MEETING DATE July 10 2006

AGENDA ITEM Approve Extending the Contract with Coca-Cola Bottling Company of Los Angeles for the Provision of Beverage Vending Machine Services at Parks and Recreation Facilities for a One-Year Period

ATTACHMENTS

		Pages
1	Coca-Cola Bottling Company of Los Angeles Contract No 2001-175	1-10

Attachment 1

AGREEMENT

The City of Culver City – Coca-Cola Bottling Company of Los Angeles
(Parks and Recreation Facilities Beverage Vending Agreement)
No 2001-175

WITNESSETH

THIS AGREEMENT (the "Agreement') is made and entered into as of the First Day of August, 2001, by and between the City of Culver City, a municipal corporation organized and existing under and pursuant to the Constitution and the laws of the State of California (the "City"), and located at 9770 Culver Boulevard, Culver City, California, and BCI Coca-Cola Bottling Company Of Los Angeles, a corporation organized and existing under and pursuant to the laws of the State of Delaware, and having a principal place of business at 1334 South Central Avenue, Los Angeles, California ("Coca-Cola")

WHEREAS, the City hereby grants to Coca-Cola the exclusive non-alcoholic beverage vending rights at the City's park and recreation facilities No other person shall be permitted to place non-alcoholic beverage vending machines in the City's park and recreation facilities, and

WHEREAS, the City wishes to implement a sponsorship program for a beverage company to partner with the City as the exclusive beverage provider of the Culver City Human Services Department, and

WHEREAS, both Coca Cola and Pepsi Bottling Company submitted bids for exclusive vending authority on April 17, 2001, City Staff met with the City Council in a legally authorized closed session to discuss and consider four alternatives and to discuss

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negotiations, and on June 25, 2001 City Staff met with the City Council in a legally authorized closed session to discuss the proposed terms of an agreement, and

WHEREAS, the City and Coca-Cola now desire to enter into an arrangement for Coca-Cola to provide vending machines at park and recreation facilities in the City, and

WHEREAS, the City Council, at its properly noticed and publicly held meeting of July 9, 2001, authorized entering into an agreement with Coca Cola for a five year partnership for thirty-five full service vending machines, authorized the City Attorney to draft this Agreement and authorized the Chief Administrative Officer to execute this Agreement on behalf of the City

NOW, THEREFORE, in consideration of the premises and the respective representations and agreements hereinafter contained, the parties hereto agree as follows

Section 1 Conditions, Duties and Responsibilities of Coca-Cola

Under the direction of, and to the sole reasonable satisfaction of, the City's Chief Administrative Officer, or the Chief Administrative Officer's designee (collectively and individually, the "CAO"), Coca-Cola shall

(a) Install Royal Marketing Vender-type beverage machines (the "Machines") The number of Machines is anticipated to initially be thirty-seven (37), however Coca-Cola and the City shall work and confer together in good faith in arriving at the final number of machines, in future decisions regarding the number of Machines and in establishing locations for each Machine Each Machine shall have a steel door and beverage vending industry standard vandal-resistance and safety features, and each Machine shall be posted in a manner readable to the public with the telephone numbers necessary obtain a refund or to report a machine being damaged, disabled or malfunctioning, or defaced with graffiti

(b) Install one recycling container at each of the thirty-seven locations of the Machines

(c) Provide repair response for all damaged, disabled and malfunctioning Machines Monday through Friday, excluding holidays, and provide the City with repair and graffiti response and refund response telephone numbers and post these telephone numbers on the machine Coca-Cola shall maintain sufficient replacement parts for the Machines so as to enable damaged, disabled or malfunctioning Machines to be repaired at the Machine's location In the event Coca-Cola shall be called by the City for repair response, Coca-Cola agrees to have a repair response person on scene within twenty-four (24) hours on the first available business day, Monday through Friday, excluding holidays Any and all repairs shall be undertaken and completed as soon as reasonably possible, and the entire cost for such repairs shall be borne by Coca-Cola In the event a Machine shall be damaged, disabled or malfunctioning to the point where repair is impossible or impractical, Coca-Cola agrees to replace the damaged, disabled or malfunctioning Machine within forty-eight (48) hours with a replacement Machine, Monday through Friday, excluding holidays Coca Cola agrees to resolve any vending disputes with customers at Coca-Cola's sole expense

(d) Provide graffiti response for all Machines and recycling containers seven days per week, including weekends and holidays, and provide the City with a graffiti response telephone number In the event Coca-Cola shall be called by the City for graffiti response, Coca Cola agrees to have a graffiti response person on scene within forty-eight (48) hours, Monday through Friday, excluding holidays

(e) Vend a combination of twenty (20) ounce carbonated soft drinks and water and twenty (20) ounce, one hundred percent (100%) juices and non-carbonated beverages

(f) Initially list and sell all drinks for one dollar and twenty-five cents ($1 25) per beverage Coca-Cola shall not change the sales price without first obtaining the permission of the City It is understood by the parties hereto that the sale price of beverages may from time to time fluctuate based on a variety of factors, and the parties hereto will consult and agree in good faith on a reasonable sale price

(g) Coca-Cola specifically agrees that Coca-Cola shall not in any manner use the name of the City of Culver City, nor the City Seal nor any City logotype, for advertisement or any other purpose, without the express prior written consent of the City Council

Section 2 **Commission** Coca-Cola shall pay to the City a forty-five percent (45%) commission on all sales The commission shall initially be based on sales of twelve dollars and fifteen cents ($12 15) per case of beverage, all cash collected, net of taxes and CRV The commission includes five percent (5%) for utility costs for machine operation Coca-Cola shall provide the City with quarterly sales figures and shall issue to the City commission checks at that time

Section 3 **Term of Agreement** The term of the Agreement shall commence on the Effective Date, as defined herein, and the Agreement shall continue in full force and effect until July 31 2006, unless the Agreement is terminated earlier pursuant to the terms hereof

Section 4 **Termination** Either the City or Coca-Cola may terminate the Agreement at any time with or without cause, at the sole discretion of the party terminating the Agreement, by giving thirty (30) business days written notice of termination to the other party The City shall be entitled to pro rata payment of commissions for all sales for as long as any machine or machines shall remain in service on City property

Section 5 **Business Licenses and Permits** Coca-Cola and subcontractors if any, shall be required to obtain all necessary documentation, including, but not limited to, any and all certificates, licenses and permits required to do business in the City

Section 6 **Indemnification** Coca-Cola shall protect, defend, indemnify, and hold harmless the City and its elected and appointed boards, commissions, officers, agents and employees from any and all claims, liabilities, expenses or damages of any nature, including attorney fees, for injury to property or to any person, arising out of or in connection with Coca-Cola's operation or placement of the vending machines

The City does not waive any rights against Coca-Cola which it may have by reason of the above hold harmless clause due to the acceptance by the City of insurance policies described herein

In the event that Coca Cola and City are sued by a third party for damages caused or allegedly caused by the operation or placement of the vending machines, Coca-Cola shall not be relieved of its indemnity obligation to City by any settlement with any such third party unless that settlement includes a full release and dismissal of all claims by the third party against the City

Section 7 **Insurance** Without limiting its obligations pursuant to the "Indemnification" section herein, Coca Cola shall obtain and cause to remain in full force and effect for the duration of the Agreement

A General Liability Insurance in the minimum amount of one million dollars ($ 1,000,000) per occurrence and five million dollars ($5,000,000) aggregate

B Workers' Compensation Insurance or State approved self-insurance in the statutorily required amount

C Automobile Liability Insurance in the following amounts

Bodily Injury Liability - $1,000,000 per occurrence

Property Damage Liability - $1,000,000 per occurrence

In addition to the above stated, Coca Cola agrees to designate the City, its agents, employees and elected and appointed officials as additional insureds to the general liability and automobile liability policies

Section 8 **Notices** All Notices given under the Agreement shall be addressed to the parties as follows

To the City
City of Culver City
Attn Interim CAO
9770 Culver Boulevard
Culver City, CA 90232

To BCI Coca-Cola
Coca-Cola Bottling Company
of Los Angeles
1334 South Central Avenue
Los Angeles, CA 90021

Section 9 **Attorney Fees** If any action is brought in law or equity to enforce or interpret the provisions of the Agreement, the prevailing party shall be entitled to reasonable attorney fees in addition to any other relief to which it may be entitled

Section 10 **Force Majeure** In case by reason of force majeure the Coca-Cola shall be rendered unable wholly or in part to carry out the Coca-Cola's obligations under the Agreement, then except as otherwise expressly provided in the Agreement, if the Coca-Cola shall give notice and full particulars of such force majeure in writing to the City within a reasonable time after occurrence of the event or cause relied on, the obligations of the Coca-Cola giving such notice, so far as they are affected by such force majeure, shall be suspended during the continuance of the inability then claimed which shall include a reasonable time period for the removal of the effect thereof, but for no longer period, and the Coca-Cola shall endeavor to remove or overcome such inability with all reasonable dispatch The term "force majeure," as employed herein, shall mean acts of God, strikes, lockouts or other industrial disturbances, acts of the public enemy, orders of any kind of the Government of the United States or of the State or any civil or military authority, insurrections, riots, epidemics, landslides, lightning, earthquakes, fires, hurricanes, storms, floods, washouts, droughts, arrest, restraining of government and people, civil disturbances, explosions, partial or entire failure of utilities, shortages of labor, material or supplies or transportation, or any other similar or different cause not reasonably within the control of the party claiming such inability

Section 11 **Assignment/Subcontracting** The Agreement shall not be assigned or subcontracted without the prior written permission of the City Coca-Cola agrees that in the event of any assignment or subcontract without the prior written permission of the City, the Agreement shall be voidable at the sole option of the City

Section 12 **Prohibition Against Transfers** Neither Coca-Cola nor the City shall assign, sublease, hypothecate, or transfer this Agreement or any interest or obligations herein directly or indirectly, by operation of law or otherwise during the term of this Agreement of any of the warranties set forth herein without the prior written consent of the other As a condition to any assignment or transfer, any prospective assignee or transferee shall also assume the obligations pursuant to this Agreement, including the warranties set forth herein Any attempt to assign, sublease, hypothecate, or transfer this Agreement without prior written consent shall be voidable at the sole discretion of the other party, and if the other party shall void any such assignment, sublease, hypothecation, or transfer, any assignee, sublessee, hypothecate or transferee shall acquire no right or interest by reason of such attempted assignment hypothecation or transfer

The sale, assignment, transfer or other disposition of any of the issued and outstanding capital stock of Coca-Cola, or of the interest of any general partner or joint venture or syndicate member or cotenant, if Coca-Cola is a partnership or joint venture or syndicate or cotenancy, which shall result in changing the control of Coca-Cola, shall be construed as an assignment of this Agreement Control means fifty percent (50%) or more of the voting power of the corporation

Section 13 **Independent Contractor Status** At all times during, Coca-Cola shall be an independent Contractor of the City and shall not be, nor hold itself out to be, nor hold its employees, officers or agents out to be, employees, officers or agents of the City

Section 14 **Severability** If any clause, provision or section of the Agreement shall be ruled invalid by any court of competent jurisdiction, the invalidity of such clause, provision or section shall not affect any of the remaining provisions hereof

Section 15 **Waiver** Waiver by the City of any breach of any term, covenant or condition herein contained shall not be deemed a waiver of such term, covenant or condition or any subsequent breach of the same or any other term, covenant or condition herein contained

Section 16 **Amendment** Notwithstanding anything herein contained to the contrary, the Agreement, and the provisions contained herein, may be altered, changed or amended, by mutual consent of the parties hereto No alteration, change or amendment shall be valid unless made in writing and signed by the parties hereto

Section 17 Section Headings The section headings of the Agreement are for convenience and reference only, and shall in no way be deemed to define, limit, or add to the meaning of any provision of the Agreement

Section 18 Governing Law/Compliance with Laws The Agreement shall be governed by, and construed in accordance Independent with, the laws of the State of California The parties hereto agree to be bound by all federal, state and local laws, ordinances, regulations and directives pertaining to the services to be performed hereunder All disputes arising hereunder shall be resolved in Los Angeles County

Section 19 Date for Reference Purposes The Effective Date of the Agreement shall be the date on which it is executed by the City The date of the Agreement is for reference purposes only

Section 20 Counterparts The Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument

Section 21 Interpretation of Agreement The parties hereto expressly agree that the Agreement shall be construed as though written jointly by both parties, and that the language of the Agreement shall not be construed as to favor one party over the other

Section 22 Extent of Agreement The Agreement represents the entire and integrated agreement between the City and Coca-Cola and supersedes any and all prior negotiations, representations or agreements either oral or written

IN WITNESS WHEREOF, the parties hereto have caused their names to be hereunto subscribed

BCI COCA-COLA BOTTLING COMPANY OF LOS ANGELES

BY Cathy L Greiner
(Signature)

Dated 10-10-01

NAME Cathy L Greiner
(Typed or Printed)

TITLE Branch Manager

CITY OF CULVER CITY

BY Michael Thompson
MICHAEL THOMPSON
Interim Chief Administrative Officer

Dated 11/6/01

APPROVED AS TO FORM

By Carol A Schwab
CAROL A SCHWAB
City Attorney

Dated 10/31/01

APPROVED AS TO CONTENT

By Don Rogers
DON ROGERS
Human Services Director

Dated 10/15/01

Our File No 2001 175 [dmm]

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