

METROPOLITAN EXPOSITION-RECREATION COMMISSION

Resolution No. 03-43

For the purpose of approving a beverage sponsorship contract for all MERC facilities with The Pepsi Bottling Group, Inc., and authorizing the MERC General Manager to execute the sponsorship contract.

WHEREAS, Metro Code Section 2.04.054(b)(16) exempts sponsorship contracts from competitive bidding provided that quotes are obtained from three potential sponsors or that good faith efforts to obtain such quotes are documented; and

WHEREAS, the MERC General Manager may delegate his authority to obtain such quotes from potential sponsors to other MERC employees or a third party; and

WHEREAS, MERC retained Front Row Marketing Services LLP to act as MERC's representative to obtain quotes from potential sponsors and recommend a sponsorship for exclusive non-alcoholic beverage services for MERC facilities; and

WHEREAS, Front Row Marketing Services LLP obtained quotes from two potential sponsors and documented its good faith efforts to obtain such quotes from a total of three potential sponsors; and

WHEREAS, The Pepsi Bottling Group, Inc. submitted a quote, and MERC staff recommends selection of The Pepsi Bottling Group, Inc. because of the financial and marketing value contained in its proposal; and

WHEREAS, the MERC General Manager has determined that the value offered by the sponsorship agreement is consistent with the criteria for assessing such values as set forth in MERC's Naming and Sponsorship Policies; and

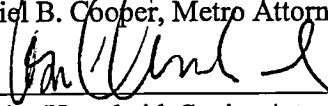
WHEREAS, the Commission desires to enter into sponsorship agreements with qualified companies in order to enhance revenues for the operation, maintenance and development of its facilities.

BE IT THEREFORE RESOLVED AS FOLLOWS:

1. The Metropolitan Exposition-Recreation Commission approves the selection of The Pepsi Bottling Group, Inc. as the Non-Alcoholic Beverage Sponsor for MERC for a limited duration; and
2. The Metropolitan Exposition-Recreation Commission approves the Non-Alcoholic Beverage Sponsorship Agreement, in a form substantially similar to the attached Exhibit "A," and authorizes the General Manager to execute the agreement on behalf of the Commission.

Passed by the Commission on December 17, 2003.

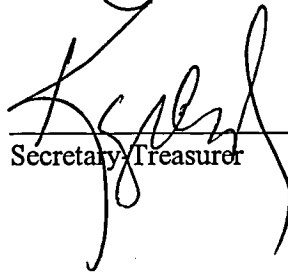
Approved as to Form:
Daniel B. Cooper, Metro Attorney

By: 

Lisa Umscheid, Senior Attorney



Chair



Secretary/Treasurer

MERC Staff Report

Agenda Item/Issue: Approval of sponsorship and exclusive non-alcoholic beverage rights with the Pepsi Bottling Group for all MERC facilities.

Resolution No. 03-43

Date: December 10, 2003

Presented by: Julie Reed

Background/Analysis

MERC entered into a personal service agreement with Front Row Marketing in April 2002 to provide consulting services related to assessment, identification, and development of sponsorship, advertising and naming rights for MERC. The consulting services were to be conducted by Front Row Marketing in two phases. Phase one included the assessment and identification of opportunities. Phase two comprises the development and selling component of the agreement. Funding for Phase 2 component was approved by the Commission as a contract amendment in August 2003.

Front Row Marketing has been actively pursuing sponsorship opportunities in the Portland marketplace. The proposal before the Commission is a sponsorship agreement with Pepsi Bottling Group that would grant Pepsi exclusive rights to provide non-alcoholic beverages at MERC facilities in exchange for cash, product discounts and marketing support services.

A request for sponsorship proposals for MERC non-alcoholic beverage service rights were presented to three potential sponsors. Formal proposals were received by local distributors for Coke, Pepsi and Snapple beverage products. The proposals were initially evaluated by Front Row Marketing, and their analysis and recommendations were presented to MERC management. All proposals were evaluated based on the criteria set for in the MERC sponsorship and naming policies. The Coke and Pepsi proposals were advanced and compared, and Pepsi was recommended for selection as the preferred sponsors based on the total value of its proposal, including cash, in-kind contributions, marketing support, the pricing advantages with Pepsi's national level relationship with MERC's catering concessionaire, Aramark, and Pepsi's outstanding service reputation in the Portland marketplace.

Highlights

Duration:

This is a seven-year agreement, beginning January 1, 2004 and terminating December 31, 2010.

Terms and Consideration

- MERC grants sponsor the exclusive right to provide non-alcoholic beverages to MERC and/or its authorized concessionaire for sale and distribution at the facilities and to provide exclusive vending services in the public area of the facilities.
- Sponsor will provide merchandising materials for point of sale advertising, free beverage cups and lids valued at \$17,000 annually, and on-facilities promotions valued at \$65,000 annually.
- Sponsor has the right to promote itself as the exclusive beverage provider for MERC facilities and to promote that its products are available at MERC facilities. Sponsor may use, but not limited to radio, television, print media, packaging of products, and cooperative advertising to promote its relationship with MERC.
- Sponsor will provide its beverage products based upon a nationally negotiated price list agreement with Aramark.

- Sponsor will provide all dispensing and vending equipment to MERC and provide repair and service on its equipment at no charge to MERC.
- MERC will not sell, dispense or serve competitive products at its facilities under most conditions.
- However, MERC retains the rights to grant its licensed events the ability to dispense competitive products if it determines that is in the best interest of the facility and the event.
- The agreement exempts Starbucks Store beverages and branding merchandise.

Fiscal Impacts

For the promotional and exclusive beverage service rights, MERC will receive from the sponsor the following fiscal consideration;

- A total sponsorship fee over the agreement period of \$129,500 to be paid annually in lump sum payments of \$18,500.
- Pay a commission fee of 40% of gross vending machine sales (net of Metro excise tax and applicable state sales, license and recycling fees). Payments will be made quarterly. The minimum annual revenue expected from this vending sales component is valued at \$8,500.
- Pay a fee of \$.75 per-case purchased by MERC or its concessionaire during the year. The minimum annual revenue expected from this product purchase component is \$7,500.
- Provide marketing support through cooperative promotions with a value of at least \$65,000 annually, measured using traditional market media rate card values.
- The sponsorship agreement also includes a one time payment of \$1,000 to the Friends of PCPA for the express purpose of purchasing two seats at PCPA venues.

Recommendation:

Staff recommends that the Commission approve the tentative exclusive non-alcoholic beverage sponsorship agreement and authorized the general manager to sign the agreement.

NON-ALCOHOLIC BEVERAGE SPONSORSHIP AGREEMENT

This Agreement is entered into this between the Metropolitan Exposition-Recreation Commission (hereinafter "MERC") and The Pepsi Bottling Group, Inc. (hereinafter "Sponsor").

RECITALS

WHEREAS, MERC manages and operates the Oregon Convention Center, the Portland Exposition Center, and the Portland Center for the Performing Arts; and

WHEREAS, MERC has the authority to enter into a sponsorship contract with a sponsor, under which the sponsor's name or logo is used in connection with a facility's goods, buildings, parts of buildings, services, systems, or functions in exchange for the sponsor's agreement to pay consideration, including money, goods, services, labor, credits, property or other consideration; and

WHEREAS, MERC desires to enter into a sponsorship contract with Sponsor under which the Sponsor's name and logo will be used in connection with MERC facilities' service of non-alcoholic beverages in exchange for the Sponsor's agreement to pay consideration to MERC, including money; and

WHEREAS, Sponsor wishes to enter into a sponsorship contract for the sponsorship of MERC facilities' service of non-alcoholic beverages.

NOW, THEREFORE, in consideration of the promises and other consideration set forth below, the parties agree as follows:

1. DEFINITIONS

(a) "Agreement Year" means each twelve-month period beginning with the first day of the Term.

(b) "Approved Cups" means disposable cups (12 oz, 16 oz, 24 oz, and 32 oz minimum sizes) approved by Sponsor from time to time as its standard trademark cups and/or vessels and/or other (disposable and nondisposable) containers approved by Sponsor from time to time, all of which shall prominently bear the trademark(s) of Sponsor's Products on all of the cup surface. Sponsor's current standard trademark cup image is attached to this Agreement as Exhibit "A."

(c) "Beverage" or "Beverages" means all carbonated and noncarbonated non-alcoholic beverages including, but not limited to, carbonated soft drinks, mixers, flavored and non-flavored waters, fruit juices, fruit juice-containing or flavored drinks, fruit punches or ades, isotonic energy and fluid replacement drinks (sometimes referred to as "sports drinks"); cold tea drinks; and all drink or beverage bases, whether in the form of syrups, powders, crystals, concentrates or otherwise, from which such drinks and beverages are made. "Beverage" or

"Beverages" shall not include coffee and hot tea products, all products served in Starbucks-branded concession areas, milk, or water drawn from the public water supply or unbranded juice squeezed fresh at the Facilities.

(d) "Competitive Products" means all Beverages other than Products (as defined in this Agreement).

(e) "Facility" and "Facilities" means the Oregon Convention Center, the Portland Center for the Performing Arts, and the Portland Exposition Center, including offices, maintenance facilities, the grounds, all buildings that are part of the location, all cafeterias, dining facilities, food service outlets or concession stands, and all vending locations in the public portions of the buildings. "Facilities" does not include vending locations in the portions of the buildings that are not accessible to the public, including but not limited to food preparation areas, service corridors, staffing areas and offices, loading docks and loading bays, and rehearsal rooms. "Facilities" does not include the Portland Exposition Center parking lots and the Oregon Convention Center parking structure.

(f) "Licensed Event" or "Licensed Events" means an event held at a Facility pursuant to a license agreement between MERC and a licensee.

(g) "Products" shall mean Beverage products sold by Sponsor to MERC and/or MERC's authorized concessionaire(s).

2. TERM

The Term of this Agreement shall be seven years, commencing on January 1, 2004 and shall remain in effect until and including December 31, 2010, unless terminated as provided in this Agreement.

3. GRANT OF BEVERAGE AVAILABILITY AND BEVERAGE MERCHANDISING RIGHTS

MERC grants to Sponsor the following Beverage availability and merchandising rights, subject to the Permitted Exceptions set forth in Paragraph 7 of this Agreement:

(a) Beverage Availability At The Facilities

MERC grants to Sponsor the right to sell Beverages to MERC and/or MERC's authorized concessionaire(s) for sale and distribution at the Facilities. MERC agrees that Products shall be the Beverages sold, dispensed, or served by MERC and/or its authorized concessionaire at the Facilities. MERC agrees that MERC and its authorized concessionaires shall purchase all (100%) of their requirements for Products from Sponsor, provided, however, that MERC and/or its authorized concessionaire shall retain the right to purchase Competitive Products if Sponsor cannot provide the type, product size, or total product amount MERC requests for a Licensed Event.

(b) **Exclusive Vending Rights In The Public Areas Of The Facilities**

MERC grants to Sponsor the exclusive right to provide vending services in the public areas of the Facilities. Sponsor agrees that its right to sell Beverages at the Facilities excludes vending services in the non-public areas of the Facilities, including but not limited to food preparation areas, service corridors, staffing areas and offices, loading docks/bays, and rehearsal rooms.

(c) **Merchandising Rights**

Sponsor shall have the right to merchandise Beverages at the Facilities as follows:

(1) **Point-of-Sale Advertising.** Sponsorship shall provide MERC and/or its authorized concessionaire with point-of-sale advertising materials. Materials promoting Products at the point of sale at the Facilities shall be clearly visible to the purchasing public and shall be displayed in a manner and location reasonably acceptable to Sponsor. MERC shall have the right to preview all materials and to reject any materials deemed by MERC, in its sole discretion, to be offensive, disruptive, contrary to the aesthetic presentation of the Facilities, or in violation of MERC's Advertising Policy or MERC's Naming and Sponsorship Policy. Sponsor's vending machines and other dispensing equipment may display full trademark panels on all sides.

(2) **Concession/Menu Board Advertising.** Trademarks for Products shall be listed on the menu boards at the concession areas in the Facilities.

(3) **Approved Cups.** MERC shall ensure that all post-mix Beverages served or pre-mixed Beverages served, sold or dispensed at concessions at the Facilities shall be served in Approved Cups.

(4) **On-Facilities Promotions.** Sponsor shall have the right to conduct on-facility promotions at MERC Facilities for the purpose of increasing the sale of Products at the Facilities. MERC and Sponsor shall mutually agree on the frequency of on-facility promotions. MERC shall have the right to approve or disapprove, in its sole discretion, any such on-facilities promotions before they occur.

(d) **Delivery Requirements**

(1) Sponsor shall provide all post-mix syrup in the bag-in-box system or five-gallon canister system, depending on the requirements of the dispensing equipment (hereinafter "Equipment"). Sponsor shall make the first delivery of post-mix to the Facilities no later than January 30, 2004.

(2) Sponsor shall deliver syrup upon order by MERC and/or its authorized concessionaire. The delivery schedule shall be determined by MERC or, at MERC's option, by MERC's authorized concessionaire. Sponsor acknowledges that the delivery schedule may vary due to event schedules and the Facilities' needs.

(3) Sponsor acknowledges that some events at the Facilities create unexpected demands for Products. MERC and/or its authorized concessionaire shall exercise reasonable efforts to maintain sufficient Products on hand for such unexpected demands. MERC retains the right, however, to demand a next-day delivery of Products by Sponsor, and Sponsor shall deliver Products ordered by MERC on a next-day basis when requested by MERC, provided that Product orders for "special delivery" or "unscheduled delivery" must be made by 3:00 p.m. the day prior to delivery. MERC shall not exercise this right unreasonably.

4. **GRANT OF BEVERAGE ADVERTISING AND PROMOTION RIGHTS**

Subject to the Permitted Exceptions set forth in Paragraph 7, MERC hereby grants to Sponsor the right to advertise and promote Beverages on and with respect to the Facilities as follows:

(a) **Signage for Products**

(1) **Facilities.** Sponsor's name and logo shall be displayed on the menu boards in the concession areas at the Facilities. The location, size and appearance of any display of Sponsor's name or logo are subject to MERC's prior approval, such approval to be granted or withheld in MERC's sole discretion. During the term of this Agreement, Sponsor shall be granted four (4) rent-free uses of a meeting room able to accommodate 150 people, provided that space is available and provided that Sponsor requests the use of meeting room space at least sixty (60) days before the event.

(2) **Obstruction of Signage.** MERC shall have the right to alter, obscure, or drape Sponsor's name and logo whenever:

- a. MERC is required to do so by a license agreement for a Licensed Event,
- b. MERC determines in its sole discretion that it is in the best interests of a Licensed Event, or
- c. MERC determines in its sole discretion that it is in the best interests of MERC.

(3) **Obligation to Maintain Signage.** MERC shall maintain in good order and repair the signs and advertising owned by MERC. Sponsor shall maintain in good order and repair all signs and advertising supplied by Sponsor. Sponsor shall replace all signs and advertising, at Sponsor's sole expense, when necessary due to age or wear and tear.

(4) **Illuminated Signage.** All lighted signs and panels advertising or promoting Products (including lighted concession advertising) shall be fully illuminated at all events at the Facilities for which any signs are illuminated.

(5) Access to Signage. Sponsor shall have the right of access to its permanent signage at all reasonable times for the purpose of replacement or removal of the same or to modify, change, or alter the promotional messages appearing thereon at Sponsor's sole cost and discretion, subject to MERC's prior approval of content.

(6) Production of Signage. Sponsor shall design, produce and maintain, at its sole cost and expense, all promotional materials, advertising, graphics, and related items used in connections with Sponsor's signage.

(b) Promotional Rights

(1) General Sponsorship Designation. Sponsor shall have the right to promote the fact that Sponsor is a sponsor of MERC and the Facilities and to promote that Sponsor's Products are available at MERC Facilities. Such promotion may occur in all advertising, including television, radio and print media, on the packaging of Products (including cups and vessels), and at the point-of-sale of any and all Products wherever they may be sold or served, and may be conducted in cooperative advertising with Sponsor's customers at no additional cost to MERC.

(2) "Official" Designations. Sponsor shall have the right to refer to any brand of Products in any of Sponsor's marketing materials as the "official" or "exclusive" soft drink, sports drink, cold tea, juice, juice drink, or bottled water of MERC or of the Facilities.

5. CONSIDERATION

(a) Sponsorship Payments

For the promotional rights, Beverage availability rights and the other sponsorship rights described in this Agreement, Sponsor shall pay MERC the following sponsorship fees:

(1) On January 1, 2004, and on January 1 of each Agreement Year thereafter, Sponsor shall pay MERC a lump sum sponsorship fee of \$18,500.

(2) On January 1, 2004, Sponsor shall pay the Friends of the Portland Center for the Performing Arts a one-time lump sum sponsorship fee of \$1,000 for the purpose of sponsoring two (2) seats at the Portland Center for the Performing Arts.

(3) No later than thirty (30) calendar days after the end of every quarter, Sponsor shall pay MERC a lump sum vending sponsorship fee totaling forty percent (40%) of the total gross receipts, less Metro excise tax and applicable sales tax, license and recycling fees, collected during the quarter from Sponsor's vending machines at MERC Facilities

(4) No later than thirty (30) calendar days after the end of every quarter, Sponsor shall pay MERC a per-case sponsorship fee totaling \$.75 per case (one case equals 24 units) purchased during the quarter by MERC and/or by MERC's concessionaire.

(b) Reporting Requirements

(1) No later than twenty (30) days after the end of every quarter, Sponsor shall provide to MERC a report of all sales made through Sponsor's vending machines at the Facilities. The report shall identify the quarterly gross sales by vending machine location.

(2) No later than twenty (30) days after the end of every quarter, Sponsor shall provide to MERC a report of all cases purchased during the quarter by MERC and/or MERC's concessionaire. The report shall identify an itemized list of the products purchased and amounts purchased by product and location for the period. Additional reports will be provided by sponsor upon request.

(3) MERC shall have the right to conduct audits or similar reviews of Sponsor's records, books, and accounts, written or electronic, related to matters covered by this Agreement, including the right to examine all information reasonably necessary for MERC to determine if it has received all compensation due to it under this agreement. Sponsor shall cooperate in full with all reasonable audit or review activity conducted by MERC pursuant to this Agreement, and shall supply all information MERC reasonably determines necessary to carry out its auditing or review function. Sponsor shall notify MERC when any internal audit or review of operations covered by this Agreement is taking place. Sponsor shall provide to MERC a copy of any informal and formal audit or review reports as soon as the reports are completed. If an audit identifies deficiencies in Sponsor's operations, within ten days Sponsor shall provide to MERC a written plan outlining how Sponsor will correct the deficiencies.

6. COMPETITIVE PRODUCTS

Subject to the Permitted Exceptions in Paragraph 7, during the entire term of this Agreement:

(a) No Competitive Products may be sold, dispensed or served by MERC and/or its authorized concessionaire at the Facilities.

(b) No permanent or temporary advertising, signage or trademark visibility for Competitive Products shall be displayed or permitted anywhere at the MERC Facilities.

(c) No agreement or relationship will be entered into or maintained by MERC pursuant to which Competitive Products are associated in any manner with MERC and/or any advertising, promotional activity or other endeavor which creates or tends to create the impression of a relationship or connection between Competitive Products and MERC. Sponsor acknowledges that MERC is a party to an agreement with ThemeParking-Design Pacifica International, Inc., dated November 15, 2001, which permits ThemeParking-Design Pacifica International, Inc. to sell advertising and sponsorships in the parking areas at the Facilities. Sponsor acknowledges that ThemeParking-Design Pacifica International, Inc. may sell advertising or sponsorships for Competitive Products and Competitive Products suppliers.

7. PERMITTED EXCEPTIONS

The following items shall be Permitted Exceptions to the sponsorship rights granted to Sponsor by this Agreement:

(a) MERC shall have the right to make available for sale at the Facilities the following products: (i) fresh-squeezed unbranded juice; (ii) milk, (iii) fresh-brewed hot tea, (iv) fresh-brewed hot coffee and espresso drinks. MERC agrees that this provision shall not be read to allow advertising or promotional rights with respect to such Competitive Products except that trademarks for such Competitive Products may be

displayed on menu boards and on dispensing and refrigerating equipment not provided by the Sponsor. MERC shall ensure that equipment provided by the Sponsor is utilized solely for Sponsor's Beverages.

(b) MERC shall have the right to license the Facilities for Licensed Events for Competitive Products suppliers. MERC shall not grant Competitive Products suppliers use of permanent concession stands or the use of Sponsor-provided equipment unless Sponsor approves such use. All Products supplied by the Competitive Products suppliers shall be removed at the conclusion of the event. Temporary advertising, signage or trademark visibility for Competitive Products shall be displayed only for the duration of the mutually agreed upon event.

(c) MERC's licensees, and exhibitors and vendors at Licensed Events, shall have the right to display references to or advertising for Competitive Products in connection with Licensed Events.

(d) MERC's licensees, and exhibitors and vendors at Licensed Events, shall have the right to distribute programs, tickets, advertising, and similar promotional materials related to Licensed Events, and such materials may include references to or advertising for Competitive Products.

(e) MERC's licensees, and exhibitors and vendors at Licensed Events, shall have the right to display the names and logos of sponsors of Licensed Events, which may include references to or advertising for Competitive Products. This right to display the names and logos of Licensed Event sponsors includes but is not limited to displays in event advertising, programs, tickets, promotional materials, temporary signage at the Facilities, banners, kiosks, public address announcements, spot advertising, video production or monitors, and electronic signage.

(f) MERC's licensees, and exhibitors and vendors at Licensed Events, shall have the right to dispense samples of Competitive Products at Licensed Events, subject to the requirements of MERC's food and beverage policies.

(g) MERC and MERC's authorized concessionaire shall have the right to purchase Competitive Products for dispensing and sale at the concession areas operated under the Starbucks brand, and shall have the right to display references to or advertising for Competitive Products in the concession areas operated under the Starbucks brand. Sponsor agrees that this Agreement in no way limits the rights of MERC and/or its authorized concessionaire to operate Starbucks-branded concession areas.

(h) Lessees leasing retail store space from MERC shall have the right to purchase Competitive Products for dispensing and sale in such retail stores, and shall have the rights to display references to or advertising for Competitive Products in such retail stores.

8. PRICING

(a) Throughout the entire term of this Agreement, Sponsor shall provide Products to MERC and/or MERC's authorized concessionaire at the prices set forth in the nationally

negotiated price list established by Sponsor and Aramark [what is the correct full name of the Aramark entity that has the price list?] (hereinafter "Price List"). The Price List for calendar year 2004 is set forth in Exhibit "B." In the event that Aramark/Giacometti Joint Venture ceases to be an authorized concessionaire of MERC during the term of this Agreement, Sponsor shall provide Products to MERC and/or MERC's authorized concessionaire for the remainder of the term of this Agreement at the prices listed in Price List in effect on the last day Aramark/Giacometti Joint Venture is MERC's authorized concessionaire, or at the prices available to MERC's authorized concessionaire, whichever is lesser.

(b) During each Agreement Year, Sponsor shall provide MERC and/or its concessionaire with free product with a retail value of at least \$900 per year for use as designated by MERC. In addition, Sponsor shall provide MERC and/or its concessionaire with free cups and lids with a retail value of at least \$17,000 per year.

9. EQUIPMENT AND SERVICE

(a) No later than January 30, 2004, Sponsor shall, at no cost to MERC, place in the MERC Facilities all Equipment necessary, in the reasonable opinion of MERC, to dispense Products at the Facilities.

(b) During the term of this Agreement, Sponsor shall place vending machines acceptable to MERC in the Facilities. Sponsor shall place a minimum of four (4) vending machines at the Oregon Convention Center, a minimum of four (4) vending machines at the Portland Center for the Performing Arts, and a minimum of three (3) vending machines at the Expo Center. MERC shall determine, in its sole discretion, the locations of the vending machines at each Facility. In addition, Sponsor shall place additional vending machines at the Facilities if requested by MERC. Sponsor shall ensure that all vending machines contain necessary stock at all times.

(c) MERC agrees (i) if requested by Sponsor, it will execute documents evidencing Sponsor's ownership of the Equipment and vending machines, (ii) the Equipment and vending machines may not be removed from the Facilities without Sponsor's written consent, and (iii) MERC will not encumber the Equipment and vending machines in any manner or permit attachment thereto except as authorized by Sponsor.

(d) Sponsor shall be required to maintain its own Equipment and vending machines, at its sole cost. Under no circumstances shall MERC be responsible for any damage, loss, or wear to Equipment or vending machines.

(e) Sponsor shall provide MERC with limited 7:00 am – 11:00 p.m. 7-day a week Equipment and vending machine service calls at no cost to MERC. Sponsor shall provide two (2) preventative maintenance calls for each MERC Facility annually at no cost to MERC. In addition, Sponsor shall provide one (1) thorough, quality-based equipment evaluation at each MERC Facility every six (6) months.

(f) Any failure by Sponsor to repair Equipment, repair vending machines, or stock vending machines within 24 hours of MERC's documented request will cause MERC to lose

(b) Worker's Compensation insurance providing coverage for Oregon statutory requirements.

(c) Employer's Liability Insurance with limits not less than \$1,000,000 each accident.

(d) Automobile Liability Insurance with limits not less than \$500,000 each occurrence, combined single limit for bodily injury and property damage including coverage for owned, non-owned and hired vehicles, including loading and unloading operations.

(e) Commercial General Liability and Automobile Liability Insurance policies required by this Agreement shall name as additional insureds: Metro, MERC, and the members, officers, directors, agents, and employees of each entity.

(f) Sponsor shall maintain with respect to each such policy evidence of such insurance endorsements as may be required by MERC and shall at all times deliver and maintain with MERC a certificate with respect to such insurance in a form acceptable to MERC.

13. INDEMNIFICATION

Sponsor agrees to indemnify, hold harmless and defend Metro, MERC, and their respective members, officers, directors, agents and employees from and against any and all liabilities, damages, actions, costs, losses, claims and expenses (including attorneys' fees), on account of personal injury, death or damage to or loss of property or profits arising out of or resulting in whole or in part from any act, omission, negligence, fault or violation of law or ordinance by Sponsor or its employees, agents, subcontractors, invitees, or any other person entering the Facilities with the implied or express permission of Sponsor. Such indemnification by Sponsor shall apply unless such damage or injury results from the sole negligence or willful misconduct of the MERC.

14. MAINTENANCE OF RECORDS

Sponsor shall maintain all of its records relating to the Sponsorship 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 Sponsor for three years after MERC makes final payment and all other pending matters under this Agreement are closed.

15. OWNERSHIP OF DOCUMENTS

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

16. INDEPENDENT CONTRACTOR STATUS

Sponsor 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 Sponsor be considered an employee of Metro. Sponsor is solely responsible for its performance under this Agreement and 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 Agreement; and for meeting all other requirements of law in carrying out this Agreement. Nothing in this Agreement shall be construed as creating a partnership or joint venture between MERC and Sponsor.

17. RIGHT TO WITHHOLD PAYMENTS

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

18. STATE AND FEDERAL LAW CONSTRAINTS

Both parties shall comply with the public and contracting provisions of ORS Chapter 279, and the recycling provisions of ORS 279.545 to 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. Sponsor 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.

19. 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.

20. 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.

21. TERMINATION

This Agreement may be terminated by the mutual consent of the parties. In addition, MERC may terminate this Agreement upon thirty (30) days prior written notice to Sponsor at any time if:

(a) Sponsor fails to make any payment due under this Agreement, and if such default continues uncured for the thirty (30) day period referred to in this Paragraph 21; or

(b) Sponsor breaches any material term or condition of this Agreement, and if such breach continues uncured for the thirty (30) days period referred to in this Paragraph 21.

21. CAPTIONS

The captions used in this Agreement are for convenience only and shall not affect in any way the meaning or interpretation of the provisions set forth herein.

22. 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.

23. MODIFICATION

Notwithstanding 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 Sponsor and the MERC Commission.

**METROPOLITAN EXPOSITION-
RECREATION COMMISSION**

THE PEPSI BOTTLING GROUP, INC.

By: _____

By: _____

Title: _____

Title: _____

Date: _____

Date: _____

DEAL POINTS	COKE	PEPSI	Remarks	2001-2001 MERC COKE DEAL	Deal Point Variances
Marketing - Sponsorship Fee Partner Funding	\$15,000	\$18,500	Dollar Cost	MERC received \$10,000 in exchange for ticket backs - number of ticketbacks unknown per contract	185% \$18,500
Marketing Fund/Fee Incentive guarantee, Case Load Rebate Participation per case and forecast (based on 10,000 cases for the forecast)	\$.50 per case - must sell 10,000 cases in non vending category FRMS Forecast \$5,000++	\$.75 per case No minimum FRMS forecast \$7,500	Not paid on full service vending cases		All upside new revenue streams tied to the sponsorship projected to capture \$7,500 annually
Full Service Vending Commissions assume the vending price @\$2.00 @ \$48 per case @ 45% to Merc = \$19.20/case.	45% or FRMS forecast \$9,500/year	40% or FRMS forecast \$8,448/year	We look to enhance the number of POS vending machines/stations. I.E. OCC & EXPO transportation plazas PCPA Back Stage...Historic COKE MERC vending figures in 2002 reflect approximately 220 cases of 20 oz. Beverages. With enhancing vending POS and adding Key POS locations we forecast to increase the historic numbers by 100% for a forecast of MERC commissions of 440cases for 10,560bttis/units @ \$2.00 @ 45% = \$9,504		All upside new revenue streams tied to the sponsorship projected to capture \$8,448 annually
Donation of Product	N/A	\$900			\$900
Direct Expense Deferment (cups & lids)	\$20,000	\$17,000	When we go to contract we will have to get a competitive pricing statement for any additional branded cups purchased above the sponsored cups.	Free COKE logoed cuyps valued @ \$20,000 (cups only)	\$17,000
Equipment Support (Add & enhance conversion expenses)	YES	YES	Pepsi will install new equipment. Coke equipment is 3+ years old.		
Development of Vending stations to support lift in sales (mutually agreed upon serving stations)	YES	YES	Build out of mutually agreed upon stations to be fitted with secure state of the art vending equipment		
Pricing (National/market competitive pricing per Aramark scale/model)	2 year guarantee - allow for up to 3%/yr. increase in year 3-7	Aramark national competitive pricing			Competitive
Payment Terms	Yr.1 \$45,000 up front - Yr. 4 \$30,000 up front - Yr. 7 \$30,000 up front. Or \$15,000 per year.	First year payment at the time of contract execution and on anniversary date			Competative
PCPA Level "A" \$500/ seat package	NA	2 for \$1,000	One time seat contribution.		\$1,000 one time fee
Total annual value to Merc	\$49,500	\$52,348		\$30,000	\$52,348 The revised new and enhanced beveragesponsorship is forecasted to be worth 174% greater than the historic three years.
TOTAL OVER THE SEVEN YEAR TERM	\$346,500	\$366,436			
MARKETING PROGRAM ANNUAL	\$97,000	\$62,000	Needs discussion to place value on this component. Pepsi is submitting revised numbers with sample promotional models	Ticket back promotion tied to National retailers valued at \$2,500 - Radio Tags for events valued @ \$7,500	TBD