



**Resolution 2003-064**

**A RESOLUTION AUTHORIZING THE CITY MANAGER TO COMPLETE THE AGREEMENT BETWEEN THE CITY OF SHERWOOD AND COCA-COLA BOTTLING COMPANY OF OREGON - FOR EXCLUSIVE SALE OF COCA-COLA PRODUCTS AT CITY OF SHERWOOD EVENTS AND FACILITIES.**

**WHEREAS**, the City of Sherwood and Sherwood School District have pledged to work together whenever possible to pursue revenue opportunities or cost savings for taxpayers; and

**WHEREAS**, the City of Sherwood and Sherwood School District have an opportunity to enter into an agreement with Coca Cola Company of Oregon for exclusive use of Coca-Cola products at school district and City events and facilities, buying and selling at a rate that enables all participants to profit from such ventures; and

**WHEREAS**, profits the City earns from selling Coca-Cola products at City events will be used to support community programs identified by the Council or Council's designee; and

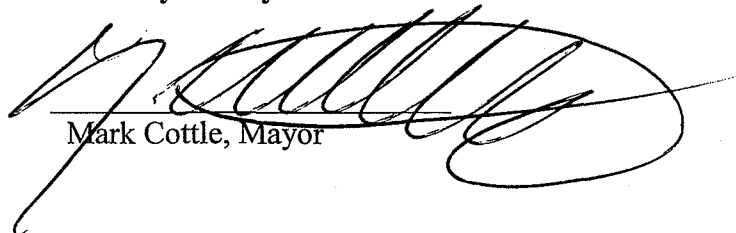
**WHEREAS**, the agreement states that Coca-Cola Bottling will return a percentage of the profits from sales to the School District and City thereby creating an additional revenue source for both.

**NOW, THEREFORE, THE CITY RESOLVES AS FOLLOWS:**

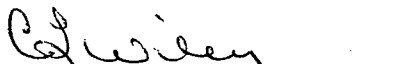
**Section 1.** To authorize the City Manager to enter into an agreement with Coca-Cola Bottling which is shown as Exhibit A to this document.

**Section 2.** This Resolution shall be effective upon its approval and adoption.

**Duly passed by the City Council this 8th day of July 2003.**

  
Mark Cottle, Mayor

ATTEST:

  
C.L. Wiley, City Recorder

## AGREEMENT

This agreement ("Agreement") is made as of the 9<sup>th</sup> day of July, 2003 by and between the City of Sherwood an Oregon municipality with its principal offices located at 20 NW Washington Street, Sherwood, Oregon 97140 (the "Account") and BCI Coca-Cola Company of Los Angeles d/b/a Coca-Cola Bottling Company of Oregon, a Delaware corporation, with an office located at 10800 SW Avery Street, Tualatin, Oregon 97062 (the "Bottler").

## WITNESSETH:

WHEREAS, Account desires to grant to Bottler the right to sell beverage products at all City of Sherwood events, including the "Community Services Fair," "Music on the Green," "Cruisin Sherwood," (with Chamber of Commerce acceptance of Account's offer) "The Great Onion Festival," "Robin Hood Festival," (with Robin Hood Festival Association acceptance of Account's offer) etc. ("Events"), and to advertise and sell its beverage products through its full-service vending machines in the ("Facilities" as defined hereinafter); and

WHEREAS, Bottler desires to exclusively advertise and sell certain of its beverage products at and in connection with the Events and in such Facilities.

NOW THEREFORE, in consideration of the mutual covenants and promises herein contained the parties do hereby agree as follows:

1. Definitions.

(a) "Beverage" or "Beverages" shall mean all nonalcoholic beverages of any kind, but shall not include fresh-brewed unbranded coffee and tea products, unflavored dairy products, water drawn from the public water supply or unbranded juice squeezed fresh on the Facilities.

(b) "Products" shall mean all Beverages purchased directly from Bottler.

(c) "Competitive Products" shall mean all Beverages which are not Products.

(d) "Approved Cups" means disposable cups the design of which is approved by The Coca-Cola Company from time to time as its standard trademark cups (a current depiction of which is attached hereto as Exhibit A) and/or vessels and/or other (disposable and nondisposable) containers approved by The Coca-Cola Company from time to time, all of which shall prominently bear the trademark(s) of Coca-Cola® and/or other Products on all of the cup surface.

(e) "Facilities" shall mean the entire premises of all facilities owned by Account and located in Sherwood, Oregon including but not limited to,

- city hall
- all police stations
- the teen center at the YMCA
- all libraries
- all public works buildings
- the Sherwood Robin Hood Theatre

- all parks and recreation facilities, including indoor and outdoor soccer fields, baseball, and other types of athletic fields

Including for each of the "Facilities" listed above, the grounds, all vending and concession areas, food outlets, and dining facilities, and, if applicable, sidelines, benches, and locker rooms.

(f) "Agreement Year" means each twelve-month period beginning with the first day of the Term.

## 2. Term

(a) This Agreement shall be in effect for a period of twelve (12) years, beginning December 1, 2003 (the "Effective Date") and ending November 30, 2014 (the "Term").

(b) Account shall grant Bottler first right of refusal of any similar agreement regarding advertising and Beverage availability rights.

## 3. Advertising Rights

(a) Account hereby grants to Bottler the exclusive right to advertise Beverages and specifically Products, (i) at the Events, and (ii) in connection with the Events, and (iii) in connection with Event-related events.

(b) Account agrees that Bottler's advertising, including advertising on Equipment (as defined hereinafter) placed at the Facilities, shall be positioned at all times in such a manner that the advertising message is in no way obscured (electronically or otherwise) and is clearly visible to the purchasing public. The Products shall be prominently listed on any menu boards located at the Events and all Equipment dispensing Products shall be prominently identified with the appropriate trademarks/logos.

(c) Account further agrees that during the Events all Products will be dispensed in Approved Cups and that no other trademarked cups, coolers or containers will be permitted.

## 4. Sponsorship Rights

(a) Bottler will have the exclusive right, with respect to the Events only, to advertise the Products as the "Official" or "Exclusive" soft drinks, Sports Drinks, water, tea and/or juice or juice drink, etc. of the Events.

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

## 5. Product Rights

(a) Account hereby grants to Bottler the right to sell or distribute Beverages at the Events, and at Event-related events. Account and its concessionaires shall purchase all Products, Approved Cups, lids and carbon dioxide from Bottler for the Events.

(b) Account hereby grants to Bottler the exclusive Beverage vending rights at the Facilities. Further, Account agrees Bottler shall have the right to place a minimum of nine (9) vending machines in mutually agreed upon locations as required to meet Beverage availability needs at the Facilities.

(c) During the Term, Bottler will loan to Account, pursuant to the terms of Bottler's equipment placement agreement, at no cost, that Beverage dispensing equipment, with the exception of post-mix Beverage dispensing equipment, reasonably required and as mutually agreed upon to dispense Beverages at the Facilities and the Events ("Equipment"). For example, Equipment may include coolers, venders, and premix Beverage dispensing equipment.

6. Consideration

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

**Agreement Years One through Six**

<u>Package</u>	<u>Commission</u>	<u>Initial Vend Price</u>
11.5 oz. cans – Minute Maid	20%	\$0.60
12 oz. cans – carbonated	30%	\$0.60
12 oz. cans – Fruitopia	20%	\$0.60
12 oz. bottles – Dasani	20%	\$0.60
12 oz. cans – PowerAde	20%	\$0.60
16 oz. bottles – Minute Maid	20%	\$1.00
20 oz. bottles – carbonated	30%	\$1.00
20 oz. bottles – Dasani	20%	\$1.00
20 oz. bottles – PowerAde	20%	\$1.00

**Agreement Years Seven through Twelve**

<u>Package</u>	<u>Commission</u>	<u>Initial Vend Price</u>
11.5 oz. cans – Minute Maid	20%	\$0.75
12 oz. cans – carbonated	30%	\$0.75

<u>Package</u>	<u>Commission</u>	<u>Initial Vend Price</u>
12 oz. cans – Fruitopia	20%	\$0.75
12 oz. bottles – Dasani	20%	\$0.75
12 oz. cans – PowerAde	20%	\$0.75
16 oz. bottles – Minute Maid	20%	\$1.25
20 oz. bottles – carbonated	30%	\$1.25
20 oz. bottles – Dasani	20%	\$1.25
20 oz. bottles – PowerAde	20%	\$1.25

Commissions are paid based upon cash collected, after deducting taxes, recycling fees, government-mandated deposits and associated handling fees, 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 Agreement Year One beginning the month of \_\_\_\_\_ 2003. Bottler may adjust the vend prices on an annual basis as necessary to reflect changes in its costs, including cost of goods. These commissions will be paid on or about the 15<sup>th</sup> of each month following the month in which they are earned, with an accounting of all sales and monies in a form satisfactory to the Account and shall become immediate property of Account.

(b) Free Product. Bottler will provide the Account with seventy (20) standard physical cases of free 12-ounce Product each Agreement Year with an annual retail value of approximately One Hundred Eighty-five Dollars (\$185). The Product will be provided according to a schedule requested by the Account, and the requests for such Product shall be administered through one Account representative.

(c) Premium Items. Bottler will provide the Account with premium items bearing Product trademarks and logos for the Events, as Bottler deems necessary and subject to availability.

#### 7. Competitive Products

(a) No Competitive Products may be sold, dispensed, sampled or served anywhere at the Events, beginning January 1, 2004.

(b) No Competitive Products may be sold or dispensed through vending machines at the Facilities.

(c) No permanent or temporary advertising, signage or trademark visibility for Competitive Products will be displayed or permitted anywhere during the Events, or (iii) in advertising for the Events.

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

(e) Should Account learn of any Competitive Products advertising or promoting any association with the Events, Account shall use its best efforts to stop such advertising or promotion to protect the exclusive associational rights granted to Bottler in this Agreement.

8. Miscellaneous

Account is responsible for conducting the Events in accordance with past practice and the highest standards. Account shall provide for advertising and promotion of the Events, shall obtain the location for the Events and shall provide for crowd control, security, insurance (insurance is the responsibility of the City for City events or Robin Hood Festival Association (RHFA) for Robin Hood Festival or Chamber of Commerce for Cruisin' Sherwood if RHFA or Chamber opt to accept the Account's offer to vend Coca Cola products), and all other aspects of the conduct of a safe and enjoyable public event, all at Account's sole expense.

9. Pricing

During Agreement Year One, Sponsor shall provide Beverages to District and/or its concessionaires at the prices set forth in Exhibit B. Such prices will be subject to annual increases of three percent (3%) each Agreement Year over the previous Agreement Year's price to reflect Sponsor's changes in its costs, including cost of goods. Notwithstanding the foregoing, Sponsor shall be allowed to increase prices by more than three percent (3%) per Agreement Year in the event of a substantial, unforeseeable increase in a major component of the Sponsor's costs, including cost of goods. During the remainder of the Term, Sponsor shall notify District in writing thirty (30) days prior to any price increases, and such notice shall include an explanation of the basis for such price increases.

10. Termination

(a) If Account breaches any of its obligations set forth in this Agreement or if that certain agreement dated \_\_\_\_\_ between Bottler and the Sherwood School District 88J is terminated, then at its option and not as its sole remedy, Bottler may terminate this Agreement, and Account shall (i) return any Equipment, and (ii) pay to Bottler a pro rata portion of the costs of refurbishing and installing the Equipment.

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

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

(d) Bottler shall have the right to withhold and not pay further commissions which may become payable to Account pursuant to this Agreement if Account (i) has failed to perform its obligations

hereunder, (ii) Bottler's rights hereunder have been lost, limited or restricted, or (iii) there exists a bona fide dispute between the parties.

11. Governing Law

This Agreement shall be governed by and construed in accordance with the laws of the State of Oregon.

12. Applicable Law

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

13. Retention of Rights

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

14. Confidentiality

The parties shall keep this the terms of this Agreement confidential.

15. Entire Agreement

This Agreement and its exhibits contain the entire agreement between the parties with respect to the subject matter hereof. This Agreement may not be assigned without the prior written consent of all parties. All amendments to or waivers of this Agreement must be in writing signed by all the parties.

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

BOTTLER

ACCOUNT

By: \_\_\_\_\_

By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

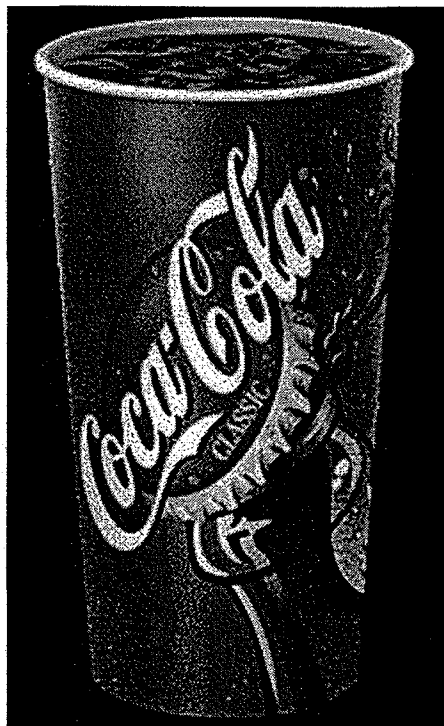
Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

EXHIBIT A

Approved Cup Graphic





## EXHIBIT B

### Product Pricing

<u>Package</u>	<u>Units</u>	<u>Cost</u>
12 ounce cans – carbonated	24	\$ 7.50 per case*
20 ounce bottles – carbonated	24	\$12.95 per case*
12 ounce bottles – Minute Maid	24	\$14.00 per case
16 ounce bottles – Minute Maid	24	\$16.95 per case
16 ounce bottles – Nestea Cool	24	\$14.50 per case
20 ounce bottles – Fruitopia	24	\$14.50 per case
12 ounce bottles - POWERāDE	24	\$12.00 per case
20 ounce bottles - POWERāDE	24	\$14.50 per case
12 ounce bottles - Dasani	24	\$ 6.50 per case
20 ounce bottles - Dasani	24	\$10.25 per case

\*Plus applicable deposits.