

UNIVERSITY OF HAWAII		MODIFICATION OF CONTRACT	PAGE 1 of 1
1. MODIFICATION NO. 1		2. CONTRACT NO. <u>C190109</u> Dated <u>06/20/19</u> / PROJECT TITLE Beverage Rights and Beverage Vending Concessions for the University of Hawaii West Oahu, Kapolei, Hawaii	
3. ISSUED BY Director, Office of Procurement Management 1400 Lower Campus Road, Room 15 Honolulu Hawaii 96822 Procurement Specialist: <u>M. Elmore</u>		4. CONTRACTOR (NAME AND ADDRESS) Coca-Cola Bottling of Hawaii, LLC 11400 SE 8 th Street, Suite 300 Bellevue, Washington 98004 ATTN: Randy Sagon, Key Account/Business Development Manager	

5. (a) ☐ This Change Order is issued pursuant to _____
The changes set forth in block 6 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 6



6. DESCRIPTION OF MODIFICATION

- a. In accordance with paragraph 14, **GENERAL CONDITIONS**, subparagraph G, Modifications to Goods and Services Contracts, the contract shall be amended to waive the annual rights fee of \$4,000.00 specified in paragraph 3, **BEVERAGE RIGHTS FEE AND VENDING COMMISSION**, for the period July 1, 2020 through June 30, 2021 due to the decrease in beverage sales volume as a result of the COVID-19 campus closure.
- b. All other terms and conditions remain the same.

EXCEPT AS PROVIDED HEREIN, ALL TERMS AND CONDITIONS OF THE DOCUMENT REFERENCED IN BLOCK 2 UNLESS HERETOFORE AMENDED, REMAIN UNCHANGED.

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

8. ☐ 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 MANAGEMENT

9. COCA-COLA BOTTLING OF HAWAII, LLC		11. UNIVERSITY OF HAWAII	
BY  / <u>2.17.22</u> (authorized signature) DATE	BY  / <u>FEB 25 2022</u> DATE		
10. NAME & TITLE OF SIGNER (TYPE OR PRINT) Randy Sagon Sales Manager F&OP		12. NAME & TITLE OF SIGNER (TYPE OR PRINT) Karlee Hisashima, Interim Director, Office of Procurement Management	



October 14, 2020

Mr. Randy Sagon
Key Account/Business Development Manager
Coca-Cola Bottling of Hawaii, LLC
11400 SE 8th Street, Suite 300
Bellevue, Washington 98004

Phone No.: (808) 294-8308
Email: randy.sagon@odomcorp.com

Dear Mr. Sagon:

Subject: Clarification of the Notice to Proceed for Contract C190109

This is with reference to the Notice to Proceed (NTP) letter dated June 20, 2019 for Contract No. C190109, Beverage Rights Concession Agreement for the University of Hawaii West Oahu, Kapolei, Hawaii. The NTP letter indicated that the initial term of the contract is "...for the period July 1, 2019 through June 30, 2020 and thereafter, shall be renewable from year to year for FOUR (4) additional years..." This was not consistent with the term provision of the contract.

In accordance with Paragraph 5, TERM, the dates indicated in the NTP letter are hereby corrected and the term of the contract shall be from July 1, 2019 through June 30, 2024.

We apologize for any inconvenience this may have caused.

Very truly yours,

Karlee Hisashima
Interim Director

KH:ME:dt

Enclosures

c: Kevin Ishida, Gary Nakamura

Date emailed : 10/15/2020 *df*
Date sent : 10/16/2020 *df*



June 20, 2019

Mr. Randy Sagon
Key Account/Business Development Manager
Coca-Cola Bottling of Hawaii, LLC
11400 SE 8th Street, Suite 300
Bellevue, Washington 98004

Date Sent: 06/21/19 *g*

Phone No.: (808) 294-8308
Email: randy.sagon@odomcorp.com

Dear Mr. Sagon:

Subject: Notice to Proceed

Transmitted herewith for your files is one duly executed copy of Contract No. C190109, Beverage Rights Concession Agreement for the University of Hawaii West Oahu, Kapolei, Hawaii.

You are hereby authorized to proceed with the work effective July 1, 2019, in strict accordance with the contract documents attached hereto. The initial term of the contract shall be for the period July 1, 2019 through June 30, 2020, and thereafter, shall be renewable from year to year for FOUR (4) additional years, upon mutual agreement in writing, subject to the provisions of the contract.

Very truly yours,

Duff Zwald
Director

DZ:ME:dt

Enclosures

c: Kevin Ishida, Gary Nakamura

**CONTRACT FOR BEVERAGE RIGHTS AND BEVERAGE VENDING CONCESSIONS
UNIVERSITY OF HAWAII WEST OAHU**

THIS CONTRACT FOR BEVERAGE RIGHTS AND BEVERAGE VENDING CONCESSIONS FOR THE UNIVERSITY OF HAWAII WEST OAHU (hereafter the "Contract"), made and entered into as of the 20th day of June, 2019, by and between the UNIVERSITY OF HAWAII, the state university and a body corporate of the State of Hawaii, hereafter the "UNIVERSITY," for the benefit of the University of Hawaii West Oahu (hereafter "UHWO") and Coca-Cola Bottling of Hawaii, LLC, whose mailing address is 11400 SE 8th Street, Suite 300, Bellevue, Washington 98004, hereafter the "CONTRACTOR."

WITNESSETH THAT:

WHEREAS, the UNIVERSITY desires to accept the proposal for the Beverage Rights Concession that was submitted by the CONTRACTOR (hereafter the "Proposal"), the terms of which are hereby made a part of this Contract by reference; and

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

1. DEFINITIONS

- A. **ADMINISTRATIVE SERVICES** – The administrative unit that represents the University of Hawaii West Oahu (UHWO) in the administration of all food service contracts on the UHWO Campus.
- B. **BEVERAGE RIGHTS** – The exclusive rights to provide fountain beverages at all Food Service Outlets within the UHWO campus 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 UHWO campus.
- C. **BEVERAGE VENDING CONCESSIONS** – The right to install and operate beverage vending machines on the UHWO Campus 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.
- D. **CONTRACT** – The agreement between the UNIVERSITY and the CONTRACTOR under which the UNIVERSITY is granting the exclusive Beverage Rights Concession to the CONTRACTOR.

- E. **CONTRACT LIAISON** – The Officer designated by the UNIVERSITY to serve as the liaison between the CONTRACTOR and the UNIVERSITY.
- F. **FOOD SERVICE OUTLETS** – All locations where the Vendors operate food service concessions within the UHWO campus, which locations are listed on ATTACHMENT A attached hereto and incorporated herein by reference.
- G. **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.
- H. **NET SALES** – Revenue after deducting taxes, deposits, recycling fees, other Government mandated fees, communication charges and credit and debit card fees.
- I. **NEW PRODUCTS** – Any new product (by name, size, packaging, SKU, initial offering, acquisition, etc.) offered by the CONTRACTOR.
- J. **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.
- K. **PROPOSAL** – The CONTRACTOR's offer to UHWO.
- L. **UNIVERSITY** – University of Hawaii, the State University and a body corporate of the State of Hawaii.
- M. **VENDORS** – Companies that operate food service concessions on the University of Hawaii West Oahu campus.

2. SCOPE OF BEVERAGE RIGHTS AND BEVERAGE VENDING CONCESSIONS TO BE PROVIDED

The UNIVERSITY grants to the CONTRACTOR the Beverage Rights and Beverage Vending Concessions at UHWO as provided in Sections 6 and 7 herein. The rights to be granted hereunder shall not extend beyond the boundaries of the University of Hawaii West Oahu campus.

3. BEVERAGE RIGHTS FEE AND VENDING COMMISSION

The CONTRACTOR shall pay to the UNIVERSITY an annual rights fee of FOUR THOUSAND DOLLARS (\$4,000.00) for BEVERAGE RIGHTS and BEVERAGE CONCESSION RIGHTS each and every AGREEMENT YEAR during the TERM of the contract, as described below. In addition, the CONTRACTOR shall pay the UNIVERSITY a commission, as described below of THIRTY-EIGHT percent (38%) of

NET SALES from all beverage vending machines that are operated by, through, or under the CONTRACTOR during the Contract term.

4. PAYMENT

- A. The CONTRACTOR shall submit its initial annual payment of FOUR THOUSAND DOLLARS (\$4,000.00) no later than **July 31, 2019**. Thereafter, annual payments shall be paid no later than July 1st of the yearly TERM as set forth below:

Year	Applicable Time Period	Amount	Due Date:
1	July 1, 2019 – June 30, 2020	\$4,000.00	July 31, 2019
2	July 1, 2020 – June 30, 2021	\$4,000.00	July 1, 2020
3	July 1, 2021 – June 30, 2022	\$4,000.00	July 1, 2021
4	July 1, 2022 – June 30, 2023	\$4,000.00	July 1, 2022
5	July 1, 2023 – June 30, 2024	\$4,000.00	July 1, 2023

- B. Payment for Commissions earned in the amount of THIRTY-EIGHT PERCENT (38%) of NET SALES from all BEVERAGE vending machines shall be paid to the UNIVERSITY by the 10th day of the following month in which they are earned. All payments shall be made out to the "University of Hawaii West Oahu" and submitted to the Business Office, ATTN: Administrative Officer, at 91-1001 Farrington Highway, Kapolei, Hawaii 96707. The termination of a subsequently negotiated 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. CONTRACTOR shall make all pertinent revenue and sales records respecting the BEVERAGE vending machines available to the UNIVERSITY. UNIVERSITY agrees that it is responsible for reviewing such records and that any claim or dispute relating to the Commissions must be brought by the UNIVERSITY in writing within one year of the date such Commissions payment is due.
- C. 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, 2024 (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 UHWO campus shall remain at the levels specified in

ATTACHMENT C attached hereto and incorporated herein by reference at least until June 30, 2020.

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 UHWO campus with the exception of a planned Starbucks or similar franchise. 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 UHWO campus unless the distribution as free samples, advertisement, or promotion is connected to a sponsorship agreement.
- B. 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 UHWO campus. This shall include advertising and promotional opportunities.
- (1) Sponsorship of UHWO events. For UHWO 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 UHWO 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.
- C. Permitted exceptions
- (1) 20% exception. Bottled and canned beverages sold in retail outlets and convenience stores within the UHWO 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 UHWO campus. On campus consumption of competitive products purchased by individuals outside of campus for individual consumption.
 - b. UHWO campus publications. Print and broadcast advertising for competitive products in UHWO campus publications and in UNIVERSITY programming on radio and television stations.
 - c. UHWO 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.
- D. 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.
- E. 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.
- (1) 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.
- (2) 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.
- (3) 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.
- (4) 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.
- (5) Secured by locks. Dispensing equipment shall have a secured locking mechanism.
- (6) Dispensers. The dispensers shall be filtered with a stainless steel, vented, double check backflow valve.

- (7) Separate water supply. All dispensers shall be equipped with separate water supply shut off.
 - (8) Compatible equipment. Equipment provided shall be compatible with the existing equipment or be an acceptable replacement agreed to by the UNIVERSITY.
 - (9) 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.
 - (10) 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.
- F. 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.
- G. Advertising material placement. The UNIVERSITY shall cooperate with the CONTRACTOR to place advertisement materials in UHWO 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.
- (1) 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.
- H. 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.
- I. 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.
- J. 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 UHWO 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 UHWO campus. The CONTRACT shall not include vending machines located off or outside of the UHWO campus.
 - (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 UHWO operations.
- D. Commission payable to UNIVERSITY. The CONTRACTOR shall pay the UNIVERSITY a monthly commission of THIRTY-EIGHT percent (38%) of NET SALES.
- E. Payment of commission. The monthly commission payments owed by the CONTRACTOR to the UNIVERSITY are due and payable by the tenth (10th) 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 UHWO campus telephone number to report malfunctions, and the UHWO 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 UHWO campus.
- H. Refunds. Refunds to the customer will be available through an on-site UNIVERSITY location(s). The CONTRACTOR shall provide refund vouchers (accepted at all CONTRACTOR provided vending machines) to the UNIVERSITY to provide a refund mechanism for money lost in the beverage vending machines. The amount of refund vouchers provided by the CONTRACTOR will be based upon mutual agreement by the UNIVERSITY and CONTRACTOR.
- 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, 2020, 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 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 UHWO campus under this Agreement (the "Premises").

8. ANNUAL SUPPLY OF PRODUCTS FOR UNIVERSITY PROGRAMS

- A. UHWO Auxiliary Services office. The CONTRACTOR shall supply the UNIVERSITY annually with no less than 200 cases (TWENTY-FOUR (24) units each) of 12 oz. cans of carbonated soft drinks and 16.9 oz. bottled water products to be used at UHWO's discretion.
- B. Timeframe for supply of product. The annual period for the supply of the CONTRACTOR's product to the UNIVERSITY shall start from the NTP through

the anniversary of each agreement year. The allotment shall be delivered by the CONTRACTOR to UHWO at the request of the Auxiliary Services Manager upon TWO (2) WEEKS prior written notice of the time and location. Delivery shall be of reasonable size.

9. Marketing Fund Support

- A. The CONTRACTOR shall supply to the UNIVERSITY a Marketing Fund to enhance programs at the UHWO in the amount of FIVE THOUSAND AND NO/100 DOLLARS (\$5,000.00) every year of the Contract term for a total of TWENTY-FIVE THOUSAND AND NO/100 DOLLARS (\$25,000.00) including Point of Sale (POS) materials and promotional support. All marketing promotions shall be mutually agreed upon and managed by the Coca-Cola Bottling of Hawaii Key Account Manager. Any amounts unused in the Marketing Fund at the end of the Agreement Year shall be retained by the CONTRACTOR as provided in CONTRACTOR's Proposal

10. CONTRACTOR'S RESPONSIBILITIES

- 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 UHWO 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, 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) Maintain card readers. The CONTRACTOR shall be responsible for maintaining the card readers in compliance with Payment Card Industry Data Security Standard.
 - (2) 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.
 - (3) 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 J 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) 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.
 - (3) 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.

- (4) 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.
- (5) 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 Hawaii.
- 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 UHWO 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 UHWO operations.
- T. No EPS foam. The CONTRACTOR shall not use expanded polystyrene (EPS) foam foodservice products. EPS foam food service products are defined for this purpose as EPS foam packaging including but not limited to, trays, plates, bowls and cups.

11. 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 UHWO campus 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).

12. 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 UHWO 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.

13. 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 <https://www.hawaii.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 UHWO 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 UHWO 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,

deductions by type (taxes, deposits, recycling fees, other government-mandated fees, communication charges, credit and debit card fees, etc.), 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 at least June 30, 2020, 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 1st 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 1st 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 Hawaii 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 Hawaii 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 Hawaii, 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 Hawaii, 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 Hawaii, Director of Office of Procurement and Real Property Management."

- b. "It is agreed that any insurance maintained by the University of Hawaii will apply in excess of, and not contribute with, insurance provided by this policy."
- c. "The University of Hawaii is added as an insured with respect to operations performed for the University of Hawaii."

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.

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 such correction or cure thereafter.

14. 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 Hawaii. 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 Hawaii 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 Proposal and the CONTRACTOR's Offer, the inconsistency shall be resolved in the following order of precedence:

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

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

COCA-COLA BOTTLING OF HAWAII, LLC

By 

Typed Name Randy Sagon

Title Key Account/ Business Development Manager *

UNIVERSITY OF HAWAII

By 

Typed Name Duff Zwald

Title Director, Office of Procurement Management

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

CONTRACTOR'S ACKNOWLEDGMENT

State of Hawaii)
City of County of Honolulu) SS.

On this 14th day of June, 2019, before me personally appeared Randolph Sagon, to me personally known, who being by me duly sworn, did say that he/she is the key account / business development manager of Coca-cola Bottling of Hawaii, LLC, 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, State of Hawaii
 My commission expires: 11/05/2021



Doc. Date: June 14, 2019 # Pages: 27-
 GARYLYN A. CARANDANG First Circuit
 Doc Description: Contract for baggage (right and baggage handling concessions University of Hawaii West Oahu)
[Signature] 6/14/19
 NOTARY SIGNATURE DATE
 NOTARY CERTIFICATION

ATTACHMENT A

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

[illegible]

ATTACHMENT B

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

Location	# of Machines	Bottle Vending	Can Vending	Credit Card Reader
2 nd Floor Classroom Building (2 vending machines)	2	2		2
1 st Floor Classroom Building (2 vending machines)	2	2		2
2 nd Floor Lab Building (2 vending machines)	2	2		2
1 st Floor Lab Building (2 vending machines)	2	2		2
1 st Floor Library (3 vending machines)	3	3		3
***2 nd Floor Admin/Allied Health Building	2	2		2
***1 st Floor Admin/Allied Health Building	2	2		2
*** Academy for Creative Media Building	4	4		4
*** Need to add				
TOTAL	19	19	0	19

ATTACHMENT C
Approved Vending Pricing

Product Name	Pkg. Size	Vend Pricing
16.9 OZ WATER	16.9 oz.	\$1.25
20 OZ WATER	20 oz.	\$1.75
20 OZ CSD	20 oz.	\$1.75
20 OZ SPORTS/ELECTROLYTE DRINK	20 oz.	\$1.75
20 OZ TEA DRINK	20 oz.	\$1.75
20 OZ ENHANCED WATER/HYDRATION	20 oz.	\$2.00
16 OZ ENERGY	16 oz.	\$2.50
COLD COFFEE DRINK		\$2.50

NOTE: Vending prices shall remain as noted above until at least June 30, 2020.
Vending prices will increase by \$.25 per PRODUCT in Year 2 of the TERM.

PRICING

Product Description	Package Size	QTY Per Case	Price Per Case	Price Per Unit
Sparkling Soft Drink(SSD)	20oz	24	\$25.44	\$1.06
POWERADE case 24	20oz	24	\$22.82	\$0.95
Vitaminwater	20oz	12	\$14.76	\$1.23
Dasani	1.5L	12	\$20.40	\$1.70
DASANI	20oz	24	\$15.36	\$0.64
Smartwater	20oz	24	\$24.86	\$1.04
Yup!	14oz	12	\$15.36	\$1.28
Minute Maid Juice To Go	12oz	24	\$26.78	\$1.16
Monster	16oz	24	\$34.44	\$1.44
Monster Java	15.5oz	12	\$27.60	\$2.30
Huberts	16.9oz	12	\$17.28	\$1.44
Zico	16.9oz	12	\$24.00	\$2.00
Gold Peak	18.5oz	12	\$15.12	\$1.26
Dunkin Donuts	13.7oz	12	\$23.00	\$1.92
Peace Tea	23oz	12	\$12.48	\$1.04
Body Armor	16oz	12	\$19.68	\$1.64
2.5 Gallon BIB	2.5gal	1	\$44.50	\$17.80/gal
5 Gallon BIB	5gal	1	\$85.25	\$17.05/gal

Cups (paper)	Units per Case	Price
16oz	1000	\$57.50
24oz	1000	\$62.70
32oz	480	\$44.95
44oz	480	\$57.50
24oz Tumbler	72	\$82.00

Lids

12-16-24oz	2000	\$48.00
32oz	960	\$38.00
44oz	960	\$48.00
CO2	20lb	\$28.25