



City of Saginaw

City of Saginaw

Meeting Date: 10/16/2018

Staff Contact: Keith Rinehart
Director of Community Services

Agenda Item: 4b
(CC-1018-02)

E-mail: krinehart@saginawtx.org

Phone: 817-230-0351

SUBJECT: Action regarding Agreement with Coca-Cola Southwest Beverages LLC to be the Official Drink Provider for the City of Saginaw

BACKGROUND/DISCUSSION:

This item is for consideration of a five year agreement with Coca-Cola Southwest Beverages LLC to be the official drink provider for the City of Saginaw. For the past five years, the City's official drink provider has been Dr. Pepper/Snapple Group. During this time, Dr. Pepper/Snapple Group became very unresponsive to the City. Earlier this year, staff contacted the three major vending drink providers regarding the City's needs. Coca-Cola Southwest was very interested and their proposal is included in the attachments.

FINANCIAL IMPACT:

The financial impact will be a guaranteed annual capital payment of \$2,000 per year for five years (\$10,000 total), and 15% commission on drink vending sales

RECOMMENDATION:

Staff recommends approval of the agreement with Coca-Cola Southwest Beverages LLC to be the official drink provider for the City of Saginaw.

Attachments

Information with Proposed Agreement



City of Saginaw

Community Services Department
333 W. McLeroy Blvd., Saginaw, Texas 76179

Council Agenda Background

To: Gabe Reaume, City Manager

From: Keith C. Rinehart, Director of Community Services

Date: City Council Meeting – October 16, 2018

ITEM:

Consideration and approval of a proposed five-year contractual agreement with Coca-Cola Southwest Beverages LLC to be the official drink provider for the City of Saginaw

BACKGROUND INFORMATION:

Over 5 years ago, the City of Saginaw entered into a contractual agreement with the Dr. Pepper / Snapple Group to be the official drink provider for the City of Saginaw. It was a five year agreement that included, drink sale commissions, use of equipment, some free advertising equipment and an annual sponsorship capital payment. During that time, Dr. Pepper became very unresponsive to the City of Saginaw that included not responding to City staff's requests and phone calls, and other issues.

In early 2018, City staff contacted the three major drink vending providers to discuss our needs, wants and a potential partnership with their organization. The Coca-Cola Southwest Beverages LLC was very interested and submitted their proposal to the City of Saginaw. Below is a summary of what was proposed:

- Five (5) year agreement / partnership
 - Provide umbrellas, concession start up products such as menu boards, dry erase boards, clocks, etc... to use at no charge at the aquatic center and softball concession stand
 - A guaranteed annual capital payment of \$2,000 per year for five years (total: \$10,000)
 - 15% commission of drink vending sales
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- Provide drink vending machines, glass front coolers and vending machines to use with full service vending

RECOMMENDATION

Approval of a proposed five-year contractual agreement with Coca-Cola Southwest Beverages LLC to be the official drink provider for the City of Saginaw

ATTACHMENTS:

- Contract with Coca-Cola Southwest Beverages LLC

If you have any questions, please feel free to contact me at 817-230-0351.

Thank you,

Keith C. Rinehart

Keith C. Rinehart
Director of Community Services
City of Saginaw

BEVERAGE AGREEMENT

Date: 10/02/2018

Parties: **BOTTLER:** Coca-Cola Southwest Beverages LLC
14185 Dallas Parkway
Suite 1300
Dallas, Texas 75254

ACCOUNT: City of Saginaw
333 W. McLeroy Blvd
Saginaw, TX 76179

1. DEFINITIONS

(a) “Agreement Year” means each twelve-month period during the Term beginning with the first day of the Term.

(b) “Beverages” 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, and brands and products of water purification and beverage making systems (e.g. Brita®, Soda Stream®, Keurig®) are deemed to be included in this definition. For the avoidance of doubt, “flavor enhancers”, "liquid water enhancers", and non-alcoholic beverages sold as “shots” or “supplements” are considered Beverages. “Beverage” or “Beverages” shall not include fresh-brewed unbranded coffee and fresh-brewed unbranded tea products, unflavored dairy products, water drawn from the public water supply or unbranded juice squeezed fresh at the Facility.

(c) “Products” shall mean Beverage products purchased directly from Bottler or sold through vending machines owned and stocked exclusively by Bottler.

(d) “Competitive Products” shall mean all Beverages which are not Products.

(e) “Concessionaire” means any current or future third-party food service provider under agreement with Account at the Facility that directly or indirectly relate to the service of Beverages.

(f) “Facility” shall mean the entire premises of City of Saginaw, located at 333 W. McLeroy Blvd, Saginaw, TX 76179, including all currently existing and future buildings, and includes, without limitation, the grounds, all vending and concession areas, sidelines, benches and locker rooms, branded and unbranded food service outlets and dining facilities.

(g) Term: 10/2/2018 (“Effective Date”) through 9/30/2023.

2. PRODUCT RIGHTS

(a) Account hereby grants to Bottler the exclusive right to sell or distribute Beverages at the Facility. Account and/or its Concessionaires shall purchase all Products, (and cups, lids and carbon dioxide,

if applicable) directly from Bottler. No Competitive Products may be sold, dispensed, sampled or served anywhere at the Facility.

(b) Account hereby grants to Bottler the exclusive Beverage vending rights at the Facility. Account agrees that Bottler shall have the right to place a minimum of three (3) Beverage vending machines in mutually agreed upon locations at the Facility.

(c) During the Term, Bottler will loan to Account, pursuant to the terms of Bottler's equipment placement agreement, at no cost, that Beverage dispensing equipment reasonably required and as mutually agreed upon to dispense Beverages at the Facility ("Equipment"). Account represents and warrants that electrical service at the Facility is proper and adequate for the installation of Equipment, and Account agrees to indemnify and hold Bottler harmless from any damages arising out of defective electrical services.

3. CONSIDERATION

In consideration of the rights and benefits granted to Bottler hereunder, Bottler agrees to provide Account with the following:

(a) Sponsorship Fees. Bottler agrees to pay Account an aggregate of Ten Thousand Dollars (\$10,000.00) for the entire Term (the "Sponsorship Fees"). The Sponsorship Fees shall be paid in equal annual installments of two thousand Dollars (\$2,000.00). The first installment shall be payable within sixty (60) days after the date this Agreement is fully executed and subsequent installments shall be due on or about the anniversary date after each Agreement Year remaining in the Term. The Sponsorship Fees shall be deemed earned evenly over the Agreement Year for which they are paid.

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

(c) Pricing. Account shall be entitled to purchase bottle/can Products from Bottler in accordance with the price schedule set forth in Exhibit B. Such prices shall remain in effect until December 31, 2018. Thereafter, such prices will be subject to an annual increase of no more than 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 January 1, 2019.

(d) In the event Account employs a Concessionaire, Account will cause Concessionaire to purchase from Bottler all requirements for Beverages (and cups, lids and carbon dioxide, if applicable). Such purchases will be made at prices and on terms set forth in Bottler's existing agreement with Concessionaire, if any. If no agreement exists between Concessionaire and Bottler, such purchases will be made at prices and on terms set forth in this Agreement. Account acknowledges that there will be no duplication of allowances, funding or benefits (including pricing) to Account or Concessionaire if Concessionaire has an existing agreement with Bottler. If such Concessionaire requires Bottler to pay the Concessionaire funding or to provide Products pursuant to prices under the separate agreement with the Concessionaire, then Customer agrees that Bottler may deduct such duplicate funding and lost margin on such lower cost Products paid or sold to Concessionaire from any payment made by Bottler to Customer.

4. TERMINATION

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

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

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

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

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

5. GOVERNING LAW

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

6. COMPLIANCE WITH LAW

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

7. 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.

8. CONFIDENTIALITY

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

9. JURY WAIVER

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

10. ENTIRE AGREEMENT

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

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

BOTTLER

ACCOUNT

By: _____

By: _____

Printed Name: _____

Printed Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

EXHIBIT A
COMMISSIONS

<u>Product</u>	<u>Vend Price</u>	<u>Commission Rate</u>
20 oz. carbonated/Nestea (except Enviga)	\$1.75	15%
20 oz. Dasani	\$1.75	15%
10 oz. MMJ	\$1.75	15%
20 oz. PowerAde	\$2.00	15%
20 oz. SmartWater	\$2.00	15%
20 oz. Topo Chico	\$2.00	15%
18.5 oz Gold Peak	\$2.00	15%
20 oz Vitaminwater	\$2.00	15%
16 oz Monster	\$3.00	15%

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

EXHIBIT B
INITIAL PRICE SCHEDULE*

INSERT BRAND, QUANTITIES AND SIZES AS NEEDED.

<u>Package</u>	<u>Price per case</u>
12 ounce cans (carbonated, except Enviga)	\$ 11.87
20 ounce bottles (carbonated)	\$ 27.52
20 ounce Vitamanwater	\$ 29.33
20 ounce PowerAde	\$ 22.56
20 ounce Dasani	\$ 15.77
20 ounce Smarrtwater	\$ 25.94
20 ounce Topo Chico	\$ 22.68
10.1 ounce Tummy Yummies	\$ 15.56
18.5 ounce Gold Peak	\$ 29.10

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