

ATTACHMENT NO. X-C

ATTACHMENT NO. X-C: Beverage Agreement with Coca-Cola

Potential motion: Move to approve the Beverage Agreement dated August 15, 2011 with Coca-Cola Refreshments USA, Inc.

Recommended action: Approve the motion.

It is proposed that the Board accept a five-year beverage agreement with Coca-Cola Refreshments USA, Inc.

The Beverage Agreement grants Coca-Cola the exclusive right to sell and advertise its products on all District premises. Except as prohibited by law, Coca-Cola will provide the necessary dispensing equipment at no cost to the District.

Coca Cola will pay \$7,500.00 to the District for the entire contract period to be paid in equal annual installments of \$1500.00, the first which will be payable thirty days from the date the Agreement is executed.

Coca-Cola will pay a monthly commission to the District, the percent of which is based upon the type of product sold.



and (“Volume Commitment”). Bottler shall not be required to pay Account any further Sponsorship Fees (as defined in Section 6, Consideration) in the event the Agreement is extended after the Fee Period because the Account has not fulfilled the Volume Commitment.

3. Advertising Rights

(a) Account hereby grants to Bottler the exclusive right to advertise Beverages and specifically Products (i) at the Facility and (ii) in connection with the Facility connection with Event-Related events. No permanent or temporary advertising, signage or trademark visibility for Competitive Products will be displayed or permitted anywhere at the Facility

(b) Account hereby grants Bottler the specific advertising rights and benefits as indicated on Exhibit A hereto.

(c) Account agrees that Bottler’s advertising shall be positioned at all times in such a manner that the advertising message is in no way obscured (electronically or otherwise) and is clearly visible to the general public. The Products shall be prominently listed on any menu boards located at the Facility and all equipment dispensing Products shall be prominently identified with the appropriate trademarks/logos.

(d) Account further agrees that all Products will be dispensed in Bottler’s equipment and that no other trademarked, equipment, coolers or containers will be permitted.

4. Sponsorship Rights

(a) Bottler will have the exclusive right to advertise the Products as the “Official” or “Exclusive” soft drink, sports drink, water, tea, energy drink and/or juice or juice drink, etc. of the Facility.

(b) Account hereby grants to Bottler a royalty-free license, exclusive for Beverages, to use the trademarks, logos and other intellectual property of the Account and Facility (“Account Marks”) in connection with the promotion of Products. Such promotion may occur in advertising (TV, radio, and print), packaging, vessels, promotional materials, and point of sale materials for Products and may be in connection with the marks and logos of Bottler’s customers.

(c) Account will not enter into any agreement or relationship whereby any Competitive Products are associated in any manner with Account, the Facility, or any of the Account Marks in any advertising or promotional activity of any kind.

5. Product Rights

(a) Account hereby grants to Bottler the exclusive right to sell or distribute Beverages at the Facility. Account and/or its Concessionaires shall purchase all Products, (and cups, lids and carbon dioxide, if applicable) directly from Bottler. No Competitive Products may be sold, dispensed, sampled or served anywhere at the Facility

(b) Account hereby grants to Bottler the exclusive Beverage vending rights at the Facility. Account agrees that Bottler shall have the right to place a minimum of Eleven (11) Beverage vending machines [or add coolers, etc.] in mutually agreed upon locations at the Facility.

(c) During the Term, Bottler will loan to Account, pursuant to the terms of Bottler’s equipment placement agreement, at no cost (except as prohibited by law, rule or regulation, in which case the rent

charged shall be the lowest legal rate available from Bottler), that Beverage dispensing equipment reasonably required and as mutually agreed upon to dispense Beverages at the Facility ("Equipment"). Account represents and warrants that electrical service at the Facility is proper and adequate for the installation of Equipment, and Account agrees to indemnify and hold Bottler harmless from any damages arising out of defective electrical services.

6. Consideration

(a) In consideration of the rights and benefits granted to Bottler hereunder, Bottler agrees to pay Account an aggregate of Seventy Five Hundred Dollars (\$7,500.00) for the entire Term (the "Sponsorship Fees").

The Sponsorship Fees shall be paid in equal annual installments of Fifteen Hundred Dollars (\$1,500.00). The first installment shall be payable within thirty (30) days after the date this Agreement is fully executed and subsequent installments shall be due on or about the anniversary date after each Agreement Year remaining in the Fee Period. The Sponsorship Fees shall be deemed earned evenly over the Fee Period.]

(b) Bottler agrees to pay Account a monthly commission based on the commission rates and initial vend prices set forth in Exhibit B.

(c) Pricing. Account shall be entitled to purchase bottle/can Products from Bottler in accordance with the price schedule set forth in Exhibit C. Such prices shall remain in effect until August 14, 2012

Thereafter, such prices will be subject to an annual increase of no more than Five percent (5%) over the previous Agreement Year's price, except in the event of an increase in a component of Bottler's cost of goods, manufacture or delivery, or increases in taxes, deposits and other government related fees in which case Bottler may increase prices to cover such increased costs. Annual price increases shall occur automatically on August 15<sup>th</sup>.

(d) In the event Account employs a Concessionaire, Account will cause Concessionaire to purchase from Bottler all requirements for Beverages (and cups, lids and carbon dioxide, if applicable). Such purchases will be made at prices and on terms set forth in Bottler's existing agreement with Concessionaire, if any. If no agreement exists between Concessionaire and Bottler, such purchases will be made at prices and on terms set forth in this Agreement. Account acknowledges that there will be no duplication of allowances, funding or benefits (including pricing) to Account or Concessionaire if Concessionaire has an existing agreement with Bottler.

7. Miscellaneous

8. Termination

(a) If Account breaches any of its obligations set forth in this Agreement, then at its option and not as its sole remedy, Bottler may terminate this Agreement, and Account shall (i) return any Equipment, (ii) pay to Bottler a pro rata portion of the costs of refurbishing and installing the Equipment, and (iii) pay to Bottler the unearned portion of pre-paid Sponsorship Fees or other upfront funding, if any.

(b) Notwithstanding the other provisions of this Agreement, if any federal, state or local law, rule, regulation or order prohibits, restricts or in any manner interferes with the sale or advertising of Beverages at any time during the Term of this Agreement or if for any reason the use of the Facility declines, then at its option and not as its sole remedy, Bottler may terminate this Agreement and Account shall (i) return any Equipment, (ii) pay to Bottler a pro rata portion of the costs of refurbishing and installing the Equipment, and (iii) pay to Bottler the unearned portion of pre-paid Sponsorship Fees or other upfront funding, if any.

(c) Account represents and warrants that it has full right and authority to enter into this Agreement and to grant and convey to Bottler the rights set forth herein. Upon expiration or revocation of such authority, then at its option and not as its sole remedy, Bottler may terminate this Agreement, and Account shall (i) return any Equipment, (ii) pay to Bottler a pro rata portion of the costs of refurbishing and installing the Equipment, and (iii) pay to Bottler the unearned portion of pre-paid Sponsorship Fees or other upfront funding, if any.

(d) Bottler shall have the right to withhold and not pay further any amounts which may become payable to Account pursuant to this Agreement if: (i) Account has failed to perform its obligations hereunder, (ii) Bottler's rights hereunder have been lost, limited or restricted, or (iii) there exists a bona fide dispute between the parties.

(e) Nothing in this section shall operate to restrict any of Bottler's other remedies in the event of a material breach by Account.

9. Governing Law

This Agreement and any dispute arising out of or relating to this Agreement shall be governed by and construed in accordance with the laws of the State of Georgia, without reference to its conflict of law rules.

10. Compliance with Law

Each of the parties hereto agrees that it will, in its performance of its obligations hereunder, fully comply with all applicable laws, regulations and ordinances of all relevant authorities and shall obtain all licenses, registrations or other approvals required in order to fully perform its obligations hereunder.

11. Retention of Rights

Account shall not obtain, by this Agreement, any right, title or interest in the trademarks of The Coca-Cola Company or Bottler, nor shall this Agreement give Account the right to use, refer to, or incorporate in marketing or other materials the name, logos, trademarks or copyrights of Bottler or The Coca-Cola Company.

12. Confidentiality

During the Term, and for a one (1) year period thereafter, the parties shall keep the terms of this Agreement confidential.

13. Jury Waiver

EACH PARTY, TO THE EXTENT PERMITTED BY LAW, KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVES ITS RIGHT TO A TRIAL BY JURY IN ANY ACTION OR OTHER LEGAL PROCEEDING ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT AND THE TRANSACTIONS IT CONTEMPLATES. THIS WAIVER APPLIES TO ANY ACTION OR LEGAL PROCEEDING, WHETHER ARISING IN CONTRACT, TORT OR OTHERWISE.

14. Entire Agreement

This Agreement and its exhibits contains the entire agreement between the parties with respect to the subject matter hereof. This Agreement may not be assigned without the prior written consent of all parties; provided, however, that Bottler may assign this Agreement in connection with its reorganization or the sale of all or substantially all of its assets. All amendments to or waivers of this Agreement must be in writing signed by all the parties.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first above written.

BOTTLER

By: Maura Novendy  
Printed Name: Maura Novendy  
Title: Controller  
Date: 9/21/11

ACCOUNT

By: \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

**EXHIBIT B**  
**COMMISSIONS**

<u>Product</u>	<u>Vend Price</u>	<u>Commission Rate</u>
12 oz. carbonated/Nestea	\$.75	15%
20 oz. Dasani products	\$1.00	28%
20 oz. Carbonated/Mimute Maid/Nestea	\$1.00	28%
300ml Dasani	\$.75	20%
20 oz. Powerade Products	\$1.25	28%
10oz. MMJTG	\$2.25	15%
12oz Powerade	\$1.00	10%
12oz Vitamin Water	\$1.25	15%

Commissions are paid based upon cash collected after deducting taxes, deposits, recycling fees, other handling fees, communication charges and credit and debit card fees, if any. Commissions shall not be payable on any sales from vending machines not filled or serviced exclusively by Bottler. Bottler may adjust the vend prices and/or commission rates as necessary to reflect changes in its costs, including cost of goods. Commissions will be paid each month following the month in which they are earned, with an accounting of all sales and monies in a form reasonably satisfactory to the Account, and shall become immediate property of Account.

**EXHIBIT C**  
**INITIAL PRICE SCHEDULE\***

<u>Package</u>	<u>Price per case</u>
12oz cans (carbonated	\$ 7.70
20oz bottles carbonated/Nestea/MM Lemonade	\$ 19.50
20oz Dasani Product	\$10.00
10oz MMJTG	\$13.50
20oz Powerade Products	\$19.50
20oz Vitamin Water Products	\$24.00
12oz Dasani	\$7.20

\*All prices are per standard physical case and exclusive of taxes, deposits, handling fees, and recycling fees.