

HABERSHAM COUNTY BOARD OF COMMISSIONERS

EXECUTIVE SUMMARY

SUBJECT: Coca-Cola Beverage Agreement

DATE: 11/06/2019

(X) RECOMMENDATION

() POLICY DISCUSSION

BUDGET INFORMATION:

() STATUS REPORT

ANNUAL-

() OTHER

CAPITAL-

COMMISSION ACTION REQUESTED ON: November 18th, 2019

PURPOSE: This agreement will allow us to continue our strong partnership with Coca-Cola for up to the next five years. This agreement will renew automatically on an annual basis, up to five years, unless otherwise stated, or terminated, by either party.

BACKGROUND / HISTORY: Coca-Cola products have been sold for many years within the Parks and Recreation Department. By purchasing products directly from Coca-Cola, we are eligible for discounts not available at storefronts. Coca-Cola is primarily sold at our concession window at the Ruby C. Fulbright Aquatic Center during activities and special events. Coca-Cola also provides beverage vending machines, found at park locations, managed by the bottler. We receive a percentage of all vending machine sales.

FACTS AND ISSUES: By providing Coca-Cola products through our concessions, Coca-Cola will provide us with the following incentive:

- **Sponsorship:** \$1,500 in sponsorship fees to be paid annually by Coca-Cola, throughout the contract period (5 years), for any recreational needs.
 - **Vending:** A 20% rebate will be issued on all sales by Coca-Cola managed vending machines on site.
 - **Pricing:** Discounted pricing on all Coca-Cola products (see Exhibit A)
-
-

OPTIONS:

- 1) Approve recommendation to enter into a one-year beverage agreement with Coca-Cola Bottling Company that may annually renew for up to four successive one-year periods, for a total of five years.
 - 2) Deny recommendation to enter into a one-year beverage agreement with Coca-Cola Bottling Company that may annually renew for up to four successive one-year periods, for a total of five years.
 - 3) Commission defined alternative
-
-

RECOMMENDED SAMPLE MOTION: I move to approve the recommendation to enter into a one-year beverage agreement with Coca-Cola Bottling Company, that may annually renew for up to four successive one-year periods, for a total of five years.

DEPARTMENT:

Prepared by: Kurt Cooper

Director: Kurt Cooper

ADMINISTRATIVE

COMMENTS: _____

_____ **DATE:** _____
County Manager

media. 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.

- (c) Account further agrees that only 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 three (3) Beverage vending machines 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 [plumbing and] 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.

In consideration of the rights and benefits granted to Bottler hereunder, Bottler agrees to pay Account an aggregate of Seven Thousand and Five Hundred Dollars (\$7,500) for the entire Term (the "Sponsorship Fees"). The Sponsorship Fees shall be paid in equal annual installments of One Thousand Five Hundred Dollars (\$1,500). The first installment shall be payable within ninety (90) 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 Term. The Sponsorship Fees shall be deemed earned evenly over the Agreement Year for which they are paid.]

- (a) Commissions. Beverage Provider shall pay the School commissions on full-service Beverage vending sales based on the following rates and initial vend prices:

	Agreement Year one	Agreement Year two	Agreement Year three	Agreement Year four	Agreement Year five
<u>Vend Price</u>	Commission %	Commission %	Commission %	Commission %	Commission %
\$1.75 – 20oz PowerAde	20%	20%	20%	20%	20%
\$1.75 – 18.5oz Gold Peak Tea	20%	20%	20%	20%	20%
\$1.50 – 20oz Dasani & Flavors	20%	20%	20%	20%	20%
\$1.50 – 20oz Sparkling	20%	20%	20%	20%	20%
\$1.75 – 20oz smartwater	20%	20%	20%	20%	20%

Commissions are paid based upon cash collected, after deducting legally imposed 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 by Beverage Provider. Vend prices and packages shall be in effect for the current Agreement Year. Beverage Provider may adjust the vend prices on an annual basis as necessary to reflect changes in its costs, including cost of goods. Commissions will be paid quarterly.

7. Pricing.

Account shall be entitled to purchase bottle/can Products from Bottler in accordance with the price schedule set forth in Exhibit A. Such prices shall remain in effect until December 31, 2019.

Thereafter, prices are subject to change on an annual basis. Annual price increases shall occur automatically on or about the anniversary date of each Agreement Year in the Term.

Bottler may offer tiered pricing that requires Account to order certain quantities or to comply with Bottler's minimum order quantities to get the contractual price or may charge a delivery fee if such minimums are not met.

8. Concessionaires.

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. If such Concessionaire requires Bottler to pay the Concessionaire funding or to provide Products pursuant to prices under the separate agreement with the Concessionaire, then Customer agrees that Bottler may deduct such duplicate funding and lost margin on such lower cost Products paid or sold to Concessionaire from any payment made by Bottler to Customer.

9. 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 (or Facilities) 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.

- 10. 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.
- 11. 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.
- 12. 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.
- 13. Confidentiality.
During the Term, and for a one (1) year period thereafter, the parties shall keep the terms of this Agreement confidential, subject to applicable laws.
- 14. 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.
- 15. Entire Agreement:
This Agreement and its exhibits contain the entire agreement between the parties with respect to the subject matter hereof. Account may not assign this Agreement without the prior written consent of the Bottler. 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

ACCOUNT

By: _____

By: _____

Printed Name: _____

Printed Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

EXHIBIT A
INITIAL PRICE SCHEDULE*

<u>Package</u>	<u>Price per case</u>
12 ounce cans (carbonated)	\$ 11.90
20 ounce bottles (carbonated)	\$ 22.75
20 ounce Dasani bottles	\$15.15
20 ounce Powerade bottles	\$22.70

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