

AN ORDINANCE **2011-12-15-1064**

AUTHORIZING EXECUTION OF A CONTRACT WITH COCA-COLA REFRESHMENTS USA, INC. D/B/A SAN ANTONIO COCA-COLA BOTTLING COMPANY FOR BEVERAGE VENDING SERVICES, CONSISTING OF APPROXIMATELY 157 VENDING MACHINES, LOCATED IN CITY-OWNED AND LEASED FACILITIES FOR AN ANTICIPATED ANNUAL REVENUE OF \$68,500.00, WHICH WILL BE DEPOSITED INTO THE APPROPRIATE GENERAL FUND, SPECIAL REVENUE FUND OR ENTERPRISE FUND.

* * * * *

WHEREAS, the City of San Antonio (“City”) Department of Finance, Purchasing & General Services Division released a Request for Proposals (“RFP”) for beverage vending services seeking to license the placement of beverage vending machines throughout City owned or leased facilities; and

WHEREAS, of the three responses received to City’s RFP, two were deemed responsive and reviewed by a scoring panel; and

WHEREAS, staff recommends Coca-Cola Refreshments USA, Inc. d/b/a San Antonio Coca-Cola Bottling Company, the respondent with the highest scoring proposal, to provide said services; **NOW THEREFORE**:

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SAN ANTONIO:

SECTION 1. Coca-Cola Refreshments USA, Inc. d/b/a San Antonio Coca-Cola Bottling Company is hereby selected to provide beverage vending services for a period commencing on January 1, 2012 and ending on December 31, 2016. The City Manager, the City Manager’s designee, or the Director of the Finance Department, is authorized to execute a contract with Coca-Cola Refreshments, Inc. in the form attached hereto and incorporated herein for all purposes as **Exhibit A**. The terms of said contract are hereby approved. This contract may be renewed for two successive two-year periods. This contract may also be extended on a monthly basis, not to exceed a total of 180 days, beyond the term or any renewal period. Neither renewal nor extension shall require additional action by the San Antonio City Council.

SECTION 2. Funds generated by this ordinance will be deposited per the table below. The monetary breakdown will correspond with the city owned facility where the revenue originates.

Fund	Internal Order	General Ledger
11001000	232000000022	4401880
29006000	242000001897	4401880
55001000	255000000008	4401880

SECTION 3. The financial allocations in this ordinance are subject to approval by the Director of Finance, City of San Antonio. The Director of Finance may, subject to concurrence by the City Manager or the City Manager's designee, correct allocations to specific Cost Centers, WBS Elements, Internal Orders, General Ledger Accounts, and Fund Numbers as necessary to carry out the purpose of this ordinance.

SECTION 4. This ordinance is effective immediately upon passage by eight affirmative votes; otherwise it is effective on the tenth day after passage hereof.

PASSED AND APPROVED this 15th day of December, 2011.



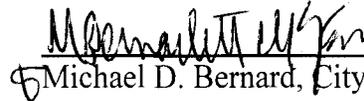
M A Y O R
Julián Castro

ATTEST:

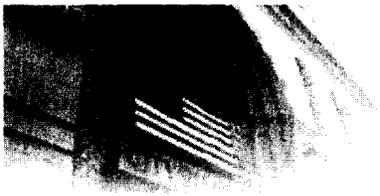
APPROVED AS TO FORM:



Leticia M. Vacc, City Clerk



Michael D. Bernard, City Attorney



Request for
**COUNCIL
ACTION**

City of San Antonio



Agenda Voting Results - 45

Name:	6, 7, 8, 10, 11, 12, 13, 14, 16, 18, 19, 20, 21, 22, 23, 26, 27, 28, 29, 30A, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 48						
Date:	12/15/2011						
Time:	10:36:06 AM						
Vote Type:	Motion to Approve						
Description:	An Ordinance authorizing execution of a contract with Coca-Cola Refreshments USA, Inc. d/b/a San Antonio Coca-Cola Bottling Company for beverage vending services, consisting of approximately 157 vending machines, located in City-owned and leased facilities for an anticipated annual revenue of \$68,500.00, which will be deposited into the appropriate General Fund, Special Revenue Fund or Enterprise Fund. [Ben Gorzell , Chief Financial Officer; Troy Elliott , Director, Finance]						
Result:	Passed						
Voter	Group	Not Present	Yea	Nay	Abstain	Motion	Second
Julián Castro	Mayor		x				
Diego Bernal	District 1		x				
Ivy R. Taylor	District 2	x					
Jennifer V. Ramos	District 3		x			x	
Rey Saldaña	District 4		x				x
David Medina Jr.	District 5		x				
Ray Lopez	District 6		x				
Cris Medina	District 7		x				
W. Reed Williams	District 8		x				
Elisa Chan	District 9		x				
Carlton Soules	District 10		x				

LICENSE AGREEMENT FOR BEVERAGE VENDING SERVICES

STATE OF TEXAS §
 §
COUNTY OF BEXAR §

This License Agreement (“**License**” or “**Agreement**”) is entered into by and between the City of San Antonio, a Texas Municipal Corporation (“**City**”) pursuant to Ordinance No. 2011-12-____ - _____ passed and approved on the _____ day of December, 2011 and Coca-Cola Refreshments USA Inc. d/b/a San Antonio Coca-Cola Bottling Company (“**Licensee**”), both of which may be referred to herein collectively as the “Parties”.

The Parties hereto severally and collectively agree, and by the execution hereof are bound, to the mutual obligations herein contained and to the performance and accomplishment of the tasks hereinafter described.

I. DEFINITIONS

As used in this Agreement, the following terms shall have meanings as set out below:

- 1.1 Adjusted Metered Gross Receipts means the amount of computed receipts, based upon meter readings that should have been removed from the Vending Machine at the time of service, less sales tax, refunds, test vends, and burglaries.
- 1.2 “City” is defined in the preamble of this Agreement and includes its successors and assigns.
- 1.3 Diet Soda means carbonated cola or citrus beverage that is zero calories and has a full calorie equivalent.
- 1.4 “Director” shall mean the director of City’s Finance Department, or the Director’s designee.
- 1.5 Fruit or Vegetable Juice means a product containing 100% fruit or vegetable juice, or a combination of each, with no added sweeteners.
- 1.6 “Gross Revenues” means the aggregate amount collected, less sales tax, documented refunds, test vends and burglaries, of the proceeds of all sales made for cash, credit or other compensation of any kind, name and nature received, directly or indirectly, by virtue of or in connection with this Agreement.
- 1.7 “Licensee” is defined in the preamble of this Agreement and includes its successors and permitted assigns.

- 1.8 Non-carbonated, zero calorie means having no added carbon dioxide; not carbonated; and having no calories.
- 1.9 Vending Banks means more than one Vending Machine at a particular location.
- 1.10 Water means plain or carbonated water with 0 calories, 0 grams of carbohydrates, 0 grams of sugar, which may be flavored or unflavored.

II. TERM

- 2.1 Unless sooner terminated in accordance with the provisions of this Agreement, the term of this Agreement shall commence on January 1, 2012 and terminate on December 31, 2016.
- 2.2 The parties shall have the right, under the same terms and conditions, to renew this contract for up to two (2), two (2) year renewal periods, and to extend this contract beyond the original term or any renewal thereof, on a month to month basis, not to exceed six (6) months. Licensee shall provide City with 180 days advance written notice of any intent not to renew. All renewals shall be in writing and signed by Director, and shall not require City Council approval.

III. PURPOSE

- 3.1 The purpose of this Agreement is to set out the terms and conditions under which Licensee agrees to and shall provide City with certain cold drink vending machine (“Vending Machines” or “Machines”) services at locations on City owned and/or controlled facilities (“Premises”). The initial locations, numbers and types of machines Licensee shall provide are identified on Attachment A – Vending Locations.
- 3.2 The Parties hereby acknowledge and agree that the locations for placement of Machines, as well as the type and/or number of Machines, may change from time to time, as required by or approved by Director in his/her sole discretion, as needs and desires of City change during the term and any renewal or extension of this Agreement. By way of example only, such a change may be prompted by new and expired lease agreements between the City and third parties. For locations added by City, Licensee shall have the sole discretion to remove a Vending Machine if, after 6 months at the new location, the annual prorated sales volume for the Machine falls below 40 cases. Licensee shall give City 30 days notice of its intent to remove a machine from such a Location.
- 3.3 The Parties hereby acknowledge and agree that this license is non-exclusive. City will not grant a license for vending cold beverage products, including carbonated

and non-carbonated, isotonic and bottled water, to another vendor within 100 feet of the vending locations being identified on Attachment A. This Agreement does not prohibit City from granting a license to another vendor to place vending machines in the same City facilities in conjunction with a separate and distinct food or drink concession contract. By example only, such facilities may include the Alamodome, the Central Library, the Police Training Academy, and other facilities where separate food and drink concessions are provided on the Premises. Any dispute under this paragraph shall be resolved in City's favor.

- 3.4 Nothing in this agreement shall be interpreted or construed as requiring or granting City the right to require that Licensee stock any cold beverage products other than those manufactured or otherwise distributed by Licensee.

IV. RIGHT OF ACCESS

- 4.1 City, in consideration of the covenants and agreements to be performed by Licensee and upon the terms and conditions hereinafter stated, grants to Licensee a non-exclusive license to install, service and maintain certain Vending Machines on the Premises at locations and in the number and type to be determined and identified by the City, subject to the obligations imposed in paragraph 4.3. Licensee may recommend to City the type and/or location of machines to be placed on the Premises.
- 4.2 It is understood and agreed between the Parties that the Director is responsible for oversight and implementation of this Agreement.
- 4.3 In determining locations and selecting vending machines, Licensee agrees to comply with all applicable Federal, State and Local laws and regulations, including, but not limited to, the Fire Code and the Americans with Disabilities Act, and to maximize access for the greatest number of persons, as reasonably feasible.

V. SERVICES BY LICENSEE

- 5.1 Licensee shall provide all equipment required and necessary to properly furnish City with vending services for the term of this Agreement and any renewal hereof. **It is agreed between the Parties that the equipment and machines are and shall remain the property of Licensee and City shall not be liable for damage to the Vending Machines or their contents for any reason, whether such damage is caused by negligent or intentional acts.**
- 5.2 Vending Machine Specifications
- 5.2.1 Meters. All Vending Machines must have internal electronic, non-resettable cash sales meters. Meters will be read, recorded and mutually

verified with a Finance Department representative at the time of installation of new Machines. Licensee shall provide period ending cash sales meter readings for every Vending Machine with each monthly Sales and Commission Report. Electronic meter readings will be subject to audit by City, its representatives, or a mutually agreed upon third party auditor that is licensed as a certified public accountant, at any time, upon reasonable notice to Licensee.

5.2.2 Machine Facades. Vending machine fronts must promote the healthy product selections that are offered in the machine. Licensee shall survey all Vending Machines currently in place and replace all Vending Machine facades that display sugar based products to new facades that represent the products contained within the Machine. Licensee shall begin the replacements within 30 days of the effective date of this Agreement and complete all replacements within 45 days of the effective date of this Agreement. Of the replacements being installed, five shall be Fuze venter graphic facades. City shall provide Licensee the desired locations for the Fuze facades. Licensee shall obtain City approval for all facades and their respective locations prior to installation.

5.2.3 Energy Efficiency. All Vending Machines shall use Energy Star technology. Some Machines shall contain timers to allow machines to be turned off during periods of non-use. Licensee shall work with City personnel to determine which Machines should have timers and how to set timer devices in accordance with City work schedules.

5.2.4 All Vending Machines must be Data Exchange (DEX) capable.

5.2.5 All Vending Machines must comply with all requirements established by the local, state, and federal guidelines.

5.3 Licensee shall not add or remove any Vending Machines without City's written consent.

5.4 Method of Customer Payment.

5.4.1 Cash. Each Vending Machine must accept dollar bills or be co-located with a bill changer.

5.4.2 Debit/Credit Cards. Licensee shall replace or retrofit, as needed, 36 Vending Machines within 30 days of the effective date of this Agreement with a Vending Machine that accepts all major credit and debit cards. The Vending Machines that will have this feature shall be mutually agreed upon by City and Licensee, provided the location is one where an appropriate signal connection can be achieved. Licensee shall review all sales to ascertain the historical sales volume of individual Vending

Machines and provide this information to City on an annual basis. Those Vending Machines that have an average annual sales volume of 85 cases or greater shall be replaced within 30 days of identification with a Vending Machine that accepts all major credit and debit cards, provided the location is one where an appropriate signal connection can be achieved.

- 5.4.3 Licensee shall comply with all laws by maintaining the level of PCI certification as required by applicable laws throughout the term of this Agreement. City may require verification of PCI certification at any time.

5.5 Servicing Vending Machines

- 5.5.1 Licensee, at its own expense, shall perform all services required, including, but not limited to, providing, maintaining, cleaning, repairing, and restocking Vending Machines. Licensee shall clean all Vending Machines and the general surrounding area with every service call.

- 5.5.2 Stocking. Licensee shall check Machines as often as necessary to ensure they are functioning properly and sufficiently stocked. Licensee shall ensure that Machines are not out of stock for any of the categories listed on Attachment B. City may call Licensee to report out of stock Machines at 1-800-647-2653 and Licensee shall restock Vendor within 24 hours (Monday through Friday 8am to 5pm). Failure to restock within 24 hours (Monday through Friday 8am to 5pm) on five (5) occasions in any contract year shall constitute a material breach of this Agreement for which City may terminate in accordance with section 11.3, Termination for Cause.

- 5.5.3 Servicing. City shall call Licensee to request service to vendors at 1-800-647-2653, and Licensee shall respond onsite to calls for service problems with Machines within 36 hours (Monday through Friday 8am to 5pm) of notification by City. All repairs shall be completed within 48 hours or the City supplied with a replacement Machine within that time period (Monday through Friday 8am to 5pm). All Vending Machines shall have a clean and visible service sticker displaying the 1-800 number that may be used to report service issues or to request to speak with local management personnel. The service sticker shall also identify the Machine to which it is affixed. Failure to respond onsite to calls for service problems within 36 hours (Monday through Friday 8am to 5pm) or to complete repairs within 48 hours or provide a replacement Machine within that time period (Monday through Friday 8am to 5pm) on three (3) occasions in any contract year shall constitute a material breach of this Agreement for which City may terminate in accordance with section 11.3, Termination for Cause.

- 5.6 Customer Refunds. The 1-800 number on the service sticker will be used for customers to report lost money, service problems, and other vending issues. City will not be responsible for reimbursing Vending Machines users for lost change and Licensee shall clearly display the steps to obtain refunds on each Vending Machine. After receiving a report of lost money, Licensee's customer service department shall notify the local supervisor, who shall make contact with the customer within 24 hours to arrange payment of the refund.
- 5.7 Cash Collection Procedures. Licensee shall collect the cash in each Vending Machine at the time of each service delivery and conduct a meter reading. Licensee shall segregate cash collected by Machine until counted after route completion. Totals shall be posted by Machine into Licensee's settlement database, which will calculate the theoretical cash collected based on sales meter readings and compare it to actual cash collected from each Machine. Discrepancies shall be noted and reviewed with drivers. City shall have access to reports generated from this database and may require copies at any time.
- 5.8 Licensee shall reimburse City for the costs associated with the maintenance of any electrical outlets necessary to operate Vending Machines.
- 5.9 Transition Period. At the expiration or upon termination of this Agreement, Licensee shall work with City and any successor beverage vending licensee to time the removal of existing Machines. City shall provide Licensee with a removal schedule to enable a smooth transition. The terms of this Agreement shall survive during this transition period, which shall not exceed 30 days. Notwithstanding the foregoing, City may require Licensee to remove all Machines upon termination. If required by City, Licensee shall remove all Machines from all locations prior to the termination date, starting no sooner than the 10th business day before the effective date of termination.
- 5.10 Products
- 5.10.1 Licensee shall supply Vending Machines with a variety of healthy products to support City's health and fitness goals. Products will include diet soda, low (as determined by City) or no calorie carbonated beverages, water, tea, enhanced water, fruit juices and isotonic drinks. Carbonated water shall not have a greater distribution than plain water.
- 5.10.2 Licensee shall ensure no duplication of brands in Vending Banks of three (3) or less Vending Machines.
- 5.10.3 City and Licensee shall mutually make the determination of which products are placed in each Vending Machine, and may change the make up from time to time, subject to the list of products in the percentage distributions shown on Attachment B – Product List and Prices. These

percentage distributions must be maintained within each Vending Machine.

- 5.10.4 Licensee shall submit requests for product changes to be vended in writing to the designated City representative with documentation supporting the request. City shall have sole authority to approve or reject such requested changes.
- 5.10.5 Licensee may only sell standard and nationally advertised products of first class standard grades and of good quality as determined by City.
- 5.10.6 Licensee shall ensure that Vending Machines shall not contain expired or outdated beverage items. All products must be pre-packaged and labeled with date of expiration. Licensee shall comply with all applicable laws regarding packaging, labeling, ingredient listing and standards.
- 5.11 Pricing Licensee's vend prices shall be as shown on Attachment B for years 1-2 of the contract, with prices for new products added during the term to be approved by City. Parties shall negotiate a price increase beginning in year 3 of the contract; which shall not exceed \$0.25. This price shall remain in effect through the remainder of the original term and the first renewal period, at which time the Parties may negotiate a new price. Notwithstanding the foregoing, the Parties may negotiate changes in products, price, annual guaranteed payments and commission structures at any time during the original term or renewal periods. Any changes shall be effected by written amendment.
- 5.12 Promote Healthy Choices. Licensee shall work with City to promote City's health and fitness goals by providing fact-based nutrition information for all of its products, including front-of-pack calorie information. In addition, Licensee shall provide point of sale messaging, posters and vending machine clings, as approved by City, tailored to meet City's target audiences. Licensee shall assist City in identifying opportunities to promote nutritional education through The Coca-Cola Foundation.
- 5.13 Licensee shall provide City with monthly reports in a format approved by City showing sales volume by product (brand and size), by Machine location.
- 5.14 Product Promotion. Each Agreement Year, Licensee shall provide City with up to one hundred and fifty (150) standard physical cases of complimentary beverages of Licensee's choosing. Such complimentary beverages will be provided to Licensee upon reasonable advance request. City must request all available complimentary beverages during the course of each Agreement Year. If City does not request all available complimentary beverages by the end of each Agreement Year, then any complimentary beverages remaining at the end of each Agreement Year shall be forfeited by City and retained by Licensee with no further obligation.

VI. PROCEEDS

6.1 Commission Payments. As consideration for the benefits granted under this Agreement, Licensee agrees to and shall pay City the percentage of Gross Revenues indicated below received each month by Licensee or its subcontractor from the sale of drinks sold in the Vending Machines that are the subject of this Agreement:

<u>Product Type</u>	<u>Commission Rate</u>
Non-carbonated, except juice	20%
Carbonated and juice	15%

6.2 Annual License Fee. In addition to the proceeds outlined above, Licensee agrees to and shall pay City \$30,000.00 per year for each year of the term, including all renewals and extensions, pro-rated for any extensions of less than one year. This Annual License Fee shall not be paid during the transition period described in section 5.9. The first installment of the Annual License Fee shall be paid within sixty (60) days after the date this Agreement is fully executed and shall be deemed earned evenly over the entire Term. Thereafter subsequent installments shall be within 30 days after the anniversary date of each Agreement year remaining in the term.

6.3 In the event that City terminates this Agreement other than for cause, or Licensee terminates this Agreement for cause, the City shall refund to Licensee a prorated portion of the Annual License Fee paid pursuant to paragraph 6.2. For this purpose, the Annual License Fee shall be prorated from the day the last vending machine operated by Licensee is removed from the Premises to the day before the next anniversary of the effective date of the Agreement and shall be due on or before the 90th day after notification of the last machine being removed is received in writing from Licensee. No such right of refund shall exist for termination by the City for cause.

6.4 If City reduces the number of Licensee's Machines on the Premises below 130 at any time during the term of the Agreement or any extension thereof, City shall refund to Licensee a prorated portion of the Annual License Fee paid by Licensee equal to \$32.00 for each Machine less than 130 multiplied by each full calendar month that the total number of Machines is less than 130. If, in the opinion of Licensee, a refund is due under this paragraph, Licensee shall notify City in writing of its intention to seek a refund upon the occurrence of the triggering event, but under no circumstances shall such notice come later than the 30th day after the anniversary date of this Agreement for the year in which the total number of Licensee's Machines on the Premises fell below 130. Upon verification and approval of the refund by both Parties, such refund shall be assessed and subtracted from the subsequent year's annual partnership support to be paid to

City. In the event that no annual partnership support is to be paid by Licensee in the subsequent year, City shall pay Licensee the amount due as a refund by check within 90 days of the end of the Agreement year and the receipt of written notification by City.

6.5 Licensee is responsible for and shall pay any and all tax obligations. Taxes shall be deducted from Gross Revenue when calculating commissions owed to City.

6.6 Commission Reports. Licensee shall provide commission payments and sales and commission reports to City by the 15th of each month for the previous month's transactions. Monthly Sales and Commission reports for Vending Machines shall include the following information by Vending Machine, with totals for all Machines:

6.6.1 Location;

6.6.2 Machine Serial Number;

6.6.3 Machine Type;

6.6.4 Beginning Sales Meter Reading for the Reporting Period per Machine;

6.6.5 Ending Sales Meter Reading for the Reporting Period per Machine;

6.6.6 Metered Gross Receipts per Machine by size and type of beverage;

6.6.7 Adjustments to Metered Gross Receipts per Machine (Sales Tax, Refunds, Test Vends, and Burglaries);

6.6.8 Any amounts collected by Licensee, in person, while servicing the machine or otherwise;

6.6.9 Total money collected for items sold from each machine;

6.6.10 Adjusted Metered Gross Receipts per Machine;

6.6.11 Commission Rate for Each Machine by size and type of beverage;

6.6.12 Commission Due for Each Machine by size and type of beverage; and

6.6.13 Summary of Metered Gross Receipts, Adjustments to Metered Gross Receipts, Adjusted Metered Gross Receipts, Total Money Collected, and Commissions Due for all Machines.

6.7 The Report required under paragraph 6.6 shall be accompanied by a check made payable to the City of San Antonio, Texas for the total amount of the commission due from revenues collected from all vending machines placed under the authority of this Agreement.

6.8 Licensee agrees and understands that, as required and provided in this Agreement, City reserves the right to audit Licensee's and its subcontractors' books and records which the City determines relevant to this Agreement, for the purpose of determining the accuracy of the reported Gross Revenues and Licensee's and its subcontractors' compliance with this Agreement. City, if it elects, has the right to require that any or all such books and records be submitted for audit to City or to a Certified Public Accountant selected by City, or any other City designee. If it shall be determined, as a result of such audit, that there has been a deficiency in the Gross Revenues reported to City or the payments due to City hereunder, then

such deficiency shall become immediately due and payable with interest at the maximum legal rate under applicable law from the date when said payments should have been made. In addition, if Gross Revenues or payments have been understated by more than 5% of the Gross Revenues reported to City during the previous reporting period, then the entire expense of the audit shall be borne by Licensee. Any audits conducted on Licensee's premises shall be during Licensee's normal business hours.

- 6.9 Licensee agrees and understands that Licensee shall be solely responsible for and shall pay without delinquency any and all applicable Federal, State or Local taxes and fees, as applicable
- 6.10 City reserves the right to charge Licensee a predetermined fee for the estimated monthly operating cost of each Machine. Licensee agrees to pay this charge on a monthly basis to cover City's cost for electricity.

VII. SERVICES BY CITY

- 7.1 Subject to the requirements of Article III of this Agreement, City will provide Licensee: (1) access to locations with sufficient space to properly install, service and maintain Vending Machines; and, (2) all necessary utility connections, as directed by Licensee, at all locations requested by City at the commencement of the Agreement and at any time during the term of the Agreement for proper operation of installed Vending Machines, unless the cost, as determined by mutual agreement of the Parties, is prohibitive. City shall not be responsible for damage to any Machine or merchandise contained in the Machine due to any interruption of electrical service or power failure, or for any other cause.
- 7.2 Any other provision hereunder notwithstanding, this Agreement does not create nor impose an obligation on City to create space or install utility connections for vending services.

VIII. INDEMNITY

- 8.1 **LICENSEE covenants and agrees to FULLY INDEMNIFY, DEFEND and HOLD HARMLESS, the CITY and the elected officials, employees, officers, directors, volunteers and representatives of the CITY, individually and collectively, from and against any and all costs, claims, liens, damages, losses, expenses, fees, fines, penalties, proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including but not limited to, personal or bodily injury, death and property damage, made upon the CITY directly or indirectly arising out of, resulting from or related to LICENSEE'S activities under this Agreement, including any acts or omissions of LICENSEE, any agent, officer, director, representative,**

employee, consultant or subcontractor of LICENSEE, and their respective officers, agents employees, directors and representatives while in the exercise of the rights or performance of the duties under this Agreement. The indemnity provided for in this paragraph shall not apply to any liability resulting from the negligence of CITY, its officers or employees, in instances where such negligence causes personal injury, death, or property damage. IN THE EVENT LICENSEE AND CITY ARE FOUND JOINTLY LIABLE BY A COURT OF COMPETENT JURISDICTION, LIABILITY SHALL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAWS FOR THE STATE OF TEXAS, WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO THE CITY UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW.

- 8.2 The provisions of this indemnity are solely for the benefit of the parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity. Licensee shall advise the City in writing within 24 hours of any claim or demand against the City or Licensee known to Licensee related to or arising out of Licensee's activities under this Agreement and shall see to the investigation and defense of such claim or demand at Licensee's cost. City shall have the right, at its option and at its own expense, to participate in such defense without relieving Licensee of any of its obligations under this paragraph.

IX. INSURANCE

- 9.1 Prior to the commencement of any work under this Agreement, Licensee shall furnish copies of all required endorsements and completed Certificate(s) of Insurance to City's Finance Department, which shall be clearly labeled "**Beverage Vending Services**" in the Description of Operations block of the Certificate. The Certificate(s) shall be completed by an agent and signed by a person authorized by that insurer to bind coverage on its behalf. City will not accept a Memorandum of Insurance or Binder as proof of insurance. The certificate(s) must have the agent's signature and phone number, and be mailed, with copies of all applicable endorsements, directly from the insurer's authorized representative to the City. City shall have no duty to pay or perform under this Agreement until such certificate and endorsements have been received and approved by City's Finance Department. No officer or employee, other than the City's Risk Manager, shall have authority to waive this requirement.
- 9.2 Licensee shall obtain and maintain in full force and effect for the duration of this Agreement, and any extension hereof, at Licensee's sole expense, insurance coverage written on an occurrence basis, unless otherwise indicated, by companies authorized to do business in the State of Texas and with an A.M Best's

rating of no less than A- (VII), in the following types and for an amount not less than the amount listed below:

TYPE	AMOUNTS
1. Workers' Compensation	Statutory
2. Employers' Liability	\$500,000/\$500,000/\$500,000
3. Broad form Commercial General Liability Insurance to include coverage for the following: a. Premises/Operations b. Independent Contractors c. Products/Completed Operations	For <u>Bodily Injury</u> and <u>Property Damage</u> of \$1,000,000 per occurrence; \$2,000,000 General Aggregate, \$1,000,000 products-completed operations aggregate
d. Personal Injury e. Contractual Liability f. Damage to property rented by you	f. \$100,000
4. Business Automobile Liability a. Owned/leased vehicles b. Non-owned vehicles c. Hired Vehicles	Combined Single Limit for Bodily Injury and Property Damage of \$1,000,000

9.3 Licensee shall be required to submit a copy of the replacement certificate of insurance to City at the address provided below within 10 days of the requested change. Licensee shall pay any costs incurred resulting from said changes.

City of San Antonio
Attn: Finance Department
P.O. Box 839966
San Antonio, Texas 78283-3966

9.4 Licensee agrees that with respect to the above required insurance, all insurance policies are to contain or be endorsed to contain the following provisions:

- Name the City, its officers, officials, employees, volunteers, and elected representatives as additional insureds by endorsement, as respects operations and activities of, or on behalf of, the named insured performed under contract with the City, with the exception of the workers' compensation, employer's liability and professional liability policies;
- Workers' compensation, employers' liability, general liability and automobile liability policies will provide a waiver of subrogation in favor of the City.
- Licensee shall endeavor to provide thirty (30) days advance written notice directly to City of any suspension, cancellation, non-renewal or material change in coverage, and not less than ten (10) calendar days advance notice for nonpayment of premium.

- 9.5 Within five (5) calendar days of a suspension, cancellation or non-renewal of coverage, Licensee shall provide a replacement Certificate of Insurance and applicable endorsements to City. City shall have the option to suspend Licensee's performance should there be a lapse in coverage at any time during this contract. Failure to provide and to maintain the required insurance shall constitute a material breach of this Agreement.
- 9.6 In addition to any other remedies City may have upon Licensee's failure to provide and maintain any insurance or policy endorsements to the extent and within the time herein required, City shall have the right to order Licensee to stop work hereunder, and/or withhold any payment(s) which become due to Licensee hereunder until Licensee demonstrates compliance with the requirements hereof.
- 9.7 Nothing herein contained shall be construed as limiting in any way the extent to which Licensee may be held responsible for payments of damages to persons or property resulting from Licensee's or its subcontractors' performance of the work covered under this Agreement.
- 9.8 It is agreed that Licensee's insurance shall be deemed primary and non-contributory with respect to any insurance or self insurance carried by the City of San Antonio for liability arising out of operations under this Agreement for Licensee's negligence only.
- 9.9 It is understood and agreed that the insurance required is in addition to and separate from any other obligation contained in this Agreement and that no claim or action by or on behalf of City shall be limited to insurance coverage provided.
- 9.10 Licensee and any subcontractors are responsible for all damage to their own equipment and/or property.

X. LIAISONS AND NOTICES

- 10.1 Unless written notification from Licensee to the contrary is received by City, Licensee's Account Executive shall be its designated representative responsible for the management of this Agreement.
- 10.2 Unless written notification from City to the contrary is received by Licensee, the Director of the Finance Department shall be City's designated representative responsible for management of this Agreement.
- 10.3 Communications between City and Licensee shall be directed to the designated representatives of each as set forth above.
- 10.4 For purposes of this Agreement, all official communications and notices among the Parties shall be deemed sufficient if in writing and either hand-delivered,

transmitted via facsimile or mailed, registered or certified mail, postage prepaid, to the addresses or facsimile telephone number set forth below:

CITY:

City of San Antonio
Finance Department
P.O. Box 839966 (for mail)
111 Soledad, 5th Floor (street address for hand delivery)
San Antonio, Texas 78283-3966
Phone: (210) 207-8648
Fax: (210) 207-4072

LICENSEE:

San Antonio Coca-Cola Bottling Company
1 Coca-Cola Place
San Antonio, Texas 78219
Phone: (210) 214-902-2913
Fax: (210) 214-902-2913

with a copy to:

Coca-Cola Refreshments USA, Inc.
2500 Windy Ridge Parkway
Atlanta, Georgia 30339
Attention: General Counsel

- 10.5 Notice of change of address by either party must be made in writing delivered to the other party's last known address or faxed within five (5) business days of such change.

XI. TERMINATION

- 11.1 For purposes of this Agreement, "termination" of this Agreement shall mean termination by expiration of the Agreement term or earlier termination pursuant to any of the provisions hereof.
- 11.2 Termination Without Cause. This Agreement may be terminated by either party upon 180 days calendar days' written notice.
- 11.3 Termination for Cause. Upon written notice, City may terminate this Agreement as of the date provided in the notice, in whole or in part, upon the occurrence of 1 or more of the following events, each of which shall constitute an Event for Cause under this Agreement:

- 11.3.1 The sale, transfer, pledge, conveyance or assignment of this Agreement without prior approval;
 - 11.3.2 Filing bankruptcy or selling substantially all of company's assets;
 - 11.3.3 Five or more failures to maintain the stock requirements as set forth in section 5.5.2; and
 - 11.3.4 Three or more failures to maintain the service level requirements as set forth in section 5.5.3.
- 11.4 Defaults with Opportunity for Cure. Should Licensee default in the performance of this Agreement in a manner stated in this section below, same shall be considered an event of default. City shall deliver written notice of said default specifying such matter(s) in default. Licensee shall have thirty (30) calendar days after receipt of the written notice to cure such default. If Licensee fails to cure the default within such thirty (30) day cure period, City shall have the right, without further notice, to terminate this Agreement in whole or in part as City deems appropriate.
- 11.4.1 Licensee's failure to pay any commission when due to City, as required herein;
 - 11.4.2 Licensee (i) vacates or abandons all or a substantial portion of the Premises without City's consent or (ii) fails to continuously operate a vending machine business;
 - 11.4.3 Licensee fails to discharge any lien placed upon the Premises within thirty (30) days after any such lien or encumbrance is filed against the Premises;
 - 11.4.4 Licensee fails to comply with any term, provision or covenant of this Agreement and shall not cure such failure, to the satisfaction of City.
- 11.5 Upon any occurrence of a default, if not cured, City shall have the option, without any notice or demand, to terminate this Agreement and enter upon and take possession of the Premises and expel or remove Licensee and Licensee's property from the Premises, to the extent allowed by law.
- 11.6 If City terminates this Agreement, Licensee shall be liable for and shall pay to City all the sums owed to City hereunder accrued to the date of such termination. If such termination is for cause, Licensee shall also pay City the costs of removing, storing or disposing of Licensee's property, if any, and all reasonable expenses incurred by City in enforcing or defending City's rights and/or remedies hereunder, including without limitation, all reasonable attorneys' fees and all court costs incurred in connection with such enforcement or defense.

- 11.7 Termination By Law. If any state or federal law or regulation is enacted or promulgated which prohibits the performance of any of the duties herein, or, if any law is interpreted to prohibit such performance, this Agreement shall automatically terminate as of the effective date of such prohibition.
- 11.8 Termination not sole remedy. In no event shall City's action of terminating this Agreement, whether for cause or otherwise, be deemed an election of City's remedies, nor shall such termination limit, in any way, at law or at equity, City's right to seek damages from or otherwise pursue Licensee for any default hereunder or other action.

XII. INCORPORATION OF ATTACHMENTS

Each of the attachments listed below is an essential part of the Agreement, which governs the rights and duties of the parties, and shall be interpreted in the order of priority as appears below, with this document taking priority over all attachments:

Attachment A – Vending Locations
Attachment B – Product List and Prices

XIII. RECORDS RETENTION

- 13.1 Licensee and its subcontractors, if any, shall properly, accurately and completely maintain all documents, papers, and records, and other evidence pertaining to the services rendered hereunder (hereafter referred to as "documents"), and shall make such materials available to the City at their respective offices, at all reasonable times and as often as City may deem necessary during the Agreement period, including any extension or renewal hereof, and the record retention period established herein, for purposes of audit, inspection, examination, and making excerpts or copies of same by City and any of its authorized representatives.
- 13.2 Licensee shall retain all documents produced as a result of services provided hereunder for a period of four (4) years (hereafter referred to as "retention period") from the date of termination of the Agreement. If, at the end of the retention period, there is litigation or other questions arising from, involving or concerning this documentation or the services provided hereunder, Licensee shall retain the records until the resolution of such litigation or other such questions. Licensee acknowledges and agrees that City shall have access to any and all such documents at any and all times, as deemed necessary by City, during said retention period. City may, at its election, require Licensee to return the documents to City at Licensee's expense prior to or at the conclusion of the retention period. In such event, Licensee may retain a copy of the documents.

- 13.3 Licensee shall notify City, immediately, in the event Licensee receives any requests for information from a third party, which pertain to the documentation and records referenced herein. Licensee understands and agrees that City will process and handle all such requests.
- 13.4 Parties agree that access to Licensee's records necessarily includes City's access to the Vending Machines themselves for the purpose of examining and reading meters.

XIV. ASSIGNMENT AND SUBCONTRACTING

- 14.1 Licensee shall supply qualified personnel as may be necessary to complete the work to be performed under this Agreement. Persons retained to perform work pursuant to this Agreement shall be the employees or subcontractors of Licensee. Licensee, its employees or its subcontractors shall perform all necessary work.
- 14.2 It is City's understanding and this Agreement is made in reliance thereon, that Licensee intends to use the following subcontractors in the performance of this Agreement: none. Any deviation from this subcontractor list, whether in the form of deletions, additions or substitutions shall be approved by Director, prior to the provision of any services by said subcontractor.
- 14.3 Any work or services approved for subcontracting hereunder shall be subcontracted only by written contract and, unless specific waiver is granted in writing by the City, shall be subject by its terms to each and every provision of this Agreement. Compliance by subcontractors with this Agreement shall be the responsibility of Licensee. City shall in no event be obligated to any third party, including any subcontractor of Licensee, for performance of services or payment of fees. Any references in this Agreement to an assignee, transferee, or subcontractor, indicate only such an entity as has been approved by Director.
- 14.3 This Agreement or any part hereof will not be assigned or otherwise transferred by any party without the prior written consent of the other parties; provided, however, that Licensee shall have the right to assign or delegate this Agreement to any of its divisions or wholly-owned subsidiaries, or in connection with the sale or merger of a majority of its assets, but such assignment will not operate to relieve Licensee of any of its liability or duties hereunder after such assignment becomes effective.
- 14.5 Any attempt to transfer, pledge or otherwise assign this Agreement without said written approval, shall be void ab initio and shall confer no rights upon any third person. Should either party assign, transfer, convey, delegate, or otherwise dispose of any part of all or any part of its right, title or interest in this Agreement, either party may, at its option, cancel this Agreement.

XV. INDEPENDENT CONTRACTOR

Licensee covenants and agrees that he or she is an independent contractor and not an officer, agent, servant or employee of City; that Licensee shall have exclusive control of and exclusive right to control the details of the work performed hereunder and all persons performing same, and shall be responsible for the acts and omissions of its officers, agents, employees, contractors, subcontractors and consultants; that the doctrine of “respondeat superior” shall not apply as between City and Licensee, its officers, agents, employees, contractors, subcontractors and consultants, and nothing herein shall be construed as creating the relationship of employer-employee, principal-agent, partners or joint venturers between City and Licensee. The parties hereto understand and agree that the City shall not be liable for any claims which may be asserted by any third party occurring in connection with the services to be performed by the Licensee under this Agreement and that the Licensee has no authority to bind the City.

XVI. LIENS PROHIBITED

Licensee agrees and understands that Licensee has no authority, express or implied, to create or place any lien or encumbrance of any kind or nature whatsoever upon, or in any manner to bind, the interest of City or Licensee in the Premises.

XVII. NON-DISCRIMINATION

Non-discrimination. As a condition of entering into this agreement, Licensee represents and warrants that it shall not discriminate on the basis of race, color, religion, ancestry or national origin, sex, age, marital status, sexual orientation, or on the basis of disability or other unlawful forms of discrimination in the solicitation, selection, hiring or commercial treatment of subcontractors, vendors, suppliers, or commercial customers, nor shall Licensee retaliate against any person for reporting instances of such discrimination. Licensee shall provide equal opportunity for subcontractors, vendors and suppliers to participate in all of its public sector and private sector subcontracting and supply opportunities. Licensee understands and agrees that a material violation of this clause shall be considered a material breach of this agreement and may result in termination of this agreement, disqualification of Licensee from participating in City contracts, or other sanctions. This clause is not enforceable by or for the benefit of, and creates no obligation to, any third party. Should Licensee subcontract the performance of any duties under this Agreement, Licensee shall include this nondiscrimination clause in all subcontracts for the performance of this agreement.

XVIII. CONFLICT OF INTEREST

18.1 Licensee acknowledges that it is informed that the Charter of the City of San

Antonio and its Ethics Code prohibit a City officer or employee, as those terms are defined in Part B, Section 10 of the Ethics Code, from having a financial interest in any contract with the City or any City agency such as city owned utilities. An officer or employee has a “prohibited financial interest” in a contract with the City or in the sale to the City of land, materials, supplies or service, if any of the following individual(s) or entities is a party to the contract or sale: a City officer or employee; his parent, child or spouse; a business entity in which the officer or employee, or his parent, child or spouse owns ten (10) percent or more of the voting stock or shares of the business entity, or ten (10) percent or more of the fair market value of the business entity; a business entity in which any individual or entity above listed is a subcontractor on a City contract, a partner or a parent or subsidiary business entity.

- 18.2 Pursuant to the subsection above, Licensee warrants and certifies, and this Agreement is made in reliance thereon, that it, its officers, employees and agents are neither officers nor employees of the City. Licensee further warrants and certifies that it has tendered to the City a Discretionary Contracts Disclosure Statement in compliance with the City’s Ethics Code.

XIX. AMENDMENTS

- 19.1 Except where the terms of this Agreement expressly provide otherwise, any alterations, additions, or deletions to the terms hereof, shall be effected by amendment, in writing, executed by both City and Licensee. Director shall have authority to execute amendments on behalf of the City without further action by the San Antonio City Council, with the exception of amendments that would reduce the revenue received by City.
- 19.2 The Parties agree that the locations of Machines, as well as the type and/or number of Machines at a particular location, is subject to change within the sole discretion of City. To the extent locations are added or deleted, or the type or number of machines at a particular location for vending machines are altered, this Agreement does not need to be formally amended, but in lieu thereof, a letter on City Letterhead sent to Licensee by Director regarding the changes contemplated in this paragraph shall suffice to accomplish the change. Said letter shall set forth the location(s), the type(s), serial number(s), as available, and/or number of machine(s) involved as well as the target date for either removal or placing of the machine(s). The letter shall be sent to Licensee not less than five (5) business days before the proposed change is to occur.
- 19.3 It is understood and agreed by the Parties hereto that changes in local, state and federal rules, regulations or laws applicable hereto may occur during the term of this Agreement and that any such changes shall be automatically incorporated into this Agreement without written amendment hereto, and shall become a part hereof as of the effective date of the rule, regulation or law.

XX. SEVERABILITY

If any clause or provision of this Agreement is held invalid, illegal or unenforceable under present or future federal, state or local laws, including but not limited to the City Charter, City Code, or ordinances of the City of San Antonio, Texas, then and in that event it is the intention of the parties hereto that such invalidity, illegality or unenforceability shall not affect any other clause or provision hereof and that the remainder of this Agreement shall be construed as if such invalid, illegal or unenforceable clause or provision was never contained herein; it is also the intention of the parties hereto that in lieu of each clause or provision of this Agreement that is invalid, illegal, or unenforceable, there be added as a part of the Agreement a clause or provision as similar in terms to such invalid, illegal or unenforceable clause or provision as may be possible, legal, valid and enforceable.

XXI. LICENSES/CERTIFICATIONS

Licensee warrants and certifies that Licensee and any other person designated to provide services hereunder has the requisite training, license and/or certification to provide said services, and meets all competence standards promulgated by all other authoritative bodies, as applicable to the services provided herein.

XXII. COMPLIANCE

Licensee shall provide and perform all services required under this Agreement in compliance with all applicable federal, state and local laws, rules and regulations.

XXIII. NONWAIVER OF PERFORMANCE

Unless otherwise specifically provided for in this Agreement, a waiver by either Party of a breach of any of the terms, conditions, covenants or guarantees of this Agreement shall not be construed or held to be a waiver of any succeeding or preceding breach of the same or any other term, condition, covenant or guarantee herein contained. Further, any failure of either Party to insist in any one or more cases upon the strict performance of any of the covenants of this Agreement, or to exercise any option herein contained, shall in no event be construed as a waiver or relinquishment for the future of such covenant or option. In fact, no waiver, change, modification or discharge by either party hereto of any provision of this Agreement shall be deemed to have been made or shall be effective unless expressed in writing and signed by the party to be charged. In case of City, such changes must be approved by City, as described in Article XIX. Amendments. No act or omission by a Party shall in any manner impair or prejudice any right, power, privilege,

or remedy available to that Party hereunder or by law or in equity, such rights, powers, privileges, or remedies to be always specifically preserved hereby.

XXIV. LAW APPLICABLE

24.1 **THIS AGREEMENT SHALL BE CONSTRUED UNDER AND IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS AND ALL OBLIGATIONS OF THE PARTIES CREATED HEREUNDER ARE PERFORMABLE IN BEXAR COUNTY, TEXAS.**

24.2 Any legal action or proceeding brought or maintained, directly or indirectly, as a result of this Agreement shall be heard and determined in the City of San Antonio, Bexar County, Texas.

XXV. LEGAL AUTHORITY

The signer of this Agreement for Licensee represents, warrants, assures and guarantees that he has full legal authority to execute this Agreement on behalf of Licensee and to bind Licensee to all of the terms, conditions, provisions and obligations herein contained.

XXVI. PARTIES BOUND

This Agreement shall be binding on and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, legal representatives, and successors and assigns, except as otherwise expressly provided for herein.

XXVII. CAPTIONS

The captions contained in this Agreement are for convenience of reference only, and in no way limit or enlarge the terms and/or conditions of this Agreement.

XXVIII. ENTIRE AGREEMENT

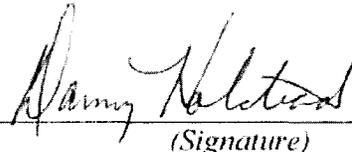
This Agreement, together with its authorizing ordinance and its exhibits, if any, constitute the final and entire agreement between the parties hereto and contain all of the terms and conditions agreed upon. No other agreements, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind the parties hereto, unless same is in writing, dated subsequent to the date hereto, and duly executed by the parties, in accordance with Article XIX. Amendments.

EXECUTED and AGREED to as of the dates indicated below in multiple originals.

CITY OF SAN ANTONIO

**COCA-COLA REFRESHMENTS USA,
INC. d/b/a SAN ANTONIO COCA-
COLA BOTTLING COMPANY**

(Signature)



(Signature)

Printed Name: _____
Title: _____
Date: _____

Printed Name: DANNY HOLSTEAD
Title: REGIONAL MANAGER
Date: 12/14/11

Approved as to Form:

Assistant City Attorney