

## METROPOLITAN EXPOSITION-RECREATION COMMISSION

### RESOLUTION NO. 95 - 25

Approving the contract with Fine Host Corporation/S. Brooks and Associates, Joint Venture, as the exclusive contractor to provide catering and concessions management services for the Civic Stadium and Portland Metropolitan Exposition Center commencing July 1, 1995 and ending June 30, 1999.

#### The Metropolitan Exposition-Recreation Commission finds:

1. That Resolution No. 95-22 was passed by the Commission on May 10, 1995, approving the selection of Fine Host Corporation/S. Brooks and Associates, Joint Venture, as the exclusive contractor to provide catering and concessions Management services for Civic Stadium and Portland Metropolitan Exposition Center; and authorizing the MERC General Manager to negotiate and execute an agreement to provide such services.

2. That Staff and Metro Counsel have negotiated an agreement to provide such services to the Stadium and Expo Center.


3. That the Metropolitan Exposition-Recreation Commission has the authority to contract such services in the best interest of the facilities managed by the Commission.

**BE IT THEREFORE RESOLVED** that the Metropolitan Exposition-Recreation Commission approve the contract with Fine Host Corporation/S. Brooks and Associates, Joint Venture, as the exclusive contractor to provide catering and concessions management services for the Civic Stadium and Portland Metropolitan Exposition Center commencing July 1, 1995 and ending June 30, 1999; and authorizes the MERC General Manager to execute the agreement to provide such services.

Approved as to Form:  
Daniel B. Cooper, General Counsel

  
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Chair

  
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Secretary/Treasurer

  
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By: Mark B. Williams  
Sr. Assistant Counsel

## **MERC STAFF REPORT**

**Agenda Item/Issue:** Approval of the contract with Fine Host Corporation/S. Brooks and Associates, Joint Venture, as the exclusive contractor to provide catering and concessions management services for the Civic Stadium and Portland Metropolitan Exposition Center commencing July 1, 1995 and ending June 30, 1999.

**Resolution No.:** 95 - 25

**Date:** June 14, 1995

**Presented by:** Jeffrey A. Blosser,  
Chris Bailey and Candy Cavanagh

**Background and Analysis:** At the May 10, 1995 MERC Commission meeting, the Commission adopted Resolution 95-22 which approved the recommendation of the MERC Food and Beverage Committee to select Fine Host Corporation/S. Brooks and Associates, Joint Venture as the vendor to provide exclusive concessions and catering management services for the Civic Stadium and Portland Metropolitan Exposition Center. This resolution also instructed the MERC General Manager to negotiate an agreement with the selected vendor to provide such services according to their response to the Request for Proposals. Staff, Metro Counsel and Fine Host Corporation representatives have negotiated an agreement to the satisfaction of all which is now ready for execution by the MERC General Manager.

The term of the contract is four (4) years with a loan of \$550,000 for capital investment to be expensed monthly as an operating cost. Compensation will be 2.5% of gross receipts after any applicable excise tax and a 10% net profit as a management fee. Commencement of this Agreement is July 1, 1995 through June 30, 1999.

**Recommendation:** Staff recommends that the Metropolitan Exposition-Recreation Commission approve the contract with Fine Host Corporation/S. Brooks and Associates, Joint Venture, for concessions and catering management services at the Civic Stadium and Portland Metropolitan Exposition Center commencing July 1, 1995 and ending June 30, 1999; and further authorizes the MERC General Manager to execute this agreement for such services.

**EXTENSION OF AND ADDENDUM TO  
CONCESSIONS AND CATERING MANAGEMENT AGREEMENT (the "Agreement")  
BETWEEN FINE HOST CORPORATION (Concessionaire)  
AND THE  
METROPOLITAN EXPOSITION-RECREATION COMMISSION (Commission),  
Originally dated September 27, 1989  
Contract No. 910485.**

This Extension and Addendum to the Agreement are agreed by and between the Metropolitan Exposition-Recreation Commission (Commission), and Fine Host Corporation (Concessionaire), a Delaware Corporation, on this 14<sup>th</sup> day of ~~May~~ JUNE 1995. 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:

- A. All references to the Memorial Coliseum are deleted from the Agreement.
- B. All references to the Civic Stadium are deleted from the Agreement.
- C. All provisions of and changes to the Agreement affect only the Oregon Convention Center (the "OCC") and the Portland Center for the Performing Arts (the "PCPA), which is hereby added as a facility at which Fine Host shall manage catering and concessions under the term of the Agreement and this addendum and extension. The Memorial Coliseum and Civic Stadium are deleted from the Agreement by this reference.
- D. Term of this extension and addendum is for four (4) years, commencing July 1, 1995 and ending June 30, 1999.
- E. New Definition: "Net Gross Receipts" shall mean food and beverage gross receipts after any applicable Metro Excise Tax has been deducted. Metro Excise Taxes shall not otherwise be claimed as an allowable expense.
- F. Six percent contract reserve shall be reduced to 5 percent for the extension of the OCC Agreement and for the addendum of the PCPA.
- 1. **Contract Extension for OCC**
  - a) Direct Operating Costs addition to those currently in effect at OCC
    - liability insurance for specific facility unit

- legal and accounting fees associated with the operations excluding labor/union issues
  - travel/entertainment/promotional
  - 50 percent moving expenses for management staff
  - payroll and benefits
  - bonuses
- b) Expenses not to be deducted as Direct Operating Costs
- performance bond or cost thereof
  - legal costs for union disputes or employees
  - out of town corporate costs
  - training except for normal everyday training of local staff
  - 50 percent of moving expenses for management
  - any corporate expenses not associated with local unit management
- c) Other expenses not defined will be discussed by both entities, but Commission has final approval on determinations of allowable expenses outside those listed above.
- d) All contract reserves (5 percent of net gross receipts) will be used for operational purpose as outlined in the Agreement. Any unused or remaining funds from the contract reserve account will remain with the OCC as revenue annually.
- e) Compensation to Fine Host for supplying Management Services for the Food and Beverage operation at the OCC will be as follows:
- 2.5 percent of Net Gross receipts
  - 10 percent of Net Profit available as a management fee
- f) All operating costs for the OCC will not exceed 5 percent of gross sales. Any costs exceeding this 5 percent cap for operational items will be the responsibility of Fine Host and will not be claimed as direct operating cost. Operational costs are defined to include all on-site costs other than labor and product costs. If operating costs which are outside of Commission's or Fine Host's control exceed the 5 percent cap, then these additional costs shall be included and will be direct operating costs even if they exceed the 5 percent cap.
- g) All other provisions of the original Agreement remain in effect through the term of this extension, provided, however, that the bond called for in the Agreement shall be increased to \$350,000 and shall apply to both the OCC and PCPA

operations.

## **2. Addendum to Agreement for PCPA**

Fine Host will manage the Food and Beverage operation for PCPA events on a management fee basis as follows:

- a) Contract to be an addendum to current Fine Host Agreement with the OCC and will run concurrently with the OCC extension which expires June 30, 1999, with no extension provisions.
- b) Fine Host's management at PCPA shall be established by Fine Host and Commission, and is currently established as in the organizational chart with fees, charges and labor as estimated in the attached (Exhibits 1,2, and 3).
- c) Fine Host will commit \$350,000 as a loan at 9 percent simple interest on the unpaid principal to PCPA facilities for improvements to the Food and Beverage operation at PCPA. Repayment of the loan is to be taken out of the operation as a direct operating cost on a (straight line with respect to principal) monthly basis to be amortized over a six (6) year term. Any remaining unpaid principal will be repaid within sixty (60) days through a buy out by MERC or Fine Host's successor if the Fine Host contract is terminated for any reason or if Fine Host is not selected as the contractor for the period following June 30, 1999.
- d) Fine Host will not receive any administrative fee for its management services at PCPA until Commission receives \$130,000 of net profit for concessions services. Fine Host will receive 15 percent of net profits generated over the \$130,000 threshold amount. PCPA will receive 85 percent of net profit over the \$130,000 in addition to 100 percent of net profits up to the \$130,000 threshold amount.
- e) Direct operating costs shall be the same as those allowed at the OCC and include the following (Fine Host shall prepare a separate monthly financial statement for its PCPA operations).
  - liability insurance for specific unit
  - legal and accounting associated with the operation excluding labor/union issues
  - travel/entertainment/promotion
  - 50 percent moving expenses for management
  - start up costs for the first year of \$15,000
  - payroll and benefits
  - repayment of loan

- operating expenses such as laundry, paper supplies, cleaning, product cost, etc.
- other support - general manager/office manager costs allocated
- bonuses

f) Expenses not to be deducted as direct operating costs:

- performance bond
- legal costs for union/employee disputes
- out of town corporate costs
- training, except for normal every day training of local staff
- 50 percent of moving expenses for management
- any corporate expenses not associated with local until management

g) Contract reserve will be 5 percent to be used for operational purposes as determined by PCPA and Fine Host management. The unused or remaining funds in the contract reserve account shall be utilized as net profit proceeds and split accordingly.

h) The exclusive rights granted under the addendum shall not be construed so as to prevent or prohibit Commission 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 Orchestra (the "OSO") consistent with past practice. OSO patrons shall be allowed to pass into the Heathman Mezzanine for refreshments as negotiated and agreed by PCPA and OSO.
2. Winningstad Theatre Snack Program: The major resident company of the Winningstad Theatre, Tygress Heart Shakespeare Company (the "THSCo"), has requested and negotiated with PCPA for a custom program for concessions services to its audiences. This program shall be recognized as an existing element of audience service which shall be continued so long as it is agreed by THSCo and PCPA.
3. Intermediate Theatre Program: The major resident company of the Intermediate Theatre, Portland Center State (the "PCS"), has requested test programs for increased concessions service to its audience on the third and fourth levels of the New Theatre Building. If so requested by PCPA, Fine Host will participate in the design and evaluation of experimental programs, and will agree to long-term implementation of

those services which are agreed to by PCS and PCPA.

4. **Open Catering:** Commission has adopted a non-exclusive catering program in PCPA facilities which shall be continued for a term of this addendum. As a consequence of its position as Concessionaire for PCPA facilities, Fine Host 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 Fine Host catering activity shall be the same as the contractual provisions for other approved full service caterers providing services at PCPA facilities. Fine Host shall cooperate with outside caterers as they perform services for clients of the facilities, as approved by PCPA.
- i) All other provisions of the original Agreement remain in effect through the term of this addendum. PCPA addendum is part of this Agreement by reference as if said addendum was part of the original Agreement.

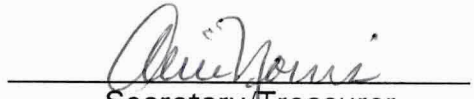
**FINE HOST CORPORATION**

  
\_\_\_\_\_  
Andy S. Bector  
Exec VP


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**METROPOLITAN EXPOSITION-  
RECREATION COMMISSION**

  
\_\_\_\_\_  
Chair

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

Approved as to Form:  
Daniel B. Cooper, General Counsel

  
\_\_\_\_\_  
By: Mark B. Williams  
Sr. Assistant Counsel

**Exhibit 1**

**Labor Transfers from OCC to PCPA**

**Fixed Transfer:**

General Manager	\$10,000.00	\$192.00 per week
Office Manager	\$ 8,000.00	\$154.00 per week

**Event Basis:**

Catering Kitchen Support  
will be documented and transferred on an event basis

Sales Manager 2 will be transferred based on functions booked  
commissions and base to be by unit

**PCPA Labor:**

Operations Manager	\$38,000.00
Restaurant Supervisor	Hourly \$12.00
Event Supervisors	Hourly \$10.50
Accounting Clerk	Hourly \$ 8.00
Waitstaff	Hourly \$ 6.50
Runners	Hourly \$ 6.50
Concession Workers	Hourly \$ 7.75/\$8.50
Bartenders	Hourly \$ 7.75



**Exhibit 2**

**General Expenses - OCC:**

Liability	\$38,000.00
Legal/Accounting	\$ 5,000.00
Miscellaneous Support	\$ 3,800.00
Travel/Entertainment	\$ 3,000.00
Bonus GM	\$13,600.00
Bonus Managers	\$ 6,000.00
Casualty Bond	<u>\$ 3,750.00</u>
Subtotal	\$73,150.00

Other Operating \$171,359.00  
(laundry, paper supplies, payroll, cleaning)

Total General Expenses \$244,509.00

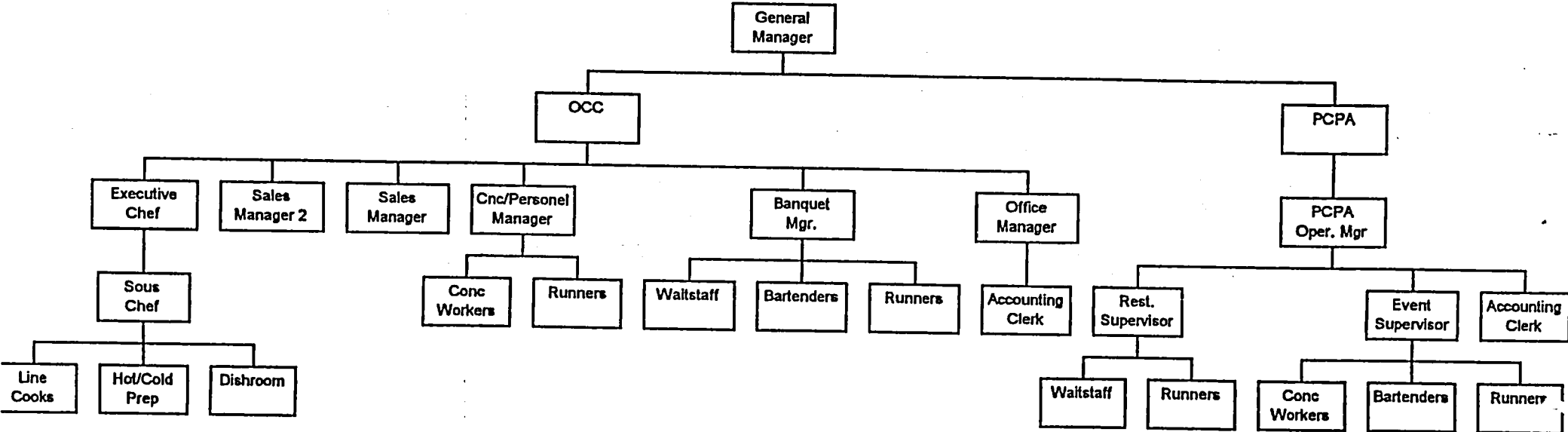
**General Expenses - PCPA:**

Liability Insurance	\$ 6,000.00
Legal/Accounting	\$ 725.00
Miscellaneous Support	\$ 900.00
Travel/Entertainment	\$ 700.00
Bonus GM	\$ 2,000.00
Bonus Managers	\$ 1,000.00
Casualty Bond	<u>\$</u>

Subtotal \$11,325.00

Other Operating \$12,675.00

Total General Expenses \$24,000.00



## CONCESSIONS AND CATERING MANAGEMENT AGREEMENT

This agreement is made and entered into on this 14 day of June, 1995, and by and between the Metropolitan Exposition-Recreation Commission (Commission) and Fine Host Corporation / S. Brooks and Associates Inc., a Joint Venture (Concessionaire) acting as a Joint Venture.

### WITNESSETH:

#### Contract Documents

The Contract documents together form the Agreement between Commission and Concessionaire. All determination of the precedence of, discrepancy in, or conflicts regarding the contract Documents shall be made by Commission, but, in general, precedence will be in accordance with the following list with the highest precedence item at the top:

- a. This Concessions and Catering Management Agreement (Agreement).
- b. The Concessionaire's proposal dated April 6, 1995, which was accepted by MERC at its meeting on May 2, 1995.
- c. Proposal Documents for Concessions and Catering Management for the Civic Stadium and the Portland Metropolitan Exposition Center, prepared by MERC dated February 21, 1995.

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. "Stadium" means the Portland Civic Stadium located between 18th and 20th Streets, and Morrison and Salmon Streets, in Portland, Oregon.

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

c. "Concessions" means the sale and all related activities supporting such sales and/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 Stadium and Expo 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 Stadium and Expo 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.

d. "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 Stadium and Expo Center pursuant to this agreement.

e. "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.

f. "Accounting Year" means the period commencing July 1 of each year and ending June 30 of the following year, consisting of 12 accounting periods. The Commission will provide an accounting period calendar for each year of the agreement.

g. "Gross Revenues" means the total amount received, or 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.

h. "Excise Tax" means the Metro Excise Tax applicable to all food and beverage revenue at the Expo Center. The Civic Stadium does not, at this time, fall under the excise tax ruling. However if the Metro Excise Tax becomes applicable to Civic Stadium food and beverage revenue, it shall be recognized and accounted for in this contract.

i. "Net Gross Proceeds" means food and beverage total gross revenues less applicable Metro excise tax. At this time, only the Expo Center will have the Metro excise tax applied. If the Civic Stadium food and beverage revenue, in the future, falls

under the Metro Excise Tax ruling, then the Stadium's food and beverage gross revenues, less the applicable Metro excise tax will equal net gross proceeds.

j. "Net Profits" means the amount calculated pursuant to Section 10 of this agreement.

k. "MERC" shall mean the Metropolitan Exposition-Recreation Commission, a subdivision of Metro.

l. "Metro" shall mean the governmental entity responsible for budgetary and management oversight of MERC Facilities.

## **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/she may designate, the Concessionaire shall manage and operate the concessions and catering at the Commission's facilities (Expo Center and Stadium). 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 Stadium and Expo Center.

## **3. RELATIONSHIP OF THE PARTIES**

The Commission and the Concessionaire have entered in to 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 statues. 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, discrimination, judicial action or other employee or union claim which may be filed against any one of them, jointly or separately. Each member of Concessionaire's Joint Venture shall be jointly and severally liable for all obligations owed to Commission pursuant to this Agreement.

**4. TERM OF THE AGREEMENT**

The term of this agreement shall commence, at Civic Stadium on July 1, 1995 and end on June 30, 1999; and to commence, at the Portland Metropolitan Exposition Center on July 1, 1995 and end on June 30, 1999, unless sooner terminated as provided herein.

The schedule term is as follows:

<u>Year No.</u>	<u>Fiscal Year</u>	<u>Stadium</u>	<u>Expo</u>
1	1995-1996	12 months	12 months
2	1996-1997	12 months	12 months
3	1997-1998	12 months	12 months
4	1998-1999	12 months	12 months

The Commission shall have the right at the end of the term of this agreement to extend this agreement for one additional two-year term, based on the same conditions as set out in the original agreement. Notwithstanding, the Commission, at its sole option and discretion, 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 Commission's facilities, all food, alcoholic and non-alcoholic beverages, candy, tobacco, and other similar products as the General Manager of the Commission, or his designee may from time to time approve for sale. In any case where it is determined by the General Manager, or his designee 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 hereunder 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 services 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 Commission's 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, exhibit halls and lobby areas.
- g. plaza, decks, sidewalks, parking lots and any other outdoor areas.

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

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 licenses 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 or his designee.

All food and beverage products prepared on Commission premises must remain and be sold exclusively on Commission premises unless otherwise authorized in the advance by the Commission's General Manager. Notwithstanding, the Concessionaire may transfer food and/or beverages prepared at one Commission facility to another Commission facility managed by the Concessionaire under this contract.

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

- a. parking rental concessions which are reserved exclusive 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 or 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 10 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 general 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 Commission's facilities.

- 1) Employ on-site management specific to each facility to the needs of each facility for concessions and catering operations.

b. Subject to Commission review and approval, develop and implement all necessary policies and procedures for the concessions and catering operation. 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 customer service training and 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 Commission General Manager, or his designee, prior to purchase. Concessionaire shall provide and maintain all uniforms in a neat and clean conditions.

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.

g. Assist the Commission as requested by the Commission's General Manager, or his designee, with selection, purchase, receipt, inspection and storage of capital equipment, rolling stock, small wares and other equipment necessary for the ongoing operation of the concessions and catering. Concessionaire 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. Concessionaire shall submit for approval of the Commission's General Manager, or his designee, a list of recommended portable equipment, capital improvements and other support equipment necessary to refurbish and update to the operation at the Stadium and the Expo Center, subject to this Agreement. List shall total no more than \$550,000. Upon approval of Commission General Manager, or his designee, Concessionaire shall procure such equipment and improvements no later than June 30, 1996 for all MERC facilities, subject to this Agreement.

h. Prepare all concessions products for sale or distribution

i. Advise and make recommendations to the Commission concerning all operational phases of the 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 the concessions and catering. Use of styrofoam products is prohibited. Participate in current Commission recycling programs, as applicable to materials generated. Concessionaire shall use recyclable products to the maximum extent economically feasible in the performance of the work set forth in this Agreement.

k. Maintain at all times all designated and 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, or his designee, 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 marketing program and annual operating budget for each accounting year to the Commission for approval as outlined in Article 11 hereof. This submission shall coincide with the Commission's budgetary process.

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, or his designee. Set ups for food and beverage required shall normally include table coverings and other items necessary for food and beverage service but not tables or chairs or other furnishing services such as sound systems or electrical connections except as the Commission's General Manager may from time to time direct Concessionaire to provide such extraordinary equipment and services, provided further that in so doing Commission's General Manager shall give Concessionaire sufficient reasonable advance notice to allow Concessionaire to include the costs of providing such services in its rate structure for any particular event such to the general right of the Commission to approve rates all as provided for herein.

t. Upon prior written approval of the Commission's General Manager, or his designee, arrange for advertising, marketing, and promotion of concessions and catering products and services.

## **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 Stadium and Expo Center including office space which it deems necessary for the Concessionaire (except such capital investment totalling \$550,000, as called for in this Agreement).

b. The Commission shall furnish the Concessionaire statements of turnstile or estimated attendance for all events at the Stadium and Expo 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, or his designee, 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, advertising and said retail sales areas shall be determined by the General Manager of the Commission, or his designee.

e. Final determination and approval on 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, or his designee, 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, or his designee, regarding dissatisfaction with the manager's performance.

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 MERC's Affirmative Action/Equal Opportunity Employment Programs. 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 August 1, 1995, 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 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 14 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 operations 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. CAPITAL INVESTMENT

Concessionaire shall commit \$550,000, as a loan, at 9% simple interest on the unpaid balance, to the Stadium and Expo Center facilities, for improvements to the food and beverage operation at those facilities. All such improvements shall be the property of Commission. Repayment of the loan shall be taken out of the operation as an expense item, to be amortized over six (6) years. Any remaining unpaid balance shall be repaid by Commission as a buy out if this Agreement is terminated for any reason, or if Concessionaire is not selected as the contractor for the period following June 30, 1999. Concessionaire shall have no other obligations for capital investment, with the exception of the requirements of Article 11(b).

on a straight line,  
monthly basis,

RBS  


## 10. 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 on deposit, subject only to obligations imposed thereon by this agreement. As previously stated in this agreement, reimbursement for both capital and operation expenses will be made to the Concessionaire, in a timely manner, upon presentation of proper documentation regarding expenses as described in Article 12, Financial Reporting and Accountability.

b. As the sole consideration to the Concessionaire for management and operation of the concessions and catering at the Stadium and Expo Center, Concessionaire shall receive 2.5% of net gross proceeds plus 10.0% of the annual net profits.

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 gross proceeds or

net profit which might have been distributed to it for periods after the date of the termination or for any other amount provided, that this subsection is not intended to affect the buy-out requirement of Article 9.

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. In the event of a loss for any accounting period, Concessionaire shall receive no distribution of a percentage of net gross proceeds for that accounting period, and said distribution shall instead be deferred until the next accounting period in which it can be paid to Concessionaire without resulting in a loss in that accounting period. Provided, however, that Concessionaire shall in any and all events receive all accrued but unpaid amounts in respect of the 2.5% management fee prior to the expiration or termination of this Agreement. No interest shall accrue on any deferred distributions of a percentage of net gross proceeds.

#### **11. CALCULATION OF NET PROFITS**

Net profit is the amount remaining after deduction from net gross proceeds only 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 goods purchased less any rebates or cost concessions received by Concessionaire, locally or nationally, whether received directly by Concessionaire or by any related corporate/business entity.
- 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: Exhibit 2 hereto contains a list of items that the parties agree are eligible for reimbursement by the Commission as allowable direct expenses. With the prior approval of the Commission, additional items that constitute on-site costs directly related to the facilities' operations shall also be reimbursed as direct costs.
- 4) Payment of required reserve (5%) [as described in b. below].
- 5) Indirect labor to include all manager's, supervisors and warehouse people's salary and wages, insurance, payroll taxes, and fringe

- benefits.
- 6) Vehicle and maintenance costs.
  - 7) Amortization for \$550,000 investment
  - 8) 2.5% Administration Fee (ie percentage of net gross proceeds if applicable)
  - 9) A one time only, first year only, start-up cost of up to \$50,000, to be approved by the Commission, any further start-up costs to be borne solely by Concessionaire.

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, corporate 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 five (5%) percent reserve of the allocable net gross proceeds shall be maintained by the Commission. The 5% fund is used for the following, and in general the percentages indicated: Equipment replacement, equipment additions, repair and maintenance of equipment (3%); marketing and promotion (1%); and utilities (1%). Use of three (3%) percent portion shall be determined by on-site manager and Commission's General Manager or his designee. The one (1%) percent for marketing will be utilized solely for that purpose and agreed to mutually. The one (1%) percent for utilities will be at the sole discretion of the Commission. Any amounts remaining in the five (5%) percent reserve account after the two (2%) percent for marketing and utilities is spent shall be net profit available for distribution as provided in paragraph 10b.

## **12. 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 Commission.



b. Complete financial system which conforms to generally accepted accounting principles and practices and includes annual line item budgeting for expenditure and revenue accounting as part of MERC's annual budgeting process, accounts segregating, and identifying assets, liabilities, and net worth.

c. Complete individual facility financial reports of all operations will be required monthly and made available to the Commission.

d. 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.

e. Complete, written inventories of concession and catering equipment to be taken not less than semi-annually and other capital assets and expendable and consumable supplies and products maintained continuously at the Commission's facilities not less than monthly. Concessionaire will submit written inventories to MERC Accounting.

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

g. Any other specific accounting information related to the concessions and catering operation which is determined by the Commission to be meaningful and necessary for review.

All accounting records, documents, books, inventories, software, 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) 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 10 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, or his designee, 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 required 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.

### **13. INSURANCE AND INDEMNIFICATION**

**Indemnification** - The Concessionaire shall indemnify and hold Metro and the Commission, its agents, employees and officials harmless from any and all claims, demands, damages, actions, losses and expenses, including attorney's and court fees, arising out of or in any way connected with its performance of this Agreement by the Concessionaire, its employees, agents, invitees, subcontractors, or customers. The Concessionaire shall not bring any action against the Commission due to the Commission's execution of its right to cancel any event.

**Insurance** - The Concessionaire shall purchase and maintain at their expense the following types of insurance covering the Concessionaire, their employees and agents:

1. Broad form comprehensive general liability insurance covering bodily injury, property damage, and personal injury with automatic coverage for premises operations. Insurance coverage must include for products liability including food and

drink. Coverage must include the contractual liability assumed under this contract.

2. Automobile bodily injury and property damage liability insurance.

3. Liquor liability insurance.

Metro and the Commission, employees, and agents shall be named as an ADDITIONAL INSURED. Notice of material change or cancellation shall be provided to Commission thirty (30) days prior to the change. Said insurance coverage shall be primary over any insurance the Commission may maintain.

Insurance coverage shall be a minimum amount of \$10,000,000 per occurrence. Primary limits with excess or umbrella is acceptable.

4. Concessionaire shall comply with the Oregon Workers' Compensation law (ORS 656.017) for all subject employees.

5. Concessionaire shall carry an "all risk" property insurance on Concessionaire's property and hereby waives all rights of subrogation against Metro and the Commission for any loss of Contractor's property, however caused. Metro hereby waives its subrogation rights against the Concessionaire except for claims under \$1,000,000 caused by the negligence of Concessionaire its employees, agents, invitees, subcontractors, or customers.

6. The Concessionaire shall provide and maintain a performance bond in the form attached as Exhibit 3 to the Commission in an amount of not less than Three Hundred, Fifty Thousand Dollars (\$350,000) for operations to assure compliance of the Concessionaire with all provisions of the 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, subcontractors, and employees of Concessionaire and subcontractors.

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.

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 judgement of the Commission's General Manager, or his designee.

#### **14. TERMINATION OR BREACH BY CONCESSIONAIRE**

**Material Breach.** Any actions by the Concessionaire or any failure by Concessionaire to perform any obligation hereunder, in the Commission's judgement, 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 with no sufficient 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 without prior notice or opportunity to cure 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.** Notwithstanding any other provisions of this agreement, 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 without prior notice or opportunity to cure. 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, or his designee.

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, Concessionaire shall be repaid for any unpaid principle remaining on its loan to Commission, as provided in Article 9.

## **15. 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.

**16. 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 it possible.

**17. 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.

**18. 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.

Time is of the essence of this agreement.

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 arbitration or litigation respecting this agreement or performance hereunder shall be had at said City and County in the circuit Court of the State of Oregon, or, if jurisdiction exists, in the United States District Court for 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 monetary value. The parties agree that the performance of Concessionaire has no value except insofar as Concessionaire's completed performance is entitled to compensation hereunder.


**19. ARBITRATION**

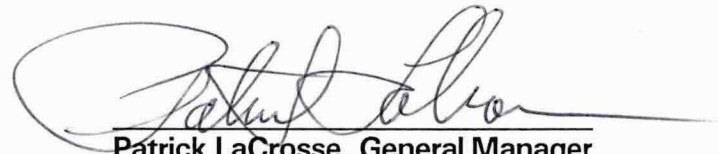
If any dispute under this agreement between the Commission and the Concessionaire can not be settled by mutual agreement within sixty (60) days of having been presented in writing to either party, it shall be submitted to an arbitrator selected by mutual agreement of the parties. In the event the two 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.

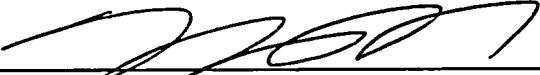
**CONCESSIONAIRE**

**METROPOLITAN EXPOSITION-  
RECREATION COMMISSION**

By:   
Title: ~~Exec~~ Auth. Signatory

  
Patrick LaCrosse, General Manager  
June 14, 1995  
Date

**APPROVED AS TO FORM**  
**Daniel B. Cooper, General Counsel**

  
\_\_\_\_\_  
**By: Mark B. Williams, Sr. Assistant Counsel**



**MINIMUM PURCHASE SPECIFICATION REQUIREMENTS**

BEEF	Heifer or Steer GRADE YIELD CONDITION GROUND BEEF	USDA Top Choice 3 or under Fresh or Frozen Chuck,20% fat content
PORK	GRADE YIELD CONDITION	U.S. No. 1 1 Fresh or Frozen
VEAL	Calf GRADE	USDA Choice
LAMB	Under one year old GRADE CONDITION	USDA Choice Fresh or Frozen
POULTRY	GRADE	USDA Inspected Grade A Hens - Fresh or Frozen Fryers - Fresh or Frozen Duckling - Fresh or Frozen Turkey Breast - Fresh or Frozen
FISH & SHELLFISH	GRADE CONDITION	When Graded - A, otherwise top quality Fresh, when available Frozen, if cost and availability warrant
EGGS	GRADE SIZE CONDITION	USDA A, 100% Candled Large Fresh
BUTTER	GRADE	USDA AA

**MILK & MILK PRODUCTS**

	<b>GRADE</b>	<b>US Extra</b>
<b>BULK ICE CREAM</b>	<b>Minimum 12% Milkfat</b>	<b>80%-100% overrun</b>
<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 Commission's 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  
Linen/Uniforms  
Supplies  
Cleaning Supplies  
Miscellaneous  
License & 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

**KNOWN 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 Three Hundred Fifty Thousand and no/100 Dollars (\$350,000), 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 this contract with \_\_\_\_\_

\_\_\_\_\_  
dated \_\_\_\_\_ day of \_\_\_\_\_, 1995, 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 \_\_\_\_\_, 1995.

Countersigned:

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

\_\_\_\_\_  
(Sealed)

\_\_\_\_\_  
Principal

\_\_\_\_\_  
(Sealed)

\_\_\_\_\_  
Surety

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