed the three proposers found to be most qualified to provide these services.
4. The Selection Committee has recommended to the Commission that it enter into a contract with Fine Host Corporation.

BE IT THEREFORE RESOLVED:

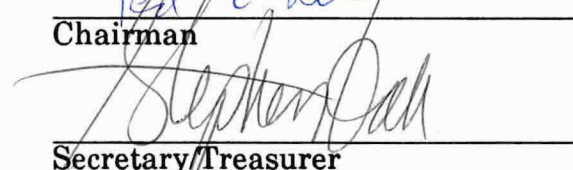
1. That Fine Host Corporation is found to be the most advantageous proposer to the Commission to manage and operate the Commission's concessions and catering facilities.
2. That the Chairman and Secretary/Treasurer are hereby authorized to enter into an agreement (attached hereto) with Fine Host Corporation for the operation of the Commission's concessions and catering facilities, as Concessions and Catering Manager, effective October 1, 1989, through June 30, 1995.

Passed by the Commission on August 9, 1989.

APPROVED AS TO FORM:

  
Metro General Counsel

  
Chairman

  
Secretary/Treasurer

ATTACHMENT B

**PROPOSED CONCESSIONS AND CATERING MANAGEMENT AGREEMENT**

This agreement is made and entered into on this \_\_\_\_\_ day of \_\_\_\_\_, 1989, by and between the \_\_\_\_\_ Commission (Commission), and \_\_\_\_\_ (Concessionaire), a \_\_\_\_\_ corporation.

**WITNESSETH:**

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. "Coliseum" means the Portland Memorial Coliseum Complex located between Broadway and Hassalo Streets, and Wheeler and Interstate Avenues, in Portland, Oregon.
- b. "Stadium" means the Portland Civic Stadium located between 18th and 20th Streets, and Morrison and Salmon Streets, in Portland, Oregon.
- c. "Convention Center" means the Oregon Convention Center (currently under construction and scheduled for opening in September, 1990), located on a 17 acre site bordered by the I-5 freeway on the west, Holladay Street on the north, Union Avenue (US 99E) on the east, and the Banfield Freeway (I-84) on the south, in Portland, Oregon.
- 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, tobacco, and similar products to patrons of events at the Coliseum, Stadium and Convention Center, in an efficient and courteous manner and in a clean and appealing environment. "Concessions" does not mean the sale of food, beverages, candy, tobacco, and similar products at the Coliseum, Stadium and Convention Center through the use of vending machines. The sale and delivery of food, beverages, candy, tobacco, and similar products through vending machines is covered under a separate contractual agreement with the Commission.

- e. "Concessions products" means all food, beverages, candy, tobacco, and similar products which the Commission directs or allows the Concessionaire to sell to patrons of events at the Coliseum, Stadium and Convention Center pursuant to this agreement.
- f. "Concessionaire's Employees" means only employees of the Concessionaire who are engaged exclusively in the management and operation of the concessions and who have no other responsibility on behalf of the Concessionaire.
- g. "Accounting Year" means the period commencing July 1 of each year and ending June 30 of the following year, consisting of 13 accounting periods at the ERC facilities and 12 accounting periods at the Metro ERC facility. The Commissions will provide an accounting period calendar for each year of the agreement.
- h. "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 or interest earned on funds in the concessions accounts.
- i. "Net Profits" means the amount calculated pursuant to Section 9 of this agreement.
- j. "Metro ERC" shall mean the Metropolitan Exposition-Recreation Commission, a subdivision of the Metropolitan Service District (Metro).
- k. "ERC" shall mean the Exposition-Recreation Commission, a subdivision of the City of Portland, Oregon (City).

2. **ENGAGEMENT**

Subject to the terms of this agreement and the direction of the Commission's General Manager or such other Commission personnel as he may designate, the Concessionaire shall manage and operate the concessions and catering at the Commission's facilities (Coliseum, Stadium, and Convention Center). This engagement is further subject to the relevant terms and conditions of any existing and subsequent use agreements between the Commission and regular users of the Coliseum, Stadium, and Convention Center.

3. **RELATIONSHIP OF THE PARTIES**

The Commission and the Concessionaire have entered into this agreement for the purpose of establishing an independent contractor relationship between the

Commission and the Concessionaire. 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 the Commission, its successors or assigns on the one part, and the Concessionaire, its successors or assigns on the other part. It is further agreed that the Concessionaire will provide its own workers compensation insurance or self-insurance program as permitted under Oregon statutes. The Concessionaire shall, subject to the terms and provisions of this agreement, have complete and independent control and discretion over the operation of the concessions and catering services contemplated by this agreement.

It is expressly understood that neither Concessionaire nor the Commission 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.

Concessionaire 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, the contracting Commission and the Concessionaire 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.

4. TERM OF THE AGREEMENT

The term of this agreement shall be for five years, nine months, with the first year commencing October 1, 1989, and ending on June 30, 1990 (nine months), and the final year terminating on June 30, 1995, unless sooner terminated as provided herein.

<u>Year No.</u>	<u>Fiscal Year</u>	<u>Coliseum/Stadium</u>	<u>OCC</u>
1	89-90	9 months	--
2	90-91	12 months	10 months
3	91-92	12 months	12 months
4	92-93	12 months	12 months
5	93-94	12 months	12 months
6	94-95	12 months	12 months

The Commission shall have the right at the end of the term of this agreement to extend this agreement for two additional two-year terms, based on the same conditions as set out in the original agreement. Notwithstanding, the Commission shall have the right to renegotiate the terms of any renewal

agreement to accommodate changes in operations, circumstances or industry practice. Sixty (60) days written notice to the Concessionaire by the Commission prior to the termination of the original agreement shall be sufficient to exercise the renewal option.

**5. EXCLUSIVE CONCESSIONS AND CATERING RIGHTS**

Subject to the provisions of this agreement, the Commission shall grant to the Concessionaire the exclusive right to manage, operate and sell in the Commissions' facilities, all food, alcoholic and non-alcoholic beverages, candy, tobacco, and other similar products as the General Manager of the Commissions 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 Concessionaire, the Concessionaire shall conduct such sales.

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

Exclusive sales rights granted herein include but are not limited to the following areas of concession and catering sales:

- a. Permanent concession stands
- b. Portable concession stands
- c. Permanent specialty concession stands
- d. Concessions hawking in seating areas
- e. Press box and lounges
- f. Banquet rooms, meeting rooms and exhibit halls.

Additional areas of concession and catering sales in the Commission's facilities may be added at the discretion of the Commission's General Manager.

The exclusive sales right shall be extended to the sale of alcoholic beverages in the appropriate concessions and catering areas, provided however that the Concessionaire may be required to obtain and maintain all necessary licenses and permits in connection with the sale of such alcoholic beverages. Presently, it is the intent of the Commission that the liquor license be held in the name of the Commission. The sale of alcoholic beverages shall be permitted in the approved concessions and catering areas only and at such Commission events as are approved in advance by the Commission's General Manager.

All food and beverage products prepared on Commission premises must remain and be sold exclusively on Commission premises unless otherwise authorized in advance by the Commission's General Manager. Notwithstanding, the Concessionaire may transfer food and/or beverages prepared at one Commission facility to another facility otherwise managed by the Concessionaire under this contract or another contract with Metro ERC or ERC without prior consent of either Commission.

The exclusive sales right granted herein to the Concessionaire shall not include the following:

- a. Parking rental concessions which are reserved exclusively by the Commission.
- b. Advertising sales which are reserved exclusively by the Commission.
- c. Facility user and tenant novelty souvenirs and program sales.
- d. Free distribution of food, beverage or merchandise samples by a trade or consumer show exhibitor which are the normal sales products of the exhibitor or sale of food or beverage products by exhibitors for consumption off Commission premises.
- e. Vending machine sales.

## 6. DUTIES OF THE CONCESSIONAIRE

For the exclusive sales rights granted in Article 5 and the management fee consideration provided for in Article 9 hereof, the Concessionaire shall be responsible for providing skillful and commercially effective management and operation of the concessions and catering operations. The Concessionaire shall be responsible for performing satisfactorily all functions, duties, and activities outlined in this agreement and any incidental activities required to successfully accomplish said functions and duties. The Concessionaire must manage and operate the concessions and catering operations in a professional and efficient manner, which will be conducive to providing first-class, high-quality services and products to Commission facility patrons in a clean and appealing environment.

The Concessionaire shall be responsible for performing but shall not be limited to the following duties and functions:

- a. Employ a highly skilled professional on-site concessions and catering manager who possesses the necessary experience and expertise to provide the overall management capability for a first class concessions and high-quality catering operation. Notwithstanding, this manager may be shared between the Commissions.
- b. Subject to Commission review and approval, develop and implement all necessary policies and procedures for the concession and catering opera-

tion. Such policies and procedures shall not be subject to Commission review with respect to labor relations.

- c. **Employ and train all employees necessary for the successful operation of the concessions and catering operation. Training of the employees must encompass the concepts and policies of a first class concession and high-quality catering operation, including appropriate first aid techniques.**
- d. **Design and prepare specifications for the purchase of uniforms for concession and catering employees to be worn at all Commission events. Uniform design must be approved by the Commission General Manager prior to purchase. Concessionaire shall provide and maintain all uniforms in a neat and clean condition.**
- e. **Provide for retail sale of food, beverages, candy, tobacco, and similar products at all appropriate concession and catering areas outlined in Article 5 hereof.**
- f. **Order, purchase, receive delivery of, and store all consumable supplies and products necessary for the operation of the concessions and catering operation.**
- g. **Assist the Commission as requested by the Commission's General Manager 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. Successful proposer shall consult with and cause its affiliates to consult with the Commission in assisting with completion of food and beverage preparation facilities, concession stands, etc.**

**(Metro ERC only) Concessionaire shall submit for approval of the Commission General Manager recommended smallware purchases or other support equipment necessary to equip the Oregon Convention Center. List shall total no more than \$600,000. Upon approval of Commission General Manager, Concessionaire shall procure such smallwares and/or furniture and equipment for the Oregon Convention Center Skyview Terrace area prior to the opening of the Oregon Convention Center.**

- h. **Prepare all concessions products for sale or distribution.**
- i. **Advise and make recommendations to the Commission concerning all operational phases of concessions and catering including but not limited to the kind, quality, brand, and price of concessions products, use of portable specialty stands, and the sale of products. The final decision regarding these matters shall rest with the Commission.**

- j. Comply with all existing laws and regulations relating to the preparation and handling, sale and disposal of concessions and catering products. Procure and maintain at all times the necessary permits and licenses required by any laws and regulations for operations of concessions and catering. Use of styrofoam products is prohibited.**
- k. Maintain at all times all related concessions and catering office, storage, kitchens, service, and retail sales areas in a clean and sanitary condition. Cleaning and waste removal from all concessions and catering areas to assigned facility compactors shall be the Concessionaire's responsibility. The Concessionaire shall also order once a month or as deemed necessary by the Commission permanent pest control through professional contract services approved by the Commission to ensure the highest standards of cleanliness and sanitary conditions in the concessions and catering areas.**
- l. Subject to prior approval by the Commission's General Manager, arrange for all repairs and maintenance to the concessions and catering facilities and equipment.**
- m. Subject to prior written approval by the Commission, arrange for replacement or modification of the concessions facilities.**
- n. Pay all sales, business and occupational taxes and other similar taxes required by law related to the operation of the concessions and catering at the Commission facilities.**
- o. Pay all catering gratuities collected for and on behalf of the concessionaire employees in a fair and equitable manner.**
- p. Provide for the necessary levels of financial reporting and accountability to the Commission as outlined in Article 11 hereof.**
- q. Prepare and submit an annual operating budget for each accounting year to the Commission for approval as outlined in Article 11 hereof.**
- r. Negotiate all collective bargaining agreements relative to the Concessionaire's employees and maintain effective day to day working relationships with appropriate union representatives.**
- s. Provide all necessary food and beverage related set up for concessions and catering events in Commission facilities as determined by the Commission's General Manager.**
- t. Upon prior written approval of the Commission's General Manager, arrange for advertising, marketing, and promotion of concessions and catering products and services.**



- u. (Metro ERC only) Sponsorship participation as indicated in the response form, for the Grand Opening of the Oregon Convention Center, will include the following:

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**7. RESPONSIBILITIES OF THE COMMISSION**

The Commission shall be responsible for performing the following duties and functions:

- a. The Commission at its sole expense shall construct, furnish and equip the physical facilities of the Coliseum, Stadium, and Convention Center including office space which it deems necessary for the Concessionaire (except such capital investment as called for in this agreement).
- b. The Commission shall furnish the Concessionaire statements of turnstile or estimated attendance for all events at the Coliseum, Stadium, and Convention Center for which the concessions are open to assist the Concessionaire in accomplishing its accounting responsibilities.
- c. The Commission shall prohibit the selling and distributing of any concessions or catering products or services in the Commission's facilities and on its premises by anyone except the Concessionaire, subject to the exclusions provided for in Articles 5 and 8 of this agreement.
- d. The Commission shall cooperate with the Concessionaire in obtaining all necessary licenses and permits.
- e. The Commission shall conduct business with the Concessionaire in an efficient and professional manner.

**8. POWERS RESERVED TO THE COMMISSION**

The Concessionaire shall, subject to the approval of the Commission and all of the terms and provisions of this agreement, have complete control and discretionary authority with respect to the operation of the concessions and catering services, 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 Concessionaire and the Commission, the decision of the

**Commission concerning the operation or management of the concessions and catering services shall be final and binding on both parties. By way of illustration and not limitation, the reserved powers of the Commission are as follows:**

- a. The final determination of all policies and procedures relative to the operation and management of concessions and catering services.**
- b. Final determination on the kinds, brands, quality, and retail prices of all concessions and catering products and services. Unless otherwise approved in advance by the Commission's General Manager, the product purchased by the Concessionaire shall be minimum requirements as laid out in Exhibit 1 to this agreement.**
- c. Final determination on the design, layout and location of all physical facilities and equipment for the concessions and catering 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 the Commission.**
- e. Final determination and approval of the annual operating budget to be implemented each accounting year for the concessions and catering operation. Concessionaire may recommend to the Commission amendments to the budget as it may deem necessary. Commission 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 the Commission.**
- f. Final determination on which specific concessions and catering products will be sold at particular events in Commission facilities.**
- g. Sole discretion to cancel, terminate or interrupt any Commission event, and cause the patrons to be dismissed, or to stop the sale of any product by the Concessionaire during any event. The Commission shall not be liable to the Concessionaire for any loss or cost occasioned by any such determination or action by the General Manager of the Commission taken in good faith for the benefit or protection of the Commission and the public generally or the Commission's facilities.**
- h. The power to have access to any concessions areas at any time.**
- i. The power to approve or disapprove the on-site manager provided by the Concessionaire at any time during the term of this agreement, and to require the Concessionaire to replace such manager within thirty (30)**

days of receipt of written notice by the Commission's General Manager regarding dissatisfaction with the manager's performance.

If in the course of administering this agreement a dispute arises between the City of Portland ERC and the Metro ERC, then that dispute shall be resolved by a three-member review committee whose membership shall include one member of each Commission appointed by the respective Commission chair and one private citizen with knowledge of food service operation appointed jointly by the Chairman of each Commission. This review committee shall resolve the dispute as quickly as is reasonably possible.

- j. Concessionaire 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 the Commission notifies the Concessionaire or its manager that any employee is deemed by it to be incompetent, disorderly or unsatisfactory, the Concessionaire will investigate the matter thoroughly, and if good cause, as determined by the Concessionaire, exists the Concessionaire 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 Concessionaire and a union or any Oregon or federal employment law or regulations.~~
- k. The Concessionaire must maintain through the term of the contract participation in the City of Portland's Affirmative Action/Equal Opportunity employment program. In addition, Concessionaire shall submit annually for the Commission's approval a program of affirmative action recruitment and training, for minorities and women, as appropriate. Such plan shall be submitted by September 1, 1989, for the first year of operation, and June 1 of each succeeding year. Concessionaire agrees to participate with and integrate into its affirmative action plan, programs in which the Commission may choose to participate, in programs designed to train and employ disadvantaged members of the local community.
- l. The power to terminate this agreement for acts of default by the Concessionaire in accordance with Article 13 hereof.
- m. The final determination of the prices at which concessions products will be sold by the Concessionaire.
- n. The determination of acceptable levels of performance in striving to achieve the most economical and efficient operation of the concessions and catering.
- o. The power to approve the salaries of on-site concessions manager and any other on-site management employees of the Concessionaire. The amounts

of any salaries in excess of those approved by the Commission shall not be counted in the distribution and calculation of net profits.

9. DISTRIBUTION OF NET PROFITS AND OTHER FUNDS

- a. All revenue from sales of concessions and catering will be deposited daily by the Concessionaire or the Commission at the determination of the Commission into a separate commercial account established and controlled by the Commission. The funds in such account shall be the sole and exclusive property of the Commission upon deposit, subject only to obligations imposed thereon by this agreement. As previously stated in this agreement, reimbursement for both capital and operating expenses will be made to the Concessionaire upon presentation of proper documentation regarding expenses as described in Article 11, Financial Reporting and Accountability.
- b. As the sole consideration to the Concessionaire for management and operation of the concessions, \_\_\_\_\_% of the annual net profits shall be distributed to the Concessionaire.
- c. The Concessionaire shall not be entitled to any other remuneration from the Commission for the performance of the Concessionaire'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 4 of this agreement, the Concessionaire shall have no claim against the Commission for net profit which might have been distributed to it for periods after the date of the termination or for any other amount.

Each accounting period, any net profit for that accounting period less any accumulated net losses in the accounting year shall be distributed in accordance with the percentages outlined in paragraph b. above to the Concessionaire. The accounting period distributions shall be made after the accounting period operating statement specified in Article 11 of this agreement is completed.

10. CALCULATION OF NET PROFITS

Net profit is the amount remaining after deduction from gross revenues the amounts described in subsections a. and b. of this Article.

- a. Direct operating costs of concessions/catering. Direct operating costs include:
  - (1) Cost of good purchased.

- (2) Direct Labor (including any applicable taxes and fringe benefits) for on-site employees devoting their full efforts to Commission contract. The proposal should encompass direct employment of all employees by the proposer.
- (3) Direct Expenses: supplies and applicable taxes, licenses and fees (See Exhibit 2).
- (4) Payment of required reserve (6%) [as described in b. below].
- (5) Food and beverage services manager's salary, insurance, payroll taxes, and fringe benefits.
- (6) Vehicle and maintenance costs.

The following are not considered direct operating costs:

- (1) Corporate supervision and support services (accounting and payroll services, bonuses, facilities planning and design, auditing, legal, insurance and bonds, long distance telephone, purchasing, personnel, training, public relations, etc.).
  - (2) Corporate taxes.
  - (3) Other general corporate administrative and overhead expenses.
- b. A six (6) percent reserve of the allocable gross revenues shall be maintained by the Commission. The 6% fund is used for the following, and in generally the percentages indicated: Equipment replacement and additions (2%); Repair and maintenance of equipment (2%); Marketing and promotion (1%); and Utilities (1%). Use of this fund shall be at the sole discretion of the Commission.

## **11. FINANCIAL REPORTING AND ACCOUNTABILITY**

The Concessionaire shall maintain at all times accurate computerized accounting records on the operation of the concessions and catering. The form and substance of the accounting system shall be subject to the determination of the Commission and shall include, but not be limited to, the following:

- a. Complete separation of financial records from those of any other of the Concessionaire's enterprises or business activities at other locations, except that consolidated operations of the Commission's facilities financial reports will be required monthly and be made available to the Commissions.
- b. 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.
- c. 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.

- d. Complete inventories of concession and catering equipment to be taken not less than semi-annually and other capital assets and expendable and consumable supplies maintained continuously at the Commission's facilities not less than semi-annually.
- e. Complete event inventory control records before and after each Commission event and actual cash count of each event's sales receipts.
- f. Any other specific accounting information related to the concessions and catering operation which is determined by the Commission to be meaningful and necessary.

All accounting records, documents, books, inventories and other such related information shall be made available for Commission inspection at any time during the term of this agreement. In addition, Concessionaire shall retain all accounting records for a period of three years after completion of the contract term. In addition to the right of inspection, the Commission 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 Concessionaire relative to performance of this agreement. Concessionaire agrees to interface with the Commission in establishing and operating an integrated computer system. It is anticipated that the system will control all point-of-sale devices, as well as offer computer assistance to the concessionaire's management staff.

The Concessionaire shall provide a financial operating statement within ten (10) business days after the end of each accounting period which details, on an accrual basis, all gross revenues, direct operating costs, and net profit resulting from the concessions and catering operation 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. The Concessionaire shall provide other financial reports on the concessions and catering operation as are determined necessary and appropriate by the Commission, including event by event statements including all payroll, product inventory in and out, and receipts, which shall be accomplished daily.

For each accounting year during the term of this agreement, the Concessionaire shall develop and submit to the Commission's General Manager for approval an annual line-item operating budget for the concessions and catering operation. The form and substance of the annual budget shall be determined by the Commission and shall include day-to-day operating costs, revenues, capital purchase and capital repair, maintenance, and replacement costs. The

Concessionaire shall be responsible for operating within the established budgetary limits at all times. The Commission reserves the right to reasonably alter or change such annual budget at any time it is deemed necessary or appropriate. It shall be the responsibility of the Concessionaire to assure compliance by any of its subcontractors, suppliers, and other such agents with the record-keeping requirements of this Article. Failure of Concessionaire to comply with accounting procedures requested by the Commission, failure of Concessionaire to immediately correct any accounting deficiency discovered by the Commission, or failure by the Concessionaire to safeguard, control, and account for funds received or held by it pursuant to this agreement, shall be cause for immediate termination of this agreement by the Commission, without notice and without recourse by the Concessionaire.

## **12. INSURANCE AND INDEMNIFICATION**

It is understood and agreed that, to the fullest extent permitted by law, the Concessionaire shall indemnify and hold harmless (Metro or City) Commission, and its agents and employees from and against all claims, damages, losses, and expenses, including but not limited to attorneys' fees and court costs, arising out of or resulting from any acts or omissions in performance of this agreement by the Concessionaire, its employees and subcontractors. The Concessionaire will not bring any action against the Commission due to the Commission's execution of its right to cancel any event.

Coverages to be provided by the foregoing insurance policy or policies shall include, but not be limited to, coverages commonly referred to by the insurance industry as:

- a. Premises/Operations Liability.
- b. Owners and Contractors Protective Liability.
- c. Blanket Contractual Liability.
- d. Broad Form Property Damage Liability.
- e. Personal injury.
- f. Stop Gap or Employer's Contingent Liability.
- g. Automobile Liability, including coverage for owned, non-owned, hired, or borrowed vehicles.
- h. Products/Completed Operations Liability (including food and drink).
- i. Liquor Legal Liability.
- j. Fire Legal Liability.

The foregoing insurance policy or policies shall:

- a. Name the (City or Metro) and the Commission as additional insureds.
- b. Apply as Primary Insurance on behalf of the (City or Metro) and Commission, regardless of what insurance the Commission may maintain.

- c. Provide for not less than sixty (60) days advance written notice to the Commission regarding termination or any material change to the policy.
- d. Include a "Cross Liability" (severability of interests) clause and a Breach of Warranty clause.
- e. Include limits of protection as follows:
  - i. Not less than \$10,000,000 Combined Single Limit Bodily Injury and Property Damage, including Loss of Use. (These limits may be structured in the form of a \$500,000 Primary with a \$9,500,000 Umbrella.)
  - ii. Fire Legal Liability in an amount of not less than \$1,000,000.

A true and certified copy of the insurance policy or policies, including all of the required coverages and endorsements, shall be provided to the Commission prior to commencement of work under this agreement.

The Concessionaire will provide a performance bond in the form attached as Exhibit 3 to the Commission in an amount of not less than Two Hundred and Fifty Thousand Dollars (\$250,000.00) for each Commission (for a total of \$500,000.00) for operations to assure compliance of the Concessionaire with all provisions of this agreement, including those related to the financial obligations of the Concessionaire. Said performance bond shall be conditioned upon faithful performance of Concessionaire's payment of moneys due or obligations owing to the Commission and to all suppliers, materialmen, and employees of Concessionaire or its subcontractors.

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, the Commission will be under no obligation to replace them.

The Commission shall insure all physical facilities and capital equipment located in the facility and used by the Concessionaire under this agreement. This insurance will not extend to include any personal property owned by the Concessionaire, its agents, employees, or contractors.

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

The terms and requirements of this Article shall be reviewed annually and modified as required in the judgment of the Commission's General Manager.

### 13. TERMINATION OR BREACH BY CONCESSIONAIRE

**Material Breach.** Any actions by the Concessionaire or any failure by Concessionaire to perform any obligation hereunder which directly or indirectly impairs or interferes with the cleanliness, safety, profitability, operational capacity, or favorable public image or reputation of the Commission's facilities



shall be a material breach and shall entitle the Commission to terminate this contract. In the event that Concessionaire shall default in the obligations or conditions set forth in this and other paragraphs 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 Concessionaire, thereupon, at Commission's option, this agreement may be terminated upon thirty (30) days' written notice notwithstanding, nothing herein shall preclude the Commission or its agents from taking any immediate necessary action to remedy dangerous or unsafe conditions, regardless of the impact upon the Concessionaire. The parties agree that the Commission shall retain the right to determine whether any action or failure of Concessionaire constitutes a material breach hereunder, and any such determination shall be conclusive and shall be binding upon the parties hereto.

**Loss of Essential Licenses - Extraordinary Breach.** The parties agree that the loss by Concessionaire of any license or permit necessary to legal performance of its duties and obligations hereunder shall constitute an extraordinary breach of this agreement and shall be grounds for immediate termination by the Commission. 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. This provision shall apply irrespective of the reason for loss or revocation of any necessary license or permit.

**Unsatisfactory Performance.** The parties agree that the Commission shall retain the right to demand performance which is in all ways satisfactory to it, and that the Commission shall retain the exclusive right to determine whether performance is or is not satisfactory. In the event Concessionaire's performance hereunder is deemed unsatisfactory, the Commission shall have the right to terminate this agreement and all rights and obligations hereunder. Notice of termination under this section shall provide such time for termination, discontinuance of operations, and vacation of facilities as deemed appropriate by the Commission's General Manager.

**Termination Accounting.** In the event of termination under this Article, each party shall have full access to the other's financial records and accounts to facilitate a determination of the financial obligations of each to the other. If the parties cannot agree, they each agree to submit to the jurisdiction of the Multnomah County Circuit Court, Portland, Oregon, for such determination. 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, the Commission 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.

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

Upon termination, the Commission shall reimburse Concessionaire for the depreciated value of capital invested by the Concessionaire. 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 contract.

This agreement may be cancelled upon sixty (60) days notice should the tax exempt status of the Oregon Convention Center general obligation bonds be threatened by actions under this contract.

14. ASSIGNMENT

Both parties fully understand and agree that the highly skilled and professional management and operation of the concessions and catering in the Commission facilities are of paramount importance and that this agreement would not be entered into by the Commission except for its confidence in, and assurances provided for, the character, management abilities, and financial stability of the Concessionaire. The Concessionaire, 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. The parties agree, further, that any occurrence, whether within or beyond the control of Concessionaire, which renders Concessionaire incapable of performing all duties required hereunder shall constitute a material breach hereunder and shall give the Commission the option of terminating this agreement.

15. BEST EFFORTS

The Concessionaire and the Commission shall each use their best efforts to obtain the most efficient and high quality operation of the concessions and catering as is possible.

16. IMPOSSIBILITY

The Commission and the Concessionaire shall not hold each other liable for failure to perform as outlined herein where such performance is rendered impossible or financially impractical due to labor strikes, walkouts, acts of God, inability to obtain necessary materials, products, and services, civil commotion, fire, unavoidable casualty, or similar causes beyond the control of the

Commission or the Concessionaire. Each party agrees to notify the other promptly upon the occurrence of an event or condition which will, or which 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.

17. MISCELLANEOUS PROVISIONS

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

The failure of the Commission to insist upon strict and prompt performance of the terms and conditions of this agreement shall not constitute a waiver of the Commission's right to strictly enforce such terms and conditions thereafter.

All notices relative to this agreement shall be in writing and shall be mailed by certified mail or delivered in person to the Commission or the Concessionaire. Said notices shall be addressed to the following:

Concessionaire

Commission

_____	_____
_____	_____
_____	_____

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 parties agree that any litigation respecting this agreement or performance hereunder shall be had at said City and County in the Circuit Court of the State of 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 contract has no value. The parties agree that the performance of Concessionaire has no value except insofar as Concessionaire's completed performance is entitled to compensation hereunder.

**18. ARBITRATION**

If any dispute under this agreement between the Commission and the Concessionaire can not be settled by mutual agreement within thirty (30) days of having been presented in writing to either party, it shall be submitted to an arbitrator selected by mutual agreement of the parties. In the event the two parties can not agree on the arbitrator, he or she shall be appointed by the presiding judge (civil) of the Circuit Court of the State of Oregon and governed by the rules of the Multnomah County arbitration program, and shall be as speedy as is reasonably possible.

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

**CONCESSIONAIRE**

\_\_\_\_\_  
**COMMISSION**

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

\_\_\_\_\_  
Chair

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

\_\_\_\_\_  
Secretary/Treasurer

**APPROVED AS TO FORM:**

\_\_\_\_\_

Exhibit 1

MINIMUM PURCHASE SPECIFICATION REQUIREMENTS

<b>BEEF</b>	Heifer or Steer GRADE YIELD CONDITION GROUND BEEF	USDA Top Choice 3 or under Fresh or Frozen Chuck, 20% fat content
<b>PORK</b>	GRADE YIELD CONDITION	U.S. No. 1 1 Fresh or Frozen
<b>VEAL</b>	Calf GRADE	USDA Choice
<b>LAMB</b>	Under one year old GRADE CONDITION	USDA Choice Fresh or Frozen
<b>POULTRY</b>	GRADE CONDITION	USDA Inspected Grade A Hens - Fresh or Frozen Fryers - Fresh or Frozen Duckling - Fresh or Frozen Turkey Breast - Fresh or Frozen
<b>FISH &amp; SHELLFISH</b>	GRADE CONDITION	When Graded - A, otherwise top quality Fresh, when available Frozen, if cost and availability warrant
<b>EGGS</b>	GRADE SIZE CONDITION	USDA A, 100% Canded Large Fresh
<b>BUTTER</b>	GRADE	USDA AA
<b>MILK &amp; MILK PRODUCTS</b>	GRADE	US Extra
<b>BULK ICE CREAM</b>	Minimum 12% Milkfat	80%-100% overrun

<b>FRESH VEGETABLES &amp; FRUITS</b>	<b>GRADE</b>	<b>US No. 1 or better</b>
<b>FROZEN VEGETABLES</b>	<b>GRADE</b>	<b>A</b>
<b>CANNED FRUIT</b>	<b>GRADE</b>	<b>US Grade A or Fancy in heavy syrup</b>
<b>CANNED VEGETABLES</b>	<b>GRADE</b>	<b>US Grade A or Fancy</b>
<b>DRY GOODS</b>	<b>RICE BEANS</b>	<b>Fancy or US No. 1 Grade A</b>
<b>BAKED PRODUCTS</b>	<b>At Commissions' Approval</b>	

**CONCESSIONS/CATERING**

**SAMPLE OPERATING EXPENSE CLASSIFICATIONS**

**Copy Machine Rental  
Vehicle Rental  
Vehicle Maintenance  
Vehicle Repair  
Equipment Rental  
Bank Charges  
Outside Security  
Membership Dues  
Freight  
Insurance  
Linen/Uniforms  
Supplies  
Cleaning Supplies  
Miscellaneous  
Licenses & Permits  
Employment Fees  
Professional Services  
Postage  
Road Expense/Manager  
Stationery & Printing  
Books and Subscriptions  
Telephone/Fax  
Armored Car and Alarm  
Catering Expense  
Credit Card Expense  
Travel/Entertainment  
Business Conference Expenses  
Computer Supplies**

PERFORMANCE BOND FORMAT

Bond No. \_\_\_\_\_

\_\_\_\_\_  
Bonding Company's Name

\_\_\_\_\_  
Address

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

**KNOW ALL MEN BY THESE PRESENTS:**

That we, \_\_\_\_\_

\_\_\_\_\_  
As Principal and \_\_\_\_\_, a corporation, organized and existing under and by virtue of the laws of the State of \_\_\_\_\_ and legally doing business in the State of Oregon, as Surety, are held and firmly bound and obligated unto the State of Oregon of Two Hundred Fifty Thousand and no/100 Dollars (\$250,000.00), lawful money of the United States, for the payment of which sum well and truly to be made, we do bind ourselves, our and each of our heirs, executors and administrators, successors and assigns, jointly and severally, firmly by these presents.

This bond is executed in pursuance of Chapter \_\_\_\_\_, Revised Code of Oregon.

**THE CONDITIONS OF THIS OBLIGATION ARE SUCH,** that whereas the Principal entered into contract with \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

dated \_\_\_\_\_ day of \_\_\_\_\_, 19 \_\_, for Concessions and Catering Management.



**NOW, THEREFORE, if the Principal shall faithfully perform all the provisions of such contract; then this obligation is void; otherwise to remain in full force and effect.**

**Provided, however, that the conditions of this obligation shall not apply to any money loaned or advanced to the Principal or to any subcontractor or other person in the performance of any such work.**

Signed and Sealed this \_\_\_\_\_ day of \_\_\_\_\_,  
19\_\_.

**Countersigned:**

\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
(Seal)

\_\_\_\_\_  
**Principal**

\_\_\_\_\_  
(Seal)

\_\_\_\_\_  
**Surety**

By \_\_\_\_\_  
**Attorney in Fact**