

ORDINANCE NUMBER 3207

AN ORDINANCE TO ACCEPT A PROPOSAL FROM COCA-COLA BOTTLING COMPNAY TO BECOME THE CONCESSIONS/VENDING PROVIDER FOR A PERIOD OF THERE YEARS AT ALL VESTAVIA HILLS PARKS AND LEISURE FACILTIES AND AUTHORIZING THE MAYOR AND CITY MANAGER TO TAKE ALL ACTIONS, INCLUDING EXECUTING AN AGREEMENT TO SECURE SAID SERVICES.

WHEREAS, the Parks and Leisure Services Department for the City of Vestavia Hills, Alabama, invited proposals for pouring concession/vendor services for all City parks and recreation facilities; and

WHEREAS, two proposals were received and reviewed by the Director and the Parks and Recreation Board; and

WHEREAS, the Parks and Recreation Board, at its regular meeting of January 16, 2024, voted to recommend approval of the proposal submitted by Coca-Cola Bottling Services along with an agreement as detailed in Exhibit A, attached to and incorporated into this Ordinance number 3207; and

WHEREAS, the Mayor and City Council feel it is in the best public interest to accept the Board's recommendation.

BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF VESTAVIA HILLS, ALABAMA, AS FOLLOWS:

1. The proposal by the Coca-Cola Bottling Company as presented shall be accepted by the City as the official concessions/vending provider for the City's Parks and Leisure Services facilities; and
2. The Mayor and City Manager are hereby authorized to execute and deliver said agreement as detailed in the attached Exhibit A and also to perform any other action as might be required in order to secure said services; and
3. This Ordinance Number 3207 shall become effective immediately upon adoption and approval following posting/publication as required by Alabama law.

DONE, ORDERED, ADOPTED and APPROVED this the 26th day of February, 2024.



Ashley C. Curry
Mayor

ATTESTED BY:



Rebecca Leavings
City Clerk

BEVERAGE AGREEMENT

Parties:

BOTTLER:

Coca-Cola Bottling Company United - Central, LLC
d/b/a Birmingham Coca-Cola Bottling Company

ACCOUNT:

City of Vestavia Hills Parks and Leisure Services, on
behalf of Vestavia Hills Parks and Recreation

The parties hereto are entering into this agreement (the “**Agreement**”) because Account wishes to grant to Bottler, and Bottler wishes to obtain, the exclusive rights set forth herein. 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 and that all requirements of the applicable public procurement laws are satisfied. In consideration of the premises and the mutual promises made herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. **Definitions.** All defined terms used in this Agreement and not otherwise defined will have the meanings set forth below:
 - (a) “**Agreement Year**” means each twelve-month period during the Term beginning on the Effective Date (as defined in Section 2).
 - (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.
 - (c) “**Competitive Products**” means all Beverages which are not Products.
 - (d) “**Concessionaire**” means any current or future third-party food or beverage service provider under agreement with Account at the Facility that directly or indirectly relate to the sale or service of Beverages.
 - (e) “**Facility**” or “**Facilities**” means the entire premises of all locations owned or controlled by Vestavia Hills Parks and Recreation, as set forth in **Exhibit A**, including all currently existing and future buildings, and includes, without limitation, the grounds, parking lots, all vending and concession areas, sidelines, benches and locker rooms, branded and unbranded food service outlets and dining facilities.
 - (f) “**Freestyle**” means a fountain dispenser that combines ingredients (microdosed beverage components, beverage mixes and flavors stored in cartridges and nutritive and non-nutritive sweeteners stored in bag-in-boxes and/or cartridges) to create a wide variety of branded fountain beverages.
 - (g) “**Products**” means Beverages purchased, or available for purchase directly from Bottler or sold through vending machines owned and stocked exclusively by Bottler.
 - (h) “**Snacks**” means all snacks and prepackaged foods made available at the Facility.
 - (i) “**Unattended Retail Services**” the provision and sale of Beverages, fresh brewed beverage(s), prepackaged food, snacks, and/or sundries through self-service kiosks, which permit sales directly to the consumer at the Facility without person-to-person interaction.

2. **Term.** This Agreement shall be in effect for a period of three (3) year(s) beginning January 1, 2024 (the “**Effective Date**”) with the option to renew for up to three (3) successive three (3) year periods, (each a “**Renewal Term**”). As used herein, the capitalized word “**Term**” shall mean the time period beginning January 1, 2024 and ending December 31, 2035, including each Renewal Term, but in no event shall the Term extend beyond any limitation in any applicable public bid law. If the Effective Date referenced in the foregoing sentence is blank, such term shall mean the last signature date of this Agreement.

3. **Advertising Rights.**

- (a) Account hereby grants to Bottler the exclusive right to advertise Beverages and specifically Products (i) at the Facility and (ii) in connection with the Facility. No permanent or temporary advertising, signage or trademark visibility for Competitive Products will be displayed or permitted anywhere at the Facility.
- (b) Bottler will have the exclusive right to advertise the Products as the “official” or “exclusive” soft drink, sports drink, water, tea, energy drink and/or juice or juice drink, etc. of the Facility.
- (c) Account hereby grants to Bottler a royalty-free license, exclusive for Beverages, to use the trademarks, logos and other intellectual property of the Account and Facility (“**Account Marks**”) in connection with the promotion of Products. Such promotion may occur in advertising (TV, radio, print, social media and/or other electronic means), packaging, vessels, promotional materials, and point of sale materials for Products and may be in connection with the marks and logos of Bottler’s other accounts.
- (d) Account agrees that Bottler’s advertising 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 general public. The Products shall be prominently listed on any menu boards located at the Facility and all equipment dispensing Products shall be prominently identified with the trademarks/logos corresponding to such Products.
- (e) Account further agrees that only Products will be dispensed in Bottler’s equipment and that no other trademarked Beverage-dispensing equipment, coolers or containers will be permitted at the Facilities.
- (f) Account will not enter into any agreement or relationship whereby any Competitive Products are associated in any manner with Account, the Facility, or any of the Account Marks in any advertising or promotional activity of any kind.

4. **Product Rights.**

- (a) Except only with respect to Concessionaires, Account hereby grants to Bottler the exclusive right to sell, serve, distribute or otherwise make available Beverages and Snacks at the Facility. Account and/or its Concessionaires shall purchase all Beverages (and cups, lids and carbon dioxide, if applicable) and Snacks directly from Bottler. Except as otherwise provided herein, no Competitive Products may be sold, dispensed, sampled, served, or otherwise made available anywhere at the Facility. Account agrees not to sell or distribute, directly or indirectly, any Products purchased hereunder outside of the Facility.
- (b) Account agrees to offer only 20oz packaged Products, 18.5oz Gold Peak Tea and 16oz Body Armor at all athletic venues, tournaments and any other events where concessions are sold, and to cause Products to be hawked in stands at all sporting events and during all events when any items of any make or description are hawked at the Facility.
- (c) Account hereby grants to Bottler the exclusive Beverage and Snack vending rights at the Facility and exclusive rights to provide Unattended Retail Services at the Facility.

- (d) **Permitted Exceptions.** On October 10, 2023, the City Council enacted Ordinance Number 3130 approving the terms, provisions, conditions and substance of the following six different form contracts (“Rental Agreements”) to be executed and delivered by individuals and other legal entities who rent facilities in the Civic Center and Park facilities for an event:

Description of Contract

- (a) Caterer Contract
- (b) Vendor Contract for Alcoholic Beverage Services
- (c) Rental Contract
- (d) Vestavia Hills Civic Center Rental Agreement (“Civic Center”)
- (e) Vestavia Hills Parks and Pavilion Rental Agreement (“Park”)
- (f) New Merkle House Facility Agreement

All of the above Rental Agreements allow the party renting the facility at the Civic Center and/or Park facility for an event to bring their own food and non-alcoholic beverages and consume that food and those non-alcoholic beverages and consume that food and those non-alcoholic beverages on and in the Civic Center or Park facility rented for and during that event.

Anything contained in this Beverage Agreement and Exhibits A, B, B and D to the contrary notwithstanding, the Bottler and Account expressly and mutually agree that should an individual or other legal entity enter into a rental agreement with the City as described and authorized by Ordinance Number 3130 and brings their/its own food and non-alcoholic beverages for the event described in the Rental Agreement, then in such event that individual and/or legal entity may do so as an exception to this Beverage Agreement and further that: (a) such Rental Agreements are not subject to this Beverage Agreement; (b) such Rental Agreements do not violate this Beverage Agreement in any respect whatsoever.

For the sake of clarity, this Permitted Exception for rentals, does not permit sale of any Competitive Beverages at an outdoor athletic facility with concessions.

- (e) **Private Consumption.** Nothing herein shall be construed to prevent the consumption of Competitive Products by (1) private individuals or (2) any visiting team or its players, coaches and staff participating in an event at the Facilities. However, such Competitive Products shall not be provided by Account or sold, sampled or dispensed to the general public.
- (f) **De minimus Distribution by Third Parties.** Isolated, de minimis instances of Competitive Products being served or distributed at the Facility by individuals not affiliated with Account will not be a violation of this Agreement, provided Account will not permit such distribution by a direct competitor of Bottler.

5. **Consideration.** In consideration of the rights and benefits granted to Bottler hereunder, Bottler agrees to provide Account with the specific items set forth in **Exhibit B** (collectively “Consideration”).

6. **Pricing.** Account shall be entitled to purchase bottle/can Products (and cups, lids and carbon dioxide, if applicable) in accordance with the then current trade prices. Thereafter, prices are subject to change each Agreement Year. Price increases generally occur automatically on January 1st of each Agreement Year. However, in the event of an increase in a component of Bottler’s cost of goods, manufacture or delivery, or increases in taxes, deposits or other government related fees, Bottler may further increase prices to cover such increased costs at other times during the Agreement

Year; in which case Bottler will provide thirty (30) days' written notice to Account prior to such price changes taking effect.

7. **Equipment.** During the Term, Bottler will loan to Account, subject to the terms of Bottler's Equipment Placement Addendum ("EPA") attached hereto as **Exhibit C**, at no cost, the Beverage dispensing equipment reasonably required and as mutually agreed upon to dispense Products at the Facility ("Equipment"). Account agrees that Bottler shall have the right to place a quantity of Beverage vending machines, coolers or other Equipment, determined by Bottler in its discretion, in mutually agreed upon locations at the Facility. Upon thirty (30) days' notice from Bottler, Bottler shall have the right to remove any Equipment, in its discretion, and Account shall provide immediate physical access to Bottler for the removal of such Equipment. The Equipment will not include Freestyle equipment. Account hereby agrees to the terms of the EPA set forth in **Exhibit C**.
8. **Concessionaire.** 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. Notwithstanding anything herein to the contrary, Bottler shall not pay to Account any Consideration for a purchase of Products by a Concessionaire to the extent that Bottler is required to pay the Concessionaire any funding duplicative of the Consideration for the same purchase of Products pursuant to an existing agreement between the Concessionaire and Bottler. In the event of a default in any of Concessionaire's obligations owing to Bottler, Account will use commercially reasonable efforts to cause Concessionaire to cure such default.
9. **Termination.** If any of the following events occur during the Term of this Agreement, Bottler may (in addition to any other remedies available) terminate this Agreement immediately upon notice to Account: (a) Account breaches any of its obligations set forth in this Agreement and fails to cure such breach within 30 days' written notice thereof; (b) any federal, state or local law, rule, regulation or order prohibits, restricts or in any manner interferes with the sale or advertising of Beverages; (c) Account files a petition under any bankruptcy law or becomes insolvent or makes any general assignment for benefit of creditors; or (d) Account's full right and authority to enter into this Agreement and to grant and convey to Bottler the rights set forth herein has expired or been revoked. In the event of any termination of this Agreement, Account shall (i) provide immediate physical access to Bottler for the removal of any Equipment and Scoreboards, (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 any Consideration.
10. **Right to Off-Set and Withhold.** In the event Account fails to pay Bottler any invoice due for Products received, transshipment charges or upon any other basis, Bottler shall have the right to deduct the amount of such unpaid invoice, transshipment charge or other charge from any Consideration otherwise due from Bottler to Account. 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. Nothing in this section shall operate to restrict any of Bottler's other remedies in the event of a material breach by Account.
11. **Adjustment.** If (i) any of the rights granted to Bottler herein are materially restricted or limited during the Term, including as a result of a Force Majeure Event (as defined in Section 14), or (ii) if any material component of the Facility is closed, or substantially closed, to customers for a period of thirty (30) consecutive days, or (iii) if the volume of Products sold to the Account decreases for any reason in any twelve month period by ten percent (10%) or more over the prior twelve month period, then in addition to any other remedies available to Bottler, Bottler may elect to adjust any Consideration to fairly reflect the decreased value of rights granted to Bottler hereunder (and Account will pay to

Bottler a refund of any prepaid amounts in excess of such reduced Consideration and a pro rata refund of the costs of refurbishing and installing the Equipment).

12. **Notices.** Any notice or other communication under this Agreement must be in writing and must be sent by registered mail or by an overnight courier service (such as Federal Express) that provides a confirming receipt. Notice is considered duly given when it is properly addressed and deposited (postage prepaid) in the mail or delivered to the courier. Unless otherwise designated by the parties, notice must be sent to the following addresses:

If to Bottler:

Coca-Cola Bottling Company United – Central, LLC
d/b/a Birmingham Coca-Cola Bottling Company
4600 East Lake Boulevard
Birmingham, AL 35217

If to Account:

City of Vestavia Hills Parks and Leisure Services, on
behalf of Vestavia Hills Parks and Recreation
1973 Merryvale Rd
Vestavia Hills, AL 35216

With a copy to:

Coca-Cola Bottling Company United, Inc.
4600 East Lake Boulevard
Birmingham, AL 35217
Attn: General Counsel

13. **Force Majeure.** The failure of a party to comply with the terms and conditions hereof because of an act of God, strike, labor troubles, war, fire, earthquake, hurricane, tornado, epidemic, act of terror or public enemies, action of federal, state or local governmental authorities, or for any reason beyond the reasonable control of such party (“**Force Majeure Event**”), will not be deemed a breach of this Agreement. Such party will resume full performance of and compliance with the terms and conditions hereof promptly upon removal of any such Force Majeure Event.
14. **Claims.** In no event will Bottler accept any audits of, or claims of discrepancies or errors in, pricing, rebates, commissions, funding, discounts, or other Consideration provided under this Agreement (“**Claims**”) more than forty-five (45) days from the date of invoice, commission report, check or other applicable documentation. In order to submit a Claim, Account shall provide Bottler a detailed, written request specifying the particular price, commission, funding, product, amount in dispute and reason for dispute, along with a true copy of the original invoice, commission report, check or other applicable documentation. Bottler will review each Claim in good faith and provide responses to each Claim submitted in accordance with this Section. Bottler will work directly with the Account to resolve any Claims or audit issues but will not interact with third-party auditors or contractors. Any audits requested by Account shall take place during normal business hours and shall be conducted at Bottler’s place of business.
15. **Immigration.** By signing this Agreement, the contracting parties affirm, for the duration of the Agreement, that they will not violate federal immigration law or knowingly employ, hire for employment or continue to employ an unauthorized alien within the State of Alabama. Furthermore, a contracting party found to be in violation of this provision shall be deemed in breach of the Agreement and shall be responsible for all damages resulting therefrom.
16. **Compliance with Title 41-16-5, Code of Alabama, 1975, Boycott Limitations.** Act 2016-312 of the Alabama Legislature prohibits a governmental entity from entering into certain public contracts with a business entity unless the contract includes a representation that the business is not currently engaged in, and an agreement that the business entity will not engage in, the boycott of a person or an entity based upon the person or business doing business with a jurisdiction with which the state can enjoy open trade. The prohibition does not apply if a business offers to provide goods or services for at least 20 percent less than the lowest certifying business entity or to a contract with a value less than \$15,000.00. Coca-Cola Bottling Company United, Inc. represents and warrants that it is not currently engaged in, and

will not engage in, the boycott of a person or an entity based in or doing business with a jurisdiction with which this state can enjoy open trade.

17. Miscellaneous. 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 Alabama, without reference to its conflict of law rules. 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. If any portion of this Agreement is severed, that is, held indefinite, invalid, or otherwise unenforceable, the rest of this Agreement continues in full force. But if the severance of a provision affects a party's rights, the severance does not deprive that party of its available remedies, including the right to terminate this Agreement. 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. During the Term, and for a one (1) year period thereafter, the parties shall keep the terms of this Agreement confidential, subject to applicable laws. **EACH PARTY, TO THE EXTENT PERMITTED BY LAW, KNOWINGLY, VOLUNTARILY, AND INTENTIONALLY WAIVES ITS RIGHTS 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. This Agreement and its exhibits contain the entire agreement between the parties with respect to the subject matter hereof and supersede all prior agreements and understandings, both written and oral. In the event of a conflict between the provisions of this Agreement and a provision in any other document including any "click through" or other online terms and conditions referenced in any such documents or in a website (collectively, "**Supplemental Terms**"), the provisions of this Agreement shall control. No Supplemental Terms shall modify, amend or supplement the terms of this Agreement, even if such Supplemental Terms are accepted or acknowledged by a party after the execution of this Agreement. 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. Bottler's delay or failure to exercise any of its rights hereunder will not operate as a waiver thereof. This Agreement may be executed in multiple counterparts, each of which shall be deemed an original and all of which shall constitute one Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the Effective Date.

BOTTLER

By: _____

Printed Name: _____

Title: _____

Date: _____

ACCOUNT

By: _____

Printed Name: _____

Title: _____

Date: _____

Exhibits Attached:

Exhibit A – Facility Locations

Exhibit B – Consideration

Exhibit C – Equipment Placement Addendum

Exhibit D – Fundraiser Terms and Conditions

EXHIBIT A
FACILITY LOCATIONS

Cahaba Heights Park

Liberty Park Sports Complex

Miracle League Field

Sacred Hollow Athletic Complex

Wald Park

Vestavia Hills Civic Center

Aquatic Complex

Splash Pad

EXHIBIT B
CONSIDERATION

1. **Annual Marketing Fees.** Bottler agrees to pay Account Ten Thousand Dollars (\$10,000) each Agreement Year of the Term (the “Annual Marketing Fees”). 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 of the Effective Date in each Agreement Year remaining in the Term. The Annual Marketing Fees shall be deemed earned pro rata on a daily basis over the Agreement Year for which they are paid.
2. **Commissions.** Bottler agrees to pay Account a monthly commission based on the commission rates and initial vend prices set forth below. All taxes, deposits, recycling fees, other handling fees, communication charges and credit and debit card fees, if any, may be deducted from funds collected before calculating commissions. Commissions shall not be payable on any sales from vending machines not filled and serviced exclusively by Bottler. Bottler may adjust the vend prices and/or commission rates to recover its costs, including cost of goods, to implement cash discounts, or as it otherwise deems necessary or desirable, in its sole discretion. 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.

Product	Vend Rate	Commission
20oz Bottled Carbonated	\$2.25	25%
20oz Dasani Water	\$2.25	25%
12oz Cans	\$1.00	25%
20oz PowerAde	\$2.25	25%
10oz MM Juice	\$2.00	25%
20oz Vitamin Water	\$2.00	25%
Chips	\$1.50	15%
Crackers	\$1.00	15%
Candy	\$1.50	15%
Pastry	\$1.50	15%

3. **Rebates.** Bottler agrees to pay Account rebates in the amounts set forth below for each converted case of Product purchased and paid for by Account for sale at the Facility, including Coca-Cola Fundraisers (the “Rebates”). The Rebates shall be paid to each qualifying Facility location annually, in arrears, within sixty (60) days after the end of each applicable Agreement Year in which the Rebates were earned and will be based on Bottler’s case sales records. Rebates shall not be earned on sales of Products through Bottler’s full-service vending machines. As used herein, a “converted case” is measured by 24-count. Regardless of the case configurations in which Products are sold, they are translated to the converted case equivalent for purposes of calculating Rebates.

Product	Rebate Amount
20oz Bottles	\$2.00/converted case
18.5oz Gold Peak Tea	\$2.00/converted case
16oz Body Armor	\$2.00/converted case

4. **Scoreboard(s).** Bottler agrees to provide Account with scoreboard(s) or scoreboard funding on the terms and conditions set forth below:
 - (a) Bottler shall pay the cost of purchasing and installing thirty (30) scoreboard(s) (the “Scoreboard(s)”), up to Two Hundred Thousand Dollars (\$200,000) (“Scoreboard Funding”) in accordance with the schedule below:

Scoreboard(s)	Purchase and Installation
Seventeen (17) Baseball/Softball Scoreboards	Purchase in 2023 and install in 2024
Nine (9) Football/Soccer/Lacrosse Scoreboards	Purchase in 2023 and install in 2024
Four (4) Basketball Scoreboards	Purchase in 2023 and install in 2024

The Scoreboard(s) shall be installed at the Facility locations specified by Account in accordance with applicable building and electrical codes. **THE PROVISION OF THE SCOREBOARD(S) IS ON AN "AS IS" BASIS. BOTTLER HEREBY DISCLAIMS ANY AND ALL EXPRESS AND IMPLIED WARRANTIES, INCLUDING WITHOUT LIMITATION, THOSE OF MERCHANTABILITY AND FITNESS FOR INTENDED USE, AND BOTTLER SHALL NOT BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL OR INDIRECT DAMAGES.**

- (b) Bottler shall be entitled to premiere and exclusive Beverage advertising rights on the Scoreboard(s) and at the Facility, and Account will not grant advertising rights at the Facility with respect to any Competitive Products.
- (c) Bottler shall provide Scoreboard service and repair during the Term of this Agreement. Account shall operate the Scoreboard(s) in good condition and during the Term of this Agreement at Account's expense and allow access by Bottler's personnel to change the promotional message on the Scoreboard(s), such changes to be in Bottler's sole discretion and at Bottler's expense and subject to Account approval of content, not to be unreasonably withheld.
- (d) Account shall pay all costs of operating the Scoreboard(s) including, but not limited to, all utility charges.
- (e) Account shall maintain the following insurance:
 - (i) All risk property insurance in an amount equal to the replacement cost of the Scoreboard(s), and general liability insurance in the amount of \$2,000,000 per occurrence, including contractual liability for this Agreement and name the Bottler as additional insured, or the maximum insurance coverages for property damage and personal injury which are permitted by law. Certificates of Insurance confirming the existence of such coverages shall be provided to Bottler annually and Account will provide Bottler with thirty (30) days' prior written notice of cancelation, non-renewal or material change of such insurance.
- (f) The Scoreboard(s) shall be the property of the Bottler. During the Term and upon expiration or termination of this Agreement, Bottler shall retain ownership of the Scoreboard(s).

- 5. **In-kind Marketing Support.** Each Agreement Year, Bottler agrees to make available to Account in-kind marketing support for mutually agreed marketing activities, such as menu boards, banners, trash barrels (when available) or other items, with an aggregate estimated retail value of up to Two Thousand Dollars (\$2,000), as determined in good faith by Bottler ("**In-kind Marketing Support**"). Account understands and acknowledges that it will not receive cash in lieu of In-kind Marketing Support.
- 6. **Complimentary Product.** Each Agreement Year, Bottler shall make available to Account standard physical cases of complimentary Products for tournaments consisting of 12oz cans and .5L Dasani with an aggregate estimated retail value of Two Thousand Dollars (\$2,000), as determined in good faith by Bottler. Such complimentary Products will be provided to Account upon reasonable advance request. Account must request all available complimentary Products during the course of each Agreement Year. If Account does not request all available complimentary Products by the end of each Agreement Year, then any complimentary Products remaining at the end of each Agreement Year shall be forfeited by Account and retained by Bottler with no further obligation. Complimentary Products are not to be resold.

7. **Fundraisers.** Account may participate in Coca-Cola truckload fundraiser sales each Agreement Year. Account's participation in any truckload fundraiser sales shall be subject to the terms and conditions set forth in **Exhibit D** hereto.

8. **Event Trailers.**

(a) In connection with this Agreement, Account may have the opportunity to use a trailer supplied by Bottler for concession sales of Products at Account events. ("**Event Trailer**"). Bottler shall not be liable to Account for any claims based on or arising out of injury to person or property in any way relating to Account's use of an Event Trailer, except such claims as might arise solely out of Bottler's gross negligence or willful misconduct. In no event and under no circumstances shall Bottler be liable to Account for any claims based upon or arising out of lost profits or prospective profits, loss of Product, or consequential, special or incidental damages in any way relating to Account's use of an Event Trailer.

EXHIBIT C
EQUIPMENT PLACEMENT ADDENDUM

During the Term of the Agreement, Bottler may provide to Account Equipment (as defined below), subject to the terms of this Equipment Placement Addendum ("EPA"). The terms of this EPA shall apply to each piece of Equipment commencing on its date of installation at any Account Location ("**Commencement Date**"). THE TERMS OF THIS EPA 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 EXHIBIT IS INCORPORATED. Any term capitalized, and not otherwise defined herein, shall have the meaning given in the Agreement.

1. **Installation and Use Restrictions.** Bottler may, from time to time, deliver and install Equipment (which term encompasses all equipment provided by Bottler at any time, including, without limitation, vending machines, coolers, fountain equipment, racks and/or any replacement parts, replacements, additions or accessories) reasonably required and as mutually agreed upon to dispense the Bottler's Products. Account shall use the Equipment only at the particular location to which such Equipment is actually delivered unless otherwise agreed by Bottler. At all times during the term of this Agreement, Account shall maintain records of the location of all Equipment and promptly provide copies of such records to Bottler upon request. The Agreement and this EPA, in addition to any additional documents and/or records by and/or between the parties describing the Equipment and the location(s) where such Equipment is placed, shall be maintained by Bottler and shall constitute the official book of record pertaining to the Equipment. Account hereby agrees that: (i) no logo, trademark, advertisement, or other indication of Bottler's ownership of the Equipment shall be obstructed, defaced, or removed, and no other logo, trademark, or advertisement shall be attached to the Equipment; (ii) the Equipment shall not be obstructed, moved, or removed without the prior written consent of Bottler; (iii) the Equipment shall not be sold, reassigned, loaned, leased, or rented to any other party except as authorized by Bottler; in which case, Account shall remain fully responsible for the Equipment as per the terms of this Agreement; (iv) no racks, merchandise, or any other objects shall be placed on top of or attached to the Equipment unless expressly authorized by Bottler; and (v) Account will not attach the Equipment, or allow the Equipment to be attached, in such a manner as to become part of the realty as a fixture or otherwise, and that the Equipment will be maintained so that it may be easily removed without damage to buildings or realty.
2. **Operation.** In consideration of the provision of the Equipment by the Bottler to Account pursuant to the Agreement, Account agrees to purchase from Bottler and store in, or sell through, the Equipment only products supplied by Bottler. In Bottler's sole discretion, a review of Account's product purchase volume and Equipment usage may justify ongoing Equipment placement or Equipment removal. Removal of any piece of Equipment will not affect the term of any agreement between the parties, and this EPA shall survive with respect to any Equipment remaining in Account's possession.
 - a. If Bottler is providing full-service vending, Account agrees to permit Bottler to place the vending Equipment on Account's premises. Bottler shall stock such vending Equipment and shall collect all vending proceeds from the sale of beverages. If Bottler has agreed to pay Account a commission on sales through the Equipment, all taxes, deposits, recycling fees, other handling fees, communication charges and credit and debit card fees, if any, may be deducted from funds collected before calculating any commissions due to Account.
 - b. Bottler hereby loans the Equipment to Account; however, during the term of this Agreement, Bottler reserves the right, upon prior notice to Account, to lease or rent the Equipment to the Account and, upon commencement of the lease or rental program, Account agrees to pay a monthly rental/lease amount. Bottler may change the rental/lease rate charged under this Agreement by sending notice of such change to Account at its present address. Account may terminate this Agreement as set forth herein if it objects to such change.
 - c. If the Equipment includes a fountain beverage dispenser, Account agrees to permit Bottler to install the fountain Equipment on Account's premises. Account agrees such fountain Equipment will be used only for the purpose of dispensing fountain beverage products of The Coca-Cola Company ("**Company**"), such as Coca-Cola® classic (or Coke®), diet Coke® and Sprite®, and other fountain products distributed by Bottler with the understanding that no product of PepsiCo, Inc. or of an affiliate thereof may be dispensed. Account further agrees not to dispense any product whose pungency could affect the normal taste or quality of the Company's fountain beverage products.
3. **Ownership.** Bottler is and, at all times, shall remain, the exclusive owner of the Equipment. Account shall protect Bottler's title and keep the Equipment free from all claims, liens, and encumbrances arising from the actions or inactions of Account. Account's obligation under this paragraph remains until such time as Bottler or Bottler's designee picks up the Equipment. Account authorizes Bottler to execute and file any additional instruments in all jurisdictions where it deems it necessary to perfect and maintain Bottler's interest in the Equipment. Bottler shall have the right, during Account's regular business hours, to inspect the Equipment at Account's premises or wherever the Equipment may be located and to review all records that reasonably relate to the Equipment upon reasonable notice to Account. Account shall promptly notify Bottler of all details arising out of any alleged encumbrances thereon or any accident allegedly resulting from the use or operation thereof.
4. **Service and Repair.** Account shall take reasonable care of the Equipment. Bottler agrees to provide reasonable service and repair for the Equipment during the term hereof. Account shall allow Bottler to enter its premises for the purpose of inspection or performance of such service and repair, or necessary replacement or return or removal of the Equipment. In the event additional service and repair is requested by Account or reasonably necessary as a result of Account's negligence or willful misconduct, Bottler may bill Account its standard rate per service call. All service and repair calls must be exclusively handled or authorized by Bottler. Account's sole recourse against Bottler with

respect to service and repair provided by Bottler or its agents to the Equipment is that Bottler will correct any defective workmanship at no additional charge to Account, provided that Bottler is given prompt notification of any defective workmanship. Account shall promptly notify Bottler of any Equipment malfunction and take reasonable steps to mitigate any risk of injury to person or property arising from such malfunction. For example, if a piece of Equipment is not cooling properly, Account will unplug that piece of Equipment until it is repaired or replaced by Bottler.

5. **Disclaimer of Warranties; Liability and Costs.** Account acknowledges that Bottler is not the manufacturer of the Equipment. BOTTLER MAKES NO REPRESENTATIONS OR WARRANTIES OF ANY KIND AND EXPRESSLY DISCLAIMS ANY IMPLIED WARRANTIES AS TO THE FITNESS FOR A PARTICULAR PURPOSE, MERCHANTABILITY, DESIGN, CONSTRUCTION, CONDITION, SPECIFICATIONS, OR PERFORMANCE OF THE EQUIPMENT. Account accepts no warranties and expressly waives any implied warranties as to the fitness for a particular purpose, merchantability, design, construction, condition, specification, or performance of the Equipment. Except to the extent attributable to the gross negligence or willful misconduct of Bottler, Account hereby assumes liability for any and all damage to (normal wear and tear excepted), or loss of, the Equipment from the time the Equipment is delivered to Account until returned to or removed and accepted by Bottler. Account assumes responsibility to report any damage to, or loss of, Equipment to Bottler immediately. To the extent any payment is due from Bottler to Account under the Agreement or otherwise, Bottler may deduct from such payment the cost of repair or replacement of Equipment due to damages for which Account is responsible hereunder. All taxes, licenses, charges, or other fees which may be imposed on Account's sales of products through the Equipment or in connection with this Agreement by any taxing authority, shall be borne by Account.
6. **Exculpation.** CUSTOMER ACKNOWLEDGES THAT INSTALLATION, USE, OR OPERATION OF EQUIPMENT CARRIES INHERENT RISKS INCLUDING BUT NOT LIMITED TO FLOODING AND DAMAGE TO FIXTURES AND OTHER PROPERTY. Bottler shall not be liable to Account for any claims based on or arising out of injury to person or property in any way relating to the installation, use, repair, or operation of the Equipment, except such claims as might arise solely out of Bottler's gross negligence or willful misconduct. In no event and under no circumstances shall Bottler be liable to Account for any claims based upon or arising out of lost profits or prospective profits, loss of product, or consequential, special or incidental damages in any way relating to the installation, use, repair, or operation of the Equipment. Account represents and warrants that plumbing and electrical service on the property is proper and adequate for the installation and use of the Equipment, and Account will not use extension cords or other electrical connections not expressly approved by Bottler.. Notwithstanding anything herein to the contrary, the provisions of this section will survive termination of the Agreement.
7. **Termination or Expiration.** Upon termination or expiration of the Agreement, Account shall promptly return all Equipment to Bottler.
8. **Remedies.** In the event of Account's breach of this EPA, Bottler shall have the immediate right to exercise any one or more of the following remedies: (w) to terminate the Agreement; (x) to declare the entire amount of any rent immediately due and payable, without notice to or demand of Account; (y) to take possession of any or all of the Equipment without demand or notice wherever the same may be located, without any court order or other process of law; or (z) to pursue any other remedy at law or in equity. If the Equipment is not made accessible by Account, then Account shall pay all costs and expenses relating to the removal of the Equipment, including reasonable attorneys' fees incurred by Bottler in enforcing its rights hereunder by litigation or otherwise. If this EPA is terminated with respect to any piece of Equipment for any reason prior to one year from the commencement date hereof, then Account shall pay Bottler all costs and expenses for installation, removal and refurbishment of the Equipment. All rights and remedies provided herein may be exercised exclusively, concurrently, or cumulatively with any other right or remedy hereunder, or as otherwise provided by law.
9. **Castors (if applicable).** If Account requests, at any time during the term of the Agreement, that Bottler provide the Equipment equipped with casters, the following provisions shall apply. Account represents and warrants that the Equipment is required by a governmental authority pursuant to applicable health, safety, sanitary or other applicable codes or ordinances, or the Account desires the Equipment to be equipped with casters to permit the efficient and thorough cleaning of the Equipment and surrounding areas. Account recognizes and acknowledges that the casters provided on the Equipment are not designed or intended to allow for the movement of the Equipment beyond the minimal distances required for cleaning of the immediate area and are not designed for movement from room to room or other similar distances. Account agrees that it shall not, and shall not permit its employees, agents, or subcontractors to use the casters to move the Equipment beyond the short distances necessary to adequately clean and maintain the Equipment and immediately surrounding areas. Account agrees not to otherwise move or displace the Equipment from the area in which it was placed by Bottler. Any violation of this section by Account shall constitute a breach of this EPA.
10. **Miscellaneous.** To the extent that any of the terms of this EPA conflict with the terms set forth in any other agreement between the parties (and the effect of such conflict diminishes the rights of Bottler under this EPA), the terms of this EPA will control; provided further that removal of any Equipment will not affect the terms of any other agreement between the parties.

EXHIBIT D
FUNDRAISER TERMS AND CONDITIONS

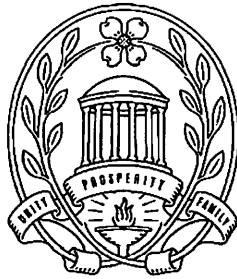
During the Term of this Agreement, Account may have the opportunity to conduct truckload fundraiser sales (each, a “Fundraiser”) from time to time in which Account will promote the sale of Bottler’s Products to interested groups and individuals that may order Products for in-person delivery. The pricing and selection of Products, location, and date of each Fundraiser shall be mutually agreed upon by Account and Bottler. These terms and conditions shall apply to any and all Fundraisers conducted by Account.

All proceeds from Fundraiser sales shall be remitted to Bottler. Bottler shall apply the proceeds to satisfy in full all (i) Bottler’s costs for the Products delivered through the Fundraiser, (ii) applicable sales taxes, and (iii) Bottler’s administrative costs associated with the Fundraiser (collectively, “Fundraiser Costs”). In the event of any chargebacks, refunds, or cancellations, the amount of the reversed charge and any resulting payment network fees incurred by Bottler shall be deducted from the Fundraiser proceeds. If the Fundraiser proceeds collected are insufficient to satisfy the Fundraiser Costs, Account agrees to pay the deficiency amount to Bottler.

For each Fundraiser, Bottler’s administrative costs are generally estimated to include (a) 4% of gross proceeds for payment card and gateway fees (plus actual fee amounts for any cancelled orders), and (b) a flat fee of \$0.50 per order for use of the Fundraiser’s e-commerce website. Account may obtain the specific administrative cost estimates for its Fundraiser from Bottler.

After satisfying the Fundraiser Costs, Bottler will remit all remaining proceeds from the Fundraiser to Account via check (“Proceeds Check”). Should any chargebacks, refunds, or cancellations occur after Bottler has delivered the Proceeds Check to Account, Account agrees to pay Bottler the amount of the reversed charge and any resulting payment network fees incurred by Bottler.

Unless otherwise agreed in writing by both parties, Account authorizes and directs Bottler to make the Proceeds Check payable to the Account’s name set forth in the Agreement and to deliver the Proceeds Check to Account’s notice address set forth in the Agreement. Account releases and forever discharges the Indemnified Parties (defined below) from any and all claims arising from the Proceed Check recipient’s use, misuse, or possession of the Proceeds Check. Bottler shall not be liable to Account for any claims based upon or arising out of lost profits or prospective profits, loss of Products, or consequential, special, or incidental damages in any way relating to a Fundraiser.



**CITY OF VESTAVIA HILLS
PARKS & RECREATION
INTER-DEPARTMENT MEMO**

February 26, 2024

To: Jeff Downes, City Manager

Cc:

From: Jamie Lee, Parks and Leisure Services Director

RE: Public Hearing - Ordinance Number 3207 - An Ordinance to accept a proposal from Coca-Cola Bottling Company to become the concessions/vending provider for a period of three years at all Vestavia Hills Parks and Leisure Facilities. Acceptance will authorize the Mayor and City Manager to do all actions necessary to secure Coca-Cola as the vendor.

Background:

The ordinance would allow the Mayor and City Manager to sign a contract with Coca-Cola to be the beverage provider for concessions in all Parks and Leisure Services Facilities. All contract details were presented at the January 8th work session. This contract would be for a three-year period with the option to renew.

Recommendation:

This proposal was unanimously recommended by the Park Board.

Fiscal Impact:

See attached proposed contract

Attachments:

1. Ordinance 3207
2. Coca-Cola Agreement - 2024