

**SECOND MODIFICATION TO  
CONTRACT FOR BEVERAGE RIGHTS AND BEVERAGE VENDING CONCESSIONS  
UNIVERSITY OF HAWAI'I AT MĀNOA**

This Second Modification ("**2nd Concession Modification**") is effective as of July 12, 2021 (the "**2nd Concession Modification Effective Date**"), between **Coca-Cola Bottling Company of Hawai'i, LLC** ("**Contractor**"), under assignment from BCI Coca-Cola Company of Los Angeles ("**Prior Contractor**"), and the **University of Hawai'i**, the state university and a body corporate of the State of Hawai'i ("**University**"), for the partial benefit of the University of Hawai'i at Mānoa Department of Intercollegiate Athletics ("**UHMAD**"). Contractor and the University are individually a "Party" and collectively the "Parties."

**RECITALS:**

WHEREAS, the Prior Contractor and the University entered into that certain Contract for Beverage Rights and Beverage Vending Concessions – University of Hawai'i at Mānoa dated August 10, 2016 ("**Initial Agreement**"); and

WHEREAS, the Prior Contractor assigned its right, title and interest in and to the Initial Agreement to the Contractor by the Assignment Agreement, as defined in the University's consent to the Assignment Agreement dated May 22, 2017 ("**UH Consent**"); and

WHEREAS, the Contractor and the University entered into that certain Modification No. 1 to the Initial Agreement dated July 1, 2018 ("**1st Modification**") and together with the Initial Agreement are collectively the "**Concession Agreement**") under which the University approved the Contractor's requested adjustment in the Vending Pricing; and

WHEREAS, as a result of the COVID-19 pandemic, and the resulting impact on the Contractor's rights and ability to generate sales under the Concession Agreement, the Parties are agreeable to adjust certain Contractor payment obligations due to the occurrence of the Adjustment Events described in the Concession Agreement; and

WHEREAS, the Parties agree that three of the four of the Adjustment Events described in subsection 12.S.a (Adjustment Events) in the Concession Agreement occurred due to the COVID-19 pandemic, including: (a) the closing of the UHM campus for more than 30 consecutive days, (b) a more than 50% decrease in beverage sale volumes during a 12-month period and (c) the University's basketball, volleyball, and baseball teams fail to play all of their scheduled home games on the UHM campus for a period of more than thirty (30) consecutive calendar days during their scheduled seasons; and

WHEREAS, the Parties agree to reduce the Contractor's obligation to pay the Beverage Rights Fee and the Diamond Corporate Sponsorship Fee during the 2019-2020 and 2020-2021 contract years; and

WHEREAS the Contractor is also willing to make additional payments to the University for promotional opportunities at the improved UHMAD football stadium facility within the lower portion of the UHM campus; and

WHEREAS, the Contractor and the University will be entering into a First Amendment ("*1<sup>st</sup> Sponsorship Amendment*") to the Corporate Partner Agreement between the Parties with an effective date of August 15, 2016 ("*Diamond Sponsorship Agreement*");

NOW THEREFORE, in consideration of the promises made herein, the parties agree to enter into this 2<sup>nd</sup> Concession Modification upon the following terms and conditions:

1. **Contractor defined.** "Contractor" is defined as the Coca Cola Bottling Company of Hawaii, LLC, with the understanding that the Contractor is subject to and will comply with the conditions contained in the UH Consent.

2. **Term.** Section 5 "TERM" shall be modified to read:

"The Contract shall be in effect from the NTP Date to ~~June 30, 2023~~ June 30, 2024 (hereafter the "Contract term" with June 30, 2024 being the "Expiration Date"), provided that the prices charged by the CONTRACTOR for beverages offered at the Food Service Outlets, the vending machines, and any other authorized location within the UHM campus shall remain at the levels specified in ATTACHMENT C attached hereto and incorporated herein by reference at least until June 30, 2017."

3. **Diamond Corporate Sponsorship definition.** Section 1 "DEFINITIONS" subsection H "Diamond Corporate Sponsorship" shall be modified to read:

"A corporate sponsorship package that is designed to primarily benefit UHM Athletics, which requires the payment of \$150,000.00 for each year of the Contract term for this annual benefit except as indicated in section 4 "PAYMENT" subsection C "Special Payment Periods", and consists of tickets to selected UHM Athletics sporting events, eligibility for promotional and advertising opportunities before, during, and after UHM Athletics events, parking at various venues to attend UHM Athletic events, and other benefits."

4. **Beverage Rights Fee and Diamond Corporate Sponsorship Fee.** Section 3 "RIGHTS FEE AND VENDING COMMISSION" shall be modified to read:

"The CONTRACTOR shall pay to the UNIVERSITY the following amounts: (1) THREE HUNDRED SIXTY SEVEN THOUSAND AND NO/100 DOLLARS (\$367,000.00) prior to the NTP Date for the first year of the Contract term and no later than the anniversary date of the NTP Date for each subsequent year during the Contract term ("Beverage Rights Fee"), (2) the Diamond Corporate Sponsorship payment of \$150,000.00 prior to the NTP Date for the first year of the Contract term and no later



than the anniversary date of the NTP Date for each subsequent year during the Contract term ("Diamond Corporate Sponsorship Fee"), and (c) a monthly commission of forty percent (40%) of net sales from all beverage vending machines that are operated by, though, or under the CONTRACTOR during the Contract term no later than the 10<sup>th</sup> day of the following month ("Vending Commission") except as indicated in section 4 "PAYMENT" subsection C "Special Payment Periods."

5. **Beverage Rights.** Section 6 "BEVERAGE RIGHTS" subsection B. "Advertising opportunities" sub-subsection (1) "Diamond Corporate Sponsorship" shall be modified to read:

"(1) Diamond Corporate Sponsorship. The CONTRACTOR shall be responsible for the annual cost of Diamond Corporate Sponsorship package at a rate of \$150,000.00 per year except as indicated in section 4 "PAYMENT" subsection C "Special Payment Periods." Payment for the Diamond Corporate Sponsorship package will be submitted via a separate check from other payments no later than the NTP Date for the first year of the Contract term and the anniversary of the NTP Date for each subsequent year of the Contract term."

6. **Payment.** Section 4 "PAYMENT" shall be modified to add a new subsection C that reads:

"C. Special Payment Periods. As a result of the COVID-19 pandemic, the payments of the Beverage Rights Fee and the Diamond Corporate Sponsorship Fee will be as follows for the remaining Contract term, with adjustments for the 2019-2020 and 2020-2021 contract years and with the understanding that the CONTRACTOR's obligation to pay the Vending Commission to the UNIVERSITY during the Contract term shall remain unchanged and unaffected:

Payment for Contract Year 2020-2021

Beverage Rights Fee (2020-21)	\$148,535
Diamond Corporate Sponsorship Fee (2020-2021)	\$57,813
Credit for CONTRACTOR full payment of 2019-2020 Beverage Rights Fee	(\$82,000)
Net Payment Due (within 30 days after 2 <sup>nd</sup> Concession Modification is fully executed)	<b>\$124,348</b>

Payment for Contract Year 2021-2022

Beverage Rights Fee (2021-2022)	\$367,000
Diamond Corporate Sponsorship Fee (2021-2022)	\$150,000

Clarence T. C. Ching Athletics Complex Rights Fee (2021-22, 2022-23, and 2023-24)	\$40,652
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Net Payment Due (within 30 days after 2 <sup>nd</sup> Concession Modification is fully executed)	\$557,652
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Payment for Contract Year 2022-2023

Beverage Rights Fee (2022-2023)	\$367,000
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Diamond Corporate Sponsorship Fee (2022-2023)	\$150,000
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Net Payment Due (as required under the Contract)	\$517,000
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Payment for Contract Year 2023-2024

Beverage Rights Fee (2023-2024)	\$367,000
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Diamond Corporate Sponsorship Fee (2023-2024)	\$150,000
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Net Payment Due (as required under the Contract)	\$517,000
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7. **Separate payment.** Section 4 "PAYMENT" shall be further modified by deleting subsection A "Submission of payments" in its entirety and amending it to read as follows:

"A. **Submission of payments.** All payments of the Beverage Rights Fee and the Vending Commission shall be made payable to the University of Hawai'i and submitted to Manager, Food Services, 1951 East West Road, Honolulu, Hawaii 96822. All payments of the Diamond Corporate Sponsorship Fee and the Clarence T.C. Ching Athletics Complex Rights Fee shall be made payable to the University of Hawai'i and submitted to the University of Hawaii at Manoa Department of Intercollegiate Athletics at 1337 Lower Campus Road, Honolulu, Hawaii 96822. The termination of the Contract by default or otherwise shall not relieve the CONTRACTOR of its obligations under the Contract or for charges accrued while the Contract was in effect but remaining unpaid at the time of termination."

8. **Beverage Vending Concessions.** Section 7 "BEVERAGE VENDING CONCESSIONS" shall be modified to add a subsection A(4) that reads:

**"Additional Equipment Rights.** The parties agree that the CONTRACTOR shall have the right to install 20 oz bottle/can coolers in the Clarence T.C. Ching Athletics Complex (8-10 coolers) beginning with the 2021-2022 Contract Year (July 1, 2021 through June 30, 2022)."



9. **Defined Terms.** All terms with initial capital letters in this 2<sup>nd</sup> Concession Modification shall have the same definitions and meanings given to them in the Concession Agreement, unless otherwise specifically defined in this 2<sup>nd</sup> Concession Modification.

10. **Contractor Certification.** The Contractor certifies that it is and shall continue to be in compliance with and shall perform all obligations required to be performed by the Contractor under or pursuant to the Concession Agreement, as amended by this 2<sup>nd</sup> Concession Modification.

11. **Counterpart signatures.** The Parties hereto agree that (i) this 2<sup>nd</sup> Concession Modification may be executed in counterparts, each of which shall be deemed an original, and said counterparts shall together constitute one and the same agreement, binding all of the Parties hereto, notwithstanding that all of the Parties are not signatory to the original or the same counterparts, and (ii) facsimile and emailed signatures on this 2<sup>nd</sup> Concession Modification or signatures by a similar medium shall be binding and effective for all purposes and shall be treated the same as signatures on the original document. The Parties agree to promptly forward signed hard copies of the originals to the other Party. The signed facsimile or emailed documents or documents in a similar medium, however, will remain effective if the signed originals are not so received.

12. **Entire Agreement.** The Concession Agreement, as amended by this 2<sup>nd</sup> Concession Modification and the Sponsorship Agreement, as amended by the 1<sup>st</sup> Sponsorship Amendment, contains the entire agreement between the Parties with respect to the subject matter hereof and thereof and supersedes any prior oral or written agreements or understandings.

13. **No Other Changes.** Except as modified herein, all other terms and conditions of the Concession Agreement shall remain in full force and effect. In the event of a conflict between this 2<sup>nd</sup> Concession Modification and the Concession Agreement, this 2<sup>nd</sup> Concession Modification shall control.

14. **Representations.** Each Party represents to the other as follows:

a. **Authority.** It has full power and authority to enter into this 2<sup>nd</sup> Concession Modification and to grant and convey the rights set forth herein.

b. **Binding Obligation.** All necessary approvals for the execution, delivery and performance of this 2<sup>nd</sup> Concession Modification by it have been obtained, and this 2<sup>nd</sup> Concession Modification has been duly executed and delivered by it and constitutes the legal and binding obligation of it enforceable in accordance with its terms.

[Remainder of page intentionally left blank]

[Signature page to follow]

IN WITNESS WHEREOF, the undersigned have caused this 2<sup>nd</sup> Concession Modification to be duly executed as of the date first above written.

COCA-COLA BOTTLING COMPANY OF HAWAII, LLC      UNIVERSITY OF HAWAII

By: 

Printed Name: Joe Carter

Title: Vice President + GM

Date: 9/21/2021

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

Printed Name: Jan Gouveia

Title: Vice President

Office of Administration

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



IN WITNESS WHEREOF, the undersigned have caused this 2<sup>nd</sup> Concession Modification to be duly executed as of the date first above written.

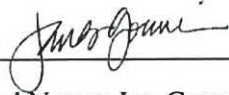
**COCA-COLA BOTTLING COMPANY OF HAWAII, LLC**      **UNIVERSITY OF HAWAII**

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

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

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

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

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

Printed Name: Jan Gouveia

Title: Vice President

Office of Administration

Date: 9/24/21

UNIVERSITY OF HAWAII	<b>MODIFICATION OF CONTRACT</b>	PAGE 1 of 1
1. MODIFICATION NO.  1	3. CONTRACT NO. <u>C170020</u> Dated <u>08/10/16</u> / PROJECT TITLE  Beverage Rights and Beverage Vending Concessions for the University of Hawaii at Manoa, Honolulu, Hawaii	
2. EFFECTIVE DATE  July 1, 2018		
4. ISSUED BY Director, Office of Procurement and Real Property Management 1400 Lower Campus Road, Room 15 Honolulu Hawaii 96822 BUYER <u>D. Zwald</u>	5. CONTRACTOR (NAME AND ADDRESS) Coca-Cola Bottling Company of Hawaii, LLC 949 Mapunapuna Street Honolulu, Hawaii 96819	

6. (a) ☐ This Change Order is issued pursuant to \_\_\_\_\_  
The changes set forth in block 7 are made to the above numbered contract.  
(b) ☐ The above numbered contract is modified to reflect administrative change.  
(c) ☒ This Supplemental Agreement is entered into to modify the contract as set forth in block 7



7. DESCRIPTION OF MODIFICATION

ATTACHMENT C, Approved Vending Pricing, shall be deleted in its entirety and replaced with the attached revised ATTACHMENT C (Modification No. 1), effective July 1, 2018.

EXCEPT AS PROVIDED HEREIN, ALL TERMS AND CONDITIONS OF THE DOCUMENT REFERENCED IN BLOCK 3 UNLESS HERETOFORE AMENDED, REMAIN UNCHANGED.

8. APPROPRIATION/FUNDING/ACCOUNTING DATA (IF REQUIRED)

9. ☐ CONTRACTOR IS NOT REQUIRED TO SIGN THIS DOCUMENT. ☒ CONTRACTOR IS REQUIRED TO SIGN THIS DOCUMENT AND RETURN ORIGINAL AND ALL COPIES TO THE DIRECTOR, OFFICE OF PROCUREMENT AND REAL PROPERTY MANAGEMENT

10. NAME OF CONTRACTOR  BY  18/13/18 (authorized signature) DATE	12. UNIVERSITY OF HAWAII  BY  8/14/18 DATE
11. NAME & TITLE OF SIGNER (TYPE OR PRINT)  Soc Carter VP/GM	13. NAME & TITLE OF SIGNER (TYPE OR PRINT)  Duff Zwald, Director, Office of Procurement and Real Property Management



**Attachment C**  
**Approved Vending Pricing**

Product Name	Pkg Size	<u>Vending Pricing</u>	<u>Vending Pricing</u>
		<u>Before</u> <u>July 1, 2018</u>	<u>After</u> <u>July 1, 2018</u>
BOTTLED WATER	20 oz.	\$1.75	\$2.00
DIET SODA	20 oz.	\$1.75	\$2.00
SODA	20 oz.	\$1.75	\$2.00
SPORTS DRINK	20 oz.	\$1.75	\$2.00
VITAMIN INFUSED WATER DRINK	20 oz.	\$2.00	\$2.25
ENERGY DRINK (MONSTER)	16 oz.	\$2.50	\$2.75
ENERGY DRINK (MONSTER Java)	15 oz.	\$2.50	\$3.50
ENERGY DRINK (NOS/FULL THROTTLE)	16 oz.	\$2.50	\$2.75
GOLD PEAK	18.5 oz.	N/A	\$2.50
PEACE TEA	23 oz.	N/A	\$2.50
BRANDED COFFEE DRINKS (DUNKIN DONUT/MCCAFE)	13.7 oz.	\$2.25	\$3.50
JUICE 100%	15.2 oz.	\$2.00	\$2.00
DIET SODA CAN	12 oz.	\$1.25	\$1.25
SODA CAN	12 oz.	\$1.25	\$1.25



UNIVERSITY  
of HAWAII\*  
SYSTEM

Office of Procurement and Real Property Management

May 22, 2017

BCI Coca-Cola Bottling Company of Los Angeles  
dba Coca-Cola Refreshments  
949 Mapunapuna Street  
Honolulu, HI 96819  
Attention: Ms. Suzan M. Oshiro  
Account Executive

Re: Contract for Beverage Rights and Beverage Vending Concessions  
University of Hawai'i at Mānoa dated August 10, 2016 ("Contract")

Dear Ms. Oshiro

The University of Hawai'i (University), for the benefit of the University of Hawai'i at Mānoa ("UHM"), and BCI Coca-Cola Co. of Los Angeles (BCI) entered into the Contract under which the University awarded the Beverage Rights Concession, consisting of the Beverage Rights, the Vending Rights, and the Exclusive Designation Rights (all as defined in the Contract) to BCI for a term of approximately seven (7) years, expiring on June 30, 2023.

By your letter to the University dated October 11, 2015 (sic) which the University received on October 11, 2016, BCI informed the University that BCI was in the process of assigning its exclusive distribution rights for products supplied from its sales centers in Hawai'i (i.e., Hilo, Moloka'i, Līhu'e, Kailua Kona, and Honolulu) ("Assignment") to the Coca-Cola Bottling Company of Hawai'i, LLC, a wholly owned subsidiary of the Odom Corporation ("CCH"). You indicated that the proposed assignment would be completed on or about October 28, 2016 ("Assignment Date") and requested that the University send BCI a letter confirming that the University would be consenting to such an assignment ("UH Consent").

Under section 13C (Subcontracting and Assignment) of the Contract, BCI is obligated to obtain the University's permission for any assignment of rights under the Contract, as "no subcontract or assignment made without such written permission will be recognized."

The University hereby issues this UH Consent and consents to BCI's assignment of its rights under the Contract to CCH, subject to BCI's and CCH's acceptance of and agreement to the following terms and conditions:

1. Confirmation that the Assignment has occurred. BCI and CCH represent and warrant that the Assignment has been fully and properly finalized, executed, and implemented.



2. No Contract changes. There shall be no changes to the Contract and nothing in any written documentation or agreement between BCI and CCH, including the Assignment (collectively the "Assignment Agreement") shall be construed or interpreted to result in any such changes to the Contract. Notwithstanding any provision in this Consent, the Contract or the Assignment Agreement to the contrary: (i) this Consent does not and should not be construed in any manner to modify, waive or affect any of the provisions of the Contract, or to waive any breach or default by BCI under the Contract and (ii) BCI will be and remain liable for any breach or default under the Contract and/or any event or incident occurring prior to the Assignment Date except to the extent that CCH performs such obligations and/or cures or corrects such failures to perform after CCH assumes all of BCI's duties, obligations and liabilities under the Contract pursuant to Section 4 below.
3. Assignment Agreement subject to Contract. The terms of the Assignment Agreement are subject to and limited by the terms of the Contract. BCI and CCH represent and warrant that the terms of the Assignment Agreement are not inconsistent with the terms of the Contract and that they will not modify, amend, or otherwise revise the terms of the Assignment Agreement without first obtaining the University's prior written approval for any such modifications, amendments, and/or revisions.
4. CCH shall comply with Contract terms. From and after the Assignment Date, CCH hereby assumes all of BCI's duties, obligations and liabilities under the Contract and CCH agrees to pay, perform, and discharge, as and when due, all of such duties, obligations and liabilities, regardless of whether the same arose before or after the Assignment Date. CCH shall perform and complete all obligations under the Contract and shall abide by and comply with all terms and conditions of the Contract, including, without limitation, complying with all indemnity, liability, and insurance obligations in favor of the University.
5. CCH and BCI indemnity. BCI and CCH shall jointly and severally indemnify, defend with counsel reasonably acceptable to the University, and hold harmless the University, the University's officers, employees, agents, representatives, and any person acting on behalf of the University (collectively the "UH Agents"), from and against any claims, demands, suits, actions, causes of action, judgments, injunctions, orders, rulings, directives, penalties, assessments, liens, liabilities, losses, damages, costs, and expenses (including reasonable attorneys' fees and costs), by whomsoever incurred, sustained, or asserted, arising out of or connected with the Consent, the Assignment Agreement, or BCI's transfer or assignment of any rights and obligations under the Contract.
6. BCI responsible for CCH. BCI shall be fully liable and responsible for any of CCH's acts or omissions to the same extent as if such acts or omissions were those of BCI. To the extent that CCH fails to fully or timely perform or complete any of

its obligations under the Contract, BCI unconditionally and irrevocably guarantees, as primary obligor and not merely as surety, for the benefit of the University and its successors and assigns, that BCI will fully and timely perform and complete or cause to be fully and timely performed and completed all covenants, agreements, obligations and liabilities of CCH under or in respect of the Contract, whether now or hereafter existing.

7. No further transfer approved. No other or further transfer or assignment of rights and/or obligations under the Contract is being permitted or authorized by this Consent.
8. Contract governs. If there is a conflict between the Assignment Agreement and the Contract, the provisions of the Contract shall govern and take precedence over the terms of the Assignment Agreement.
9. No University waiver required. The Assignment Agreement shall not require the University to waive, scale back, and/or restrict any rights the University may have under the Contract.
10. University reservation. The University reserves any and all of its rights under the Contract, including the right to require BCI to fully and properly perform all obligations under the Contract, including: (a) to the extent that CCH fails to fully or timely perform and complete any such obligations and (b) any obligations arising from or attributable to the time period prior to and including the Assignment Date herein, particularly BCI's obligations to indemnify, defend, and hold harmless the University under the Contract.
11. No additional cost/liability. The Consent and the Assignment Agreement do not impose any material cost, expense, responsibility or liability upon the University and the University will not and hereby does not incur any such additional cost, expense, responsibility, and/or liability by executing the Consent or consenting to the Assignment Agreement herein.
12. Not inconsistent with law. The terms of the Assignment Agreement shall not be inconsistent with or cause or require the University to act in a way inconsistent with applicable laws, statutes, ordinances, rules, regulations, orders, and directives.
13. Consent not valid until conditions met. The Consent will not be valid unless and until a certificate of CCH's insurance, in form and substance required by the Contract is delivered to the University.
14. No oral or verbal changes. This Consent may not be changed or terminated orally, verbally, or in any manner other than by a written agreement signed by the University, BCI, and CCH.



15. Use same definitions contained in Contract. All capitalized terms not defined herein will have the meaning accorded them in the Contract, a true and correct copy of which CCH hereby acknowledges receipt.
16. Headings, captions. The paragraph headings appearing herein are for purposes of convenience only and are not deemed to be part of this Consent.
17. Counterpart signatures. This Consent may be executed in counterparts, each of which when so executed and delivered will be deemed an original for all purposes, but all such counterparts will together constitute one and the same instrument.
18. Delivery of signed original. A signed copy of this Consent delivered by email will be deemed to have the same legal effect as delivery of an original signed copy of this Consent. Notwithstanding the foregoing, each party hereto will deliver original counterpart signatures to the other parties by no later than ten days after the date hereof.

By executing in the spaces provided below, BCI and CCH hereby agree to perform, comply with, and abide by the terms contained in this Consent and the Contract.

Very truly yours,



Duff Zwald  
Director, Office of Procurement and  
Real Property Management

BCI:


BCI Coca-Cola Bottling Company  
of Los Angeles

CCH:

Coca-Cola Bottling Company of Hawai'i, LLC

J. Andy Hill  
J. Andy Hill (Mug 1, 2017)

By \_\_\_\_\_  
Print Name: Andy Hill  
Title: Vice President Sales Operations

By   
Print Name: Adam Hilpert  
Title: COO

cc: Deborah T. Huebler, Director of Campus Services  
Jan S. Gouveia, Vice President for Administration



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Office of Procurement and Real Property Management

August 12, 2016

Mr. Andy Hill  
Vice President, Sale Operations  
BCI Coca-Cola Co. of Los Angeles  
1334 South Central Avenue  
Los Angeles, California 90021

Dear Mr. Hill:

Subject: Notice to Proceed

Transmitted herewith for your files is one duly executed copy of Contract No. C170020 for Beverage Rights and Beverage Vending Concessions for the University of Hawaii at Manoa.

You are authorized to proceed with the work effective August 15, 2016, in strict accordance with the contract documents attached hereto. The term of the Contract shall be for the period August 15, 2016 to June 30, 2023.

Very truly yours,

A handwritten signature in black ink, appearing to read "Duff Zwald".

Duff Zwald  
Director

DZ:km

Enclosures

c: Darryl Nohara, Andy Lachman, Thad Nakajima



Sharae Wright  
Counsel  
T 404.876.8522  
sharaewright@coca-cola.com

Coca-Cola Refreshments USA, Inc.  
One Coca-Cola Plaza  
Atlanta, GA 30313

August 12, 2016

**Andy Lachman**

Manager • University Housing, Food Services, and Mall Services  
Auxiliary Services • Campus Services  
University of Hawai'i at Mānoa  
1951 East West Road • Honolulu, HI 96822  
Phone: 808.956.8449 • Fax: 808.956.9968  
Email: lachman@hawaii.edu

Dear Mr. Lachman,

The purpose of this letter is to confirm that Jonathan D. Webster, Vice President and General Manager of Coca-Cola Refreshments, is authorized to execute contractual documents on behalf of BCI Coca-Cola Company of Los Angeles.

Please reach out to me if you have any questions or concerns.

Warm Regards,

Sharae Wright  
Counsel



**CONTRACT FOR BEVERAGE RIGHTS AND BEVERAGE VENDING CONCESSIONS  
UNIVERSITY OF HAWAII AT MANOA**

THIS CONTRACT FOR BEVERAGE RIGHTS AND BEVERAGE VENDING CONCESSIONS FOR THE UNIVERSITY OF HAWAII AT MANOA (hereafter the "Contract"), made and entered into as of the 10<sup>th</sup> day of August, 2016, by and between the UNIVERSITY OF HAWAII, the state university and a body corporate of the State of Hawai'i, hereafter the "UNIVERSITY," for the benefit of the University of Hawai'i at Mānoa (hereafter "UHM") and BCI Coca-Cola Co. of Los Angeles, whose mailing address is 1334 South Central Ave., Los Angeles, California 90021, hereafter the "CONTRACTOR."

**W I T N E S S E I H   I H A I :**

WHEREAS, the written offer of the CONTRACTOR (hereafter the "Contractor's Offer") has been determined to be the qualifying offer for the Beverage Rights and Beverage Vending Concessions for the University of Hawai'i at Mānoa (collectively the "Beverage Rights Concession") submitted pursuant to a Call for Offers issued in January 2016 by Auxiliary Services, University of Hawai'i at Mānoa (hereafter the "CFO"), the terms of which are hereby made a part of this Contract by reference; and

WHEREAS, the UNIVERSITY desires to accept the offer for the Beverage Rights Concession that was submitted by the CONTRACTOR,

NOW, THEREFORE, the CONTRACTOR agrees to accept the Beverage Rights Concession, in strict accordance with the CFO and the CONTRACTOR's Offer, the originals of which are maintained in the Office of Procurement and Real Property Management, University of Hawai'i, and are incorporated herein by reference, and in consideration of the mutual promises hereinafter set forth, the parties agree as follows:

**1.     DEFINITIONS**

- A.   **ATHLETICS** – The Department of Intercollegiate Athletics at the University of Hawaii at Mānoa and an administrative unit and geographical location affected by this Contract.
- B.   **AUXILIARY SERVICES** – The administrative unit that represents the University of Hawai'i at Mānoa in the administration of all food service contracts except dining/retail outlets in the Student Affairs' facilities.
- C.   **BEVERAGE RIGHTS** – The exclusive rights to provide fountain beverages at all Food Service Outlets within the UHM campus with the exception of Subway in the UHM Campus Center and the exclusive rights for eighty (80) percent of beverage shelf space for the CONTRACTOR's prepackaged beverages at all Food Service Outlets within the UHM campus with the exception of Subway in the UHM Campus Center.

- D. **BEVERAGE RIGHTS CONCESSION** – The Beverage Rights Concession shall consist of the following exclusive rights with respect to the UHM campus: (1) the Beverage Rights, (2) the Vending Rights, and (3) the Exclusive Designation Rights.
- E. **CFO** – The University of Hawaii at Mānoa Call For Offers for Beverage Rights and Beverage Vending Concessions.
- F. **CONTRACT** – The agreement between the UNIVERSITY and the CONTRACTOR under which the UNIVERSITY is granting the exclusive Beverage Rights Concession to the CONTRACTOR.
- G. **CONTRACT LIAISON** – The Officer designated by the UNIVERSITY to serve as the liaison between the CONTRACTOR and the UNIVERSITY.
- H. **DIAMOND CORPORATE SPONSORSHIP** – A corporate sponsorship package that is designed to primarily benefit UHM Athletics, which requires the payment of \$150,000.00 for each year of the Contract term for this annual benefit, and consists of tickets to selected UHM Athletics sporting events, eligibility for promotional and advertising opportunities before, during, and after UHM Athletics events, parking at various venues to attend UHM Athletic events, and other benefits.
- I. **EXCLUSIVE DESIGNATION RIGHTS** - The exclusive use of the designations "Beverage Provider to the University of Hawaii at Mānoa," "Soft Drink Provider to UH Athletics," "Beverage Supplier to UH Athletics," "Beverage Provider to the UH Rainbow Warriors," and "Beverage Provider to the UH Rainbow Wahine."
- J. **FOOD SERVICE OUTLETS** – All locations where the Vendors operate food service concessions within the UHM campus with the exception of College Hill and the Subway operation at the UHM campus, which locations are listed on ATTACHMENT A attached hereto and incorporated herein by reference..
- K. **LIKE NEW** – Equipment that has been completely cleaned, refurbished and had all mechanical parts checked with all defective and underperforming pieces replaced. The equipment is also visually indistinguishable from new and performs at original equipment manufacturer's (OEM) standards.
- L. **NEW PRODUCTS** – Any new product (by name, size, packaging, SKU, initial offering, acquisition, etc.) offered by the CONTRACTOR.
- M. **NTP DATE** – Date that the UNIVERSITY issues its notice to proceed letter to the CONTRACTOR, which date shall constitute the first date from which the CONTRACTOR may commence operations under the Beverage Rights Concession and is entitled to the Exclusive Designation Rights.
- N. **OFFER** – The CONTRACTOR's response to the CFO.



- O. **STUDENT HOUSING SERVICES** – An organization on the University of Hawaii at Mānoa campus and a stakeholder in this Contract.
- P. **STUDENT LIFE AND DEVELOPMENT** – A department of the University of Hawaii at Mānoa responsible for co-curricular education and is a stakeholder in this CONTRACT.
- Q. **UHM** – University of Hawai'i at Mānoa.
- R. **UNIVERSITY** – University of Hawai'i, the state university and a body corporate of the State of Hawai'i.
- S. **VENDING RIGHTS** – the right to install and operate beverage vending machines at the current locations listed on ATTACHMENT B attached hereto and incorporated herein by reference, with any other additional locations requiring the prior written approval of the UNIVERSITY and an amendment to this Contract signed by both parties.
- T. **VENDORS** – Companies that operate food service concessions on the University of Hawaii at Mānoa campus.

## 2. **SCOPE OF BEVERAGE RIGHTS AND BEVERAGE VENDING CONCESSIONS**

The UNIVERSITY grants to the CONTRACTOR the Beverage Rights Concession, which shall consist of the following exclusive rights with respect to the UHM campus: (1) the Beverage Rights, (2) the Vending Rights, and (3) the Exclusive Designation Rights.

## 3. **RIGHTS FEE AND VENDING COMMISSON**

The CONTRACTOR shall pay to the UNIVERSITY the following amounts: (1) THREE HUNDRED SIXTY SEVEN THOUSAND AND NO/100 DOLLARS (\$367,000.00) prior to the NTP Date for the first year of the Contract term and no later than the anniversary date of the NTP Date for each subsequent year during the Contract term, (2) the Diamond Corporate Sponsorship payment of \$150,000.00 prior to the NTP Date for the first year of the Contract term and no later than the anniversary date of the NTP Date for each subsequent year during the Contract term, and (c) a monthly commission of forty percent (40%) of net sales from all beverage vending machines that are operated by, though, or under the CONTRACTOR during the Contract term no later than the 10<sup>th</sup> day of the following month.

## 4. **PAYMENT**

- A. Submission of payments. All payments shall be made payable to the University of Hawai'i and submitted to Manager, Food Services, 1951 East West Road, Honolulu, Hawaii 96822. The termination of the Contract by default or otherwise shall not relieve the CONTRACTOR of its obligations under the contract or for



charges accrued while the Contract was in effect but remaining unpaid at the time of termination.

- B. Late payments. Any amounts owing by the CONTRACTOR under the terms of the CONTRACT shall bear interest from the date such amounts become due until paid. The rate of such interest shall be either (a) at the specific maximum rate, if any, then allowed by the appropriate statutes of the State of Hawaii, or any successor law or statute, or (b) if there is no such maximum rate, TWO (2) percentage points above the large business prime rate of interest then being charged by the bank principally used by the UNIVERSITY.

## **5. TERM**

The Contract shall be in effect from the NTP Date to June 30, 2023 (hereafter the "Expiration Date"), provided that the prices charged by the CONTRACTOR for beverages offered at the Food Service Outlets, the vending machines, and any other authorized location within the UHM campus shall remain at the levels specified in ATTACHMENT C attached hereto and incorporated herein by reference at least until June 30, 2017.

## **6. BEVERAGE RIGHTS**

- A. Exclusive right. The CONTRACTOR shall have the exclusive right to have its fountain beverages sold at all Food Service Outlets within the UHM campus. The UNIVERSITY and the CONTRACTOR agree that beverage products manufactured, sold and distributed by the CONTRACTOR shall be the exclusive beverages sold, dispensed, served, distributed as free samples, advertised, or promoted anywhere, anytime on the UHM campus unless the distribution as free samples, advertisement, or promotion is connected to a sponsorship agreement.
- B. Advertising opportunities. The CONTRACTOR will be provided advertising and promotional opportunities in athletic venues and at men's and women's sporting events such as, but not limited to, advertisements on scoreboards, tournament sponsorships, and marketing acknowledgements. These advertising and promotional opportunities will be in line and consistent with a Diamond Corporate Partner level package.
- (1) Diamond Corporate Sponsorship. The CONTRACTOR shall be responsible for the annual cost of Diamond Corporate Sponsorship package at a rate of \$150,000.00 per year. Payment for the Diamond Corporate Sponsorship package will be submitted via a separate check from other payments no later than the NTP Date for the first year of the Contract term and the anniversary of the NTP Date for each subsequent year of the Contract term.
- (2) Exclusive advertising opportunity. The CONTRACTOR shall be the exclusive company in the soft drink category to receive advertising and promotional opportunities for UHM Athletics facilities. This Contract does

not prohibit UHM Athletics from providing advertising and promotional opportunities to: (a) Non-Beverage, milk products including protein milks, local based dairies and their product lines, Alcoholic Beverage, Non-Alcoholic Beer, and Non-Alcoholic wine companies and (b) other entities who offer or sell soft drink beverages and sign agreements for Diamond Corporate Sponsorship with UHM Athletics, including but not limited to, restaurants and supermarkets.

- (3) Marketing materials and signage. The CONTRACTOR shall be responsible for the cost of producing the marketing materials and signage in line and consistent with the standard operating procedures of the UHM Athletics Diamond Corporate Sponsorship program.

C. Right of First refusal. The CONTRACTOR shall be provided first right of refusal in the soft drink category for sponsorship of events being held by the UNIVERSITY within the UHM campus other than in UHM Athletics facilities. This shall include advertising and promotional opportunities.

- (1) Sponsorship of UHM events. For UHM events for which the UNIVERSITY seeks sponsorship, the UNIVERSITY shall have the opportunity to negotiate with all soft drink companies including the CONTRACTOR. If the UNIVERSITY reaches tentative agreement with a soft drink company other than the CONTRACTOR to sponsor such UHM event, the UNIVERSITY will notify the CONTRACTOR of the terms of such tentative sponsorship agreement. The CONTRACTOR will thereafter have fourteen (14) calendar days to match or exceed the terms of such tentative sponsorship agreement offered by any other soft drink company. If the CONTRACTOR fails to respond or otherwise match or exceed the terms of the tentative sponsorship agreement offer within such fourteen (14) day period, the UNIVERSITY is free to accept the offer from the other soft drink company, finalize such tentative agreement, and sign it.

D. Permitted exceptions

- (1) 20% exception. Bottled and canned beverages sold in retail outlets and convenience stores within the UHM campus provided that the beverages not produced by the CONTRACTOR do not exceed TWENTY (20) percent of the beverage shelf space in the location and are not stored within coolers supplied by the CONTRACTOR.
  - a. Coolers with shelves. For the purposes of determining the TWENTY (20) percent of the beverage shelf space in a location, only coolers with shelves will be considered. All other beverage dispensers such as barrel coolers shall be exclusively the CONTRACTOR's products besides other permitted exceptions as noted within this Contract.



- (2) Specialty drinks. Specialty drinks that are not manufactured, sold and distributed by the CONTRACTOR or the CONTRACTOR's main competitor.
- (3) Alcoholic beverages. Alcoholic beverages, non-alcoholic beers, non-alcoholic wines and non- alcoholic mixers associated with alcoholic drinks such as but not limited to sweet sour mix, grenadine, margarita mix, pina colada mix and mai tai mix.
- (4) Milk. Fresh milk, protein milk, and bottled milk beverages.
- (5) Juices. Freshly squeezed juices, locally bottled juices, and locally bottled nectars.
- (6) Coffee. Freshly brewed coffee and beverages (e.g. espresso, latte and cappuccino), freshly brewed tea and freshly brewed tea products, and hot chocolate.
- (7) Hot beverages; smoothies. Any contracted branded concept of hot beverages and freshly made smoothie drinks that are part of a specific company branded concept.
- (8) National branded restaurant concepts. Beverages associated with national branded restaurant concepts that have a specialty drink associated with their concept that will be permitted, and other branded concepts that specialize in specialty drinks. National branded restaurant concepts may advertise their specialty drinks on menu boards.
- (9) No use of approved cups. Beverages falling within any of the permitted exceptions, to the extent served or sold in cups, shall not be served or sold in approved cups supplied by the CONTRACTOR.
- (10) Miscellaneous. Nothing in this Contract shall prevent:
  - a. Purchase outside UHM campus. On campus consumption of competitive products purchased by individuals outside of campus for individual consumption.
  - b. UHM campus publications. Print and broadcast advertising for competitive products in UHM campus publications and in UNIVERSITY programming on radio and television stations.
  - c. UHM student groups. Sponsorships received by student groups and organizations from an entity (such as a branded restaurant concept) that includes the logo of a product as part of the advertising/publicity material.



- d. Not affiliated with UNIVERSITY. The consumption of competitive products by persons not affiliated with the UNIVERSITY and sponsoring, promoting or performing in touring attractions or engaged as speakers or persons affiliated with the manufacturer or supplier of a competitive product, who are utilizing UNIVERSITY facilities on a limited basis, provided that no advertising is allowed with respect to such competitive products.
- (11) Service all locations. CONTRACTOR shall service all locations at intervals necessary to keep each dispensing location supplied with syrup and CO2 gas. Volumes vary at each location. It shall be the responsibility of the CONTRACTOR to maintain records of volumes and their trends and fluctuations in order to ensure appropriate deliveries to ensure no out of stocks occur. These records shall be made available to the UNIVERSITY upon request.
- (12) Install equipment. CONTRACTOR shall be required, at the inception and throughout the term of the CONTRACT, to supply, install, service and maintain all fountain, display, and other equipment used to sell, dispense or display beverages, without cost to the UNIVERSITY.
- a. New equipment. All equipment used to sell, dispense or display beverages shall be new, state of the art, and remain state of the art for the entire term of the Contract and shall include ice dispensing capability.
  - b. Energy efficient. All equipment must be ENERGY STAR® products or be certified by the Federal Energy Management Program as energy efficient in all categories available. The CONTRACTOR shall submit evidence of the ENERGY STAR® status or certification for the beverage equipment that is being installed.
  - c. New racks. The CONTRACTOR shall furnish new racks, CO2 handling components and any other equipment as deemed reasonably necessary by the UNIVERSITY at no charge to the UNIVERSITY.
  - d. Refrigeration dispensers. Some areas shall require self-contained refrigeration dispensers and stands. The selection of products to be dispensed and the versatility of equipment required shall be determined by the UNIVERSITY based upon reasonable customer needs. Specific equipment to be provided shall be agreed upon by the CONTRACTOR and UNIVERSITY.
  - e. Secured by locks. Dispensing equipment shall have a secured locking mechanism.

- f. Dispensers. The dispensers shall be filtered with a stainless steel, vented, double check backflow valve.
  - g. Separate water supply. All dispensers shall be equipped with separate water supply shut off.
  - h. Compatible equipment. Equipment provided shall be compatible with the existing equipment or be an acceptable replacement agreed to by the UNIVERSITY.
  - i. Supply syrup lines. The CONTRACTOR shall supply and install necessary syrup lines for the equipment in a manner that will not detract from the decor of each location. The CONTRACTOR must obtain the UNIVERSITY's prior written approval for placement of any and all equipment, including the syrup lines.
  - j. CO2 lines. The CONTRACTOR shall be responsible for installing CO2 gas lines for CO2 tanks to dispensing equipment where such installation is necessary. The UNIVERSITY shall be responsible for providing passage through walls, ceilings, etc., if required at installation sites. The UNIVERSITY reserves the right to withhold approval of dispensing equipment installation depending upon the total cost required.
- (13) Menu boards. All point of sale locations shall require menu boards as needed. All menu boards shall be provided to the UNIVERSITY at no additional cost upon the UNIVERSITY'S request.
- (14) Advertising material placement. The UNIVERSITY shall cooperate with the CONTRACTOR to place advertisement materials in UHM campus convenience store locations in order to feature the CONTRACTOR's products and stimulate sales. The UNIVERSITY reserves the right to reject or require the removal of any advertising that the UNIVERSITY feels is unacceptable.
- a. Removal of advertising. The UNIVERSITY reserves the right to have any previously approved advertising removed by the CONTRACTOR due to unforeseen circumstances, including, without limitation, negative public reaction to the advertising.
- (15) CONTRACTOR to grant credit. The CONTRACTOR shall pick up and issue credit for items that are damaged, stale, have an expired shelf date, and/or in the UNIVERSITY'S opinion, slow sellers.
- (16) National price agreements. The CONTRACTOR shall honor all national price agreements with Vendors of the UNIVERSITY, provided the pricing does not exceed the maximum price set forth in this Contract.



- (17) Fair pricing to Vendors. The CONTRACTOR shall extend fair pricing to the Vendors based on the pricing of local stores of similar size. The Vendors are not obligated to buy directly from the CONTRACTOR and may purchase the CONTRACTOR's product through local wholesale or retail stores.

## **7. BEVERAGE VENDING CONCESSIONS**

- A. The CONTRACTOR shall have the exclusive Vending Rights for soft drinks on the UHM campus, which shall include, but not be limited to, bottle and can beverages.
- (1) Change in locations/numbers. Locations and numbers of the beverage vending machines may be changed with the UNIVERSITY'S prior written approval. The current locations and numbers of the vending machines are listed in ATTACHMENT B attached hereto and incorporated herein by reference.
- (2) Only within UHM campus. The CONTRACT shall not include vending machines located off or outside of the UHM campus. The boundaries of the UHM campus are shown on the map attached hereto as part of said ATTACHMENT B.
- (3) No filling of reusable water containers. The Vending Rights under this Contract shall not extend to or include the exclusive right to operate vending machines that dispense water into a reusable container or a container provided by the customer.
- B. CONTRACTOR responsibilities. The CONTRACTOR, by and through its representatives, agents, subcontractors, and/or independent contractors, shall be responsible for all product, equipment, service, and revenue generation and accounting in connection with the operation of the vending machines.
- C. Point of sale advertising. At the CONTRACTOR'S expense, the CONTRACTOR may supply point-of-sale advertising promoting the CONTRACTOR'S beverages. The UNIVERSITY reserves the right to reject and/or remove any advertising that interferes with UHM operations.
- D. Commission payable to UNIVERSITY. The CONTRACTOR shall pay the UNIVERSITY a monthly commission of FORTY percent (40%) of net sales. Net sales shall be calculated as gross sales collected minus the applicable Hawai'i general excise tax and the Hawaii redemption value for the beverage containers used in the beverage vending machines.

- E. Payment of commission. The monthly commission payments owed by the CONTRACTOR to the UNIVERSITY are due and payable by the tenth (10<sup>th</sup>) day of the month following the month in which the revenue was generated.
- (1) Inclusion of revenue. The monthly revenue generated by each beverage vending machine shall be included in the monthly net sales used in the calculation of the UNIVERSITY's monthly commission payment. Causes of abnormal or unusual reduction in the revenue generated by the beverage vending machines shall be noted and explained.
- (2) Losses absorbed by CONTRACTOR. Losses incurred from or attributable to the operation of beverage vending machines and/or equipment due to theft, fire, vandalism, damage, etc., shall be absorbed by the CONTRACTOR and shall not be factors in the computation of the commissions due and payable to the UNIVERSITY.
- F. Debit/credit card technology. The CONTRACTOR shall purchase and install in its beverage vending machines equipment capable of taking or processing payment by debit and credit cards. The CONTRACTOR shall obtain the UNIVERSITY's written approval for the debit/credit card technology and equipment to be used in the beverage vending machines before the CONTRACTOR purchases or installs any beverage vending machines.
- G. Identification. Each beverage vending machine shall be clearly identified with a number or other identifying feature acceptable to the UNIVERSITY on its front so that reports of malfunctions can be accurately traced to a particular beverage vending machine.
- (1) Clearly labeled. In a manner acceptable to the UNIVERSITY, each beverage vending machine is to be clearly labeled near eye level in the vicinity of the coin/bill or debit/credit card acceptor with the UHM campus telephone number to report malfunctions, and the UHM location to receive refunds when money is accepted and no product is dispensed or an unsatisfactory product is vended.
- (2) Removal of notices. Information regarding the UNIVERSITY's refund process, including the campus telephone number, shall be removed from the beverage vending machines when the machines are removed from the UHM campus.
- H. Refunds. Refunds to the customer will be available through an on-site UNIVERSITY location(s). The CONTRACTOR shall reimburse the UNIVERSITY for money lost in the beverage vending machines. Reconciliation of refunds from the UNIVERSITY and reimbursement to the refund account by the CONTRACTOR shall be done upon request by the UNIVERSITY.



- I. Subcontractor. The CONTRACTOR'S responsibilities for operating the beverage vending machines may be fulfilled through the use of a subcontractor that is acceptable to the UNIVERSITY. In order to obtain the UNIVERSITY's prior written approval for the use of any subcontractor, the CONTRACTOR shall do the following:
- (1) Describe and identify subcontractor. The CONTRACTOR shall identify the subcontractor(s) and the qualifications of the subcontractor(s).
  - (2) Current list of clients. A list of current clients or customers of all proposed subcontractors and a description of how the subcontractor will contribute to or comply with all of the CONTRACTOR's obligations in operating the beverage vending machines.
  - (3) Meetings. The UNIVERSITY may request a meeting with any or all of the proposed subcontractors.
  - (4) Prior written approval. The CONTRACTOR shall obtain the UNIVERSITY's prior written approval for the use of any subcontractor to perform any obligations under this Contract relating to the operation of the beverage vending machines. The UNIVERSITY reserves the right to reject any and all subcontractors.
  - (5) CONTRACTOR not relieved. The use of a subcontractor does not relieve the CONTRACTOR of any of its obligations and responsibilities to the UNIVERSITY under this Contract.
- J. Equipment voltage. The beverage vending machine equipment shall operate on 110-115 volts and be UL listed.
- K. Coin/bill acceptors. Equipment shall include coin mechanisms and bill acceptors that accept current U.S. coin and currency, and shall be promptly updated as needed to accept future U.S. coin and currency.
- (1) Sales metering. All electrically operated machines shall be equipped with non-resettable cash metering devices, and/or sales metering devices. The required capacity of each machine shall depend on the needs and requirements of each location.
- L. ADA compliant. All equipment shall meet current Americans with Disabilities Act (ADA) standards.
- (1) 54" height limit. All selection buttons, coin mechanisms, and bill acceptors shall be no higher than 54 inches.



- M. CONTRACTOR to maintain beverage vending machines. All beverage vending machines and equipment shall be kept clean and in a sanitary condition. Any parts of the machine that are broken, scratched, or dented are to be repaired or replaced to maintain a clean appearance and prevent vandalism.
- N. Prices. Prices shall remain fixed and shall not exceed current UNIVERSITY approved prices from the NTP Date to at least June 30, 2017, provided that the Federal and Hawaii State tax structure and the statutory minimum wage requirements remain the same. However, this does not preclude downward adjustments in prices during this period. Current UNIVERSITY approved prices for beverages to be dispensed by the CONTRACTOR using the beverage vending machines allowed under this Contract are included in ATTACHMENT C attached hereto and incorporated herein by reference.
- (1) No current UNIVERSITY approved price. In cases where a current UNIVERSITY approved price is not available for a product, pricing will be based on an equivalent product. The UNIVERSITY shall be the sole judge of quality and equivalency of products offered. In the alternative, the CONTRACTOR shall seek the UNIVERSITY's prior written approval for the pricing for such product.
- (2) No current price and no equivalent. In cases where a current UNIVERSITY approved price is not available for a product and there are no equivalent products with current UNIVERSITY approved pricing, the CONTRACTOR and the UNIVERSITY shall mutually agree upon a price for the item.
- (3) No agreement. If the UNIVERSITY and the CONTRACTOR are unable to reach agreement on the price of any new item or product to be offered for sale in the beverage vending machines, the CONTRACTOR shall not offer such item or product for sale.
- O. CONTRACTOR shall service. The CONTRACTOR shall, at the CONTRACTOR's sole cost and expense, supply, install, fill, service and maintain all beverage vending machines and equipment.
- (1) Stocking. The CONTRACTOR shall keep full service beverage vending machines stocked at appropriate serving temperature so as to provide, under normal conditions, sufficient amounts of products, dispensed in conformity with all applicable Federal, State and local laws. The UNIVERSITY shall have the final authority to require increased stocking levels to deal with unacceptable frequencies of product "outages".
- (2) Inspection program. The CONTRACTOR shall establish a recurring inspection and preventative maintenance program to ensure that the beverage vending machines remain in sound operating condition. Throughout the term of the Contract, the CONTRACTOR shall make periodically inspect each beverage vending machine, with or accompanied

by a UNIVERSITY representative, to evaluate the beverage vending machines for replacement and/or repair.

- (3) Dispose of packing material. All cartons or packaging material left over from stocking the beverage vending machines shall be removed from the premises used by the CONTRACTOR within the UHM campus under this Agreement (the "Premises")..

## **8. ANNUAL SUPPLY OF PRODUCTS FOR UNIVERSITY PROGRAMS**

- A. UHM Athletics. The CONTRACTOR shall supply UHM Athletics annually with drink products, water coolers, ice chests, and related accessories, in the quantities and in accordance with the requirements described in and listed on ATTACHMENT D attached hereto and incorporated herein by reference.
- B. UHM Chancellor's office. The CONTRACTOR shall supply the UNIVERSITY annually with no less than 1,400 cases. Twenty-four ((24)) units each of the products offered by the CONTRACTOR to be shared among the UHM Chancellor's Office, UHM Auxiliary Services, UHM Student Life, and UHM Student Housing.
- C. Timeframe for supply of product. The annual period for the supply of the CONTRACTOR's product to the UNIVERSITY shall start on July 1st and run through June 30<sup>th</sup> of the following year. Product shall be delivered by the CONTRACTOR to the UHM campus at the request of the UNIVERSITY. Delivery shall be of reasonable size.

## **9. CONTRACTOR'S RESPONSIBILITES**

- A. Ensure correct functioning. The CONTRACTOR shall ensure correct functioning of the beverage dispensing and fountain equipment by working with the various Vendors within the UHM campus to train staff on appropriate use. In no event shall the UNIVERSITY be held liable or responsible for any costs associated with the maintenance or repair of the beverage dispensing and fountain equipment and/or the beverage vending machines or equipment (collectively the "Contractor's Equipment").
- B. Preventative maintenance. The CONTRACTOR shall be responsible, at the CONTRACTOR's sole cost and expense, for preventive maintenance and remedial service for all of the Contractor's Equipment in accordance with the manufacturer's recommendations and guidelines.
- C. Calibration. The CONTRACTOR shall be responsible for supplying technical service personnel at least once a year to calibrate the beverage dispensing and fountain equipment to ensure the proper ratio of syrup to soda water. Scheduling shall be coordinated between the UNIVERSITY and the CONTRACTOR. The CONTRACTOR shall respond to the UNIVERSITY's requests for additional



technical service assistance if the UNIVERSITY deems it necessary due to concerns about the quality of the product.

- D. Maintain UNIVERSITY specified equipment. The CONTRACTOR shall be required, at the inception and throughout the term of the Contract, to furnish, supply, install, service and maintain all UNIVERSITY specified coolers, fountain units, vending machines, CO2, displays and other such equipment used to sell, dispense or display beverages, with all such services to be provided and furnished without charge to the UNIVERSITY.

- (1) State of the art equipment. All equipment used to sell, dispense or display beverages shall be new or "like new", state of the art, and remain state of the art for the entire term of the Contract and fountain beverage dispensers shall include ice dispensing capabilities. The beverage vending machines shall be considered new if they have been used for less than six months without any service calls and are equipped with current technology.
- (2) Beverage vending machines. The CONTRACTOR shall supply, install, fill, service and maintain all beverage vending machines and equipment.

- E. NFC readers. The CONTRACTOR shall install near field communication (NFC) readers on the beverage vending machines that accept both credit cards, debit cards, and the University One Card System stored value; and are mutually agreed upon with the UNIVERSITY. All costs associated with the readers, including but not limited to, installation, removal, maintenance, replacement, connectivity, and transaction fees shall be the sole responsibility of the Contractor.

- (1) Payment for University One Card use. The CONTRACTOR shall receive the University One Card stored value vending funds transacted on a weekly reconciliation payment from UHM Student Life & Development, minus a 7.5% service and credit card transaction fee. The fee is used to offset One Card system costs such as the online account management website and credit card transaction fees incurred when customers load funds to their accounts.
- (2) Maintain card readers. The CONTRACTOR shall be responsible for maintaining the card readers in compliance with Payment Card Industry Data Security Standard.
- (3) Remove card readers. The CONTRACTOR shall remove the card readers at the UNIVERSITY's request for any of the following reasons:
  - a. Non-compliance with Payment Card Industry Data Security Standard.

- b. Security issues related to the card readers.
  - c. The implementation of a University One Card system that will replace the credit card readers.
  - d. Any non-resolvable or ongoing issue with the technology that prevents the readers from properly functioning.
  - e. Any non-resolvable or ongoing customer service issue related to the readers.
- (4) Connectivity of readers. The CONTRACTOR shall be responsible, at the CONTRACTOR's cost, for connectivity of the readers and will not have access to any UNIVERSITY maintained network. If a wired connection is required for the connectivity of the readers, the CONTRACTOR shall be responsible for the cost of the wiring connection.
- F. Energy efficient. All equipment shall be ENERGY STAR® products or be certified by the Federal Energy Management Program as energy efficient in all categories available. The CONTRACTOR shall submit evidence of the ENERGY STAR® status or certification for the Contractor Equipment that is being provided.
- G. Loaner equipment. The CONTRACTOR shall furnish/deliver applicable loaner equipment in the case of a major breakdown, at no charge to the UNIVERSITY. A major breakdown is defined as equipment that cannot be repaired in the time frames outlined in Item K of this section.
- H. Advertising material. The CONTRACTOR shall furnish Contractor's Equipment and advertising material to properly merchandise the CONTRACTOR's products. The requirement to provide necessary Contractor's Equipment to the UNIVERSITY shall continue through the Contract term, including accommodating the UNIVERSITY's needs for upgrading, additional sites, and/or unanticipated circumstances. The CONTRACTOR shall change the beverage dispensing equipment as mutually agreed upon with the UNIVERSITY.
- I. Other equipment. The CONTRACTOR shall furnish new racks, CO2 handling components and any other equipment as deemed reasonably necessary by the UNIVERSITY at no charge to the UNIVERSITY (collectively the "Other Equipment"). The Other Equipment shall be considered part of the Contractor's Equipment.
- J. Technical service personnel. Technical service personnel shall be available and shall respond to requests to replace or repair malfunctioning Contractor's Equipment.
- (1) Retail locations. With respect to all retail locations, an appropriately trained technician shall be on-site and working diligently to return malfunctioning Contractor's Equipment to normal operation within FOUR (4) hours of the service call for a given incident and shall have the



Contractor's Equipment back in service within TWENTY-FOUR (24) hours of the time the service call was placed.

- (2) Residential dining areas. With respect to all UNIVERSITY residential dining areas, the CONTRACTOR shall make every effort to repair the Contractor's Equipment, which will usually be the fountain or dispensing equipment before the next scheduled meal service. The CONTRACTOR shall have the Contractor's Equipment operational or replaced within THREE (3) hours of the service call.
  - (3) Stan Sheriff Center/Les Murakami Stadium. With respect to events held at the Stan Sheriff Center and Les Murakami Baseball Stadium, the UNIVERSITY requires on-site repair personnel during these events.
  - (4) Replacement. At its discretion, the UNIVERSITY may require the CONTRACTOR to replace or upgrade of any of the Contractor's Equipment that frequently malfunctions or exhibits excessive downtime. A change in the Contractor's Equipment, including replacement with similar or like models, shall require the CONTRACTOR to obtain the UNIVERSITY's prior written approval.
  - (5) UNIVERSITY may act. Should the CONTRACTOR not perform the necessary repairs in the time-frame stated above, the UNIVERSITY reserves the right to hire a company of its choice, from a list provided by the CONTRACTOR, to complete the necessary repairs. The UNIVERSITY shall forward all invoices for repairs and related expenses to the CONTRACTOR for payment, and shall be reimbursed by the CONTRACTOR for any product substitutions to provide the level of service required for these venues.
  - (6) Special events. With respect to special events, such as but not limited to graduation, concerts, etc., the UNIVERSITY may require on-site repair personnel during these events.
  - (7) Beverage vending machines. With respect to vending machines, technical service personnel shall have the beverage vending machine repaired, restocked, or replaced within SIXTEEN (16) working hours of being notified of a malfunctioning machine or insufficiently stocked machine. If a beverage vending machine is not repaired, restocked, or replaced within SIXTEEN (16) working hours of notification, the UNIVERSITY reserves the right to charge the CONTRACTOR a FIFTY AND NO/100 DOLLAR (\$50) fee for each day that the beverage vending machine is in an unacceptable condition.
- K. Vehicles. The CONTRACTOR shall provide all vehicles to be used for restocking and servicing the beverage vending machines. All vehicles shall be the property of the CONTRACTOR or the UNIVERSITY approved Subcontractor and shall be identified with the CONTRACTOR's or the Subcontractor's logo. All vehicles

shall be maintained in accordance with State of Hawaii Department of Health standards for transporting food and beverages.

- L. Sufficient inventory. The CONTRACTOR agrees to keep a sufficient variety and quantity of post mix syrup, CO2, and prepackaged beverages in stock at the CONTRACTOR'S warehouses to enable the CONTRACTOR to continue the beverage service operations for at least seven (7) days in case of cessation of beverage deliveries to the State of Hawai'i.
- M. Health tests. The CONTRACTOR shall provide and require health and tuberculosis examinations for all employees in accordance with applicable laws and shall ensure that the Subcontractor provides and requires the same for its employees.
- N. Control of keys. The CONTRACTOR shall be responsible for control of keys obtained from the UNIVERSITY and for the security of any areas upon which is located any of the Contractor's Equipment.
- O. Report losses. The CONTRACTOR shall immediately report the loss of any UNIVERSITY key and all facts relating to losses incurred as a result of break-ins to the Contract Liaison.
- P. Cost of rekeying. The CONTRACTOR shall be responsible for the costs of rekeying facility door locks if key security is compromised due to an act or omission of the CONTRACTOR or its employees or agents or the Subcontractor's employees or agents.
- Q. Uniforms. The CONTRACTOR shall provide all CONTRACTOR employees (service personnel, drivers, stock persons, and delivery persons) with uniforms and nametags that are to be worn at all times while on or within the UHM campus.
- R. Payment of parking fees. The CONTRACTOR shall require all CONTRACTOR employees parking a vehicle on campus to pay the prevailing parking fees charged by the UNIVERSITY to its own employees. The UNIVERSITY reserves the right to determine the number of parking permits to be issued as well as the location of the designated parking areas.
- S. Point of sale advertising. At the CONTRACTOR'S expense, the CONTRACTOR may supply point-of-sale advertising to promote the CONTRACTOR'S beverages. The UNIVERSITY reserves the right to reject and/or remove any advertising that interferes with UHM operations.
- T. No EPS foam. The CONTRACTOR shall not use EPS foam foodservice products. EPS foam food service products are defined for this purpose as expanded polystyrene (EPS) foam packaging including but not limited to, trays, plates, bowls and cups.



## **10. UNIVERSITY'S RESPONSIBILITIES**

- A. Utility costs. The UNIVERSITY shall provide water and electrical connections necessary for the operation of all of the Contractor's Equipment at no cost to the CONTRACTOR. The UNIVERSITY does not guarantee an uninterrupted supply of water and electricity. However, the UNIVERSITY shall be diligent in restoring service following an interruption. The UNIVERSITY shall not be liable for any product loss or additional costs from or attributable to the interruption or failure of any such utility service. The CONTRACTOR shall make final connections necessary to operate the beverage for all vending machines and equipment.
- (1) Data lines. The UNIVERSITY shall pay for installation of data lines for the CONTRACTOR's use when required for services mandated by the UNIVERSITY.
- B. Placement of advertising. The UNIVERSITY shall cooperate with the CONTRACTOR to place advertising materials in UHM campus convenience store locations in order to feature the CONTRACTOR'S products and stimulate sales. The UNIVERSITY reserves the right to reject and/or require the removal of any advertising that the UNIVERSITY finds or determines to be unacceptable (e.g., if the advertising generates negative public reaction).

## **11. PRODUCT STANDARDS AND ADDITIONAL BEVERAGES**

- A. Beverages to be identified. All beverages, including juice and isotonic beverages, packaged, manufactured or distributed by the CONTRACTOR shall be identified (by complete description including name, SKU, size, packaging, etc.).
- B. Additional beverages. The UNIVERSITY recognizes that, regardless of the beverages currently approved by the UNIVERSITY for sale within the UH Mānoa campus under this Contract, the market for beverage products packaged, manufactured, distributed, or available through other arrangements by the CONTRACTOR will change and additional beverages may become available for possible sale under this Contract.
- (1) Offer submission. Offer of additional beverages shall be submitted by the CONTRACTOR to the Contract Liaison and shall include the full product(s) description.
- (2) UNIVERSITY approval. The CONTRACTOR will obtain the UNIVERSITY's prior written approval of any additional beverages and if deemed necessary by the UNIVERSITY, an amendment to add any such approved additional beverages to the Contract will be executed by the CONTRACTOR and the UNIVERSITY.

- C. Flavor dispensing. The CONTRACTOR and UNIVERSITY shall mutually determine, with the UNIVERSITY having final authority for the decision, all flavors to be dispensed at each location whether vending, fountain, retail or other.
- D. Portion/size adjustments. The CONTRACTOR shall revise portion sizes and specifications in order to better respond to consumer demand.

## 12. SPECIAL PROVISIONS

### A. CONTRACT INVALIDATION

If any provision of this Contract is found to be invalid, such invalidation will not be construed to invalidate the entire Contract.

### B. PROHIBITIONS

- (1) CONTRACTOR shall prohibit. The CONTRACTOR shall preclude its employees, representatives, agents, and/or subcontractors from:
  - a. No illegal acts. Using the Premises for illegal acts or purposes.
  - b. No lodging. Using the Premises for lodging.
  - c. No objectionable smoke, gases, or noise. Generating or causing the generation of noxious and objectionable smoke, gases, vapors, sounds or noise.
  - d. No flammable liquids. Storing or accumulating flammable liquids and materials which may invalidate any insurance coverage for fire and safety carried by the UNIVERSITY, as possible non-compliance/non-adherence to applicable Underwriter's rules and regulations or any other codes and ordinances.
  - e. No unauthorized signs. Posting of unauthorized bills, posters, and signs within the Premises. (Advertising relating to the Beverage Rights Concession, including the Beverage Rights, the Vending Rights, and the Exclusive Designation Rights, shall be in accordance with UNIVERSITY regulations, policies and procedures).
  - f. No stacks of boxes. Stacking of boxes, cartons, barrels or other similar items in an unsightly or unsafe manner on or about the premises.
  - g. No overloading. Overloading floors.



h. No objectionable use. Using the Premises in any manner found objectionable by the UNIVERSITY.

(2) Beverage service. The Premises shall be used for the purpose of the beverage service programs solely for the UNIVERSITY. The use of the Premises for purposes other than as specified is prohibited.

C. CONTRACTOR'S PERSONNEL

CONTRACTOR'S personnel shall comply with established UNIVERSITY policies in regards to Sexual Harassment and Related Conduct, Workplace Non-Violence, and Illegal Drugs and Alcohol Abuse. The UNIVERSITY reserves the right to require the CONTRACTOR remove personnel from servicing UNIVERSITY accounts. The UNIVERSITY will not tolerate objectionable or inappropriate behavior. Please refer to <http://www.hawai.edu/policy> for the following UNIVERSITY policies.

Sexual Harassment (Executive Policy E1.203)

Sexual Assault (Executive Policy E1.204)

Workplace Non-Violence (Executive Policy E9.210)

Illegal Drugs and Alcohol Abuse (Executive Policy E11.201)

D. ADDITIONAL LOCATIONS

The UNIVERSITY reserves the right to add locations within the UHM campus for vending machines and retail operations during the term of this Contract.

E. MANAGEMENT TEAM

The UNIVERSITY reserves the right to require a change in the CONTRACTOR's management team if performance is deemed unsatisfactory.

F. RISK OF LOSS

Any and all goods, wares, merchandise, furniture, equipment, vehicles, and personal property of any kind or description which may be on the Premises at any time during the term of the Contract (collectively "Contractor's Personal Property"), regardless of ownership of such property, shall be at the sole risk and hazard of the CONTRACTOR, and the CONTRACTOR shall not hold the UNIVERSITY liable or responsible for any loss thereof or damage thereto caused by water, gas, defective electrical wiring, fire, or by or for any other cause whatsoever unless the same shall be due to any act or omission of the UNIVERSITY, its officers or employees.

**G. TAXES AND ASSESSMENTS**

The CONTRACTOR shall pay at least ten (10) days before the same becomes delinquent all taxes, rates, assessments, impositions, duties, charges and other outgoings of every description to which the Premises or the UNIVERSITY or the CONTRACTOR, in respect thereof are now or may during the term of the Contract become liable based upon the operations of the CONTRACTOR under this Contract, whether the same are or shall be assessed to or be payable by law by either the UNIVERSITY or the CONTRACTOR.

**H. PREMISES/PROPERTY UPON TERMINATION**

Upon termination of the Contract, the CONTRACTOR shall remove Contractor's Personal Property from the Premises and restore the Premises to as good a condition as at the commencement of the operations, alterations to the Premises which had been previously been approved by the UNIVERSITY and ordinary wear and tear excepted. The CONTRACTOR and UNIVERSITY shall jointly conduct a closing inspection. Surrendered Premises shall be left in a clean and orderly state satisfactory to the UNIVERSITY. To accomplish this, the CONTRACTOR and the UNIVERSITY shall establish a checklist of the work that shall be done to restore the Premises in a clean and orderly condition at least ONE (1) month prior to termination.

The CONTRACTOR shall, at its own expense, restore the Premises to a condition satisfactory to the UNIVERSITY within THIRTY (30) days after the termination of the Contract. Furthermore, upon the termination of the Contract, should the CONTRACTOR fail to remove any and all Contractor's Personal Property from the Premises, the UNIVERSITY may, at the UNIVERSITY'S option, (a) remove any and all Contractor's Personal Property from the Premises and place said property in storage at the cost and expense of the CONTRACTOR; or (b) consider the Contractor's Personal Property as "abandoned" and remove and dispose of the Contractor's Personal Property, at the CONTRACTOR'S cost and expense, and the CONTRACTOR does hereby agree to pay all costs and expenses for removal and disposal of the Contractor's Personal Property.

**I. TRANSITION UPON TERMINATION**

The CONTRACTOR agrees to permit prospective offerors for a subsequent contract access to the Premises for the purpose of inspecting equipment and facilities during the subsequent call for offers at mutually agreeable times between the CONTRACTOR and the UNIVERSITY. After the new contract is awarded, the CONTRACTOR shall permit the new contractor access to the Premises at mutually agreeable times between the CONTRACTOR and the new contractor for an orderly phase in of the new contract.



J. RIGHTS AND REMEDIES OF THE UNIVERSITY FOR DEFAULT

In the event the operations of the CONTRACTOR in the performance of the Contract should fail to conform to the terms of the Contract, the UNIVERSITY may reject the same, and it shall thereupon become the duty of the CONTRACTOR to correct same to conform to terms of this Contract, without expense to the UNIVERSITY, provided that should the CONTRACTOR fail, neglect, or refuse to do so, the UNIVERSITY shall thereupon have the right to perform the CONTRACTOR's obligation and the CONTRACTOR shall pay the cost incurred by the UNIVERSITY in performing the CONTRACTOR's obligation.

K. EXAMINATION & AUDIT

- (1) Accurate records. The CONTRACTOR shall maintain accurate, complete and separate books of accounts according to generally accepted accounting principles reflecting the CONTRACTOR's operations at or within the UHM campus under this Contract together with appropriate supporting data and documents.
- (2) Make records available. The CONTRACTOR shall make said books of accounts and supporting data and documents available in the State of Hawaii for inspection, reproduction, and audit by the UNIVERSITY at all reasonable times, and shall retain and make available said books, data, and documents at all reasonable times for a period of at least THREE (3) years after the close of the UNIVERSITY'S fiscal year. If a dispute, discrepancy, litigation, or claim is instituted before the expiration of the THREE (3) periods the CONTRACTOR shall retain all books of account, data, and supporting documents until such disputes, discrepancies, claims, litigations, or audit findings are resolved.
- (3) Submit operating statements. The CONTRACTOR shall submit to the UNIVERSITY operating statements, including but not limited to, vending sales receipts by machines and category of sales with meter readings, etc., by location within TWENTY (20) days after the close of each calendar month. Causes of abnormal revenue deviations shall be noted by the CONTRACTOR as part of this statement.
- (4) Sales/commission annual audit. The CONTRACTOR shall conduct an annual sales and commission audit for each Contract year, in accordance with generally accepted auditing standards and by an independent certified public accounting firm at the expense of the CONTRACTOR. The scope of this examination shall be such that an auditor's opinion shall be issued. The CONTRACTOR shall notify the UNIVERSITY, in writing, of any deficiency made known as a result of said audits. The CONTRACTOR shall submit copies of the audit report, including the auditor's opinion to the UNIVERSITY.

The CONTRACTOR shall, within THIRTY (30) days of receipt of audit report, correct any deficiencies noted by said audit, in its accounting procedures. If the audit should uncover the under reporting of sales, the CONTRACTOR shall make the appropriate payment to the UNIVERSITY. If the result of the audit is an overpayment by the CONTRACTOR to the UNIVERSITY, the UNIVERSITY shall refund or credit the CONTRACTOR for the amount overpaid.

L. ESCALATION CLAUSE

1) VENDING BEVERAGES

Prices shall remain fixed and shall not exceed current University approved prices from the start of the Contract to June 30, 2017, provided the Federal and Hawaii State tax structure and the statutory minimum wage requirements remain the same. However, this does not preclude downward price changes during this period. The CONTRACTOR's request for price changes in subsequent years shall be submitted to the UNIVERSITY for review no later than (90) days prior to each July 1<sup>st</sup> during the Contract term in an agreed upon format by the UNIVERSITY and the CONTRACTOR. Requests for changes in prices shall be considered by the UNIVERSITY taking into account such factors as, but not limited to, the following:

- a. Honolulu Consumer Price Index. The annual Consumer Price Index-All Urban Consumers Report for Honolulu, HI, for Food away from home, as issued by the United States Department of Labor, Bureau of Labor Statistics Data, or its equivalent replacement.
- b. Minimum wage changes. Statutory changes in the minimum local labor hourly rates.
- c. Tax changes. Statutory changes in the Federal and State of Hawaii Tax Structure.

Each price adjustment approved by the UNIVERSITY shall be held firm for a period of TWELVE (12) months. The CONTRACTOR shall submit to the UNIVERSITY monthly and on an agreed upon form, all new beverage items to be introduced. Subject to the approval of the UNIVERSITY, new products may be sold in the vending machines, and prices shall remain fixed for the period through each June 30th. The UNIVERSITY approved prices shall become effective July 1<sup>st</sup> of each year during the Contract term.



M. INDEPENDENT CONTRACTOR

In the performance of its operations under this Agreement, the CONTRACTOR is an "independent contractor", with the authority and responsibility to control and direct the performance and details of the work and services required under the Contract; however, the UNIVERSITY shall have a general right to inspect the operations to determine whether, in the UNIVERSITY'S opinion, the operations are being performed by the CONTRACTOR in compliance with the Contract. The CONTRACTOR and CONTRACTOR'S employees and agents are not by reason of this Contract, agents or employees of the UNIVERSITY for any purpose, and the CONTRACTOR and the CONTRACTOR's employees and agents shall not be entitled to claim or receive from the UNIVERSITY any vacation, sick leave, retirement, worker's compensation, unemployment insurance, or other benefits provided to UNIVERSITY employees. Furthermore, the CONTRACTOR intentionally, voluntarily, and knowingly assumes the sole and entire liability to the CONTRACTOR's employees and agents in the course of their employment, and to any individual not a party to the Contract, for all loss, damage, or injury caused by the CONTRACTOR, or the CONTRACTOR's employees or agents in the course of their employment. The CONTRACTOR is responsible for securing all employee-related insurance coverage for the CONTRACTOR and the CONTRACTOR's employees and agents that is or may be required by law, and for payment of all premiums, cost, and other liabilities associated with securing the insurance coverage.

N. JURISDICTION/SERVICE OF PROCESS

The CONTRACTOR, by execution of the Contract, acknowledges that the CONTRACTOR is transacting business within the State of Hawai'i and hereby submits to the jurisdiction of the courts of the State of Hawaii as to any cause of action arising out of the performance and/or breach of this Contract. The CONTRACTOR further agrees that when absent from the State of Hawai'i any service of process may be made by leaving a certified copy of a summons with the Director or Deputy Director of the Department of Commerce and Consumer Affairs, State of Hawaii, and mailing by certified or registered mail, postage prepaid, a copy of said summons to CONTRACTOR.

O. INDEMNIFICATION

The CONTRACTOR shall indemnify, defend and hold harmless the UNIVERSITY and the State of Hawai'i, and their officers, employees, agents, and any person acting on their behalf from and against: (a) any claim or demand for loss, liability or damage, including, but not limited to, claims for property damage, personal injury or death, by whomsoever brought, arising from any act or omission of the CONTRACTOR, or any of its officers, employees, agents, subcontractors, assignees, or representatives in the performance of the Contract; except liability arising out of the sole negligence of the UNIVERSITY or its employees; (b) all claims, suits and damages by whomsoever brought or made by reason of the nonobservance or nonperformance by the CONTRACTOR, or any of its officers,



employees, agents, subcontractors, assignees, or representatives of any of the terms, covenants and conditions herein or the rules, regulations, ordinances and laws of the federal, state, municipal or county governments. Furthermore, the CONTRACTOR shall reimburse the UNIVERSITY and the State of Hawai'i, and their officers, employees, agents, and any person acting on their behalf for all attorney's fees, costs, and expenses incurred in connection with the defense of any such claims.

P. LITIGATION

If, without any fault, the UNIVERSITY, or any of its agents or employees shall be made a party to any litigation commenced by or against the CONTRACTOR arising out of the CONTRACTOR's use of the Premises, then the CONTRACTOR shall pay all costs and reasonable attorney's fees incurred by or imposed upon the UNIVERSITY in connection with the litigation. The CONTRACTOR shall also pay all costs and reasonable attorney's fees incurred or paid by the UNIVERSITY in enforcing the terms and conditions of the Contract. Each party shall give prompt notice to the other of any claim or suit instituted against it that may affect the other party.

Q. INSURANCE

The CONTRACTOR shall maintain commercial or comprehensive general liability insurance acceptable to the UNIVERSITY in full force and effect throughout the term of this Contract. The policy or policies of liability insurance maintained by CONTRACTOR shall provide Combined Single Limit Coverage (bodily injury and property damage) in the amount of \$1,000,000 per occurrence, and \$5,000,000 in the aggregate.

Insurance shall be in force the first day of the term of this Contract.

Each insurance policy required by this Contract shall contain the following three clauses:

- a. "This insurance shall not be cancelled, limited in scope of coverage or non-renewed until after THIRTY (30) days' written notice has been given to the University of Hawai'i, Director of Office of Procurement and Real Property Management."
- b. "It is agreed that any insurance maintained by the University of Hawai'i will apply in excess of, and not contribute with, insurance provided by this policy."
- c. "The University of Hawai'i is added as an insured with respect to operations performed for the University of Hawai'i."

The CONTRACTOR agrees to deposit with the UNIVERSITY, on or before the effective date of this CONTRACT, certificates of insurance necessary to satisfy the UNIVERSITY that the insurance provisions of this Contract have been



complied with and to keep such insurance in effect and the certificates therefore on deposit with the UNIVERSITY during the entire term of this Contract.

The UNIVERSITY shall retain the right at any time to review the coverage, form, and amount of the insurance required hereby. If, in the opinion of the UNIVERSITY, the insurance provisions in this Contract do not provide adequate protection for the UNIVERSITY, the UNIVERSITY may require the CONTRACTOR to obtain insurance sufficient in coverage, form, and amount to provide adequate protection. The UNIVERSITY's requirements shall be reasonable but shall be designed to assure protection from and against the kind and extent of the risks which exist at the time a change in insurance is required.

The UNIVERSITY shall notify the CONTRACTOR in writing of changes in the insurance requirements; and if the CONTRACTOR does not deposit copies of acceptable insurance policies with the UNIVERSITY incorporating such changes within SIXTY (60) days' of receipt of such notice, this Contract shall be in default without further notice to CONTRACTOR and the UNIVERSITY shall be entitled to all legal remedies.

The procuring of such required policy or policies of insurance shall not be construed to limit the CONTRACTOR's liability hereunder nor to fulfill the indemnification provisions and requirements of this Contract. Notwithstanding said policy or policies of insurance, the CONTRACTOR shall be obligated for the full and total amount of any damage, injury, or loss arising from its acts or omissions with respect to this Contract.

R. TERMINATION OF CONTRACT

In the event the CONTRACTOR fails to meet all commitments in accordance with this Contract and does not remedy such default within THIRTY (30) days after receipt of written notice from the UNIVERSITY, the UNIVERSITY may terminate the Contract.

Should the UNIVERSITY exercise its right of termination, such exercise shall be without prejudice to any other remedy or right of action which the UNIVERSITY may have for any preceding or other breach of this Contract by the CONTRACTOR.

S. CONTRACTOR'S RIGHT TO ADJUSTMENTS OR TERMINATION.

Termination Rights. The CONTRACTOR will have the right to terminate this Contract upon 45 days' prior written notice to UNIVERSITY at any time if the UNIVERSITY breaches any material term or condition of this Contract, and the UNIVERSITY fails to correct or cure any such breach within said 45 day period after receiving written notice from the CONTRACTOR clearly describing the material term or condition of this CONTRACT involved and the UNIVERSITY's alleged breach of such material term or condition, provided that if such correction or cure cannot be completed within said 45 day period, the

UNIVERSITY will not be deemed in breach if the UNIVERSITY commences such correction or cure during said 45 day period and continues to diligently work toward completing such correction or cure thereafter.

Adjustments.

- a. Adjustment Events. If any of the following events occur: (i) the CONTRACTOR declines to terminate the Contract early due solely to the UNIVERSITY's failure to timely correct or cure its breach of a material term or condition of this Contract or (ii) there is a closing of any material component of the UHM campus for more than thirty (30) consecutive calendar days due to a cause beyond the reasonable control of the UNIVERSITY and the CONTRACTOR, or (iii) the volume of beverages sold at the UHM campus decreases for any reason in any twelve month period by 50% or more over the prior twelve month period, or (iv) the UNIVERSITY's basketball, volleyball, and baseball teams fail to play all of their scheduled home games on the UHM campus for a period of more than thirty (30) consecutive calendar days during their scheduled seasons (whether or not due to a cause beyond the reasonable control of the UNIVERSITY or the CONTRACTOR, including a strike or other work stoppage) (collectively the "Adjustment Events"), then the CONTRACTOR may elect, at its option, to adjust on a pro-rata basis to be determined by the CONTRACTOR the rights fee and commissions to be paid to the UNIVERSITY for the then remaining portion of the Contract term to address the impacts and potential impacts of the Adjustment Events.
- b. Adjustment Notice to the University. In the event the CONTRACTOR elects, based on the Adjustment Events, to adjust the rights fee and commissions payable by the CONTRACTOR to the UNIVERSITY (the "Adjustment") for the remainder of the Contract term, the UNIVERSITY, may, at its option, within ten (10) days following the UNIVERSITY's receipt of the CONTRACTOR's written notice of the Adjustment sought to be made by the CONTRACTOR, notify the CONTRACTOR of the UNIVERSITY's disagreement with the amount or extent of the Adjustment. The parties will then attempt in good faith to resolve the disagreement over the Adjustment.
- c. No agreement on Adjustment. If the parties cannot agree on the Adjustment, then the CONTRACTOR may either terminate this Contract on forty-five (45) days' prior written notice to the UNIVERSITY or continue with the Contract and pay the UNIVERSITY the rights fees and commissions as required under Section 3 of this Contract.



### **13. GENERAL CONDITIONS**

#### **A. Laws to be Observed**

The CONTRACTOR shall at all times observe and comply with all federal, state and local laws or ordinances, rules and regulations which in any manner affect those engaged or employed in the operation of the Beverage Rights Concession under this Contract, and the conduct of the operations. The CONTRACTOR shall also comply with all such orders and decrees of bodies or tribunals having any jurisdiction or authority over the operations. Any reference to such laws, ordinances, rules and regulations shall include any amendments thereto.

The CONTRACTOR shall protect and indemnify the UNIVERSITY and all its officers, agents and employees against any claim or liability arising from or based on the violation of any such laws, ordinances, rules and regulations, orders and decrees, whether such violation is committed by the CONTRACTOR and/or any of its officers, employees, agents, subcontractors, assignees, or representatives. If any discrepancy or inconsistency is discovered in this Contract in relation to any such laws, ordinances, rules and regulations, orders or decrees, the CONTRACTOR shall forthwith report the same to the Director, Auxiliary Services, in writing.

#### **B. Patented Article**

The CONTRACTOR will be required to, and shall hold the UNIVERSITY and its officers, employees, agents, and any person acting on its behalf harmless against all demands, claims, actions, suits or liabilities arising from the use of any patented article, patented process or patented appliance used in connection with this Contract. Any royalties due or becoming due for the use of any patented article or process shall be paid by the CONTRACTOR.

#### **C. Subcontracting and Assignment**

The CONTRACTOR shall not subcontract, convey, transfer or assign any of the rights under this Beverage Rights Concession and/or this Contract with the UNIVERSITY, nor shall the CONTRACTOR assign the Contract to any other person or firm without written permission from the Director, Auxiliary Services, and no subcontract or assignment made without such permission will be recognized. No subcontract shall, under any circumstances, relieve the CONTRACTOR of its obligation and liability under this Contract with the UNIVERSITY, and all persons engaged in performing services covered by the Contract shall be considered employees of the CONTRACTOR.

D. Governing Law

The Contract and any of its terms or provisions, as well as the rights and duties of the parties to the Contract, shall be governed by the laws of the State of Hawai'i. Any action at law or in equity to enforce or interpret the provisions of the Contract shall be brought in a state court of competent jurisdiction in Honolulu, Hawaii.

E. Severability

In the event that any provision of the Contract is declared invalid or unenforceable by a court, such invalidity or unenforceability shall not affect the validity or enforceability of the remaining terms of the Contract.

F. Waiver

The failure of the UNIVERSITY to insist upon the strict compliance with any term, provision or condition of the Contract shall not constitute or be deemed to constitute a waiver or relinquishment of the UNIVERSITY's right to enforce the same in accordance with the Contract.

G. Modifications to Goods and Services Contracts

Subject to mutual written agreement, the parties to the Contract may make modifications within the general scope of this Contract.

H. Novation or Change of Name

- (1) Recognition of a successor in interest; novation. When in the best interest of the UNIVERSITY, a successor in interest may be recognized in a novation agreement in which the transferor and the transferee and the UNIVERSITY shall agree that the transferee assumes all of the transferor's obligations; and the transferor remains liable for all obligations under the Contract but waives all rights under the Contract as against the UNIVERSITY.
- (2) Change of name. When the CONTRACTOR requests to change its name under this Contract, the UNIVERSITY shall, upon receipt of a document indicating such change of name (for example, an amendment to the articles of incorporation of the corporation), enter into an agreement with the CONTRACTOR to effect such a change of name. The agreement changing the name shall specifically indicate that no other terms and conditions of the Contract are thereby changed.



I. Use of UNIVERSITY's Name

Except as specifically provided in Section 2, Item (3), the Contract conveys no right to the CONTRACTOR to use the name University of Hawai'i with respect to or in connection with any of its operations under this Contract, and, upon the termination of this Contract for any reason, the CONTRACTOR shall have no right to indicate its relationship with the UNIVERSITY with respect to any of its operations except with the written consent of the UNIVERSITY.

J. Furnished Property


The CONTRACTOR assumes complete responsibility for equipment and facilities furnished by the UNIVERSITY in connection with the Contract and the CONTRACTOR agrees to pay for all such equipment and facilities damaged or not accounted for to the UNIVERSITY's satisfaction. The furnishing to CONTRACTOR of any equipment or facilities in connection with this Contract shall not, unless otherwise expressly provided, be construed to vest title thereto in the CONTRACTOR.

In the event of an inconsistency among the terms of this Contract, the CFO and the CONTRACTOR's Offer, the inconsistency shall be resolved in the following order of precedence:

1. This Contract.
2. The CFO.
3. CONTRACTOR's Offer.

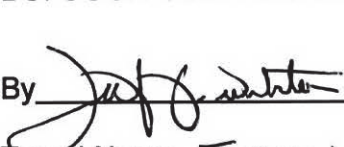
IN WITNESS WHEREOF, each of the parties have executed this Contract, effective the day and year first above written.

UNIVERSITY OF HAWAI'I

By   
Typed Name Jan Gouveia

Title Vice President for Administration

BCI COCA-COLA CO. OF LOS ANGELES

By   
Typed Name JONATHAN D. WEBSTER

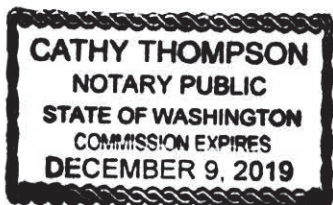
Title Vice President & General Manager  
COCA - COLA REFRESHMENTS  
PACIFIC NORTHWEST MARKET UNIT

\*Evidence of authority of the CONTRACTOR's representative to sign this Agreement for the CONTRACTOR must be attached.

CONTRACTOR'S ACKNOWLEDGMENT

State of Washington )  
County of King ) SS.

On this 8<sup>th</sup> day of August, 2016, before me personally appeared Jonathan D. Webster, to me personally known, who being by me duly sworn, did say that he/she is the Vice President & General Manager of Coca-Cola Refreshments P.W.M., the CONTRACTOR named in the foregoing instrument, and that he/she is authorized to sign said instrument in behalf of the CONTRACTOR, and acknowledges that he/she executed said instrument as the free act and deed of the CONTRACTOR.



[Signature]  
Notary Public, Cathy Thompson  
My commission expires: 12/9/19



## ATTACHMENT A

The UNIVERSITY currently distributes and/or promotes beverages through its operations within the UHM campus, including but not limited to:

LOCATION	RETAIL	FOUNTAIN
<b>STUDENT LIFE AND DEVELOPMENT</b>		
Ba-Le Restaurant	X	X
Starbucks	X	
Simply to Go	X	
Jamba Juice		
Pizza Hut Express		X
Subway	X	X
Stir Fresh	X	X
Campus Center Dining Food Court	X	X
Catering	X	
<b>STUDENT HOUSING SERVICES</b>		
Hale Aloha Cafeteria		X
Gateway Cafeteria		X
Hale Noelani Convenience Store	X	X
Catering	X	
<b>ATHLETICS</b>		
L&L (Athletics)	X	X
Les Murakami Baseball Stadium	X	X
Stan Sheriff Center	X	X
T.C. Ching Complex	X	
UH Softball Stadium	X	
<b>AUXILIARY SERVICES</b>		
Catering		
The Bean Counter	X	
The Curb (Sinclair)		
Da Spot		
Honolulu Gourmet (Sustainability Courtyard)		
Le Crepe Café		
Serg's Mexican Grill	X	
Uahi Island Grill	X	
Verde Kaimuki	X	
Paradise Palms Café	X	X
The Curb	X	
Domino's Pizza	X	
Honolulu Gourmet	X	X
India Café	X	
L&L	X	X
Panda Express	X	X
<b>CAMPUS SERVICES</b>		
Mānoa Campus Bookstore	X	

## ATTACHMENT B

The current locations of all bottle and can beverage vending machines at the UNIVERSITY's UHM campus are listed below. The CONTRACTOR shall install equipment at additional locations as required by the UNIVERSITY.

Location	Glass Front	Bottle Vending	Can Vending	Credit Card Reader
Architecture		1		1
Army ROTC		1		1
Art		1		1
Athletics		2		1
Bilger		1		1
Bio Med		2		2
Campus Center Games Room		2		2
East West Center		1		1
College of Business Administration	2	4		4
Frear Hall		1		1
Gateway		1		
Hale Aloha Ilima		1		
Hale Aloha Lehua		1		
Hale Aloha Lokelani		1		
Hale Aloha Mokihana		1		
Hale Anuenue		1		
Hale Kahawai		1		
Hale Kuahine		1		
Hale Laulima		1		
Hale Mānoa		1		
Hale Wainani		2		
Hale Wainani Laundry Room		1		
Hemenway Hall	2	5		
Holmes Hall		2		2
Jefferson Hall		1		
Johnson Hall A		1		
Johnson Hall B		1		
Keller Hall Vending Kiosk		3		3
KHET		1		
Kuykendall (DH)		3		3
Kuykendall (Ewa)		1		1
Law School Second Floor		1		1
Law Library		1		1



<b>Location</b>	<b>Glass Front</b>	<b>Bottle Vending</b>	<b>Can Vending</b>	<b>Credit Card Reader</b>
QLC		1		1
Lincoln Hall		1		
Moore Hall		2	1	1
Music		1		1
Physical Science		2		2
Pool		1		1
POST		1		1
Post Office		1		1
Saunders Hall		2		2
St. John		1		1
Webster		1		1
<b>TOTAL</b>	<b>4</b>	<b>63</b>	<b>1</b>	<b>39</b>

**ATTACHMENT C**  
**Approved Vending Pricing**

<b>Product Name</b>	<b>Pkg. Size</b>	<b>Vend Pricing</b>
BOTTLED WATER	20 oz.	\$1.75
DIET SODA	20 oz.	\$1.75
SODA/ICED TEA	20 oz.	\$1.75
SPORTS DRINK	20 oz.	\$2.00
VITAMIN INFUSED WATER DRINK (SoBe)	20 oz.	\$2.00
FRAPPUCCINO CARAMEL	13.7 oz.	\$2.25
FRAPPUCCINO MOCHA	13.7 oz.	\$2.25
ENERGY DRINK	16 oz.	\$2.50
JUICE 100%	15.2 oz.	\$2.00
DIET SODA CAN	12 oz.	\$1.25
SODA CAN	12 oz.	\$1.25



**ATTACHMENT D**  
**Annual Supply of Products for Intercollegiate Athletics**

**Draft Product Allotment for Athletics**

<b><u>Item</u></b>	<b><u>First Year</u></b>	<b><u>Each Additional Year</u></b>
<b>Drink Products</b>		
Cs./24 - 20 oz. bottle. fluid replacement	2,000	2,000
Cs./24 - 20 oz. bottle. water	1,500	1,500
Cs./24 - Other drinks to include but not exclusively Fruit Juices, 12 oz. canned soda, and specialty drinks	1,500	1,500
12 oz. paper cups	160,000	160,000
Fluid replacement drink Syrup or powder mix for X gal.	20,000	20,000
<b>Water Coolers, Ice Chests and Related Accessories</b>		
Lg. Sideline cart	2	Update and Replace as needed
Mobile Ice Barrel	2	Update and Replace as needed
Single Water Cooler Sideline cart	6	2
Double Water Cooler Sideline cart	4	2
10 gal. water coolers	26	10
7 Gallon water coolers	16	10
3 Gallon water coolers	10	10
102 Quart Ice Chests	6	1
60 Quart Ice Chests	12	2
48 Quart Ice Chests need count	20	10
12 Ounce Cups (2000/case) (if logo specific game day cups are required)	30	30
Clear Cup Carrier	10	6
1 gal Water Pitcher	6	4
Stir Sticks	6	6
Weight charts	16	16
32 Ounce Squeeze Bottles (100/case)	8	8
Squeeze Bottle Carriers	16	8
Colored Squeeze Bottle Neckers (25/pkg)	6	8
Antimicrobial Towels (100/case)	8	8