

COCA-COLA
The City of Stockton and SMG Stockton
POURING RIGHTS AGREEMENT

THIS AGREEMENT is made and entered into as of _____, 2016 by and between SMG, a Pennsylvania general partnership ("SMG"), City of Stockton, a Municipal Corporation ("City," and together with SMG, "Customer") and BCI Coca-Cola Bottling Bottler of Los Angeles ("Bottler"). Capitalized terms not defined within the body of the Agreement are defined in Exhibit "A".

R E C I T A L S:

A. SMG is the manager of those certain Covered Outlets listed on Exhibit "B" as the Stockton Arena and the Bob Hope Theatre (the "SMG Outlets") pursuant to that certain First Amended and Restated Management Agreement dated February 24, 2011, by and between SMG and City (the "Management Agreement").

ARTICLE I
COVERED OUTLETS

The Agreement will apply to all Covered Outlets listed in Exhibit "B". If any Covered Outlet is eligible for an alternate marketing or funding program offered directly or indirectly by Bottler or any of their subsidiaries or authorized bottlers, Bottler in its sole discretion will determine which marketing or funding program will be made available to that Covered Outlet. In no event will any Covered Outlet be eligible for more than one marketing or funding program offered by Bottler or any of its subsidiaries or authorized bottlers. Customer agrees to provide Bottler with sixty (60) days written notice of the opening, acquisition, transfer or closing of any Covered Outlet.

ARTICLE II
EFFECTIVE DATE, TERM and VOLUME COMMITMENTS

2.1 **Term**. This Agreement will become effective when signed by Customer and an authorized representative of Bottler and will continue for ten (10) years or until the Customer has purchased all of the Volume Commitments as defined herein, whichever occurs last (the "Term").

2.2 **Exhibits**. This Agreement also consists of the following exhibits, which are hereby incorporated by this reference:

- (a) Exhibit "A" Definitions;
- (b) Exhibit "B" Covered Outlets; and
- (c) Exhibit "C" Insurance Requirements for Professional Services

ARTICLE III
FOUNTAIN PROGRAM TERMS AND CONDITIONS

3.1 **Volume Commitment.** Customer agrees that the SMG will purchase 27,370 gallons of Bottler Fountain Syrups during the Term to be used at Stockton Arena.

3.2 **Availability.**

(a) **Fountain Beverage Availability.** For those Covered Outlets offering fountain service, Customer will serve in each Covered Outlet a core brand set of Bottler Fountain Beverages that consists of Coca Cola®, Diet Coke®, Sprite® and, on Dispensers with 8 valves or more, Coke Zero™, and the remaining Bottler Fountain Beverages will be jointly selected by Customer and Bottler. All Fountain Beverages served in the Covered Outlets will be Bottler Fountain Beverages.

(b) **Concessionaires.** In the event Customer employs additional Concessionaires, Customer 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. Customer acknowledges that there will be no duplication of allowances, funding or benefits (including pricing) to Customer or Concessionaire to the extent of Customer's actual knowledge if Concessionaire has an existing agreement with Bottler.

3.3 **Pricing.** Bottler agrees that during the Term, Customer will have the right to purchase Bottler Fountain Syrups from Bottler at Bottler's then-current published chain account prices, which prices are subject to change from time-to-time.

3.4 **Marketing Program.** In consideration of the Beverage availability rights granted to Bottler herein, the marketing programs outlined below will be provided to assist Customer in maximizing the sale of Bottler Fountain Beverages in the Covered Outlets.

(a) **Funding.**

(i) **Performance Fund.** Bottler agrees to pay City a one-time payment of Sixty-Five Thousand Dollars (\$65,000) in Agreement Year One (the "Performance Fund"). The Performance Fund shall be payable within sixty (60) days from the date this Agreement is fully executed by all parties. The Performance Fund shall be deemed earned on a daily basis over the Term of the Agreement. Funding is provided in return for Customer's commitment to comply with the Performance Criteria set forth in Section 3.4(b) below.

(ii) **Sponsorship Fund.** Bottler agrees to pay City an aggregate of Fifty Thousand Dollars (\$50,000) for the Term (the "Sponsorship Fees"). The

Sponsorship Fees shall be paid in annual installments of Five Thousand Dollars (\$5,000) per each Agreement Year. The first installment shall be payable within sixty (60) days from the date this Agreement is fully executed by all parties and subsequent installments shall be due on or about the beginning of each Agreement Year. The Sponsorship Fund will be used for City programs, including recreational youth programs. Sponsorship Fees shall be deemed earned evenly over the Agreement Year for which they are paid.

(iii) **Marketing POS Fund for Covered Outlets managed and operated by SMG.** Bottler will provide SMG a Marketing POS Fund in the aggregate amount of Six Thousand Dollars (\$6,000) which shall be allocated in annual installments of Five Hundred Dollars (\$500) per each Agreement Year throughout the Term (the "Marketing POS Fund"). If in any Agreement Year the expenses for the Marketing POS Fund are less than the funding available, the excess funding shall be retained by Bottler.

(iv) **Arena Conversion Fund.** Bottler will make available to SMG an Arena Conversion Fund in the amount of Five Thousand Dollars (\$5,000) for use in the first Agreement Year. Arena Conversion Fund will be used to purchase new menu boards and other marketing activities at the Stockton Arena. Funding will be managed by Bottler. If the expenses for the Arena Conversion Fund are less than the funding available, the excess funding shall be retained by the Bottler.

(v) **Growth Fund.** During the Term, Bottler will provide a Growth Fund to SMG to encourage and reward the growth of Bottler Fountain Syrup volume. After the Stockton Arena has purchased 2,738 gallons of Bottler Fountain Syrup from Bottler or Bottler-authorized distributor in any given Agreement Year, Bottler will pay SMG Stockton \$2.00 per gallon for all additional incremental gallons purchased during said Agreement Year. Growth Funds, if earned, will be paid to SMG Stockton annually following the period in which they are earned and will only be paid on incremental gallons. To qualify for funding, each Covered Outlet must also comply with the performance criteria set forth in Section 3.4(b).

(b) **Performance Criteria.** To qualify for funding, Customer and each Covered Outlet must comply with all of the following performance criteria and all other obligations under this Agreement:

(i) Include approved renditions of Bottler brands, trademarks and/or logos on merchandise at point of order (*e.g.*, counter card, register topper, counter mats, lobby stands); and

(ii) Perform those additional Bottler Fountain Beverage marketing activities the parties mutually agreed upon.

Customer agrees that Bottler will have the right to audit compliance with the performance criteria at reasonable times and places. Customer will provide proof of compliance with the performance criteria upon request.

ARTICLE IV **EQUIPMENT PROGRAM**

4.1. **General.** Where permitted by law, Bottler will lease to Customer without any additional charge during the Term Bottler approved Dispensers reasonably necessary to enable Customer to dispense a quality Fountain Beverage. No ice makers or water filters will be provided. Equipment innovations that require a separate agreement (such as Coca-Cola Freestyle) will also not be provided without a separate agreement. Customer will not alter or add to any Dispenser provided by Bottler (including using a Dispenser for merchandising) without Bottler's prior written consent.

All Dispensers provided by Bottler will at all times remain the property of Bottler and are subject to the terms and conditions of this Article IV, (referred to as the "Lease").

4.2 **Lease Agreement and Term.** Pursuant to this Lease, Bottler hereby leases to Customer all Beverage Dispensers provided to Customer ("Equipment"), subject to the terms and conditions set forth in this Lease. Unless otherwise agreed in writing, the Equipment will also include, where applicable, all permanent merchandising, menu boards, refrigeration units, ice makers and water filtration equipment provided by Bottler. Each piece of Equipment is leased commencing on its installation date (the "Commencement Date"). Customer may request the removal of any Equipment upon thirty (30) days prior written notice to Bottler. Removal of Equipment will not affect the term of this Agreement between the parties. If this Lease is terminated with respect to any piece of Equipment prior to 100 months from the Commencement Date for that piece of Equipment, for any reason other than in connection with the termination of this Agreement by Customer pursuant to Article VI, Section 6.1.1(i), Customer will pay Bottler the actual cost of removal (including standard shipping and handling charges) and remanufacturing of that equipment, as well as the unamortized portion of the costs of (i) installation and (ii) non-serialized parts (e.g., pumps, racks and regulators) and other ancillary equipment. Collectively, removal costs and items (i) and (ii) are referred to as "unbundling costs." The terms of this Lease will continue in effect with respect to each piece of Equipment until the Equipment has been returned to Bottler and will survive the expiration or termination of any agreement into which this Lease is incorporated, by not more than 60 days, unless mutually agreed by both parties in writing.

4.3. **Title to the Equipment.** Title to the Equipment is, and will at all times remain, vested in Bottler. Customer will have no right, title, or interest in or to the Equipment, except the right to quiet use of the Equipment in the ordinary course of its business as provided in this Lease. Customer will execute such title documents, financing statements, fixture filings, certificates and such other instruments and documents as Bottler will reasonably

request to ensure to Bottler's satisfaction the protection of Bottler's title to the Equipment and Bottler's interests and benefits under this Lease. Customer will not transfer, pledge, lease, sell, hypothecate, mortgage, assign or in any other way encumber or dispose of any of the Equipment. THE PARTIES AGREE, AND CUSTOMER WARRANTS, THAT THE EQUIPMENT IS, AND WILL AT ALL TIMES REMAIN, PERSONAL PROPERTY OF BOTTLER NOTWITHSTANDING THAT THE EQUIPMENT OR ANY PART THEREOF MAY NOW BE, OR HEREAFTER BECOME, IN ANY MANNER AFFIXED OR ATTACHED TO, OR EMBEDDED IN, OR PERMANENTLY RESTING UPON, REAL PROPERTY OR IMPROVEMENTS ON REAL PROPERTY. Customer may perform ordinary maintenance and repairs to the Equipment as required by this Lease, but will not make any alterations, additions, or improvements to the Equipment without the prior written consent of Bottler (including using Equipment for merchandising not approved by Bottler). All parts added to the Equipment through alterations, repairs, additions or improvements will constitute accessions to, and will be considered an item of the Equipment and title to such will immediately vest in Bottler. Customer agrees that Bottler may transfer or assign all or any part of Bottler's right, title and interest in or to any Equipment (in whole or in part) and this Lease, and any amounts due to or become due, to any third party ("Assignee") for any reason. Upon receipt of written notice from Bottler and approval of such assignment, Customer will perform all its obligations with respect to any such Equipment for the benefit of the applicable Assignee, and, if so directed, will pay all amounts due or to become due hereunder directly to the applicable Assignee or to any other party designated by such Assignee.

4.4. **Use of Equipment.** Customer agrees that if the Equipment is a Dispenser, then the Equipment will be used for the purpose of dispensing fountain beverage products of The Coca-Cola Company, such as Coca Cola®, diet Coke® and Sprite®. If the Equipment is a pump for bag in box or similar container, such pump may be used only to dispense products of The Coca-Cola Company. If the Equipment is other than a dispenser or a pump, then it will be used only in a location where Fountain Beverage products of The Coca-Cola Company are served and where no Fountain Beverage is served that is a Product of PepsiCo.

4.5. **Inspection and Notification.** Bottler will have the right during Customer's regular business hours to inspect the Equipment wherever the Equipment may be located and to review all records that relate to the Equipment with the prior consent of the Customer. Consent shall not be unduly withheld from Bottler, but may not interfere with an event. Customer will promptly notify Bottler of all details arising out of any change in location of the Equipment, any alleged encumbrances thereon or any accident allegedly resulting from the use or operation thereof.

4.6. **WARRANTY DISCLAIMER.** CUSTOMER ACKNOWLEDGES THAT BOTTLER IS NOT A MANUFACTURER OF THE EQUIPMENT AND THAT BOTTLER HAS MADE NO REPRESENTATIONS OF ANY NATURE WHATSOEVER PERTAINING TO THE EQUIPMENT OR ITS PERFORMANCE, WHETHER EXPRESS OR IMPLIED, INCLUDING (WITHOUT LIMITATION) ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, OR ANY OTHER WARRANTIES RELATING TO THE DESIGN, CONDITION, QUALITY,

CAPACITY, MATERIAL OR WORKMANSHIP OF THE EQUIPMENT OR ITS PERFORMANCE, OR ANY WARRANTY AGAINST INTERFERENCE OR INFRINGEMENT, OR ANY WARRANTY AGAINST INTERFERENCE, OR INFRINGEMENT, OR ANY WARRANTY WITH RESPECT TO PATENT RIGHTS, IF ANY, PERTAINING TO THE EQUIPMENT. BOTTLER WILL NOT BE RESPONSIBLE FOR ANY LOSS OF PROFITS ANY DIRECT, INCIDENTAL OR CONSEQUENTIAL LOSSES OR DAMAGES OF ANY NATURE WHATSOEVER, RESULTING FROM THE DELIVERY, INSTALLATION, MAINTENANCE, OPERATIONS, SERVICE OR USE OF ANY EQUIPMENT OR OTHERWISE.

Notwithstanding the foregoing, nothing in this Article IV, Section 4.6 shall limit Bottler's liability for direct damages arising out of Bottler's negligence or willful misconduct in connection with the Bottler's delivery, installation, maintenance, operations, or service of the Equipment.

4.7. **Taxes.** Bottler will pay all assessments, license fees, taxes (including sales, use, excise, personal property, ad valorem, stamp, documentary and other taxes) and all other governmental charges, fees, fines or penalties whatsoever, whether payable by Bottler or Customer, on or relating to the rental, shipment, transportation, delivery, or of the Equipment.

4.8. **Conformance to Applicable Laws.** Bottler shall comply with all applicable Federal, State, and Municipal laws, rules, and ordinances. Bottler shall not discriminate in the employment of persons or in the provision of services under this Agreement on the basis of any legally protected classification, including race, color, national origin, ancestry, sex or religion of such person.

4.9. **Licenses, Certifications and Permits.** Prior to the City's execution of this Agreement and prior to the Bottler's engaging in any operation or activity set forth in this Agreement, Bottler shall obtain, at its expense, a City of Stockton business license, which must be kept in effect during the term of this Agreement. Bottler covenants that it has obtained all certificates, licenses, permits and the like required to perform the services under this Agreement.

4.10. **Maintenance and Repairs.** Customer will, at its expense, keep the Equipment in good condition, repair, and working order. Customer will pay all costs incurred in connection with the shipment, use, operation, ownership, or possession of the Equipment during the term of this Lease. Customer's recourse against Bottler with respect to service provided by Bottler or its agents to the equipment is that Bottler will correct any defective workmanship at no additional charge to Customer, provided that Bottler is given prompt notification of any defective workmanship. Bottler will not be otherwise liable for negligent acts or omissions committed in regard to maintenance or repair of the Equipment, and assumes no responsibility for incidental, consequential or special damages occasioned by such negligent acts or omissions.

4.11. **Service Program.** Customer may use Bottler's service network without any additional charge for a total of fifty (50) regular mechanical repair calls for

Fountain Beverages Dispensers provided by Bottler for each twelve month Year (which will be prorated for each Year less than twelve months). These calls are calculated sequentially on a per outlet basis and may not be aggregated. Parts required for these regular mechanical repair calls will also be provided without any additional charge. Any special service calls for ("Special Service Calls") are not considered regular service and will not be provided free of charge. Charges for Special Service Calls or for regular mechanical repair calls in excess of those available without any additional charge under this program will be charged at Bottler's then current rates. Charges will include labor, travel time, parts, and administrative costs. All such charges will be invoiced to Customer.

4.12. **Risk of Loss.** After acceptance of the Equipment by Customer, all risk of loss, including damage, theft or destruction, to each item of Equipment will be borne by Customer. No such loss, damage, theft or destruction of Equipment, in whole or in part, will impair the obligations of Customer under this lease, all of which will continue in full force and effect.

4.13. Intentionally Deleted

4.14. **Default.** The occurrence of any of the following will constitute a "Default" by Customer (i) nonpayment by Customer when due of any amount due and payable under this Lease, (ii) failure of Customer to comply with any provision of this Lease, and failure of Customer to remedy, cure, or remove such failure within ten (10) days after receipt of written notice thereof from Bottler, (iii) any statement, representation, or warranty of Customer to Bottler, at any time, that is untrue as of the date made, (iv) Customer's becoming insolvent or unable to pay its debts as they mature, or Customer making an assignment for the benefit of creditors, or any proceeding, whether voluntary or involuntary, being instituted by or against Customer alleging that Customer is insolvent or unable to pay its debts as they mature, (v) appointment of a receiver, liquidator, trustee, custodian or other similar official for any of the Equipment or for any property in which Customer has an interest, (vi) seizure of any of the Equipment, (vii) default by Customer under the terms of any note, document, agreement or instrument evidencing an obligation of Customer to Bottler or to any affiliate of The Coca-Cola Company, whether now existing or hereafter arising, (viii) Customer taking any action with respect to the liquidation, dissolution, winding up or otherwise discontinuing the conduct of its business, (ix) Customer transferring all or substantially all of its assets to a third party or (x) the transfer, conveyance, assignment or pledge of a controlling interest or ownership of Customer to a third party without Bottler's prior written consent.

4.15. **Remedies.** Upon the occurrence of any Default or at any time thereafter, Bottler may terminate this Lease as to any or all items of Equipment, may enter the premises where the Equipment is located and retake possession of the Equipment at Customer's expense, and will have all other remedies at law or in equity for breach of the Lease. Customer acknowledges that in the event of a breach of Sections 4.4 or 4.5 under this Article IV or a failure or refusal of Customer to relinquish possession of the Equipment in breach of this Section 4.15 following termination or Default, Bottler's damages would be difficult or impossible to ascertain, and Customer therefore agrees that Bottler will have the

right to an injunction in any court of competent jurisdiction restraining said breach and granting Bottler the right to immediate possession of the Equipment.

4.16. **Liquidated Damages.** If Customer acts in violation of the prohibitions described in Section 4.3 of this Article IV, or is unable or unwilling to return the Equipment to Bottler in good working order, normal usage wear and tear excepted, at the expiration or termination of the Lease, Customer will pay the replacement cost of said equipment.

4.17. **Other Terms.** Customer represents and warrants that it complies with all applicable laws and regulations and all appropriate practices with respect to food safety including the storing, preparation and serving of food. Furthermore, Customer acknowledges and agrees to comply with all equipment manufacturer specifications and product dispensing and preparation instructions and specifications. No failure by Bottler to exercise and no delay in exercising any of Bottler's rights hereunder will operate as a waiver thereof; nor will any single or partial exercise of any right hereunder preclude any other or further exercise thereof or of any other rights. This Article IV constitutes the entire agreement of the parties with respect to the Lease of the Equipment and supersedes all prior oral and written agreements between the parties governing the subject matter thereof.

ARTICLE V
BOTTLE/CAN PROGRAM TERMS AND CONDITIONS

5.1 **Volume Commitment.** Customer agrees that the Covered Outlets will purchase or through vending, sell a combined minimum of 67,672 standard physical cases of Bottler Bottle/Can Beverages during the Term. The volume commitment described in this Section 5.1 is aggregate of all Covered Outlets.

5.2 **Availability.** Customer will make available a full line of Bottler Bottle/Can Beverages for sale at City hosted or sponsored events held at each Covered Outlet, subject to availability from Bottler. All Bottle/Can Beverages served at City hosted or sponsored events in the Covered Outlets will be Bottler Bottle/Can Beverages and purchased directly from Bottler; provided, however, that Customer may serve the Bottle/Can Permitted Exception in each Covered Outlet.

5.3 **Pricing.** Customer shall be entitled to purchase Bottler Bottle/Can Beverages for sale at each Covered Outlet, subject to availability from Bottler, in accordance with the price schedule set forth below. Such prices shall remain in effect through Agreement Year One. Thereafter, such prices will be subject to an annual increase of four percent (4%) 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 or about the anniversary date of each Year in the Term.

Product Description	Price Per Case
10 oz. Glass - Sparkling	\$16.08
20 oz. Sparkling	\$25.83
20 oz. DASANI	\$16.40
20 oz. POWERADE	\$19.09
12 oz. Can - Sparkling & Still	\$11.00
20 oz. PET - vitaminwater	\$26.73
16 oz. Can - Monster Brands	\$34.08
15.2 oz. (450 ml) Minute Maid Juice To Go	\$24.71
8.5 oz. Aluminum Bottle - Sparkling	\$20.16
20 oz. PET - FUZE Refresh	\$26.87
9.5 oz. Glass - illy	\$35.48

5.4 **Consideration.**

5.4.1 **Commissions.**

As set forth in the table below, Bottler shall pay Customer commissions on full-service Beverage vending sales. Bottler may at any time decrease commissions in the event of a substantial increase of a material component of Bottler's cost of goods, manufacture or delivery greater than the annual percentage increase in

the Consumer Price Index. Bottler shall notify Customer thirty (30) days in advance prior to the date any such substantial commission decrease takes effect. 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 Bottler. Vend prices and packages shall be in effect for the current Agreement Year. Bottler 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, with an accounting of all sales and monies.

Product Description	Vend Rate Agreement Years 1-2	Vend Rate Agreement Years 3-6	Vend Rate Agreement Years 7-10		Commissions
12 oz. Can - KO CSD & NCB	\$1.00	\$1.25	\$1.50		30.0%
16 oz. Can - Monster Brands	\$3.00	\$3.25	\$3.50		30.0%
15.2 oz. (450 ml) PET - MMJTG	\$2.00	\$2.25	\$2.50		30.0%
20 oz. PET - DASANI	\$1.50	\$1.75	\$2.00		30.0%
20 oz. PET - KO CSD	\$1.50	\$1.75	\$2.00		30.0%
20 oz. PET - FUZE Refresh	\$1.50	\$1.75	\$2.00		30.0%
20 oz. PET - POWERADE	\$1.50	\$1.75	\$2.00		30.0%
20 oz. PET - vitaminwater	\$2.00	\$2.25	\$2.50		30.0%

5.4.2 Growth Fund. Bottler will provide a Growth Fund to encourage and reward the growth of direct delivery volume as described in the table below. After the Covered Outlets have purchased 4,430 standard physical cases of Bottler Bottle/Can Beverages from Bottler or Bottler authorized distributor in any given Agreement Year during the Term, Bottler will pay SMG \$1.50 per standard physical case for all additional incremental cases purchased during said Agreement Year. Growth Funds, if earned, will be paid to SMG annually following the period in which they are earned. To qualify for funding, each Covered Outlet must also comply with the performance criteria set forth in Section 4.4. Note: volume from full-service Beverage vending sales will not be included in the calculation for Growth Fund.

Standard Physical Cases of Bottler Bottle/Can Beverages	Funding on Incremental Standard Physical Cases
0 gallons to 4,430 Standard Physical Cases	\$0.00/Standard Physical Cases
4,431 Standard Physical Cases or more	\$1.50/Standard Physical Cases

5.4.3 **Performance Criteria.** To qualify for the pricing, funding and commissions set forth above, Customer and each Covered Outlet must comply with the following performance criteria and all other obligations under this Agreement:

- (i) Perform those additional Bottler Bottle/Can Beverage marketing activities the parties mutually agreed upon.

Customer agrees that Bottler will have the right to audit compliance with the performance criteria at all reasonable times and places. Customer will provide proof of compliance with the performance criteria upon request.

5.5 **Equipment.** Bottler will provide each Covered Outlet with the Cold Drink Equipment at no cost to Customer, except as prohibited by law, rule or regulation, in which case the rent charged will be the lowest legal rate available from the Bottler. All Cold Drink Equipment will be identified by Bottler Bottle/Can Beverage trademarks and will remain the property of Bottler. Except where prohibited by law, all Cold Drink Equipment will exclusively dispense Bottler Bottle/Can Beverages and no items of any kind other than Bottler Bottle/Can Beverages may be stored, displayed or sold in, on or through the Cold Drink Equipment. Use of the Cold Drink Equipment will be in accordance with the Bottler's standard equipment placement terms, and Customer agrees to abide by such terms. To the extent that such standard placement terms are inconsistent with the terms of this Agreement, the terms of this Agreement will control. Bottler will have the right to relocate or remove some or all of the Cold Drink Equipment if Bottler determines the volume of Bottler Bottle/Can Beverages sold through such equipment justifies relocation or removal. Electrical installation costs and utilities for the Cold Drink Equipment will be at Customer's expense. Customer represents and warrants that electrical service at the Covered Outlets is proper and adequate for the installation of the Cold Drink Equipment, and Customer agrees to indemnify and hold harmless Bottler from any damages arising out of defective electrical services.

5.6 **Service.** Service for all the Cold Drink Equipment shall include Bottler personnel delivering replacement product for vending machines on a consistent basis or Consistent scheduled deliveries shall be mutually agreed upon by Bottler and Customer. Bottler shall be responsible for removing any expired product from vending machine during routine deliveries at no expense to Customer.

**ARTICLE VI
MISCELLANEOUS**

6.1 Termination and Damages.

6.1.1 Once both parties sign this Agreement, it may be terminated before the scheduled expiration date only in the following circumstances (i) either party may terminate the Agreement if the other party fails to comply with a material term or condition of the Agreement and does not remedy the failure within 90 days after receiving written notice specifying the non-compliance or (ii) Bottler may terminate the Agreement if, at any time during the Term or over the course of the Term, there is a transfer or closing of more than 10 percent Covered Outlets or a transfer of more than 10 percent of the assets of Customer.

6.1.2 Upon expiration or termination, Customer must return any equipment owned by Bottler and the marketing program will no longer be made available to Customer. In addition, if any piece of equipment other than Cold Drink Equipment is removed from a Covered Outlet prior to 100 months from the installation date for that piece of equipment, Customer will pay Bottler the actual cost of removal (including standard shipping and handling charges) and remanufacturing of the equipment, as well as the unamortized portion of the costs of (i) installation and (ii) non-serialized parts (e.g., pumps, racks and regulators) and other ancillary equipment.

6.1.3 Furthermore, in the event of any early termination of this Agreement, Customer will pay Bottler the unamortized cost of installation and the entire cost of removal of all Cold Drink Equipment. Collectively, removal and remanufacturing costs and items (i) and (ii) and the unamortized cost of installation and entire cost of removal of all Cold Drink Equipment are referred to as "unbundling costs." Upon termination, Customer must also pay the following amounts (a) all paid but unearned funding plus (b) interest at the rate of 1%, compounded monthly, or such lesser percentage as required by law, accrued from the date funds were paid or unbundling costs were incurred through the date of repayment.

6.1.4 The parties acknowledge that in addition to the liquidated damages outlined above, either party may pursue other remedies or damages if the other party breaches the terms of the Agreement. Nothing herein will be construed as a waiver of any right of Bottler to prove consequential damages as a result of a breach by Customer including, but not limited to, lost profits, and other damages allowable. To determine Lost Profits, the parties would multiply the remaining number of years left in Agreement by the sales volumes for the Agreement Year preceding termination.

6.1.5 The parties acknowledge that in addition to the liquidated damages outlined above, either party may pursue other remedies or damages if the other party breaches the terms of the Agreement. Nothing herein will be construed as a waiver of any right of either party to prove consequential damages as a result of a breach by the other party including, but not limited to, lost profits, and other damages allowable.

6.2 **Non-Complying Outlets.** In the event a Covered Outlet has not achieved compliance within 60 days from receipt of written notice of non-compliance, Bottler will have the option to terminate this program with respect to such Covered Outlet on 30 days' additional written notice. In the event 10% or more of the Covered Outlets fail to comply with this Agreement, Bottler will have the right to terminate this Agreement for breach, and the termination remedies set forth above will apply. Nothing in this paragraph will operate to restrict any of Bottler's other remedies in the event of a material breach by Customer.

6.3 **Governing Law; Dispute Resolution.** This Agreement will at all times be governed by the laws of the State of California. Should there be a dispute between Bottler and Customer relating in any way to the Agreement, the breach of the Agreement, or the business relationship of the parties, the parties agree that they will make a good faith effort to settle the dispute in an amicable manner. If the parties are unable to settle the dispute through direct discussions, at that time they will attempt to settle the dispute by mediation held before a mediator agreed upon by both parties in writing before pursuing any available remedies in a court of law. If litigation is pursued, the exclusive venue(s) for such litigation will be in the State Court, County of San Joaquin, Stockton Branch or the Federal Court, Eastern District, and the parties agree to submit to the personal jurisdiction of the courts in the State of California.

6.4 **Transfers and Assignments.**

6.4.1 If there is a transfer of more than 10 percent of the Covered Outlets, or a transfer of more than 10 percent of the assets of Customer, and Bottler does not elect to terminate the Agreement under the "Termination and Damages" section above, then, upon mutual agreement between Customer and Bottler, Customer will cause the acquiring, surviving or newly created business to assume all of Customer's obligations under the Agreement with regard to the acquired assets or business. The Agreement will not be otherwise assignable without the express written consent of Bottler. Nothing contained herein will be construed as a waiver of Bottler's termination rights pursuant to this Agreement.

6.4.2 If Customer transfers or closes any Covered Outlets, Customer will pay Bottler the cost to remove equipment other than Cold Drink Equipment located in such Covered Outlet installed less than 100 months prior to the transfer or closure, unless Customer causes the new owner or operator at the location to assume the lease of the equipment on terms acceptable to Bottler in its reasonable discretion.

6.4.3 Notwithstanding anything herein to the contrary, Bottler hereby agrees that in the event the Management Agreement is terminated or expires, SMG's liability and obligations under this Agreement shall terminate as of the date of such termination or expiration. Further, this Agreement may be assigned by City to SMG's successor, subject to Bottler's prior written consent, which consent shall not be unreasonably withheld or delayed.

6.4.4. **Non-Assignability.** The Bottler shall not assign, sublet, or transfer this Agreement or any interest or obligation in the Agreement without the prior written consent of the City, and then only upon such terms and conditions as City may set forth in writing. Bottler shall be solely responsible for reimbursing subcontractors; provided however that Bottler may assign this Agreement to a licensed bottler of The Coca-Cola Company.

6.5 **Trademarks.** Neither Customer nor Bottler will make use of TCCC's or the other party's trademarks or logos (either alone or in conjunction with their or another party's trademarks or logos) without the prior written consent of that party, and all use of the other party's trademarks will inure to the benefit of trademark owner. For purposes of this Agreement, TCCC's trademarks include trademarks owned, licensed to or controlled by an entity in which TCCC has a 50% or more ownership interest.

6.6 **No Competitive Advertising.** Customer will not depict, advertise, promote or merchandise any Competitive Beverages anywhere in or in association with the Covered Outlets and Customer will not enter into any agreement or relationship whereby any Competitive Beverages are associated in any advertising or promotional activity of any kind with Customer, the Covered Outlets, or any of the trademarks of Customer. Notwithstanding the foregoing, Bottler acknowledges and agrees that certain Concessionaires have existing agreements with Competitive Beverages and such Concessionaires may advertise and promote such Competitive Beverages within the Covered Outlets.

Customer reserves the right to allow temporary signage for Competitive Beverages to be displayed at Covered Outlets during Special Promotional Events (as defined below); provided however that (i) no Competitive Beverages may be sold during any such Special Promotional Events, and (ii) the temporary signage shall be removed immediately following the completion of any such event. "Special Promotional Event" means either (i) an event which is part of a national multi-market pre-sponsored touring show which is sponsored by a manufacturer, licensee or distributor of a Competitive Beverage and for which advertising rights for a Competitive Beverage is mandated in an agreement between such sponsor and the promoter of the event or (ii) local corporate events conducted by other beverage companies. Nothing in this Agreement is intended to prevent another beverage Bottler from sponsoring an event that is conducted at the Covered Outlets.

Bottler agrees that Customer will have the right to provide Competitive Beverages when a third party that is unaffiliated with the Customer rents one or more Covered Outlets for an event that is sponsored by the manufacturer, licensee or distributor of a Competitive Beverage. This exception will be narrowly construed and shall only be applicable when equivalent Bottler Beverages have been offered for such event and the third party has rejected the Bottler Beverages and requested Competitive Beverages as a non-negotiable condition of having the event at the Covered Outlet. This exception shall only allow for the temporary provision of Competitive Beverages during the third party's rental of the Covered Outlet(s) and shall only allow for Competitive Beverages to be provided in the Covered Outlet that is being rented by such third party.

6.7 **Pricing.** All prices quoted in this Agreement do not include, and Customer will be responsible for the payment of all, taxes, deposits, other government mandated fees, handling fees and recycling fees.

6.8 **Offset.** If Customer owes any amounts to Bottler under this or any other agreement, in addition to any other remedies it may have, Bottler may use funds due Customer to offset amounts due to Bottler under this or any other agreement. Excess lease charges, service costs and fair share charges, if any, will be deducted from earned funding.

6.9 **Force Majeure.** Either party is excused from performance under this Agreement to the extent and for so long as such nonperformance results from any act of God, strikes, war, terrorism, riots, acts of governmental authorities, shortage of raw materials or any other cause outside the reasonable control of the nonperforming party.

6.10 **Waiver.** The failure of either party to seek redress for the breach of, or to insist upon the strict performance of any term, clause or provision of the Agreement, will not constitute a waiver, unless the waiver is in writing and signed by the party waiving performance.

6.11 **Warranties.** Customer and Bottler each represent and warrant that they have the unrestricted right to enter into this Agreement and to make the commitments contained in this Agreement. In addition, each party represents that the person whose signature appears on the Agreement has the right to execute this Agreement on behalf of the party indicated. Customer represents and warrants that it will comply with (i) all applicable laws and regulations and all appropriate practices with respect to food safety including the storing, preparation and serving of food and potability of water, (ii) all equipment manufacturers' specifications and product dispensing and

preparation instructions and specifications and (iii) Bottler's Quality Beverage Standards. Bottler shall provide the Product Warranty and Indemnity set forth in Article VII to Customer.

6.12 **Resale and Packaging.** Customer represents and warrants that it will (i) properly dispose of all packaging (ii) not resell Bottler Beverages or Bottler Beverage components or ingredients (including packaging) or Bottler Bottle/Can Beverages to third parties except for the purpose of environmentally safe disposal (iii) not directly or indirectly ship, distribute or sell any Bottler Bottle/Can Beverages outside of Stockton City Limits and (iv) sell finished Fountain Beverage only in cups or glasses and not in closed containers that retain carbonation, or in bottles or cans.

6.13 **Claims for Rebate, Discount or Allowance Discrepancies.** In no event will Bottler accept any claims of discrepancies or errors in pricing or funding hereunder more than one (1) year from the date of invoice with respect to pricing or payment with respect to funding. In support of any such claim, Customer will provide a detailed, written request specifying the particular product, the amount in dispute and reason for dispute, along with a true copy of the original invoice or payment and all other documents in support of the claim. Bottler will review each such claim in good faith and provide prompt responses to each properly made claim. If Customer withholds any payments, Bottler reserves the right to withhold funding due Customer. Bottler will work directly with the Customer to resolve any such claims, but will not interact with third-party auditors or contractors.

6.14 **Construction Severability.** This Agreement and any accompanying documents constitute negotiated agreements between the parties, and the fact that one party or its counsel, or the other, will have drafted this Agreement, any document or particular provision hereof will not be considered in the construction or interpretation of this Agreement, the documents or any provision hereof. If any term or provision of this Agreement is found to be void or contrary to law, such term or provision will be deemed severable, but only to the extent necessary to bring this Agreement within the requirements of law, from the other terms and provisions hereof, and the remainder of this Agreement will be given effect as if the parties had not included the severed term herein.

6.15 **Third Party Beneficiaries.** Customer and Bottler hereby expressly acknowledge and agree that this Agreement is for the sole exclusive benefit of the parties hereto, and no other third party is intended to or will have any rights hereunder.

6.16 **Indemnification**

(i) Bottler agrees to indemnify and hold harmless Customer, Customer's affiliates and their respective employees, officers, directors, shareholders, and agents, from and against any and all third party claims for direct damages, losses, penalties, fines, demands, actions, suits liabilities, obligations and expenses (including reasonable attorneys' fees and costs of litigation), arising from Bottler's violation of applicable law or material breach of this Agreement. This Section does not apply to claims caused by Customer's negligence or intentional misconduct. Customer will give Bottler prompt written notice of any claim covered by this Section and provide reasonable assistance in the defense of any such claim.

(ii) Customer agrees to indemnify and hold harmless Bottler, Bottler's affiliates, and their respective employees, officers, directors, shareholders, and agents, from and against any and all third party claims for direct damages, losses, penalties, fines, demands, actions,

suits liabilities, obligations and expenses (including reasonable attorneys' fees and costs of litigation), arising from Customer's violation of applicable law or material breach of this Agreement. This Section does not apply to claims caused by Bottler's negligence or intentional misconduct. Bottler will give Customer prompt written notice of any claim covered by this Section and provide reasonable assistance in the defense of any such claim.

6.17 **Additional Terms.** The terms and conditions of this Agreement will supersede all prior agreements between the parties relating to the subject matter of this Agreement. No supplement, modification, or amendment of this Agreement will be binding unless executed in writing by authorized representatives of both parties. Bottler will not be bound by any standard or preprinted terms or conditions contained in Customer's purchase orders, acknowledgements, invoices, vendor allowance forms or other Customer forms, or counteroffers, that propose terms or conditions in addition to or differing from the terms and conditions set forth in this Agreement with respect to its subject matter. In addition, any terms and conditions on Customer's internet site to which agreement by Bottler is deemed or required in any manner, whether through an online electronic agreement, site use, or otherwise, will be null and void and of no legal effect on Bottler.

6.18 **Insurance.** During the term of this Agreement, Bottler shall maintain in full force and effect at its own cost and expense the insurance coverage as set forth in the attached Exhibit C and shall otherwise comply with the other provisions of Exhibit C.

6.19 **Notices.** All notices herein required shall be in writing and shall be sent by certified or registered mail, postage prepaid, addressed as follows:

To Bottler: BCI Coca-Cola Bottling Company of Los Angeles _____
Key Account Director
1295 Bradley Ave
Sylmar, CA 91342

With a copy to:
Coca-Cola Refreshments, USA Inc.
Legal Counsel
1 Coca-Cola Plaza
Atlanta, GA 30313

To City: City Manager
City of Stockton
425 N. El Dorado Street
Stockton, CA 95202

6.20 **Records and Audits.** Bottler shall maintain all records regarding this Agreement and the services performed for a period of three years from the date that final payment is made. At any time during normal business hours, the records shall be made available to the Customer to inspect and audit.

ARTICLE VII PRODUCT WARRANTY AND INDEMNITY

7.1 Coca-Cola Refreshments USA, Inc., on behalf of itself, other wholly-owned US subsidiaries of The Coca-Cola Company, including without limitation Odwalla, Inc., and Coca-Cola North America (collectively, "CCR"), warrants to Customer that:

7.1.1 At the time of shipment from CCR, food and beverage products manufactured by CCR ("Products") will be free from material defects and will be suitable for their intended purpose.

7.1.2 The Products will meet the requirements of the Federal Food, Drug and Cosmetic Act ("Act"), as amended, including the Food Additive Amendments of 1958, and the amendments resulting from the Public Health Security and Bioterrorism Preparedness and Response Act of 2002; will not be adulterated or misbranded within the meaning of the Act; and, will not be products which, under the provisions of Sections 404 and 505 of the Act, may not be introduced into interstate commerce. CCR further warrants that the Products will, at the time of shipment, comply with all other applicable federal and state laws, rules and regulations. This warranty is extended and applicable to any lawful state law in which the definitions of adulteration or misbranding are substantially the same as those in the Act.

7.1.3 The warranties provided in Section 7.1.2 above will not apply when any Products are shipped or delivered under a label or labeling designed by or on behalf of Customer, or the Products are manufactured in accordance with written specifications provided by or on behalf of Customer. In such a case, CCR warrants only that the Products will conform to the label, labeling or specifications provided by or on behalf of Customer.

7.1.4 With respect to post-mix syrups ("Syrup"), coffee and tea, CCR warrants only the Syrup, coffee and tea themselves, and not any product made from the Syrup, coffee or tea, including the finished beverage. No warranty is provided for finished beverages because the finished beverage could incorporate water, THE WARRANTIES SET FORTH HEREIN ARE IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, AND CCR DISCLAIMS ALL OTHER WARRANTIES INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

7.2 Customer agrees that its sole and exclusive remedy for breach by CCR of the warranties provided herein in this Article VI and any applicable implied warranties will be as follows: CCR will, at its sole option, either replace the Products or refund the actual, net purchase price paid by Customer for the Products, and CCR will indemnify and hold Customer harmless against (i) any claim, loss, or expense arising out of the death, disease or bodily injury of a consumer resulting from or caused by the chemical composition of the Products sold to Customer or any ingredient included by CCR in the Products or (ii) any claim, loss, or expense arising out of any patent or trademark infringement suit in a court of competent jurisdiction based on Customer's use or sale of the Products as contemplated by CCR; provided, however, that any such claim, loss or expense set forth under subsections (i) and (ii) was not caused by the fault or negligence of Customer, and further provided

that the Products were handled under normal conditions of sale, and in accordance with applicable product handling requirements by Customer from the time of delivery until final sale to the consumer; and provided further that (a) Customer gives CCR timely written notice of the assertion or pendency of any such claim, (b) CCR has the right to defend any such claim and (c) CCR has the right of approval prior to settlement of any such claim.

7.3 This Product Warranty and Indemnity sets forth the sole and exclusive remedy for Customer against CCR with respect to the Products, and is the complete agreement between the parties with respect to such subject matter. IN NO EVENT WILL CCR BE LIABLE TO CUSTOMER, OR ANY OTHER PERSON OR ENTITY, WHETHER IN CONTRACT IN TORT OR ON ANY OTHER LEGAL THEORY, FOR ANY INDIRECT, INCIDENTAL, SPECIAL, OR CONSEQUENTIAL DAMAGES OF ANY KIND, INCLUDING LOST REVENUES, PROFITS OR BUSINESS OPPORTUNITIES, OR FOR ANY OTHER COST OR LOSS OF A SIMILAR TYPE.

7.4 This Product Warranty and Indemnity is not assignable or transferable, by operation of law or otherwise, and revokes any prior continuing warranty provided with respect to the Products.

7.5 Notices required hereunder will be sent by certified mail to the Risk Management Department, The Coca-Cola Company, P.O. Box 1734, Atlanta, GA 30301.

(Signatures appear on following page.)

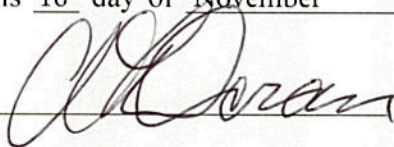
BCI COCA-COLA BOTTLING COMPANY
OF LOS ANGELES

City of Stockton
425 North El Dorado Street
Stockton, CA 95203

Agreed to this 16th day of November,
2016

Agreed to this ____ day of _____,
2016

Signature: _____



Signature: _____

Bonnie Paige
City Clerk

Printed Name Andrew T. Doran

Title VP, Food Service & On Premise
3 Park Plaza, Suite 600
Irvine, CA 92614

City of Stockton

City of Stockton

Agreed to this ____ day of _____,
2016

Agreed to this ____ day of _____,
2016

Signature: _____

Kurt Wilson
City Manager

Signature: _____

John M. Luebberke
City Attorney

EXHIBIT "A"**DEFINITIONS**

Capitalized words or phrases used throughout this Agreement have the following meanings:

1. "Agreement" means this agreement and all exhibits and attachments thereto.
2. "Beverage" means all non-alcoholic beverages (*i.e.*, anything consumed by drinking), whether or not such beverages (i) contain nutritive, food, or dairy ingredients or (ii) are in a frozen form. This definition applies without regard to the beverage's labeling or marketing. Powders, syrups, grounds (such as for coffee), herbs (such as for tea), concentrates, K-Cups®, pods and all other beverage bases from which Beverages can be made are deemed to be included in this definition. For the avoidance of doubt, "flavor enhancers", "liquid water enhancers", brands and products of water purification and Beverage making systems (e.g. Brita®, Soda Stream®), and non-alcoholic beverages sold as "shots" or "supplements" are considered Beverages. However, this definition does not include fresh-brewed unbranded coffee and fresh-brewed unbranded tea products, unflavored and unbranded dairy products, water drawn from the public water supply or unbranded juice squeezed fresh at a Covered Outlet. Nothing in this definition is intended to limit or expand what Customer must serve under the Availability section(s) of the preceding Exhibits.
3. "Bottle/Can Beverage" mean any Beverage, including a pre-mix Beverage, in pre-packaged, ready-to-drink form in bottles, cans or other factory-sealed containers.
4. "Bottle/Can Beverage Permitted Exceptions" means the following stock keeping units of Competitive Beverages in Bottle/Can Beverage form: Energy Drinks. If any Bottle/Can Beverage Permitted Exception becomes a Product of PepsiCo at a later date, that Competitive Beverage will no longer be deemed a Bottle/Can Beverage Permitted Exception.
5. "Bottler" means BCI Coca-Cola Bottling Company of Los Angeles.
6. "Cold Drink Equipment" means Venders and Coolers.
7. "Competitive Beverage" means any Beverage that is not a Bottler Bottle/Can Beverage and any product, whether or not a Beverage, marketed under Beverage trademarks that are not Bottler Bottle/Can Beverage trademarks (*e.g.*, "Gatorade Energy Bars").
8. "Concessionaire" means any current or future third-party food service provider under agreement with Customer.
9. "Cooler" means a device provided by Bottler for keeping Beverages cool that does not contain a payment mechanism.
10. "Covered Outlets" means outlets, properties and facilities located in the City limits of Stockton, California where Beverages are served that are owned or operated by Customer, including any such outlets, properties and facilities that are (i) opened after the Agreement is signed, (ii) co-branded or (iii) acquired during the Term of the Agreement (unless those outlets, properties and

facilities are already governed by an agreement with Bottler and that agreement is validly assigned to Customer as part of the acquisition); provided, however, that if the acquired outlets are currently under a pre-existing agreement with a Competitive Beverage supplier, the acquired outlets will come under this Agreement after the applicable agreement with the Competitive Beverage supplier is terminated or expires. With respect to those provisions relating to Bottler Bottle/Can Beverages, this Agreement will only apply to those Covered Outlets that are located in the geographic territory in which Bottler is authorized to distribute, promote, market, and sell Bottler Bottle/Can Beverages. The term Covered Outlets includes all locations within such outlets, properties and facilities where Beverages are or can be served, including, but not limited to, buildings, grounds, parking lots, branded or non-branded food service outlets, food courts, concession areas, vending areas, dining areas, banquet areas, sidelines, benches and locker rooms, branded and unbranded food service outlets and dining facilities, and employee lounges/break rooms located within or adjacent to such outlets, properties and facilities; excluding backstage catering subject to performers' rider requirements.

11. "Customer" means The City of Stockton and SMG Stockton and any of its subsidiaries or any entity that is under the same ownership group as The City of Stockton and SMG Stockton.

12. "Dispenser" means a piece of equipment that dispenses Beverages through a valve.

13. "Fountain Beverages" are those Beverages that are served through Dispensers and any carbonated Beverages that are not Bottle/Can Beverages.

14. "Fountain Syrup" means the Fountain Beverage syrup used to prepare Fountain Beverages, but does not include Frozen Fountain Syrup or other forms of concentrate, such as frozen concentrates used to prepare Juices, or Liquid Coffee Concentrate.

15. "Lease" means the terms and conditions set forth in Article IV.

16. "Product of PepsiCo" means any (i) Beverage which has a trademark owned by, licensed to, controlled by or distributed by PepsiCo, Inc. or any of its subsidiaries, affiliates or bottlers, or any entity or joint venture in which PepsiCo, Inc. or any of its subsidiaries, affiliates or bottlers, has at least a 50% ownership interest or (ii) non-Beverage that is marketed under a Beverage trademark described in (i).

17. "Product Warranty and Indemnity" means the terms and conditions set forth in Article VII.

18. "Quality Beverage Standards" means the Quality Beverage Standards found at: www.cokesolutions.com/Operations/Pages/Site%20Pages/Dispensed%20Beverage%20Quality.aspx.

19. "Special Service Calls" means any removal, remodel, relocation or reinstallation of Dispensers, installation or removal of ice makers, service caused by non-approved ice, flavor changes, summarize/winterize, line changes, or service necessitated by damage or adjustments to the equipment resulting from misuse, abuse, failure to follow operating instructions or service by unauthorized personnel, unnecessary calls (equipment was not plugged in, CO2 or Fountain Syrup container was empty), or calls that are not the result of mechanical failure.

20. "TCCC" means The Coca-Cola Company. When the term TCCC is applied to a term (such as Beverage as in "TCCC Beverage") it means such term as marketed under (i) trademarks owned by TCCC and (ii) trademarks licensed by TCCC that are designated as a TCCC product by Company.
21. "Term" is defined in Article II, Section 2.1.
22. "Vender" means a Beverage vending machine provided by Bottler.
23. "Volume Commitment" means the volume purchase commitments set forth in Article III, Section 3.1 and Article V, Section 5.1, each of which will be increased if Customer (i) acquires any existing outlets that were previously serving Bottler Beverages prior to the acquisition and (ii) any such outlets become Covered Outlets under this Agreement. To calculate the increase for such acquired outlets, Bottler will multiply the estimated average annual volume of the acquired outlets for each product category for which the Volume Commitment applies by the number of calendar years it is estimated that are remaining in the Term when such outlets are acquired. The Volume Commitment will not increase based upon newly constructed Covered Outlets or based upon the acquisition of existing outlets that were serving Competitive Beverages.
24. "Year" means each consecutive twelve month period during the Term, beginning with the first day of the Term, and any remaining period of time between the last full twelve-month period of the Term and the end of the Term.

EXHIBIT "B"**COVERED OUTLETS**

Existing Covered Outlets	Type of Service (Fountain/Bottle)
City Hall	
Libraries located within City limits – (4)	
SEB Building	
Main Police Department	
MUD	
MUD Field	
CDD	
Corp Yard	
Animal Shelter	
Community Centers – (4)	
Louis Park Softball Complex	
Billy Hebert Field – vending only	
Arnaiz Softball Complex – vending only	
Shooting Range	
Civic Auditorium- excluding private rental	
Weber Point- excluding temporary concessions due to private rental	
Soccer Complex	
Bob Hope Theatre	
Stockton Arena	
Oak Park Ice Rink	
Potential Properties that may be included at a later date and will have First Rights of Negotiation	
Billy Hebert Field	
Pixie Wood	
Arnaiz Stadium	
Golf Courses – (2)	
Marina	
Tennis Center	
Community Pool – (1)	
Community Pool – (1)	

Exhibit C:
Insurance Requirements for Professional Services

Bottler shall procure and maintain for the duration of the contract insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by the Bottler, its agents, representatives, or employees.

MINIMUM SCOPE AND LIMIT OF INSURANCE

Coverage shall be at least as broad as:

1. **Commercial General Liability (CGL):** Insurance Services Office Form CG 00 01 covering CGL on an "occurrence" basis, including products and completed operations, property damage, bodily injury and personal & advertising injury with limits no less than **\$1,000,000** per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.
2. **Automobile Liability:** Insurance Services Office Form Number CA 0001 covering, Code 1 (any auto), or if Bottler has no owned autos, Code 8 (hired) and 9 (non-owned), with limit no less than **\$1,000,000** per accident for bodily injury and property damage.
3. **Workers' Compensation** insurance as required by the State of California, with Statutory Limits, and Employer's Liability Insurance with limit of no less than **\$1,000,000** per accident for bodily injury or disease. ***(Not required if Bottler provides written verification it has no employees)***

If the Bottler maintains higher limits than the minimums shown above, the City of Stockton requires and shall be entitled to coverage for the higher limits maintained by the Bottler. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the City of Stockton.

Other Insurance Provisions

The insurance policies shall contain, the following provisions, with the exception of Notice of Cancellation:

Additional Insured Status

The City of Stockton, its Mayor, Council, officers, representatives, agents, employees and volunteers shall be included as additional insureds on the CGL policy and AL policy with respect to liability arising out of work or operations performed by or on behalf of the Bottler including materials, parts, or equipment furnished in connection with such work or operations. General liability coverage can be provided in the form of an endorsement to the Bottler's insurance (ISO Form CG 20 10 11 85 or both CG 20 10 and CG 20 37 forms if later revisions used).

Primary Coverage

For any claims related to this contract, the **Bottler's insurance coverage shall be primary** insurance as respects the City of Stockton, its Mayor, Council, officers, representatives, agents, employees and volunteers. Any insurance or self-insurance maintained by the City of Stockton, its Mayor, Council, officers, representatives, agents, employees and volunteers shall be excess of the Bottler's insurance and shall not contribute with it. The City of Stockton does not accept primary endorsements limiting the Bottler's insurance coverage to sole negligence.

Notice of Cancellation

Bottler shall endeavor to provide thirty (30) days written notice if any of the above insurance policies are cancelled.

Waiver of Subrogation

Bottler hereby grants to City of Stockton a waiver of any right to subrogation which any insurer of said Bottler may acquire against the City of Stockton by virtue of the payment of any loss under such insurance. Bottler agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the City of Stockton has received a waiver of subrogation endorsement from the insurer.

Deductibles and Self-Insured Retentions

Any deductibles or self-insured retentions must be declared to and approved by the City of Stockton Risk Services. The City of Stockton may require the Bottler to provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention.

Acceptability of Insurers

Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A-VII if admitted to do business in the State of California; if not admitted to do business in the State of California, insurance is to be placed with insurers with a current A.M. Best's rating of no less than A+:X.

Claims Made Policies

If any of the required policies provide coverage on a claims-made basis:

1. The Retroactive Date must be shown and must be before the date of the contract or the beginning of contract work.
2. If Claims Made policy form is used, a three (3) year discovery and reporting tail period of coverage is required after completion of work.

Verification of Coverage

Bottler shall furnish the City of Stockton with certificates of insurance and amendatory endorsements required by this clause. All certificates and endorsements are to be received and approved by the City of Stockton Risk Services before work commences.

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Exhibit "A"

The City of Stockton and SMG Stockton

Customer Initials _____

Failure to obtain the required documents prior to the work beginning shall not waive the Bottler's obligation to provide them. The City of Stockton reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time, for any reason or no reason.

Bottler shall, prior to the commencement of work under this Agreement, provide the City of Stockton with a copy of its Declarations Page and Endorsement Page for each of the required policies.

Certificate Holder Address

Proper address for mailing certificates, endorsements and notices shall be:

- City of Stockton
- Attention: Risk Services
- 425 N El Dorado Street
- Stockton, CA 95202

City of Stockton Risk Services Phone: 209-937-5037

City of Stockton Risk Services Fax: 209-937-8558

Maintenance of Insurance

If at any time during the life of the Contract or any extension, the Bottler fails to maintain the required insurance in full force and effect, all work under the Contract shall be discontinued immediately. Any failure to maintain the required insurance shall be sufficient cause for the CITY to terminate this Contract.

Special Risks or Circumstances

City of Stockton reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances. If such changes are required, then, Bottler shall be advised and such additional changes shall be mutually agreed upon.