

Concession Agreement

This Concession Agreement (this "Agreement") is made and entered into on this 28th day of June, 2000, by and between the CITY OF PORTLAND, OREGON ("City") and ARAMARK/GIACOMETTI JOINT VENTURE (the "Concessionaire"), a joint venture formed under the laws of the State of Oregon.

WITNESSETH:

WHEREAS, the City is the owner of the certain public event facility known as the Portland Civic Stadium located between 18th and 20th Streets and Morrison and Salmon Streets in Portland, Oregon (the "Stadium,");

WHEREAS, Concessionaire is engaged in the business of providing concessions, catering and other services at public event facilities; and

WHEREAS, the City desires to grant to Concessionaire the right to provide concessions, catering and other services at the Stadium, all in accordance with the terms hereof;

NOW THEREFORE, in consideration of the mutual covenants of the parties hereto, and upon the express terms and conditions hereinafter set forth, it is agreed by the parties as follows:

1. Definitions. The following terms are defined as follows:

A. "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 at the Stadium, in an efficient and courteous manner and in a clean and appealing environment. "Concessions" does not mean the sale of food, beverages, candy, and similar products through the use of vending machines.

B. "Concessions Products" means all food, beverages, candy, and similar products which the City directs or allows the Concessionaire to sell to patrons of events at the Stadium, excluding vending machine sales.

C. "Concessionaire's Employees" means only employees of the Concessionaire who are engaged in the management and operation of the concessions or catering, including contracted services.

D. "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 gratuities collected for and on behalf of Concessionaire's Employee's.

E. "Net Profits" means the amount calculated pursuant to Article 10 of this Agreement.

F. "General Manager" shall mean the individual staff member appointed by the City and having responsibility for the management of the Stadium, or the General Manager's delegee. All references to General Manager shall refer to the City's Spectator Facilities Manager.

2. Engagement. Subject to the terms of this Agreement and the direction of the General Manager or such other City personnel as he/she may designate, the Concessionaire shall manage and operate the Concessions at the Stadium. This engagement is further subject to the relevant terms and conditions or any existing and subsequent use agreements between the City and users of the Stadium. Concessionaire has visited the Civic Stadium and has determined for itself the available equipment and condition of the premises. Concessionaire acknowledges that it understands that construction activities are going to be going on at the Civic Stadium during the term of this Agreement. Concessionaire agrees that it will comply with the construction and safety requirements imposed.

3. Relationship of the Parties

A. The City and the Concessionaire have entered into this Agreement for the purpose of establishing an independent contractor relationship between the City and the Concessionaire. It is further understood and agreed by and between the parties that nothing herein shall constitute or be construed to be an employment, partnership, joint venture, or joint employer relationship between the City, its successors or assigns on the one part, and the Concessionaire, its successors or assigns on the other part. It is further agreed that the Concessionaire will provide its own workers' compensation insurance or self-insurance program as permitted under Oregon statutes. The Concessionaire shall, subject to the terms and provisions of this Agreement, have complete and independent control and discretion over the operation of the Concessions. It is expressly understood that neither Concessionaire nor the City 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.

B. Concessionaire shall be solely liable for, and shall independently undertake to defend, any and all unfair labor practice charges, grievances, judicial actions, or other employee or union claims, as well as general liability and personal liability, based on conduct alleged to have been committed by

its employees, agents, or supervisors at any time. However, the City and the Concessionaire will cooperate in good faith in the investigation and defense of any unfair labor practice charge, grievance, judicial action or other employee or union claim which may be filed against any one of them, jointly or separately.

4. Term of the Agreement. The term of this Agreement ("Term") shall commence on the "Termination Date" between MERC and the City of Portland, which is expected to be July 1, 2000 and shall continue until the last event of the 2000 professional baseball season at the Stadium.

5. Exclusive Concessions and Catering Rights

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

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

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

- 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 and meeting rooms
- g. concourses
- 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.

B. Additional areas of concession and catering sales in the Stadium as may be added at the discretion of the General Manager.

C. The exclusive sales right shall be extended to the sale of alcoholic beverages in the appropriate concessions and catering areas, provided however that the Concessionaire may be required to obtain and maintain all necessary licenses and permits in connection with the sale of such alcoholic beverages. As of July 1, 2000 the City will hold the liquor licenses in the name of the City. 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 the General Manager.

D. All food and beverage products prepared at the Stadium must remain and be sold exclusively at the Stadium unless otherwise authorized in advance by the General Manager. Notwithstanding the foregoing, the Concessionaire may transfer food and/or beverages prepared at one City Facility to another facility otherwise managed by the Concessionaire under this Agreement or another contract with City without prior consent of the City.

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

- 1) Parking rental concessions which are reserved exclusively by the City.
- 2) Advertising sales which are reserved exclusively by the City.
- 3) Stadium user and tenant novelty souvenirs and program sales.
- 4) Vending machine sales.

7. Duties of the Concessionaire. For the exclusive sales rights granted in Article 4 and the Fee consideration provided by in Article 10 hereof, the Concessionaire shall be responsible for providing skillful and commercially effective management and operation of the Concessions. The Concessionaire 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 Concessionaire 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 the Stadium's patrons in a clean and appealing environment.

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

A. Employ a highly skilled professional on-site concessions manager who possesses the necessary experience and expertise to provide the overall

management capability for a first-class concessions and a high quality catering operation. This manager may be shared between the MERC Facilities.

B. Subject to City review and approval, develop and implement all necessary policies and procedures for the concession and catering operation. Such policies and procedures shall not be subject to City review with respect to labor relations.

C. Employ and train all employees necessary for the successful operation of the concessions and catering operation. Training of the employees must encompass the concepts and policies of a first class concession and high quality catering operation, including appropriate first-aid techniques, and superior customer service skills, and alcohol management training.

D. Design and prepare specifications for the purchase of uniforms for concession and catering employees to be worn at all Stadium events. Uniform design must be approved by the General Manager or designee, prior to purchase unless consistent with Concessionaire's existing uniforms. The Concessionaire shall provide and maintain all uniforms in a neat and clean condition.

E. Provide for retail sale of food, beverages, candy, and similar products at all appropriate concession and catering areas outlined in Article 5 hereof.

F. Order, purchase, receive delivery of, and store all consumable supplies and products necessary for the operation of the concessions and catering operation.

G. Assist the City as requested by the General Manager, or his/her designee, with selection, purchase, receipt, inspection and storage of capital equipment, rolling stock, smallwares and other equipment necessary for the ongoing operation of Concessions. Concessionaire shall consult with and cause its affiliates to consult with the City in assisting with completion of food and beverage preparation facilities, concession stands, etc.

H. Prepare all Concessions Products for sale or distribution.

I. Advise and make recommendations to the City concerning all operational phases of Concessions, including but not limited to the kind, quality, brand and price of Concessions Products, use of portable specialty stands and the sale of products. The final decision regarding these matters shall rest with the City.

J. Comply with all existing laws and regulations relating to the preparation and handling, sale and disposal of Concessions Products. Procure and maintain at all times the necessary permits and licenses required by any laws and regulations for operations of Concessions. Use of styrofoam products is prohibited.

- K. Maintain at all times all related concessions and catering office, storage, kitchens, service, and retail sales areas in a clean and sanitary condition. Cleaning and waste removal from all concessions and catering areas including seating areas (excluding any spectator seating bowl areas) specific for food service needs to assigned facility compactors shall be the Concessionaire's responsibility. The Concessionaire shall also order once a month or as deemed necessary by the City permanent pest control through professional contract services approved by the City to ensure the highest standards of cleanliness and sanitary conditions in the concessions and catering areas. The Concessionaire is expected to participate fully in the City's recycling plans at the Stadium.
- L. Subject to prior approval by the General Manager, arrange for all routine repair and maintenance to the concessions and catering facilities and equipment.
- M. Pay all sales, business and occupational taxes and other similar taxes required by law related to the operation of the Concessions.
- N. Pay all catering gratuities collected for and on behalf of the Concessionaire employees in a fair and equitable manner.
- O. Provide for the necessary levels of financial reporting and accountability to the City as outlined in Article 11 hereof.
- P. Negotiate all collective bargaining agreements relative to the Concessionaire's employees and maintain effective day to day working relationships with appropriate union representatives.
- Q. Provide all necessary food and beverage related setup for concessions and catering events in Stadium as determined by the General Manager.
- R. Comply with the recycling policies and procedures at all Stadium and any such regulations passed and adopted by the City.
- S. Provide all necessary reports, scheduling information, sales and booking of facility space as directed by the City, using the facility management system in addition to corporate management systems.
- T. Comply, be well versed and participate in, attaining specific goals and mission of the City with regard to the Stadium.

8. Responsibilities of the City

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

- A. The City at its sole expense, shall construct, furnish and equip the concession and catering facilities of the Stadium, including office space,

computer equipment, storage areas, kitchens/pantries, which it deems necessary for the Concessionaire to operate within the Stadium.

B. The City shall obtain from the Interim Stadium Operator (Portland Family Entertainment) and shall furnish to the Concessionaire estimated attendance for all events at Stadium for which the Concessions are open, not less than ten (10) days in advance, to assist the Concessionaire in accomplishing its accounting responsibilities.

C. The City shall prohibit the selling and distributing of any Concessions Products or services in the Stadium and on its premises by anyone except the Concessionaire, subject to the exclusions provided for in Articles 4 and 8 of this Agreement.

D. The City shall cooperate with the Concessionaire in obtaining all necessary licenses and permits.

E. The City shall conduct business with the Concessionaire in an efficient and professional manner.

9. Powers Reserved to the City. The Concessionaire shall, subject to the approval of the City 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 Concessionaire and the City, the decision of the City 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 the City 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 the General Manager, the product purchased by the Concessionaire shall meet the minimum requirements as laid out in Exhibit 1 to this Agreement.

C. Final determination on the design, layout and location of all physical facilities and equipment for the Concessions 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 or his designee.

E. Final determination on which specific Concessions Products will be sold at particular events in Stadium.

F. Sole discretion to cancel, terminate or interrupt any Stadium event, and cause the patrons to be dismissed, or to stop the sale of any product by the Concessionaire during any event. The City shall not be liable to the Concessionaire for any loss or cost occasioned by any such determination or action by the General Manager taken in good faith for the benefit or protection of the City and the public generally or the Stadium.

G. The power to have access to any concessions areas at any time.

H. The power to approve or disapprove the Concessionaire's General Manager and Chef provided by the Concessionaire at any time during the term of this Agreement, and to require the Concessionaire to replace such personnel within thirty (30) days of receipt of written notice by the General Manager regarding dissatisfaction with the Concessionaire's Manager's performance.

I. Concessionaire will employ only competent and orderly employees who will keep themselves neat and clean and accord courteous and competent treatment and service to all patrons. Whenever the City notifies the Concessionaire or its manager that any employee is deemed by it to be incompetent, disorderly or unsatisfactory, the Concessionaire will investigate the matter thoroughly, and if good cause, as determined by the Concessionaire, exists the Concessionaire shall discharge such person, provided, however, that such discharge is not in violation of any outstanding collective bargaining agreements that may be entered into between the Concessionaire and a union or any Oregon or federal employment law or regulations.

J. Equal Opportunity and First Opportunity Target Area program participation.

K. The power to terminate this Agreement for acts of default by the Concessionaire in accordance with Article 14 hereof.

L. The final determination of the prices of which Concessions Products will be sold by the Concessionaire.

M. The determination of acceptable levels of performance in striving to achieve the most economical and efficient operation of the Concessions.

N. The power to approve the salaries of on-site concessions manager and any other on-site management employees of the Concessionaire. The

amounts of any salaries in excess of those approved by the City shall not be counted in the distribution and calculation of Net Profits.

10. Distribution of Net Gross Revenues, Net Profits and Other Funds

A. All Gross Revenues from Concessions will be collected by Concessionaire and distributed as provided herein.

B. As the sole consideration to the Concessionaire for management and operations of the Concessions, the Concessionaire shall receive a management fee (the "Fee") equal to the sum of 6.5% of Gross Revenues, plus 10% of Net Profits, until such time as the aggregate Fee equals \$78,000. Thereafter, the Fee in excess of \$78,000 shall be calculated on the basis of 3.9% of Gross Revenues plus 10% of Net Profits. In no event shall the total Fee over the course of the 2000 professional baseball season be less than \$60,000, as calculated in accordance with this paragraph. In such event, the City shall pay to the Concessionaire the amount of the shortfall. In view of the fact that the Term may commence after the beginning of the 2000 professional baseball stadium, a determination will be made jointly by Concessionaire and the City of Portland by taking into account the Concessionaire financial returns for those baseball games which occur in the 2000 professional baseball season prior to the commencement of the Term.

C. The Concessionaire shall not be entitled to any other remuneration from the City for the performance of the Concessionaire's duties, obligations and activities pursuant to this Agreement. Further, in the event of termination of the Agreement before the end of the Term as a result of the default of Concessionaire, the Concessionaire shall have no claim against the City for the Fee which might have been distributed to it for periods after the date of the termination or for any other amount not otherwise payable to Concessionaire upon termination in accordance with the terms of this Agreement.

11. Calculation of Net Profits

A. "Net Profits" means the amount remaining after deduction from Gross Revenues of the amounts described in subsections A. and B. of this Article.

B. Direct Operating Costs of Concessions. Direct operating costs include, without limitation, the costs incurred in performing the functions and activities to be performed by Concessionaire in accordance with Article 5 hereof (unless expressly excluded pursuant to Article 11.B, below):

- 1) cost of goods sold.

- 2) Direct labor (including any applicable taxes, worker's compensation costs, and fringe benefits for on-site employees devoting their full efforts to the Concessions.)
- 3) Direct expenses, expenses of the type listed in Exhibit 2, including but not limited to: supplies and applicable taxes, licenses and fees (see Exhibit 2).
- 4) Concessions manager's salary, insurance, payroll taxes and fringe benefits.
- 5) 20% of the Group Manager's salary, bonus, insurance, payroll taxes and fringe benefits approved by City.

The following are not considered direct operating costs:

- 1) Corporate supervision and support services (accounting and payroll services, bonuses (other than City-approved bonuses for the Concessionaire's on-site management staff), facilities planning and design, auditing, legal, insurance (other than insurance costs directly attributable to providing the insurance coverages required herein for the Concessionaire's operations at the Stadium) and bonds, purchasing, personnel, training, public relations, etc.)
- 2) Corporate taxes
- 3) Other general corporate administrative and overhead expenses.
- 4) Attorneys' fees incurred pursuant to Article 21.

12. Payment; Financial Reporting and Accountability

A. Concessionaire shall be permitted to retain the Fee from Gross Revenues. If, in any accounting period, available Gross Revenues are insufficient to permit Concessionaire to retain the Fee for such accounting period, the City shall pay to Concessionaire the amount of such shortfall within twenty (20) days following receipt of Concessionaire's invoice therefor. The City may recover the amounts paid to Concessionaire in respect of such shortfalls in future months, provided that sufficient excess Gross Revenues are available to permit the City to do so.

B. The City, and not Concessionaire, will bear all direct operating costs. Concessionaire will fund, on the City's behalf, all direct operating costs from Gross Revenues. If, in any month, available Gross Revenues are insufficient to cover direct operating costs, the City shall pay to Concessionaire the amount of such shortfall within twenty (20) days following receipt of Concessionaire's invoice therefor. The City may recover the amounts paid to Concessionaire in respect of such shortfalls in future months, provided that sufficient excess Gross Revenues are available to permit the City to do so.

C. Within 20 days following the end of each Concessionaire accounting period the Concessionaire shall pay to the City the Net Profits, if any, attributable to such accounting period, less the Fee for such accounting

period. As used herein, "accounting period" shall mean the 4 or 5 week financial reporting periods of Concessionaire, 3 of which occur in each quarter.

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

- 1) Complete financial system which conforms to generally accepted accounting principles and practices and includes line item budgeting for expenditure and revenue accounting, accounts segregating, and identifying assets and liabilities.
- 2) 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.
- 3) Complete event inventory control records before and after each Stadium event and actual cash count of each event's sales receipts.
- 4) Any other specific accounting information related to the Concessions which is determined by the City to be meaningful and necessary.
- 5) Complete financial reports of all operations will be required monthly and made available to City.

E. All accounting records, documents, books, inventories and other such related information shall be made available for City inspection at any time during the Term. In addition, Concessionaire shall retain all accounting records for a period of three years after completion of the Term. In addition to the right of inspection, the City shall have the right at any time during the term of this Agreement and during the three year period following completion of the Agreement to conduct a full audit, including a certified audit by an independent accounting firm on the financial records and business activities of the Concessionaire relative to performance of this Agreement.

F. The Concessionaire shall provide a financial operating statement within ten (10) business days after the end of each accounting period which details on an accrual basis, all Gross Revenues, direct operating costs, Net Profits and the Fee resulting from the Concessions for the preceding accounting period. The Concessionaire shall provide other financial reports on the Concessions as are determined necessary and appropriate by the City,

including event by event statements including all payroll, product inventory in and out, and receipts, which shall be accomplished daily.

G. It shall be the responsibility of the Concessionaire to assure compliance by any of its subcontractors, suppliers, and other such agents with the record-keeping requirements of this Article. Failure of Concessionaire to comply with accounting procedures requested by the City, failure of the Concessionaire to immediately correct any accounting deficiency discovered by the City, or failure by the Concessionaire to safeguard, control and account for funds received or held by it pursuant to this Agreement shall be cause for immediate termination of this Agreement by the City with notice but without recourse by the Concessionaire, except as otherwise expressly set forth herein.

13. Insurance and Indemnification

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

B. Insurance coverages to be provided by the Concessionaire ~~foregoing~~ shall include, but not be limited to, coverages commonly referred to by the insurance industry as:

- 1) premises/operations liability
- 2) owners and contractors protective liability
- 3) blanket contractual liability
- 4) broad form property damage liability
- 5) personal injury
- 6) automobile liability, including coverage for owned, non-owned, hired or borrowed vehicles.
- 7) products/completed operations liability (including food and drink)
- 8) Liquor legal liability
- 9) Fire legal liability.

The foregoing insurance policy or policies shall:

- 1) Name the City as additional insured
- 2) Name Portland Family Entertainment as additional insured
- 3) Name the Oregon Liquor Control Commission as the certificate holder .

- 4) Apply as primary insurance on behalf the City, regardless of what insurance the City may maintain.
- 5) Provide for not less than sixty (60) days advance written notice to the City regarding termination or any material change to the policy
- 6) Include limits of protection as follows:

Not less than \$10,000,000 combined single limit bodily injury and property damage, including loss of use.

C. Concessionaire, 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. Concessionaire shall provide the City with certification of Workers' Compensation insurance including employer's liability.

D. A true and certified copy of the insurance certificates, including all of the required coverages and endorsements shall be provided to the City 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, the City will be under no obligation to replace them.

G. The City shall keep and maintain property insurance on all real and personal property owned by the City and waives subrogation for all losses except those in excess of the City's self insured deductible or any amounts not reimbursed by the City's property insurance.

H. The Concessionaire must provide property insurance for all real and personal property owned by the Concessionaire, its agents, employees or contractors and waives all rights of subrogation.

I. Concessionaire 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.

J. The Concessionaire shall be required to strictly adhere to, coordinate with City 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 Concessionaire and all subcontractors and suppliers within their control shall notify the City as to:

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

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

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

The terms and requirements of this Article 12.B shall be reviewed annually and modified as requested in the sole judgment of the General Manager.

14. Termination or Breach by Concessionaire

A. Material Breach: Any actions by the Concessionaire or any failure by Concessionaire to perform any obligation hereunder which directly or indirectly impairs or interferes with the cleanliness, safety, profitability, operational capacity, or favorable public image or reputation of the Stadium shall be a material breach and shall entitle the City to terminate this Agreement. In the event that Concessionaire 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 ten (10) days after written notice of said default to the Concessionaire (or such longer period as is reasonably necessary to effectuate a cure under the circumstances, provided, that Concessionaire commences such cure within such ten (10) day period and then diligently completes same), thereupon, at City's option, this Agreement may be terminated upon thirty (30) days' written notice. Nothing herein shall preclude the City or its agents from taking any immediate necessary action to remedy dangerous or unsafe conditions, regardless of the impact upon the Concessionaire. The parties agree that the City shall retain the right to determine whether any action or failure of Concessionaire constitutes a material breach hereunder and any such determination shall be conclusive and shall be binding upon the parties hereto.

B. Loss of Essential Licenses-Extraordinary Breach. The parties agree that the loss by Concessionaire of any license or permit necessary to legal performance of its duties and obligations hereunder shall constitute an extraordinary breach of this Agreement and shall be grounds for immediate termination by City. This provision shall apply specifically but not exclusively to the licenses or permits issued by the Oregon State Liquor Control City to allow sale of alcoholic beverages under the terms hereof, to the extent held by Concessionaire. This provision shall apply irrespective of the reason for loss or revocation of any necessary license or permit.

C. Unsatisfactory Performance: The parties agree that the City shall retain the right to demand performance which is in all ways satisfactory to it, and that the City shall retain the exclusive right to determine whether performance is or is not satisfactory. In the event Concessionaire's performance hereunder is deemed unsatisfactory, and such performance remains unimproved for a period of thirty (30) days following notice thereof to the Concessionaire, the City shall have the right to terminate this Agreement and all rights and obligations hereunder. Notice of termination under this subsection shall provide such time for termination, discontinuance of operations and vacation of facilities as deemed appropriate by the City'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 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, the City 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) The \$60,000 minimum Fee provided in Section 10.B. of this Agreement will be prorated as of the date of termination.
- 3) Immediately upon notice of termination hereunder, all products, food or equipment for which Concessionaire is entitled to claim for reimbursement shall automatically become the property of the City and shall automatically come into custody and possession of the City, subject only to Concessionaire's right to be reimbursed therefor at its cost.
- 4) Upon termination, Concessionaire shall provide City with termination accounting including, but not limited to, the following:
 - a. Accounts payable closed at thirty (30) 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 those accounts will be subtracted from Gross Revenues;
 - d. A final inventory on smallware conducted seven (7) days prior to termination;

- e. A final inventory on consumables conducted one (1) day prior to termination;
- f. All other accounting and contract close-out procedures shall be finalized no later than forty-five (45) days following termination.

15. Assignment. Both parties fully understand and agree that the highly skilled and professional management and operation of the concessions and catering in the Stadium are of paramount importance and that this agreement would not be entered into by the City except for its confidence in, and assurances provided for, the character, management abilities, and financial stability of the concessionaire. The concessionaire, therefore, shall not sell, assign, sublet, transfer, or in any manner encumber the rights and privileges granted herein, nor allow such assignment, subletting, transfer, or any other encumbrance to occur by operation of law or otherwise. The parties agree, further, that any occurrence, whether within or beyond the control of Concessionaire, which renders Concessionaire incapable of performing all duties required hereunder shall constitute a material breach hereunder and shall give the City the option of terminating this Agreement.

16. City's Remedies If Concessionaire Becomes Insolvent. The parties agree that if Concessionaire 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 Concessionaire's performance of this Agreement. Accordingly, it is agreed that upon the occurrence of any such event, City shall be entitled to request of Concessionaire or its successor in interest, adequate assurance of future performance in accordance with the terms and conditions hereof. Failure of Concessionaire and surety to comply with such request within ten (10) calendar days of service upon both Concessionaire and Surety of a written request from City for such assurances shall entitle City to terminate or suspend Concessionaire's performance of the Agreement. City shall not be bound to the Agreement by an insolvent Concessionaire'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 City may have against Concessionaire under any other provision of this Agreement or any provision(s) of law.

17. Control of Ownership

- A. Any change in control or the transfer of a controlling interest in stock ownership of Concessionaire shall require the prior written consent of City. Change of control shall mean the occurrence of any of the foregoing:

1) Any person, corporation, limited liability company, partnership, trust or association or any group within the meaning of Section 13 (d)(3) of the Securities Exchange Act of 1934 as amended (The "Exchange Act") and the rules and regulation, promulgated thereunder, shall have acquired after the date hereof beneficial ownership (within the meaning of Rule 13(d)(3) of the Exchange Act), directly or indirectly, of common stock (or other securities convertible into such common stock) representing fifty percent (50%) of the combined voting power of all common stock of Concessionaire entitled to vote in the election of directors, other than having such power only by reason of the happening of a contingency (hereinafter called a "Controlling Person"); or

2) A majority of the Board of Directors of Concessionaire shall cease for any reason to consist of

a. Individuals who on the date hereof were serving as directors of Concessionaire; and

b. Individuals who subsequently become members of the board if such individuals' nomination for election or election to the Board is recommended or approved by a majority of the board of Directors or stockholders of Concessionaire provided that use of the provisions of this clause (b) shall not be used to evade the intent of the Article, Change of Ownership.

B. For the purposes of 17A (1) above, a person or group shall not be a Controlling Person if such person or group holds voting power in good faith and not for the purposes of circumventing this provision as an agent, bank broker, nominee, trustee or holder or revocable proxies given in response to a solicitation pursuant to the Exchange Act, for on more beneficial owners who do not individually, or if they are a group acting in concert, as a group, have the voting power specified in clause (1).

C. Concessionaire shall give City a written request to approve the change in control prior to any change in control taking effect. If a change in controls occurs without prior written notice to City, such change shall constitute a material breach of this Agreement and City, in its sole discretion, may terminate this Agreement for such breach.

In determining whether to approve or disapprove a request by the Concessionaire to sell the company, City 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 Portland area.

H. City 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 City requests information regarding the above criteria the thirty (30) day approve/disapprove time period shall begin upon satisfactory response by the Concessionaire to the City.

18. Best Efforts. The Concessionaire and the City shall each use their best efforts to obtain the most efficient and high quality operation of the Concessions as is possible.

19. Impossibility. The City and the Concessionaire shall not hold each other liable for failure to perform as outlined herein where such performance is rendered impossible or financially impractical due to labor strikes, walkouts, acts of God, inability to obtain necessary materials, products, and services, civil commotion, fire, unavoidable casualty, or similar causes beyond the control of the City or the Concessionaire. Each party agrees to notify the other promptly upon the occurrences of an event or condition which will, or which is likely to, give rise to a claim under this Article. The failure to give prompt notice as herein required shall act as a waiver of any claim under this Article.

20. Year 2000 Compliance. Concessionaire warrants that all software, hardware or equipment with imbedded microchips shall be designed to perform so that there shall be no abnormally and/or invalid and/or incorrect results from the software, hardware or equipment with imbedded microchips at the year 2000 pertaining only to the equipment or systems owned or provided by ARAMARK.

21. Arbitration. 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 sounding in tort, shall be settled by binding arbitration in Portland, Oregon under ORS Chapter 36; provided, however, that the requirements, (including but not limited to notice requirements) limitations, and exclusions of the Oregon Tort Claims Act, RFS 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.

22. Miscellaneous Provisions

A. Validity: The City and Concessionaire 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. The City and Concessionaire 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 Concessionaire waives any right, claim, argument or defense that any language of this Agreement should be construed strictly against the City.

C. Compliance with Applicable Laws: The Concessionaire 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 the City premises as designated by the City.

D. Waiver of Subrogation: The Concessionaire, its agents, employees and insurer(s) hereby release the City from any and all liability or responsibility, including anyone claiming through or under them, by way of subrogation or otherwise for any loss or damage which Concessionaire may sustain incidental to or in any way related to Concessionaire's operation under this Agreement. All agreements between Concessionaire and subcontractors shall contain similar release of the City.

E. Labor Disputes: In the event Concessionaire 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 City 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 the City, the City shall be entitled to use all facilities, smallwares and equipment at the City

premises and any supplies and inventory of Concessionaire on hand. The Concessionaire 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, the Center may terminate this Agreement upon 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 the City and the Concessionaire. No provision of this Agreement may be changed or eliminated unless mutually agreed to in writing by the City and the Concessionaire.

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

Concessionaire

ARAMARK Sports and
Entertainment Services, Inc.
ARAMARK Tower
1101 Market Street
Philadelphia, PA 19107
Attn: President
Attn: General Counsel

City

1120 S.W 5th Avenue
Portland, Oregon 97204
Attn: Chief Administrative Officer
Attn: Spectator Facilities
Manager

I. Miscellaneous: 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 Concessionaire has no value except insofar as Concessionaire'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.

CONCESSIONAIRE

City

ARAMARK/Giacometti**Joint Venture**

By: ARAMARK Sports and
Entertainment Services, Inc., a
partner

The City of Portland, Oregon

By: _____
Name:
Title:

By: _____
Name:
Title:

Exhibit 1

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 Heavy syrup
CANNED VEGETABLES	GRADE	US Grade A or Fancy
DRY GOODS	RICE BEANS	Fancy or US No. 1 Grade A
BAKED PRODUCTS	At City's Approval	

Exhibit 2**Concessions/Catering****Sample Operating Expense Classifications**

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

ORDINANCE No. 174584

*Authorize a Concession Agreement with Aramarmark/Giacometti Joint Venture to provide concession services to Civic Stadium for the summer 2000 Rockies baseball season. (Ordinance)

The City of Portland ordains:

Section 1. The Council finds:

1. The City is the owner of Civic Stadium, which is located between 18th and 20th Streets and Morrison and Salmon Streets in Portland, Oregon.
2. Currently, Civic Stadium is operated by the Metropolitan Exposition Recreation Commission (Metro) under the terms of the Amended Consolidation Agreement between the City of Portland and Metro.
3. Due to the pending renovation of Civic Stadium, the City of Portland has given Metro notice that effective July 1, 2000 Civic Stadium will no longer be operated by the Metropolitan Exposition Recreation but will be returned to the City of Portland.
4. That notice was given in anticipation of the City of Portland and Portland Family Entertainment Limited Partnership (PFE) entering into a cooperative agreement to improve Civic Stadium and bring new sports franchises to the facility.
5. There is an existing contract between MERC and Aramark/Giacometti Joint Venture to provide concession services to all MERC facilities, including Civic Stadium, Portland Metropolitan Exposition Center, Oregon Convention Center and Portland Center for the Performing Arts.
6. That contract stipulates that in the event any of the above mentioned facilities managed and operated by MERC ceases to be operated by MERC, the concession agreement shall cease to apply to that facility.
7. Under the terms of the Termination Notice given by the City of Portland to MERC, Civic Stadium will cease to be operated by MERC effective July 1, 2000.
8. In order that concession services are provided for the period beginning July 1, 2000, it is necessary for the City of Portland to enter into an agreement with Aramark/Giacometti Joint Ventures to provide concession services to Civic Stadium for the summer Rockies' season.

NOW, THEREFORE, the Council directs:

- a. The Mayor and Auditor are hereby authorized to execute the Concession Agreement in substantially the form attached hereto as Exhibit A.
- b. Compensation for the provision of concession services for Civic Stadium shall be in accordance with the provisions of Section 9 of the Concession Agreement.

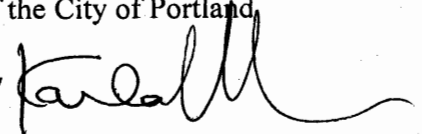
Section 2. The Council declares that an emergency exists in order that concession services for Civic Stadium continue without disruption; therefore, this Ordinance shall be in force and effect from and after its passage by the Council.

Passed by the Council, **JUN 28 2000**

Mayor Vera Katz
Office of Management and Finance
Bureau of Financial Management
June 22, 2000

GARY BLACKMER
Auditor of the City of Portland

By



Deputy

Agenda No.

ORDINANCE NO. 174584

Title

*Authorize a Concession Agreement with Aramark/Giacometti Joint Venture to provide concession services to Civic Stadium for the summer 2000 Rockies baseball season. (Ordinance)

INTRODUCED BY	DATE FILED: JUN 23 2000
MAYOR VERA KATZ	Gary Blackmer Auditor of the City of Portland
NOTED BY COMMISSIONER	By: <u>Brill Olson</u> Deputy
Affairs	For Meeting of: _____
Finance and Administration <u>VK</u>	ACTION TAKEN:
Safety	
Utilities	
Works	
BUREAU APPROVAL	
Bureau: Office of Management and Finance	
Prepared by Date	
R. Roth 6/22/00	
Budget Impact Review:	
<input checked="" type="checkbox"/> Completed <input type="checkbox"/> Not Required	
Bureau Head: <u>Tim Grewe by J. Bees</u>	

AGENDA		FOUR-FIFTHS AGENDA	COMMISSIONERS VOTED AS FOLLOWS:		
				YEAS	NAYS
Consent <input checked="" type="checkbox"/>	Regular	Francesconi	Francesconi	<input checked="" type="checkbox"/>	
NOTED BY		Hales	Hales	<input checked="" type="checkbox"/>	
City Attorney		Saltzman	Saltzman	<input checked="" type="checkbox"/>	
City Auditor		Sten	Sten	<input checked="" type="checkbox"/>	
City Engineer		Katz	Katz	<input checked="" type="checkbox"/>	