

METROPOLITAN EXPOSITION-RECREATION COMMISSION

RESOLUTION NO. 00- 44

Approving exclusive Pourage/Sponsorship Rights for all MERC Facilities with Coca-Cola Bottling of Oregon.

The Metropolitan Exposition Recreation Commission finds:

1. The Commission has the authority to enter into an exclusive pourage/sponsorship agreement for the facilities under its management.
2. The Commission had such an arrangement for five years with its current vendor for all of its facilities.
3. The Commission authorized staff to issue an RFP for such exclusive pourage sponsorship services in September of 2000.
4. The Commission wishes to contract for such exclusive rights at all MERC facilities.


BE THEREFORE RESOLVED that the Metropolitan Exposition Recreation Commission approves the selection of Coca-Cola Bottling of Oregon to supply exclusive pourage and sponsorship services, and;

BE IT FURTHER RESOLVED that the Commission approves the Pourage Services Agreement attached as Exhibit A, and authorizes the General Manager to execute the contract on behalf of the Commission

Passed by the Commission on November 15, 2000.



Chair



Secretary-Treasurer

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

By: 

Senior Assistant Counsel

MERC Staff Report

Agenda Item: Approval of Coca-Cola Bottling of Oregon as the exclusive pourage/sponsorship contract for all MERC facilities.

Resolution No.: 00-44

Date: November 15, 2000

Presented By: Jeffrey A. Blosser

Background and Analysis:

Commission approved staff's request to issue a Request for Proposals for exclusive soft drink pourage and sponsorship rights for its facilities. The Commission currently has a contract with Pepsi for such services that expired in June of 2000. Staff received two responses from Coca-Cola Bottling of Oregon and Pepsi Bottling Group of Portland. Staff reviewed both proposals and found that they meet the criteria required by the RFP except Pepsi did not meet the financial minimum of \$35,000; their proposal was \$21,350 and Coca-Cola of Oregon's proposal was \$40,000 total.

Fiscal Impact:

MERC will receive \$40,000 of reduced operating costs from its operations per year.

Recommendation:

Staff recommends that the Metropolitan Exposition Recreation Commission authorize the General Manager to enter into an exclusive pourage/sponsorship contract with Coca-Cola Bottling of Oregon (see attached agreement).

POURAGE SERVICES AGREEMENT

THIS AGREEMENT is entered into between the Metropolitan Exposition-Recreation Commission (MERC), whose address is P.O. Box 2746, Portland, Oregon 97208 and governing body for BCI COCA-COLA BOTTLING GROUP OF L.A. INC. and COCA-COLA BOTTLING OF OREGON whose address is 10800 SW Avery Tualatin, Oregon 97062, hereinafter referred to as the "CONTRACTOR."

In exchange for the promises and other consideration set forth below, the parties agree as follows:

Duration

This agreement shall be effective January 1, 2001 and shall remain in effect until and including December 31, 2003, unless terminated or extended as provided in this Agreement. The Agreement may be extended for two additional three-year terms at the option of MERC and COCA-COLA Bottling of Oregon.

Scope of Work

CONTRACTOR shall provide all services and materials specified in the attached "Attachment A — Scope of Work," which is incorporated into this Agreement by reference. CONTRACTOR, in accordance with the Scope of Work, shall provide all services and materials in a competent and professional manner.

Payment

MERC shall pay CONTRACTOR for services performed and materials delivered, and CONTRACTOR shall pay MERC consideration in the amount(s), manner and at the time(s) specified in the Scope of Work.

Insurance

CONTRACTOR shall procure and maintain at CONTRACTOR'S expense, the following types of insurance covering the CONTRACTOR, its employees and agents.

- A. Broad form comprehensive general liability insurance covering personal injury, property damage, and bodily injury with automatic coverage for premises and operation and product liability. The policy must be endorsed with contractual liability coverage.
- B. Automobile bodily injury and property damage liability insurance. Insurance coverage shall be a minimum of \$500,000 per occurrence. If coverage is written with an aggregate limit, the aggregate limit shall not be less than \$1,000,000. MERC it's elected officials, departments, employees, and agents shall be named as an ADDITIONAL INSURED. Notice of any material change or policy cancellation shall be provided to MERC thirty (30) days prior to the change.

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

CONTRACTOR shall provide MERC with a certificate of insurance complying with this article and naming MERC as an additional insured within fifteen (15) days of execution of this Contract or twenty-four (24) hours before services under this Contract commence, whichever date is earlier.

CONTRACTOR shall not be required to provide the liability insurance described in this Article only if an express exclusion relieving CONTRACTOR of this requirement is contained in the Scope of Work.

Indemnification

CONTRACTOR shall indemnify and hold MERC, its agents, employees, and elected officials harmless from any and all claims, demands, damages, actions, losses and expenses, including attorney's fees, arising out of or in any way connected with its performance of this Agreement, or with any patent infringement or copyright claims arising out of the use of CONTRACTOR'S designs or other materials by MERC and for any claims or disputes involving subcontractors.

Maintenance of Records

CONTRACTOR shall maintain all of its records relating to the Scope of Work on a generally recognized accounting basis and allow MERC the opportunity to inspect and/or copy such records at a convenient place during normal business hours. All required records shall be maintained by CONTRACTOR for three years after MERC makes final payment and all other pending matters are closed.

Ownership of Documents

All documents of any nature including, but not limited to, reports, drawings, works of art and photographs, produced by CONTRACTOR pursuant to this Agreement are the property of MERC, and it is agreed by the parties that such documents are works made for hire. CONTRACTOR hereby conveys, transfers, and grants to MERC all rights of reproduction and the copyright to all such documents.

Project Information

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

Independent Contractor Status

CONTRACTOR shall be an independent CONTRACTOR for all purposes and shall be entitled only to the compensation provided for in this Agreement. Under no circumstances shall CONTRACTOR be considered an employee of MERC.

CONTRACTOR shall provide all tools or equipment necessary to carry out this Agreement, and shall exercise complete control in achieving the results specified in the Scope of Work. CONTRACTOR is solely responsible for its performance under this Agreement, the quality of its work, for obtaining and maintaining all licenses and certifications necessary to carry out this Agreement, for payment of any fees, taxes, royalties, or other expenses necessary to complete the work except as otherwise specified in the Scope of Work, and for meeting all other requirements of law in carrying out this Agreement. CONTRACTOR shall identify and certify tax status and identification number through execution of IRS form W-9 prior to submitting any request for payment to MERC.

Right to Withhold Payments

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

State and Federal Law Constraints

Both parties shall comply with the public contracting provisions of ORS chapter 279, and the recycling provisions of ORS 279.545 - 279.650, to the extent those provisions apply to this Agreement. All such provisions required to be included in this Agreement are incorporated herein by reference. CONTRACTOR shall comply with all applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations including those of the Americans with Disabilities Act.

Situs

The situs of this Agreement is Portland, Oregon. Any litigation over this agreement shall be governed by the laws of the State of Oregon and shall be conducted in the Circuit Court of the state of Oregon for Multnomah County, or, if jurisdiction is proper, in the U.S. District Court for the District of Oregon.

Assignment

This Agreement is binding on each party, its successors, assigns, and legal representatives and may not, under any circumstance, be assigned or transferred by either party.

Termination

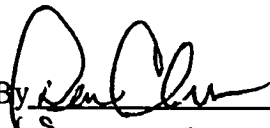
This Agreement may be terminated by mutual consent of the parties. In addition, MERC may terminate this Agreement by giving CONTRACTOR thirty days written notice of intent to terminate, without waiving any claims or remedies it may have against CONTRACTOR. Termination shall not excuse payment for expenses properly incurred prior to notice of termination, but neither party shall be liable for indirect or consequential damages arising from termination under this section.

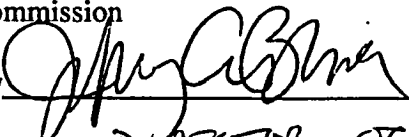
No Waiver of Claims

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

Modification

Notwithstanding and succeeding any and all prior agreement(s) or practice(s), this Agreement constitutes the entire Agreement between the parties, and may only be expressly modified in writing(s), signed by both parties.

By 
Title DISTRICT SALES MANAGER
Date 1.11.01

Metropolitan Exposition-Recreation
Commission
By 
Title DIRECTOR - OCC
Date 1/11/01

Attachment A
Scope of Work

1. Contractor will supply all equipment, necessary in the commercially reasonable opinion of MERC, for the concession stands and portable operations to adequately serve their products to the attendees at all three MERC facilities. Equipment will be provided at all three facilities at no charge; unless mutually agreed to. All equipment will be installed no later than January 19, 2001 at all MERC facilities. This process of equipment replacement is deemed as soon as possible.

2. Contractor will provide soft drink beverages and supplies required for all MERC facilities at the ARAMARK/GIACOMETTI nationally negotiated price for the items listed below as well as any other selected beverage to be dispensed. All price increases are subject to the ARAMARK/GIACOMETTI national negotiated price and may not necessarily be individually increased without the approval of ARAMARK/GIACOMETTI. Payment will be made for actual product ordered and received by MERC Concession/Catering contractor ARAMARK/GIACOMETTI, based on MERC's current need:

- Cola soft drink post-mix \$ 7.36 / gallon
- Diet Cola soft drink post-mix \$ 7.36 / gallon
- Lemon-lime soft drink post-mix \$ 7.36 / gallon
- Other soft drink post-mix \$ 7.36 / gallon
- CO2 in 20 lbs. Tanks \$12.00 / 20 lbs.
- 20 oz. bottles carbonated soft drink \$13.00 / case + DEP
- Water and other agreed to beverages \$ 6.00 / case + DEP IF REQUIRED
- 16 oz. Juices \$16.56 / case + DEP IF REQUIRED
- Soft Drink - cans \$ 8.40 / case + DEP

~~All pricing includes any required deposit for items listed above.~~

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3. All post-mix syrup shall be provided in the bag-in-box system or five-gallon canister system, depending on equipment requirements. The post-mix, regardless of system, must be available beginning with the initial delivery that must be within 14 days of the date of the agreement.

4. Contractor shall make deliveries of syrup upon order by MERC Concession/Catering Contractor, ARAMARK/GIACOMETTI, as needed. Delivery schedule will be determined by MERC or, at MERC's option, by ARAMARK/GIACOMETTI, and may vary due to the nature of MERC's business and the facilities need.

5. Except as specified in Section 7, Contractor shall be the exclusive supplier of soft drink pre-mix, bottles and cans of soft drink, and soft drink vending in public areas, for the term of the agreement.

6. The exclusive rights to the soft drink pourage and sponsorship rights under this agreement to not include the following:

- a) Display or products/services in connection with trade, exhibit, consumer shows or corporate convention business.
- b) Advertising in programs, ticketing (unless agreed to), or other similar promotional handouts.
- c) Event sponsors' identification and acknowledgement including but not limited to temporary signage, banners, kiosks, and public address announcements.
- d) Spot advertising or video production or monitors or electronic signage.
- e) Coffee products, and other non-competitive products.
- f) MERC may from time to time promote or co-promote special events at MERC facilities. These events require promotional support that MERC may secure through sponsorships. If Contractor declines to participate in such events, MERC reserves the right to present event sponsorship to other soft drink companies and/or other alternative drink companies including signage and event pourage.
- g) MERC may from time to time book events with natural sponsors and/or specific requests for beverage service. Such events may require covering up of signage and/or pouring a competitor's product. MERC facilities shall have the right to comply with such requests without being in breach of this agreement.

7. Contractor shall provide 24-hour, 7-day a week repair service at no charge to MERC for all soft drink dispensing equipment provided by the Contractor and equipment currently owned by MERC. Additional equipment purchased by MERC during the period will also be covered by this maintenance provision.

8. Some events have unforeseen demands of sales and/or services. MERC's concessionaire, ARAMARK/GIACOMETTI will maintain sufficient backup of product for those needs, however, in emergency situations it may be necessary for a next day delivery. MERC shall maintain the right to ask for and receive next day delivery whenever necessary, but shall not abuse said right unnecessarily.

9. Installation and service of all equipment include all necessary pressure tanks and lines and shall be delivered/installed within 14 days of the contract approval by MERC. All machines shall be of recent manufacture and acceptable to MERC and MERC's Concession/Catering Contractor, ARAMARK/GIACOMETTI.

10. The failure to repair soft drink dispensing equipment within 24 hours will cause MERC to lose sales. Loss of sales due to Contractor's inability to repair soft drink dispensing equipment could lead to the termination of the contract per the termination paragraph and/or liquidated damages of \$500.00 for every day the equipment is not in working order as determined by MERC. Contractor will be notified in writing of such failure and have 24 hours upon notice to repair all damaged or non-working equipment. If after such notice and there is no action by the Contractor, MERC may exercise the liquidated damages penalty and if Contractor still does not cure the equipment failure problem, MERC at it's sole discretion, may terminate the contract for non-performance.

11. Contractor shall provide MERC consideration for exclusive pouring privileges as follows:

- a) Annual cash payment of -0- to be in two equal installment on November 1 and April 1 of each year.
- b) Sufficient logoed cups for all facilities to dispense soft drink products. The logos shall include soft drink provider.
- c) Advertising on the back of event ticket in the amount of \$10,000 annually.
- d) Commercial advertising inside facilities as follows: signs, banners and kiosk (locations to be determined).
- e) Guaranteed event booking at MERC facilities (events to include meetings, corporate functions, trade shows and any food/beverage type functions).
- f) Other (specify): Radio advertising 4 weeks a year to promote upcoming events.
- g) Contractor will be permitted to place up to four vending machines in the public areas of the current facilities and up to four more in the expanded facility at the Oregon Convention Center. Other public locations will be mutually agreed to by the management of the Expo Center and PCPA. In consideration for these placements, Contractor will charge \$2.00/ea. for 20 oz. Bottles and remit 30% back to MERC. Contractor access shall be determined at a later date. The \$2.00/bottle price includes the mandatory \$-.05 deposit.
- h) Public vending will be available during all hours of operation. No timers or unplugging of machines at any time.

Contractor Response Form

Contractor proposer shall attach necessary pages to this proposal to respond to each of the areas listed below in order to be in compliance with a complete response to the Exclusive Pourage Sponsorship Rights RFP. Any item not responded to will be considered non-responsive.

- 1) Explanation of the last three installations requiring use of proposer's equipment in a concessions operation.
- 2) Please acknowledge your acceptance of the ARAMARK/GIANCOMETTI national pricing contract for MERC facilities.
- 3) Please acknowledge your acceptance of the exemptions to the exclusivity rights granted in the Agreement.
- 4) Please list the type or types of considerations MERC is to receive for the minimum \$35,000 consideration.
- 5) List insurance company(s) that will meet the MERC insurance requirements and that the indemnification language is acceptable.
- 6) Explain how you will service this account to provide 24-hour, 7-day a week coverage.
- 7) Please indicate how you will respond to the recycled product requirement on Page 5.
- 8) To facilitate evaluation of proposals, all responding firms will adhere to the format outlined within this RFP. Firms wishing to take exception to, or comment on, any specified criteria within the RFP are encouraged to document their concerns in this part of their proposal. The proposer shall define any issues and/or costs that are excluded in their proposal for the work required by this RFP. Exception or comments should be succinct, thorough and organized.

Coca-Cola Bottling of Oregon **Response to RFP:**

1. Coca-Cola has two options when providing installations for our project installs. Our first option is BevCo. BevCo does all the installations for our local Wendy's. Our second option is a company called Preferred Service out of Vancouver. Preferred Service does all our installations for McDonalds. Both companies are more then capable of installing and servicing the equipment asked for in this RFP.
2. Coca-Cola Bottling of Oregon accepts ARAMARK/GIANCOMETTI national pricing for MERC facilities.
3. Coca-Cola Bottling of Oregon accepts the exemptions to the exclusivity rights granted in the Agreement.
4. Considerations for MERC totaling \$35,000 minimum:

• FREE logoed cups	\$20,000 value
• CASH for ticket backs	\$10,000
• Ticket back promo with NATIONAL retailers	\$2,500 value
• <u>Radio tags for events</u>	<u>\$7,500 value</u>
TOTAL	\$40,000 year
5. Coca-Cola Bottling of Oregon is a self-insured company. We do have Travelers as a third party insurer. We will provide certificate of insurance when contract is agreed to.
6. EQUIPMENT SERVICE is provide 24-hours a day, 7-days a week through DIRECT SEVICE at our 1-800-241-COKE number. Coca-Cola LOCAL technicians provide Service.

PRODUCT SERVICE will be provided by an On Premise Account Manager (OPAM). The OPAM will call on the accounts on a weekly basis and help determine the wants and needs of each facility. The order will be placed, and the product will arrive in 48hrs. We are on a 48hr sell cycle, order Mon. for Wed., Tue. For Thur., ect... We also have weekend service for EMERGENCY situations.
7. Coca-Cola Bottling of Oregon's packages are all 100% recyclable.