

METROPOLITAN EXPOSITION RECREATION COMMISSION

Resolution No. 09-14

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

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

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

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

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

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


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

Passed by the Commission on November 4, 2009.


Chair

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


Secretary/Treasurer

By: 
Nathan A. Schwartz Sykes
Senior Attorney

MERC STAFF REPORT

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

Resolution No. 09-14

Presented By: Jeffrey A. Blosser

Date: November 4, 2009

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

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

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

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

MERC/ARAMARK/Giacometti Partnership Deal Points

We are in final negotiations with ARAMARK .

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

1. MERC shall receive \$2 million in capital investment dollars to be spent on Food and Beverage related needs in all of the three buildings.
2. MERC receives credits through ARAMARK/Giacometti Partners Natural Vendor Discounts against cost of sales.
3. This contract gives ARAMARK/Giacometti Partners exclusive rights to all food and beverage service to be provided in the three buildings except as excluded at the PCPA facilities.
4. ARAMARK/Giacometti Partners are responsible for carrying out all management related duties as spelled out in paragraph 5 in the Agreement to include staff management, labor negotiations, sales efforts, food purchasing, all health and safety related practices and permits, provide high level quality food and service, incorporate the new branding Culture, Nature Nurture, comply with generally accepted accounting procedures, advise MERC on operational issues as well as capital improvements, marketing plan development, preparing annual budgets, comply with MERC FOTA/MWESB programs, comply with MERC sustainable programs.
5. ARAMARK/Giacometti Partners is a joint venture with 12% minority partnership; will provide quarterly reports on these outcomes of FOTA/MWESB hires and purchasing; is responsible for creating the Leg UP Program to reach out to economically disadvantaged individuals for a training venture and management program to create capacity building in the food and beverage business arena; and to comply with other MERC Commission requirements related to FOTA/MWESB. MERC and Contractor will establish target for FOTA and MWESB requirements annually.
6. Commission has final determination on all operating policies, pricing of services and food items and brands of product to be served.
7. Final determination of the annual budget to be used at each facility related to Food Service operations.
8. The power to approve or disapprove the Group Manager, facility specific General Manager, Executive Chef and the Controller provided by contractor.
9. Final approval of the spending of the 5% reserve account monies annually.
10. Financial deal is as follows:
 - a. ARAMARK/Giacometti Partners shall receive:
 - 3.25% of Net Gross Receipts each year
 - 10% of Net Profits generated each year
 - 1% of Net Profits of \$3,600,000 is exceeded in any year
 - Up to 2.5% of Net Profits in any year depending upon the qualitative incentives scores as outlined in the contract

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

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

Food and Beverage Operations Agreement

This agreement is made and entered into on this ____ day of _____, 2009, by and between the Metropolitan Exposition Recreation Commission ("MERC", or "the Commission") and ARAMARK/Giacometti Joint Venture Partnership ("Contractor" or "ARAMARK"), a joint venture partnership formed under the laws of the State of Oregon between ARAMARK Sports & Entertainment Services, LLC and Giacometti Partners, Ltd., an Oregon corporation.

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

1. Definitions

The following terms are defined as follows:

- A. "Accounting Year" means the period commencing November 5, 2009 and ending June 30, 2010; thereafter "Accounting Year" means the period commencing July 1 and ending June 30 of the following year, consisting of 12 accounting periods at MERC Facilities.
- B. "Accounting Period" means the monthly accounting period used by MERC and is 12 different monthly accounting periods.
- C. "Catering Gratuities Collected For Employees" means the percentage of service fees invoiced to clients reduced by Metro Excise Tax, sales and use tax or any tax of a similar nature for catered events requiring labor as part of the desired service level.
- D. "Concessions" means the sale and all activities supporting, related to, or necessarily incidental to such sale (including catering) of food, beverages (alcoholic and non-alcoholic), candy, and similar products to patrons of events, including restaurants, bars, and coffee shops, at the Expo, PCPA, and the Convention Center, in an efficient and courteous manner and in a clean and appealing environment. "Concessions" excludes the sale of food, beverages, candy, and similar products through the use of back-of-house vending machines.
- E. "Concessions Products" means all food, beverages, candy, and similar products that MERC directs or allows the Contractor to sell to patrons of events at the Expo, PCPA and Convention Center, excluding vending machines.
- F. "Contractor's Employees" means only employees of the Contractor who are engaged exclusively in the management and operation of the concessions or catering, including contracted services, and who have no other responsibility on behalf of the Contractor.

- G. **“Convention Center”** means the Oregon Convention Center located 777 NE Martin Luther King, Jr. Blvd., Portland, Oregon.
- H. **“Culture/Nature/Nurture”** means the new branding strategies for all of the marketing, sales efforts, quality of service and performance approaches outlined from the Contractor to the food and beverage management services at the MERC Facilities as set forth in Exhibit 10.
- I. **“Direct Operating Costs”** means the following costs incurred in performing the functions and activities described in the Scope of Work for the Food & Beverage Operations Agreement.

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

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

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

Accruals of the Reserve Cost described below;

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

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

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

corporate administrative and overhead expenses, and all attorneys' fees unless such attorney's fees are incurred in providing services directly to MERC and are approved in advance by MERC.

- J. **"EBMS"** means the Event Business Management System software program used to account for all Food and Beverage revenues, expenditures and budgets associated with this contract; to track the financial performance of the parties to this contract; and to support and record all transactions associated with this contract, including, without limitation, work orders, service orders, client agreements, and client invoices.
- K. **"Expo"** means the Portland Metropolitan Exposition Center located on Marine Drive bordered by I-5 and Portland International Raceway.
- L. **"First Opportunity Target Area program"** ("FOTA") means the MERC policy of providing first opportunity for available jobs to economically disadvantaged residents living in economically distressed neighborhoods and purchasing from businesses as specified and directed by the Commission.
- M. **"General Manager"** means the individual staff member appointed by Metro and having responsibility for the management of all MERC Facilities, or the General Manager's designee.
- N. **"Gross Revenues"** means the total amount received, accruing from, or realized by the sale of Concessions Products for cash or credit pursuant to the terms of this Agreement. "Gross Revenues" does not include sales and use tax or any tax of a similar nature or any catering gratuities collected for and on behalf of concessions employees.
- O. **"Metro"** means the metropolitan service district formed pursuant to ORS Chapter 268 and the Metro Charter.
- P. **"Metro Excise Tax"** means the Metro Excise Tax applicable to all food and beverage revenue at the Expo and Convention Center but excluding PCPA at which excise tax does not apply. However, if the Metro Excise Tax becomes applicable to PCPA and/or to food and beverage revenue, it shall be applied in calculating Net Gross Receipts.
- Q. **"MERC Facilities"** means, collectively, the Expo, the Convention Center and the PCPA.
- R. **"National Volume Discounts"** means discounts received by ARAMARK for specified items purchased by ARAMARK, which discounts are credited to MERC through each Facility's Cost of Sales.

- S. "Net Gross Receipts" means the total amount received, accruing from, or realized by the sale of food and beverage services at each Facility for cash or credit pursuant to the Food & Beverage Operations Agreement, excluding any applicable Metro Excise Tax, and also sales tax, use tax or other similar tax, or any catering gratuities collected for and on behalf of any of proposer's employees.
- T. "Net Profits" means the sum remaining after deducting from "Net Gross Receipts" the "Direct Operating Costs" and "Reserve Cost" described herein.
- U. "PCPA" means the Portland Center for the Performing Arts at 1111 SW Broadway, with the Arlene Schnitzer Concert Hall at 1037 SW Broadway, Hatfield Hall at 1111 SW Broadway and the Keller Auditorium at 222 SW Clay, in Portland, Oregon.
- V. "Reserve Cost" means a sum equal to five percent (5%) of Net Gross Receipts for each Facility covered by the Food & Beverage Operations Agreement.

2. **Term of the Agreement**

- A. The term of this Agreement shall be from November 5, 2009 through June 30, 2014.
- B. MERC shall have the right at the end of the initial five-year term of this Agreement to extend this Agreement for one additional five year term, based on the same conditions applicable to the initial term. MERC shall have the right to renegotiate the terms of any renewal agreement to accommodate changes in operations, circumstances or industry practice; provided that any changes resulting from such renegotiations are acceptable to both parties. Sixty (60) days written notice to the Contractor by MERC prior to the expiration date of the initial term of the Agreement shall be sufficient to exercise the renewal option. MERC may condition any such notice upon renegotiation as provided herein.

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

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

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

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

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

1. ASCH – Heathman Mezzanine Linkage: The passage door between the Concert Hall and Heathman Hotel shall be recognized as an existing feature; it shall be allowed to be open in conjunction with performances by the Oregon Symphony (the "OS") consistent with past practice. OS patrons shall be allowed to pass into the Heathman Mezzanine for refreshments as negotiated and agreed by MERC and OS.
2. Open Catering: As a consequence of its position as Contractor for MERC Facilities, Contractor shall be recognized as an approved caterer and added to the listing of authorized providers distributed to users of the Facilities. The financial terms for Contractor catering activity shall be the same as providing services at MERC Facilities. Contractor shall cooperate with outside caterers as they perform services for clients of the Facilities, as approved by MERC.

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

- a. Permanent concession stands
- b. Portable concession stands
- c. Permanent specialty concession stands

- d. Concessions hawking in seating areas
 - e. Press box lounges
 - f. Banquet rooms, meeting room and exhibit halls
 - g. Lobby areas
 - h. All outdoor areas including but not limited to: parking lots, plazas, docks, etc.
 - i. Existing permanent restaurants, lounges, unless otherwise agreed to by both parties.
- C. The exclusive sales right granted herein to the Contractor shall not include the following:
- 1. Parking rental concessions which are reserved exclusively by MERC.
 - 2. Advertising sales which are reserved exclusively by MERC.
 - 3. Facility user and tenant novelty souvenirs and program sales.
 - 4. Free distribution of food, beverage or merchandise samples by a trade or consumer show exhibitor which are the normal sales projects of the exhibitor or sale of food or beverage products by exhibitors for consumption off MERC premises.
 - 5. "Back-of-house" vending machine sales, subject to the requirements of ORS 346.510 et seq.
 - 6. Business services, including but not limited to faxes, copies, parcel storage, coat check and other similar services.
- D. Additional areas of concession and catering sales in MERC's Facilities may be added at the discretion of MERC's General Manager.
- E. The exclusive sales right shall be extended to the sale of alcoholic beverages in the appropriate concessions and catering areas, provided however that the Contractor may be required to obtain and maintain all necessary licenses and permits in connection with the sale of such alcoholic beverages. Presently, MERC and ARAMARK jointly hold the liquor licenses in the name of MERC and ARAMARK as designee. The sale of alcoholic beverages shall be permitted in the approved concessions and catering areas only and at other locations as licensed or as are approved in advance by MERC's General Manager.

- F. All food and beverage products prepared on MERC premises must remain and be sold exclusively on MERC premises unless otherwise authorized in advance by MERC's General Manager. Notwithstanding the foregoing, the Contractor may transfer food and/or beverages prepared at one MERC Facility to another Facility otherwise managed by the Contractor under this Agreement or another contract with MERC without prior consent of MERC.
- G. Off-premise catering will be permitted with the approval of the General Manager. All expenses or revenues associated with the off-premise catering shall be entered into EBMS system in the same manner all associated revenues and expenses were coded to the Facility at which the food was prepared.

4. Relationship of the Parties

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

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

5. Duties of the Contractor

For the exclusive sales rights granted in Article 5 and the management fee consideration provided by in Article 9 hereof, the Contractor shall be responsible for providing skillful and commercially effective management and operation of the Concessions and shall use its best efforts to obtain the most efficient and highest quality operation possible. The Contractor is charged with preparing and delivering high quality food and beverage services at all functions for MERC clients at every venue opportunity consistent in every respect with the Culture/Nature/Nurture branding strategy. The Contractor shall be responsible for performing

satisfactorily all functions, duties, activities outlined in this Agreement and any incidental activities required to successfully accomplish said functions and duties. The Contractor must manage and operate the Concessions in a professional and efficient manner, which will be conducive to providing first-class, high quality services and products to MERC Facilities' patrons in a clean and appealing environment.

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

- A. Employ a highly skilled, professional, on-site concessions and catering management team who possesses the necessary experience and expertise to provide the overall management capability for a first-class concessions and a high quality catering operation. Contractor will specify management structure at each Facility as well as for the group of Facilities if a manager is to be shared between MERC Facilities.
- B. Subject to review and approval of the MERC General Manager or designee, develop and implement all necessary policies and procedures for food and beverage services. Such policies and procedures shall not be subject to MERC review with respect to labor relations.
- C. Employ and train all employees necessary for the successful operation of food and beverage services, including but not limited to training the concepts and policies of a first-class concession and high quality catering operation, superior customer service skills, alcohol management training, and proper use and maintenance of all equipment.
- D. Pay all employment related expenses and taxes required by law.
- E. Design and prepare specifications for the purchase of uniforms for concession and catering employees to be worn at all MERC events, subject to the prior approval of the MERC GM or designee.
- F. Provide for retail sale of food, beverages, candy, and similar products at all appropriate concession and catering areas. Recommend, for approval, all pricing associated with such retail sales for all Facilities and types of services to be rendered.
- G. Order, purchase, receive delivery of, and store all consumable supplies and products necessary for the operation of the concessions and catering operation, using the inventory control process described in Exhibit 1.
- H. Assist MERC with selection, purchase, receipt, inspection and storage of capital equipment, rolling stock, small wares and other equipment necessary for the ongoing operation of concessions and catering. Such purchases will be paid through the Reserve Account or as part of the Facilities Capital Investment.

- I. Consult with MERC concerning and require any affiliates to consult with MERC concerning enhancement of food and beverage preparation Facilities, concession stands, and any related Facilities or service requirements.
- J. Upon approval of MERC's GM or designee, shall procure such signage, small wares, renovations, furniture and equipment for all MERC Facilities in accordance with Facility needs, event schedules, and related matters. Such purchases will be paid through the Reserve Account or as part of the Facilities Capital Investment:
- K. Prepare all food and beverage products for sale or distribution.
- L. Advise and make recommendations to MERC concerning all operational phases of food and beverage products including but not limited to the kind, quality, brand and price of products, use of portable specialty stands and the sale of products. Contractor shall purchase locally produced products whenever possible to showcase Pacific Northwest produce, meats, beers, wines and organic options, and shall operate in the most sustainable fashion possible, in the sole opinion of MERC.
- M. Contractor shall at all times operates consistently with the MERC branding image known as "Culture, Nature, Nurture" and shall purchase products locally to operate consistently with such branding image. A detailed description of the elements that will be used to implement the Culture, Nature, Nurture brand is attached to this Agreement as set forth in Exhibit 10, which is incorporated by reference as it is set forth in full. No later than March 31, 2010, MERC and ARAMARK shall negotiate a binding agreement to implement fully the Culture, Nature, Nurture Brand. Such agreement shall require Contractor to balance local purchasing with NVD purchases to maximize profitability while maintaining local brand identity, including FOTA and MWESB purchases.
- N. Contractor shall meet with MERC no less than once per quarter on a regular basis, to review culinary performance, quality of services and product rendered at each Facility. Such discussions shall also address, without limitation, seasonal menus, review of customer comments about food quality, new service techniques, concession stand food service and food quality, and efforts directed toward improving the culinary experience at all of the MERC Facilities.
- O. Comply with all existing laws and regulations relating to the preparation, handling, sale and waste disposal or other processing of Food and Beverage Service Products. Procure and maintain at all times the necessary permits and licenses required by any laws and regulations for operations of Food and Beverage Services.

- P. Provide to MERC within 30 days of receipt all reports of any inspections of MERC Facilities related to risk management, risk of liability, safety, sanitation or cleanliness, including, without limitation reports from any government health or safety regulator, any government Health Department, the federal Occupation Safety & Health Administration, the Oregon Occupation Safety & Health Administration, and the Oregon Workers Compensation Division.
- Q. At all times maintain all related food and beverage service office, storage, kitchens, service, and retail sales areas in a clean and sanitary condition. Contractor shall also clean and remove waste from all food and beverage service areas, including seating areas to be specified by Facility, building and location (and excluding any spectator seating bowl areas) specific for food service needs to assigned Facility compactors.
- Contractor shall also procure necessary pest control to ensure the highest standards of cleanliness and sanitary conditions in the food and beverage service areas. Pest control will be paid from the Reserve Account.
- R. Subject to prior approval by MERC's GM or designee, arrange for all repairs and maintenance to the food and beverage service areas and equipment through MERC Staff or outside vendors or providers. All costs related to the repair and maintenance will be paid out of the Reserve Account.
- S. Subject to prior written approval by MERC's GM or designee, arrange for replacement or modification of food and beverage areas. All costs related to the replacement or modification of food and beverage areas will be paid out of the Reserve Account.
- T. Pay all excise tax, sales tax, business and occupational taxes and other similar taxes required by law related to the operation of food and beverage service areas.
- U. Pay all catering gratuities collected for and on behalf of the Contractor employees in a fair and equitable manner and record payments in an account in EBMS.
- V. Develop, with the prior approval of MERC's GM or designee, such accounting procedures for the Food and Beverage Services that:
1. Provide all required and necessary levels of financial reporting and accountability to MERC in a form acceptable to it, including all items set forth as SCOPE OF WORK Exhibit 2 – Accounting Procedures & Duties, which Exhibit is incorporated by this reference as if set forth in full; and
 2. Make use of the MERC Event Business Management System ("EBMS") to include work orders, service orders, client invoices, license agreements or any other comprehensive agreements with MERC clients that include

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

3. Support by original invoices for goods and services actually received for all Food and Beverage expenses, including the allowable corporate expenses listed on Exhibit 9 attached hereto.
- W. Prepare and submit to MERC an annual operating budget for each accounting year and provide as required an updated forecast of annual results to MERC's GM or designee. The Contractor will enter monthly budget amounts by Facility into EBMS.
- X. Negotiate all collective bargaining agreements relative to the Contractor's employees and maintain effective day-to-day working relationships with appropriate union representatives.
- Y. Provide all necessary food and beverage related setup for concessions and catering events in MERC Facilities as determined by MERC's GM or designee.
- Z. Provide for and arrange annual programs for aggressive advertising, marketing, and promotion of food and beverage products services for and at MERC and Facilities, including menu or electronic menu and marketing production to be paid out of the Reserve Account.
- AA. Comply with all recycling and sustainability policies and procedures at all MERC Facilities and any such regulations passed and adopted by MERC, Metro, or any governmental agencies. Contractor is expected to participate fully in MERC's recycling, composting, and sustainability plans at each designated Facility.
- BB. Provide all necessary reports, scheduling information, sales and operating procedures as directed by the specific MERC Facility Director or designee, using the EBMS in addition to corporate management systems, including but not be limited to; Sustainability results, FOTA hiring and numbers of staff in the FOTA areas, MWESB reporting of use by Contractor for operations, services and sub - contractors, Marketing and Sales Program of Work for each Facility. MERC and Contractor agree that by June 30, 2010, they will establish appropriate FOTA Target Levels and shall consider and, if necessary, update such target levels no later than June 30 of each subsequent year thereafter.
- CC. Shall comply with all MERC FOTA and MWESB policies and programs as approved by MERC for hiring and purchasing, and shall submit reports at least quarterly reporting on all payments made to all FOTA participants, excluding any payments made to any joint venture partner of any party to this contract. The FOTA/MWESB/local designations for purchasing will reside in EBMS and ARAMARK will use the data in the EBMS system to provide specialized

purchasing reports as needed. No later than March 31, 2010, Contractor shall propose a form of contract to MERC implementing elements of the Leg-Up program as set forth in Exhibit 11. No later than June 30, 2010, the parties shall reach agreement on the form of contract, which shall be effective as of July 1, 2010.

6. Responsibilities of MERC

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

- A. MERC shall render any compensation of and consideration to Contractor in accordance with the provisions set forth in Article 9.
- B. MERC at its sole expense, except such capital investment as called for in this Agreement, shall construct, furnish and equip the physical Facilities of MERC Facilities, including office space, computer equipment, storage areas, kitchens/pantries, which it deems necessary for the Contractor to operate within MERC Facilities.
- C. MERC shall furnish the Contractor estimated attendance for all events at all MERC Facilities for which the Contractor is providing food and beverage service, not less than thirty (30) days in advance, to assist the Contractor in accomplishing its accounting responsibilities, allowing Contractor to accurately forecast events. MERC sales personnel will support Contractor's forecasting requirements by providing the most current information available.
- D. MERC shall prohibit the selling and distributing of any Concessions Products or services in MERC Facilities and on its premises by anyone except the Contractor, subject to the exclusions provided for in Articles 5 and 8 of this Agreement.
- E. MERC shall cooperate with the Contractor in obtaining all necessary licenses and permits.
- F. MERC shall conduct business with the Contractor in an efficient and professional manner.

7. Powers Reserved to MERC

The Contractor shall, subject to the approval of MERC and all of the terms and provisions of this Agreement, have complete control and discretionary authority with respect to the operation of the Concessions, including the use of the premises, labor relations policies, including wage rates, the hiring, promotion and discharge of its employees, the establishment of the wages, hours and other terms and conditions of employment, and with respect to all other phases of operation, except as otherwise herein expressly limited or provided for in this Agreement. In the event of a

dispute between the Contractor and MERC, the decision of MERC concerning the operation or management of the Concessions shall be final and binding on both parties. By way of illustration and not limitation, the reserved powers of MERC are as follows:

- A. The final determination of all policies and procedures relative to the operation and management of Concessions.
- B. Final determination on the kinds, brands, quality and retail prices of all Concessions Products and services. Unless otherwise approved in advance by MERC's General Manager, the product purchased by the Contractor shall meet the minimum requirements as laid out in Exhibit 3 to this Agreement.
- C. Final determination on the design, layout and location of all physical Facilities and equipment for the Concessions operation and any future changes or modifications thereto.
- D. Final determination on the use, number and location of portable concessions stands, permanent specialty stands and other Facilities used in the concessions and catering operation. Product availability and said retail sales areas shall be determined by the General Manager of MERC or his designee.
- E. Final determination and approval of the annual operating budget to be implemented each Accounting Year for the Concessions operation. Contractor may recommend to MERC amendments to the budget as it may deem necessary. MERC reserves the right to amend or alter said annual budget at any time during the course of the year if deemed necessary and appropriate by MERC.
- F. Final determination on which specific Concessions Products will be sold at particular events in MERC Facilities.
- G. Sole discretion to cancel, terminate or interrupt any MERC event, and cause the patrons to be dismissed, or to stop the sale of any product by the Contractor during any event. MERC shall not be liable to the Contractor for any loss or cost occasioned by any such determination or action by the General Manager of MERC taken in good faith for the benefit or protection of MERC and the public generally or MERC Facilities.
- H. The power to have access to any concessions areas at any time.
- I. The power to approve or disapprove the Group Manager, Facility specific General Manager and Chef and Controller provided by the Contractor at any time during the term of this Agreement, and to require the Contractor to replace such personnel within thirty (30) days of receipt of written notice by MERC's General Manager regarding dissatisfaction with the Manager's performance.

- J. Contractor will employ only competent and orderly employees who will keep themselves neat and clean and accord courteous and competent treatment and service to all patrons. Whenever MERC notifies the Contractor or its manager that any employee is deemed by it to be incompetent, disorderly or unsatisfactory, the Contractor will investigate the matter thoroughly, and if good cause, as determined by the Contractor, exists the Contractor shall discharge such person, provided, however, that such discharge is not in violation of any outstanding collective bargaining agreements that may be entered into between the Contractor and a union or any Oregon or federal employment law or regulations.
- K. Implement and manage at the sole discretion of MERC all Equal Opportunity and FOTA programs and participation.
- L. The power to terminate this Agreement for acts of default by the Contractor in accordance with Article 15 hereof.
- M. The final determination of the prices of which Concessions Products will be sold by the Contractor.
- N. The determination of acceptable levels of performance in striving to achieve the most economical and efficient operation of the Concessions.
- O. The power to approve the salaries of on-site concessions manager and any other on-site management employees of the Contractor. The amounts of any salaries in excess of those approved by MERC shall not be counted in the distribution and calculation of net profits.
- P. The power to establish, maintain, manage and provide for an effective recycling and sustainability program for the clients and attendees at all MERC Facilities and use by Contractor.

8. Contractor's Payment of Facilities Capital Investment

- A. Within ten days after the parties' execution of this Agreement, Contractor shall deposit the sum of \$2,000,000.00 (TWO MILLION DOLLARS) in a segregated account controlled by MERC to be used for food and beverage capital acquisitions, proposed by Contractor and approved by MERC pursuant to subparagraph 8.B., below. MERC shall be the sole owner of these funds.
- B. MERC and Contractor hereby agree to the proposed Facilities Capital Investment set forth on the Attached Exhibit 4 totaling the sum of \$2,000,000 (TWO MILLION DOLLARS) which proposal may be revised by mutual agreement of the parties. Upon approval of MERC's General Manager or the General Manager's designee, Contractor, on behalf of MERC, shall procure such signage,

smallwares, renovations, furniture and equipment for all MERC Facilities in accordance with Facility needs, and event schedules. MERC shall pay the cost of procuring all such items from the sum Contractor provides pursuant to this section.

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

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

1. 3.25% of Net Gross Receipts in any Accounting Year;
2. 10% of Net Profits in any Accounting Year; and
3. 1% of Net Profits, if total Net Profits for all MERC Facilities in any Accounting Year exceed \$3,600,000 (the "Total Profit Threshold"). At the beginning of each accounting year, MERC General Manager shall allocate the Total Profit Threshold among MERC Facilities. The General Manager shall determine the method of allocating the Total Profit Threshold in his or her sole discretion, in consultation with Contractor in conjunction with the annual budget process. If the Total Profit Threshold is not exceeded in an Accounting Year, and any of the Facilities exceeds their individual profit threshold, the Contractor shall receive 1% of the net profits of each of the individual Facilities that exceed their individual profit threshold.
4. 2.5% of Net Profits of each Facility in any Accounting Year if the Contractor meets the Qualitative Incentives, which shall be set annually as follows:

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

Commencing at the start of the second Accounting Year of the Contract, Contractor shall submit its proposed qualitative goals to MERC for review and comment no later than May 1. Thereafter, such qualitative goals shall be mutually determined by MERC and the Contractor annually prior to each Accounting Year of the Agreement. Such qualitative goals will be developed for each MERC Facility individually and shall detail how the Qualitative Goals will be graded and at what levels the Contractor must

perform to receive the Qualitative Incentive. The parties shall meet periodically during each Accounting Year to review and discuss interim assessments and updates of Contractor's progress toward the Qualitative Incentives. Following the end of each Accounting Year, MERC shall submit to Contractor the assessment of the Contractor's attainment of the Qualitative Goals, by Facility, for the just ended Accounting Year. Any dispute over the terms of the annual Qualitative Goals will be submitted to mediation by a mutually acceptable third party before the provisions of Article 20 are invoked. The Qualitative Incentive, if any, earned by the Contractor in any Accounting Year shall be paid to the Contractor by the MERC within thirty (60) days following the end of each Accounting Year.

- B. For each Accounting Period, the parties shall distribute the following funds to Contractor and MERC according to the procedures in this subparagraph:
1. Contractor's compensation, in accordance with the percentages outlined in Paragraph 9.A. of this Agreement, shall be distributed to Contractor;
 2. Excise taxes of seven and one-half percent (7.5%), or such other amount as may be imposed by the Metro Code, of Gross Revenues shall be distributed to MERC for payment of excise taxes;
 3. Five percent (5%) of Net Gross Receipts shall be distributed to MERC for deposit in the Reserve Account (defined below); and
 4. All funds due to MERC under this Agreement shall be distributed to MERC within five (5) days of the parties reaching agreement on the amounts to be distributed to each party. Losses occurring in an Accounting Period will be carried forward and recovered in future Accounting Periods, provided sufficient Gross Revenues are available therefore. Any loss that remains unrecovered upon the expiration of the term will be recovered from available Net Profits from prior Accounting Periods. The Accounting Period distributions shall be made after the Accounting Period operating statement specified in Article 11 of the Agreement is completed in accordance with the payment procedures outlined in Paragraph 9.A. of this Agreement.
 5. No later than ten business days after the end of each Accounting Period, Contractor shall record in EBMS the detail transactions for the period and generate a comprehensive financial statement of the revenues and expenses for the Accounting Period based on the EBMS data. No later than fifteen business days after the end of each Accounting Period, Contractor and MERC shall agree upon the amount to be distributed to Contractor and the amount to be distributed to MERC. If the parties do not agree on the amounts to be distributed, such disagreement shall be submitted to arbitration in accordance with Article 20 hereof.

6. No later than August 31 of each year, MERC shall determine the amount of any additional compensation due to Contractor under the formulas set forth in Paragraph 9.B. of this Agreement. In the event that Contractor's compensation requires a redistribution from MERC's account, Contractor shall submit an invoice to MERC. MERC shall pay the invoice from MERC's account.
 7. Contractor shall distribute its compensation only after MERC approves and signs a written itemization of the distributions. Contractor shall make distributions under this paragraph only by written check.
- C. Upon completion of the approval process described in paragraph 1) below, Contractor shall deposit daily all revenue from Concession stands into a separate commercial account for each MERC Facility, or with MERC's approval, a single commercial account with subaccounts for each MERC Facility, (hereinafter "Contractor's Accounts") established by Contractor at a bank approved by MERC. Contractor shall not use any other accounts for the daily deposit of revenues from the catering and concessions operations at MERC Facilities. The Contractor's Accounts shall be subject to the following restrictions:
1. Contractor shall not deposit any funds into Contractor's Accounts until Contractor has provided MERC with a comprehensive description of its accounting and cash handling methods and procedures for concessions and catering operations at MERC, and MERC has approved such methods and procedures. Contractor and MERC shall agree upon Contractor's accounting and cash handling procedures no later than December 1, 2009.
 2. After Contractor has deposited the daily revenues into Contractor's Accounts, Contractor may transfer the funds into its own corporate accounts.
 3. If Contractor fails to comply with any of the requirements of this Amendment, or if Contractor Corporation's corporate debt rating is downgraded below investment grade by any major rating agency, MERC shall have the right to demand that Contractor immediately thereafter deposit all revenues from concessions operations at MERC Facilities into a separate commercial account established and controlled by MERC. If MERC makes such a demand, Contractor shall make no withdrawals from Contractor's Accounts other than to transfer all funds into MERC account, which transfer Contractor shall make within 24 hours after MERC's demand. Contractor shall immediately notify MERC if any major rating agency lowers the rating on Contractor Corporation's corporate debt below investment grade. MERC shall reimburse Contractor for its operating expenses from such account.

4. Contractor shall exercise fiduciary responsibility for the safeguarding, accounting, and control of all funds deriving from concessions operations at MERC. Contractor accepts full responsibility and liability for these funds. Contractor shall be responsible for any losses from these funds prior to the time they are deposited into an account controlled by MERC, and shall immediately replace any such losses upon demand from MERC. Under no circumstances will MERC be responsible for any losses of funds under the control of Contractor that derived from catering and concessions operations at MERC.
- D. A Reserve Account shall be established in EBMS for each Facility to account for the five percent (5%) of Net Gross. Reserve Funds will be used for improvements to the food and beverage Facilities, including capital improvements, equipment, smallwares, marketing the Facility, electronic marketing, utilities expenses, pest control and repairs and maintenance. Contractor, after approval from MERC, shall enter requests into EBMS to spend Reserve Account funds. The request is entered as a Requisition into EBMS. After the request is approved by the Facility Director, a purchase order shall be generated by MERC. All transactions from the Reserve Account shall require an approved, valid purchase order. Goods and services shall be entered into EBMS as received against the purchase order. MERC shall issue payment to the vendors consistent with the approved purchase order and the actual goods and services received. At the end of the Accounting Year, any funds left in the Reserve Account shall be credited as Net Profits to be distributed pursuant to Section 9.A. above.
 - E. In the event the number of Facilities comprising MERC Facilities increases or decreases, or any single MERC Facility permanently expands or is reduced in size, the Profit Threshold will be adjusted on an equitable basis to account for such increase or decrease, taking into account, among such other factors as are deemed appropriate by the parties, the event levels, event mix, attendance and comparative profitability of the affected MERC Facility or Facilities.
 - F. The Contractor shall not be entitled to any other remuneration from MERC for the performance of the Contractor's duties, obligations and activities pursuant to this Agreement. Further, in the event of termination of the Agreement before the end of the term prescribed in Article 2 of this Agreement, the Contractor shall have no claim against MERC for any Net Profits which might have been distributed to it for periods after the date of the termination or for any other amount not otherwise payable to Contractor upon termination in accordance with the terms of this Agreement.

10. Business Practices of the Parties.

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

- A. Both parties shall use EBMS to document all transactions at any MERC Facility, including, without limitation, service and work orders, budgets, vendor payment, Contractor payments, payroll entries and accounting transactions.
- B. All management, sales and accounting staff shall be trained and knowledgeable in EBMS. Contractor's Controller shall be intimately familiar with the operation of EBMS, and shall be capable of providing EBMS training to all the Contractor's employees.
- C. Notwithstanding any result in use of EBMS for accounting purposes, the relationship between the parties remains as provided in Section 4 of the Agreement.
- D. MERC shall retain and maintain both the EBMS and MS SQL databases on its servers.
- E. MERC shall collect all catering deposits and payments on behalf of Contractor as recorded in EBMS. Contractor shall submit all client billing for deposits and final payments to MERC into EBMS. MERC shall bill the clients directly for the deposits and final payments. Contractor shall pay MERC all final payments and deposits from clients pursuant to paragraph J below.
 - 1. Contractor shall collect and deposit all concession stand revenue and deposit in their accounts at the bank in accordance with procedures listed above in paragraph 9C above.
 - 2. MERC clients shall make all payments directly to MERC for services provided by the Contractor.
 - 3. MERC shall be responsible for the collections of all aged or associated bad debts from the Food and Beverage catering services provided by the Contractor. If MERC is unable to collect on any debt, the bad debt expense shall be charged to the operating statement and subject to the profit split in accordance with the terms of the Agreement. If any disputes with Clients occur regarding Contractor service, MERC shall freeze any payments to Contractor in regard to the disputing client until the dispute is resolved.

When Contractor incurs an expense for a direct operating cost by MERC pursuant to this Agreement, Contractor shall pay such expense directly to the vendor or provider. Contractor shall pay all vendors and providers with written checks or electronic payment. Contractor shall not pay vendors and providers in cash from cash receipts. When paying expenses, Contractor shall take into account any discounts or credits received by Contractor or any related affiliate or parent company. No later than 10 business days after the end of each month, Contractor shall provide to MERC documentation of every expense paid by Contractor for

the prior month, such documentation to be in a form consistent with the requirements of this Agreement, and which substantiates that Contractor has received the good, product, item or services, and the exact amount of the cost incurred by Contractor and taking into account any discounts or credits received by Contractor or any related affiliate or parent company. Expenses without supporting documentation will not be considered direct operating payment under this Agreement.

- F. All clients shall be entered into the EBMS system by MERC or at MERC discretion, by Contractor.
- G. MERC shall provide the terms of payment in the License Agreement with all Clients. The parties have agreed to the applicable terms which are set forth in the License Agreement, attached as Exhibit 6 to this Addendum. MERC reserves the right to change the terms of the License Agreement in the regular course of business at its sole discretion.
- H. MERC shall manage all requests for credit and shall establish deposit minimums. MERC shall approve or deny credit applications at its sole discretion.
- I. Contractor shall make all purchases and expenses. All expenses shall be supported by original source documents, payroll register reports or other documentation approved in advance by MERC. All expenses not properly supported will be disallowed and not considered an appropriate expense under this contract.
- J. MERC shall transfer all funds collected for Food and Beverage catering services to Contractor once per week on such day as the parties mutually agree. On the same day, MERC shall invoice Contractor for disallowed expenses, if any. A list of allowed corporate expenses is set forth on Exhibit 9 to this Agreement. The invoice shall have reasonably sufficient detail that ARAMARK can identify the expenses.

Contractor shall collect and deposit all concession stand revenue and deposit in their accounts at the bank in accordance with procedures listed above in paragraph 8B.
- K. MERC shall monitor all Food and Beverage receipts through EBMS on all days that MERC offices are open for business.
- L. MERC shall provide access to all EBMS reports and client information including, without limitation, all aging and past due information, only to designated Contractor and MERC employees.
- M. Contractor may generate an EBMS report, which may be exported as an electronic spreadsheet, to provide Contractor's corporate office with transaction

data. With advance approval of MERC, the Contractor may extract data from EBMS in order to electronically transfer Contractor transactions to the Contractor's corporate office. The parties shall work together to finalize and implement reporting procedures within six months after the execution date of this agreement.

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

11. Financial Reporting and Accountability

- A. In addition to properly utilizing EBMS, Contractor shall maintain at all times independent accurate computerized accounting records on the operation of the Concessions for Contractor's records and accounts. The form and substance of the accounting system shall be subject to the determination by MERC and shall include, but not be limited to, the following:
1. Separate financial records for each of MERC Facilities, except that consolidated operations of MERC's Facilities financial reports will be required monthly and be made available to the Commission. MERC acknowledges that certain of Contractor's financial functions, such as payroll accounts, are maintained on a consolidated basis; provided that records are maintained of the transactions pertaining to each individual MERC Facility.
 2. Complete financial system which conforms to generally accepted accounting principles and practices and includes annual line item budgeting for expenditure and revenue accounting, accounts segregating, and identifying assets, liabilities, and net worth.
 3. Documentation supporting all entries into the financial accounting system to include all expenditure invoices, payroll summaries and copies of payroll tax returns, revenue and bank deposit receipts, bank statements and all other such related documentation, copies of which are to be submitted monthly if not previously provided to support request for payment.
 4. Complete inventories of concession and catering equipment to be taken not less than annually and other capital assets and expendable and consumable supplies maintained continuously at MERC Facilities not less than annually. Recording of capital inventory will be maintained and automated into EBMS by MERC, and inventory of equipment will be conducted by ARAMARK.
 5. Complete event inventory control records before and after each MERC event and actual cash count of each event's sales receipts.

6. Any other specific accounting information related to the Concessions which is determined by MERC to be meaningful and necessary.
 7. Discrepancies between the Contractor's records and MERC's records, including but not limited to EBMS, will be the responsibility of Contractor to reconcile and document.
- B. All accounting records, documents, books, inventories and other such related information shall be made available for MERC inspection at any time during the term of this Agreement. In addition, Contractor shall retain all accounting records for a period of six years from the end of the Contract Year in which the record was made or such longer period as is required by law. In addition to the right of inspection, MERC shall have the right at any time during the term of this Agreement and during the three-year period following completion of the Agreement to conduct a full audit, including a certified audit by an independent accounting firm, on the financial records and business activities of the Contractor relating to performance of this Agreement.
- C. Contractor shall make a good faith effort to establish and operate an integrated computer system satisfactory to MERC that will control point-of-sale devices that are PCI-compliant as certified by a third party; offer computer assistance to the Contractor's management staff; and provide electronic interfaces between EBMS and other applications and sources, including Contractor's account applications, bank accounts, point-of-sale equipment, and inventory systems. Such interfaces may include electronic upload and download of data in support of collecting line item detail in EBMS.
- D. The Contractor shall provide a financial operating statement within three (3) business days after MERC closes the EBMS accounting period which details on an accrual basis, all gross revenues, direct operating costs and Net Profits resulting from the Concessions for the preceding accounting period. Such report shall provide the basis from which distribution of Net Profit is made in accordance with Article 9 hereof. ARAMARK will work with MERC to create a yield management tool to help determine profit margin for key events. To the extent there are any additional costs associated with providing such reports, the additional costs will be Direct Operating Costs. If there are any costs associated with such reports, ARAMARK staff will review the costs with Facility Directors prior to incurring the costs or providing the reports.
- E. For each Accounting Year during the term of this Agreement, the Contractor shall develop and submit to MERC's General Manager, or his designee, for approval an annual line-item operating budget for the Concessions. The form and substance of the annual budget shall be determined by MERC and shall include day-to-day operating costs, revenues, capital purchase, and capital repair, maintenance and replacement costs. The Contractor shall be responsible for operating within the

established budgetary limits at all times, unless otherwise approved in writing by MERC. MERC reserves the right to reasonably alter or change such annual budget at any time it is deemed necessary or appropriate.

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

12. Audits; Financial Safeguards.

- A. Within 10 days of the execution of this Agreement, Contractor shall provide to MERC a comprehensive description of its accounting and cash handling methods and procedures for concessions and catering operations at MERC. MERC shall have the right to approve all such methods and procedures. Contractor shall implement only those accounting and cash handling methods that have been approved by MERC.
- B. MERC shall conduct an annual audit, or similar review, of Contractor's records, books, and accounts related to matters covered by this Agreement. The audit shall be conducted by an outside accounting firm selected by MERC. The cost of the annual audit will be treated as an operating expense under the Agreement.
- C. MERC may conduct annual performance audits, or similar reviews, of Contractor's business process, internal controls, compliance to Contractor's policies and procedures and compliance to MERC's policies and procedures, as applied to Contractor and Contractor's employees. If any such performance audits identify deficiencies in Contractor's operations, Contractor shall provide to MERC within ten (10) days a written plan outlining how Contractor will correct the deficiencies. Failure by Contractor to correct the deficiencies may be considered by MERC, at MERC's reasonable discretion, to be a material breach of the Agreement in accordance with paragraph 15(A).
- D. MERC shall have the right to conduct unannounced cash audits or other spot checks of food service activities, including but not limited to conducting surprise cash counts, observing Contractor's employees' cash handling methods, and observing product inventory counts. If any such cash audits or spot checks identify deficiencies in Contractor's operations, within ten days Contractor shall provide to MERC a written plan outlining how Contractor will correct the

deficiencies. Failure by Contractor to correct the deficiencies may be considered by MERC, at MERC's sole discretion, to be a material breach of the Agreement in accordance with Paragraph 15(A).

- E. Contractor shall notify MERC when any internal audit or review of its operations at MERC is taking place. Contractor shall provide to MERC a copy of any informal and formal audit or review reports as soon as the reports are completed. If an audit identifies deficiencies in Contractor's operations, within ten days Contractor shall provide to MERC a written plan outlining how Contractor will correct the deficiencies. Failure by Contractor to correct the deficiencies may be considered by MERC, at MERC's sole discretion, to be a material breach of the Agreement in accordance with Paragraph 15(A).
- F. Contractor shall require its bank to provide directly to MERC original monthly bank statements for Contractor's Accounts as soon as the bank statements are available.
- G. Contractor shall ensure that all equipment (such as safes and lock boxes) and forms are appropriate for the proper and reliable handling of cash in an operation the size and complexity of the concessions and catering operation at MERC. MERC shall have the right to demand that Contractor employ different or additional equipment and forms if MERC, in its sole discretion, determines that different or additional equipment and forms are appropriate. Contractor shall immediately and fully comply with any such demands. The direct operating costs incurred by Contractor to comply with such a demand by MERC shall be treated as Direct Operating Costs.
- H. Contractor shall limit access to financial records, bank statements, deposit slips, and similar account-related documents for Contractor's Accounts to a limited group of Contractor's employees having a business need to have access to such records.
- I. Contractor shall assign an employee approved by MERC to reconcile daily concession stand receipts to daily bank deposits at each concession stand in operation to ensure that all deposits are complete and that all Contractor's financial documents are complete, accurate, and legible.
- J. Contractor shall obtain armored car services with a firm acceptable to MERC. When it is reasonable and prudent to do so, Contractor shall schedule extra pick-ups of cash from MERC Facilities.
- K. Contractor shall exercise reasonable care to ensure that no more than the minimum amount of cash necessary remains in MERC Facilities after business hours and during weekends.

13. Performance Bond

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

14. Indemnification and Insurance

- A. It is understood and agreed that, to the fullest extent permitted by law, the Contractor shall indemnify, defend and hold harmless MERC and its agents and employees from and against all claims, damages, actions, losses, and expenses, including but not limited to attorneys' fees and court costs, arising out of, resulting from or in any way connected with any acts or omissions in performance of this Agreement by the Contractor, its employees and subcontractors, excluding any claims, damages, actions, losses or expenses resulting from the sole negligence or willful misconduct of MERC, its agents or employees. The Contractor will not bring any action against MERC due to MERC's execution of its right to cancel any event. In addition, in any and all claims against MERC, the indemnification obligations set forth herein shall not be limited in any way by any limitation in the amount of types of insurance obtained by Contractor in accordance with this Agreement.
- B. Contractor may charge an allocated charge as a Direct Operating Cost for the cost of providing the following insurance coverages for which Contractor and MERC shall review annually the amount of the allocated charge:
1. Comprehensive commercial liability insurance covering bodily injury and property damage, with automatic coverages for premises operations and product liability, owners and contractors protective liability, product/completed operations liability (including food and drink), liquor legal liability, fire legal liability and contractual liability coverage.
 2. Automobile bodily injury and property damage liability insurance coverage, including coverage for owned, non-owned, hired or borrowed vehicles.

Certificates evidencing the foregoing insurance policy or policies shall:

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

2. Apply as primary insurance on behalf of Metro and MERC, regardless of what insurance MERC may maintain.
 3. Provide for not less than thirty (30) days' advance written notice to MERC regarding cancellation of the policy.
 4. Include limits of protection as follows:
 - a. For commercial general liability insurance, a minimum of \$10,000,000 combined, single-limit, bodily injury and property damage coverage, including loss of use coverage, with automatic coverage for premises, operation and product liability.
 - b. For automobile bodily injury and property liability insurance coverage, a minimum of \$1,000,000 per occurrence.
- C. Contractor, its subcontractors, and all employees working under this Agreement that are subject employers under the Oregon Workers' Compensation Law shall comply with ORS 656.017, which requires them to provide Workers' Compensation coverage for all their subject workers. Contractor shall provide MERC with certification of Workers' Compensation insurance including employer's liability.
- D. A true copy of the insurance certificates, including all of the required coverages and endorsements shall be provided to MERC prior to commencement of work under this Agreement.
- E. In the event that concessions and/or catering Facilities are destroyed by an act of God, fire, vandalism, etc., to the extent that continued operation thereof is not feasible, MERC will be under no obligation to replace them.
- F. MERC shall keep and maintain property insurance on all real and personal property owned by MERC and waives subrogation for all losses except those in excess of MERC's self insured deductible or any amounts not reimbursed by MERC's property insurance.
- G. The Contractor must provide property insurance for all real and personal property owned by the Contractor and its agents, employees, or contractors and waives all rights of subrogation for any loss or damage to property that Contractor may sustain incidental to or in any way related to its negligent acts or omissions in its operation under the Agreement. Such waiver shall not apply to losses arising solely out of the negligent acts or omissions of MERC, its agents, employees, or invitees.

- H. Contractor shall take all necessary precautions for the safety of employees and others in the vicinity of the services being performed and shall comply with all applicable provisions of federal, state and local safety laws and building codes, including the acquisition of any required permits.
- I. The Contractor shall be required to strictly adhere to, coordinate with MERC and document full compliance with the policies and procedures of the Oregon Occupational Health and Safety Code, OAR Chapter 437, Division 155, Hazard Communication.

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

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

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

- J. Any other insurance deemed necessary by the Contractor to its operations shall be obtained at its own expense.
- K. The parties shall review annually the terms and requirements of this Article and which may be modified upon mutual written agreement between MERC and Contractor.

15. Termination or Breach by Contractor

A. Material Breach

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

the Contractor. The parties agree that MERC shall retain the right to determine whether any action or failure of Contractor constitutes a material breach hereunder (except as to the factual determination whether such action or failure has occurred) and any such determination shall be conclusive and shall be binding upon the parties hereto.

B. Loss of Essential Licenses-Extraordinary Breach

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

C. Unsatisfactory Performance

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

D. Termination Accounting

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

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

2. Immediately upon notice of termination hereunder, all products, food or equipment for which Contractor is entitled to claim for reimbursement shall automatically become the property of MERC and shall automatically come into custody and possession of MERC, subject only to Contractor's right to be reimbursed therefore at its cost.
3. Upon termination, MERC shall reimburse Contractor for the depreciated value of capital invested by the Contractor. Simple straight line depreciation shall be used, with a five year life assumed for all furniture, equipment and smallwares and a five year life for physical building improvements over the life of the Agreement.
4. Upon termination, Contractor shall provide MERC with termination accounting including, but not limited to, the following:
 - a. Accounts payable closed at sixty (60) days after termination;
 - b. Accounts receivable closed at forty-five (45) days after termination;
 - c. Accounts receivable uncollected at sixty (60) days after termination will be written off and the management fee for those accounts will be subtracted from the final payment to Contractor;
 - d. A copy of the most recent annual inventory (conducted in June of each year);
 - e. A final inventory on smallware conducted seven (7) days prior to termination;
 - f. A final inventory on consumables conducted one (1) day prior to termination;
 - g. All other accounting and contract close-out procedures shall be finalized no later than sixty (60) days following termination.
5. Upon termination, MERC shall reimburse Contractor for the undepreciated value of the \$2,000,000 capital investment paid by the Contractor, using simple straight line depreciation and assumes a five-year life commencing on the effective date of this contract for all furniture, equipment, smallwares and physical building improvements.

16. MERC's Remedies If Contractor Becomes Insolvent

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

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

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

- A. Both parties fully understand and agree that the highly skilled and professional management and operation of the concessions and catering in MERC Facilities are of paramount importance and that this agreement would not be entered into by MERC except for its confidence in, and assurances provided for, the character, management abilities, and financial stability of the Contractor. The Contractor, therefore, shall not sell, assign, sublet, transfer, or in any manner encumber the rights and privileges granted herein, nor allow such assignment, subletting, transfer, or any other encumbrance to occur by operation of law or otherwise. In addition, Contractor shall not permit any change of control of the joint venture formed to perform this Agreement. The parties agree, further, that any occurrence, whether within or beyond the control of Contractor, which renders Contractor incapable of performing all duties required hereunder shall constitute a material breach hereunder and shall give MERC the option of terminating this Agreement. Notwithstanding the foregoing, any transaction which results in the shares of a corporate parent of ARAMARK being publicly owned and traded shall not be deemed an assignment or other enumerated transaction, and shall not require the consent of MERC.
- B. The transactions set forth in Paragraph 17.A. shall require prior written notice to and prior consent of MERC.
- C. If any such transaction occurs without prior written notice to MERC or the prior consent of MERC, such change shall constitute a material breach of this Agreement and MERC, in its sole discretion, may terminate this Agreement for such breach.

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

1. Whether the proposed purchaser is of sufficient size to perform the obligations required in the Agreement.
 2. Whether the proposed purchaser has sufficient financial resources to fill the operational and financial guarantees specified in the Agreement.
 3. Whether the proposed purchaser has sufficient favorable experience providing services similar to those required in the Agreement.
 4. The nature of any other commitments which the proposed purchaser may have in related food service management either nationally or within the Metro service area.
- D. MERC shall within thirty days (30) of receipt of a request to enter into the transaction either approve or disapprove the request, provided such approval shall not be unreasonably withheld. If MERC requests information regarding the above criteria such thirty (30) day time period shall begin upon satisfactory response by the Contractor to MERC.
- E. Contractor shall deliver to MERC a true and correct copy of the executed Joint Venture Agreement between ARAMARK Sports and Entertainment Services, LLC and Giacometti Partners, Ltd. Contractor shall notify MERC, in writing, of any changes in the respective ownership in, control over or responsibilities with regard to the Contractor on the part of Contractor. No such changes will be made without the prior written approval of MERC, unless expressly provided for in the initial Joint Venture Agreement.
- F. In the event that the powers and authority granted to MERC by Metro, an Oregon metropolitan service district, under Chapter 6.01 of the Metro Code are changed or modified so that the duties and obligations set forth in this Agreement become that of Metro, or of any other governmental body, this Agreement may be assigned to Metro or to such other governmental body.

19. Force Majeure

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

occurrence of an event or condition that will, or that is likely to, give rise to a claim under this Article. The failure to give prompt notice as herein required shall act as a waiver of any claim under this Article.

20. Arbitration

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

21. Miscellaneous Provisions

A. Validity

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

B. Ambiguities

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

C. Compliance with Applicable Laws

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

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

D. Waiver of Subrogation

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

E. Labor Disputes

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

F. Non-Waiver and Severability

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

G. Entire Agreement

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

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

H. Notices

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

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

I. Additional Miscellaneous Provisions

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

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

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

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

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

**ARAMARK/Giacometti Joint Venture
Partnership**

**METROPOLITAN EXPOSITION
RECREATION COMMISSION**

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

Exhibit 1
Inventory Procedures & Duties

A. Perpetual Warehouse Inventories

1. The computer or manual system has the ability to maintain a current, accurate perpetual inventory balance of any item in the warehouse as long as ALL transactions which affect the balance are entered into the system, promptly and accurately. This means that:
 - a. Every time the item is received from a supplier, the Receiving record is entered.
 - b. Every time the item is transferred to any other location (point-of-sale, kitchen, another warehouse) an Inventory Transfer is entered.
 - c. Every time the item is returned to the warehouse from any other location and put back into stock, an Inventory Transfer is entered.

B. Period-End Physical Inventories

1. Policy - Every Department is responsible for taking a complete and accurate physical inventory of all product cost and specified supplies accounts after the close of business of each accounting period, following the procedures specified below. Each Department Manager is responsible for supervising each month's inventory-taking and for verifying the reasonableness of the inventory counts.
2. Preparations For Inventory-Taking
 - a. The assignments for taking inventory are defined by the Department Manager. The Manager/Supervisory employee is normally made responsible for taking the inventory at each specified location or group of locations.
 - b. The assigned supervisor should review the physical condition of the inventory a day or two before the actual inventory counting is scheduled. Where necessary, employees should be instructed to place the stock in proper condition to facilitate inventory-taking.
 - c. Making sure that the product or shelf is marked with the Item Number, to facilitate locating and recording the item on the Inventory Worksheet.
 - d. Consolidating the inventory, whenever possible, so that the entire stock of an item is together. When it is not possible to have the entire stock in one place, the shelf location should contain a note telling where the remainder of the stock is located.

C. Inventory Worksheets

1. Computer-printed Inventory Worksheets are used to record the physical inventory counts in all warehouses and other inventory locations (such as kitchens) which do not use Stand Sheets. The Worksheets lists the items on file in Item Number sequence within each product cost or supplies account.
2. Stand Sheets may be used to record the physical inventory at points of sale which use them. The Stand Sheet to be used for physical inventory must include all non-chargeable food and beverage products as well as those supplies items which by local policy must be counted.
3. Inventory Worksheets (including Stand Sheets) must be signed and accounted for after the physical inventory has been taken by the Department Manager.

D. Cut-Off Of Receiving At Inventory Time

1. Each location must make a clearly defined Cut-off of Receiving prior to each Physical Inventory.
2. All shipments which arrive prior to the Cut-off must be received, placed in stock and entered into the system before inventory counting is begun.
3. When entering the last shipment received before cut-off into the system enter "Received Before Inventory." It will enable the office to make a proper period cut-off of Accounts Payable.
4. All shipments which arrive after the Cut-off must be put aside in a designated area and clearly marked "Received After Inventory." Once again enabling the office to make a proper period cut-off of Accounts Payable.

E. Inventory-Taking Procedure - Warehouse/Kitchens

1. Use two people to take inventory, one counter and one recorder. The counter will announce the item number, description and unit to the recorder. While the recorder is locating the item on the Inventory Worksheet and verifies that the unit is correct, the counter counts the item. When the recorder is ready, the counter announces the item, count and unit to the recorder. The recorder repeats the information and records the count in the Actual column for that location in Pen not Pencil.
2. Count the items in the sequence in which they are stored, moving from left to right across each shelf and from top to bottom, so that nothing is omitted. When one section is completed, move on to the adjacent section.

F. Period-End Physical Inventories

1. Inventory-Taking Procedure - Warehouse/Kitchens
2. Inventory must be entered directly on to the Inventory Worksheets. Use of separate sheets entails the risk that a sheet(s) may be lost or transcribed incorrectly.
3. Weigh meats, poultry, dried fruits and vegetables, shortenings, sugar, flour, etc. and report to the nearest pound.
4. Do not inventory opened cans, packages, jars, or spices in use. It is also not cost effective to count insignificant quantities of supplies such as straws, napkins and foil.
5. List as inventory only items which have actually been counted. Do not set "par values" for spices, condiments, produce, etc.
6. Liquor bottles should be inventoried by weighing them or by estimating their content to the nearest tenth of a bottle. The procedure used for routine accountability should be followed.
7. Draft Beer - Partial kegs must be inventoried to the nearest quarter of a keg, using a consistent method each month.
8. If a deposit is charged for beer kegs, the kegs must be listed separately on the Stand Sheet or Inventory Worksheet and counted each period. The count must include all full, partial and empty kegs on hand.

G. Inventory Entry and Review

1. After the Inventory count has been completed, the inventory counts for each location are keyed into the system.
2. For the Warehouse(s) on which a perpetual inventory is maintained, a report is run showing the perpetual balance, physical inventory and variance for each item.
3. When there is a variance, the physical count is to be checked to make sure that the original count was accurate and that no stock has been overlooked. For any physical counts that are found to be in error, the correct amounts are re-entered.
4. The unresolved variances are reviewed by management to evaluate the effectiveness of control over product in the warehouse. If the conclusion is reached that there is a control problem, efforts are made to determine whether the variances were caused by poor warehouse security or failure to record transactions or a combination of the two.

5. Before running the Close procedure, which precludes any further changes to Physical Inventory counts, the following steps are performed:
 - a. A Cost of Sales Analysis report for the period is prepared using the Ending Inventory amounts from the above report.
 - b. The Percentages by Account from the Potential and Actual Cost of Sales Analyses are compared. When there is a significant difference, the detailed inventory results are reviewed to see if errors or omissions can be identified and corrected.
6. After all corrections to the inventory have been entered, the Monthly Close program is run. It replaces the perpetual inventory counts with the final physical counts, resets the system in preparation for the new Accounting Period and produces the Inventory Book report.

Exhibit 2
SCOPE OF WORK – Accounting Procedures & Duties

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

A. Accounting Procedures

1. Contractor shall record in EBMS all transactions for invoicing, purchasing and summary payroll.
2. Contractor will directly enter data into EBMS and maintain Resource Master and Price List.
3. Clients receive a single invoice from MERC for all charges including Food & Beverage (“F&B”). All client deposits and payments will be received by MERC and deposited into MERC accounts.
4. Service orders, invoices, client payments will be recorded in EBMS.
5. Contractor enters all Reserve account purchases and purchase order into EBMS.
6. Vendor Payments will be processed by Contractor.
7. Inventory accounting may reside in EBMS or in another appropriate automated system
8. Payroll will be processed by the contractor and summary information posted into EBMS

B. Purchasing/Contracting & Vendor Payments Procedures

1. Contractor will comply with MERC purchasing/contracting policy/procedures for Reserve account purchases.
2. Contractor will follow best practices of internal control of Receiving and Inventory, including original invoice and receiving documentation.
3. Contractor will comply and track information regarding First Opportunity Target Area (“FOTA”) and Minority, Women, Emerging Small Business (“MWESB”).
4. Contractor will follow best practice of process Vendor Payables and payments.
5. Contractor will not pay for purchases that are on backorder or partial shipments.
6. Contractor will transfer to MERC the benefits of National Volume Discounts (“NVDs”).

C. Management Fee & Payroll Payment Procedures

1. Contractor will submit supporting documents or invoice for the following:
 - a. Payroll (based upon Payroll dates) including summary level information
 - b. Corporate Allocations and Charges (monthly)
 - c. Other ancillary charges such as expense reports
2. MERC may choose to require use of MERC's purchase cards for reserve purchases.

D. Compliance Procedures of Accounting Process, Internal Controls

1. Compliance with MERC policy and procedure will be determined by GM, or designee. Prior written approval is required for modifications and deviations from policy or procedures
2. Requests may be presented and discussed at monthly meetings with the General Manager, Facility Directors, the Deputy General Manager and the MERC Controller.

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

1. Contractor will be subject to annual audit by MERC's external auditors.
2. Contractor will be subject to audit by the Metro Auditor, at her discretion
3. Contractor will be subject to performance internal audits, at MERC's discretion, but at least bi-annually
4. Contractor will provide copies of internal audits performed by the Contractor within a reasonable time, but no later than 30 days
5. Contractor will notify MERC of any issues or findings that indicate a lack of internal control, such as difficulty reconciling with corporate ledgers, unusual cash overages or shortages, significant inventory variances

F. Audited Financial Reports

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

**Exhibit 3
Minimum Purchase Specification Requirements**

BEEF	Heifer or Steer Grade 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 Condition	USDA Inspected Grade A Hens - Fresh or frozen Fryers - Fresh or frozen Duckling - Fresh or frozen Turkey Breast - Fresh or frozen
CANNED VEGETABLES	Grade	US Grade A or Fancy
DRY GOODS	Rice Beans	Fancy or US No. 1 Grade A
BAKED PRODUCTS	At Commission's Approval	

Exhibit 4
Facilities Capital Investment

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

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

Exhibit 5

Food & Beverage Qualitative Goals

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

**Exhibit 6
License Agreement**

To be attached

Exhibit 7

Form of Bond

To be attached

Exhibit 8
Concessions/Catering
Sample Operating Expense Classifications

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

Exhibit 9
Allowable Corporate Expenses

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

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

Exhibit 10
CULTURE/NATURE/NURTURE

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

Approach

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

Brand Strategy & Communication

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

- Greg Robeson Communications Partnership- local firm to assist in development and deployment of brand strategy as well as marketing and communication initiatives. Will provide continual insight while driving the processes to assure alignment with consumers and the local Portland community.
- Website - *Culture/Nature/Nurture* as the brand identity will be fully integrated into the web re-design for the food and beverage department. Understanding that the web is our key point of contact with our consumers, it is important that our brand is the common thread. Components such as custom graphic interface design and branding, content (*to include: menu, services, upgraded services, philosophy, local suppliers, partnerships, specials, news, meet the team, etc.*), navigation, and usability testing will be included in process. In addition, "green web design" will be considered during this process (*green web design means being equally accessible to all, therefore minimizing the use of others to manage*).
- Menu Collateral Design- ARAMARK proposes electronic menu marketing collateral as the main source of food and beverage offering communication. A complete customizable and easy to navigate .pdf file will be developed. This would be easily accessible through the website as well as e-mail. Despite the prediction of its demise, printed marketing collateral is still necessary for traditional consumers. The printed material will be

produced using recycled post-consumer materials and renewable energy sources. In addition, we will use firms who will accommodate "low run printing" to reduce over-production and waste.

Additional Brand/ Marketing Initiatives

- *Source List* for local produce- in partnership with our local produce companies a comprehensive source list will be developed to assure that our menus and sales process maximize the opportunity for the inclusion of local produce. This would be an active-list to include seasonal crop rotation and available quantities.
- *STIR Concept and Awareness*- create additional awareness of recently launched STIR concept which features local Portland spirits. Create "grand opening" event to introduce STIR to the community. High visibility on web and print materials. Introduce social media marketing such as Facebook and Twitter. Create e-blast for local and convention customers. Participate/host community social events. Launch local PR campaign with news release and promotional offers.
- Leverage ARAMARK marketing and communications departments to gain more local and national PR surrounding MERC's *Culture/Nature/Nurture* brand promise and launch.

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

Exhibit 11
Leg-Up Program

Goal

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

Plan

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

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

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

Responsibilities of the Organizations Involved

Metro - Parent organization

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

MERC - Owns and sponsors the project

- Contribute a portion of the margin for seed money

ARAMARK - Administers the project for MERC

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

Giacometti Partners - Provide additional mentorship opportunities

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