

**RESOLUTION 20-31**


**A RESOLUTION OF THE CITY OF PANAMA CITY BEACH, FLORIDA, APPROVING AN EXCLUSIVE BEVERAGE AND VENDING POURING RIGHTS AGREEMENT WITH BUFFALO ROCK COMPANY GRANTING CERTAIN NON-ALCOHOLIC BEVERAGE AND POURING RIGHTS ON CITY PROPERTY VALUED AT \$93,546.02 PER ANNUM.**

**BE IT RESOLVED** that the appropriate officers of the City are authorized to accept and deliver on behalf of the City that certain Beverage and Vending Pouring Rights Agreement between the City and Buffalo Rock Company, granting certain, exclusive beverage and pouring rights in exchange for financial payments and incentives to the City as more fully set forth in the body of the agreement in substantially the form attached and presented to the Council today, with such changes, insertions or omissions as may be approved by the City Manager and whose execution shall be conclusive evidence of such approval.

THIS RESOLUTION shall be effective immediately upon passage.

**PASSED** in regular session this 9<sup>th</sup> day of January, 2020.

**CITY OF PANAMA CITY BEACH**

By:   
Mike Thomas, Mayor

**ATTEST:**

  
Mary Jan Bossert, City Clerk

## **BEVERAGE AND VENDING POURING RIGHTS AGREEMENT                    D**

This **BEVERAGE AND VENDING POURING RIGHTS AGREEMENT** ("Agreement"), made this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_ between the City of Panama City Beach ("the City"), a municipal corporation in Bay County, Florida and Buffalo Rock \_\_\_\_\_, an \_\_\_\_\_, whose principal address is 2377 Sherman Ave 32405 ("Vendor") relating to (i) the purchase by the City from Vendor of the Products and (ii) the placement by the City of signage etc., for Vendor's Products through full service vending machines. The support described below is in lieu of any other discounts, allowances or rebates to which the City might otherwise be entitled from time to time.

### **1. DEFINITIONS**

As used in this Agreement, the following capitalized terms shall have the respective meanings assigned thereto below.

1.1 "Beverage" or "Beverages" means "Beverage" means branded nonalcoholic and non-carbonated beverages natural or artificially within the Vendor's product line, including carbonated soft drinks (bottled and fountain), carbonated soft frozen beverages, bottled water (flavored, sweetened, spring, sparkling, still, filtered, purified, artesian, well, distilled, or mineral), fruit juices (sweetened and unsweetened), fruit juice-containing drinks, fruit punches, fruit flavored drinks, ready to drink tea products, Isotonic drinks (drinks intended to replenish fluid and minerals the body loses during a time of physical activity), and energy drinks (drinks containing additives or legal stimulants associated with increasing the consumer's energy level) and any future categories of nonalcoholic beverage products that may be distributed by Vendor.

The term "Beverage" will NOT include the following which are expressly excluded from the definition and scope of this RFP:

- Nutritional supplements.
- Milk or flavored milk.
- Fresh brewed coffee, or ready-to-drink coffee products.
- Fresh brewed tea products
- Hot chocolate
- Water drawn from the public water supply.
- Bulk water coolers.
- ALL alcoholic beverages.

1.2 "Cases" shall mean the number of cases of Packaged Products purchased by the City from Vendor, initially delivered in quantities of 24, 15, and 12 bottle/can units, and thereafter in such other size, quantity and type of containers as determined by Vendor's licensed beverage manufacturer, from time to time.

1.3 "Equipment" means all types of equipment owned and/or operated by Vendor and used to sell or dispense the Products, including: full service vending machines ("Vending Machines"), coolers, fountain dispensing equipment and retail single-serve food service equipment.

1.4 "Facilities" shall mean the City facilities under the direction of the City's Parks and Recreation Department specifically listed in Exhibit "A", including all buildings, the

grounds, parking lots, dining/cafeteria facilities, snack bars, food carts, retail locations, the grounds, unbranded and branded food service outlets, parking lots and all vending areas located at or around the Facilities.

1.5 "Gallons" shall mean the number of gallons of the Fountain Products purchased by the City from Vendor.

1.6 "Packaged Products" shall mean Beverages that are distributed in pre-packaged form (e.g., bottles and cans). A current list of Vendor's Packaged Products is listed in attached Exhibit B, which may be amended by Vendor from time to time.

1.7 "Fountain Products" shall mean Beverages used to create and dispense fountain beverages and/or frozen carbonated and non-carbonated beverages. A current list of Vendor's Fountain Products is listed in attached Exhibit B which may be amended by Vendor from time to time. "Products" shall mean Fountain Products, Packaged Products and LCT manufactured, bottled, sold and/or distributed by Vendor.

1.8 "Year" shall mean each 12-month period during the Term commencing on the first day of the Term or an anniversary thereof.

## **2. TERM**

The term of this Agreement shall commence on January 1, 2020 and expire on December 31, 2022, (the "Term"). When fully executed, this Agreement will constitute a binding obligation of both parties until expiration or termination. In the event that Vendor is not in default of any provision of this Agreement, Vendor shall have an option to renew this Agreement for two (2) additional twelve (12) month terms on the same terms and conditions herein, upon giving the City prior written notice of the exercise of this option at least sixty (60) days before the expiration of the initial Term or any Additional Term.

## **3. SCOPE**

### **3.1 Exclusive Pouring Rights.**

Except as outlined herein, during the Term of this Agreement Vendor shall have the exclusive right to make all Beverages (including Fountain Products and Packaged Products, including Packaged Products sold through vending machines) available for sale and distribution within the Facilities where Beverages are sold and concessions operations for the City or its Facilities subject to the limitations herein. Accordingly, the Products shall be the only Beverages of their respective type sold, dispensed or served anywhere at the Facilities, and City will cause the purchasing representative for each of the Facilities to purchase all its respective requirements for such Products directly and exclusively from Vendor.

### **3.2 Ancillary Products.**

During the Term, the City must purchase and may cause the purchasing representative for each of the Facilities to purchase its respective requirements for carbon dioxide and branded disposable cups ("Ancillary Products") from Vendor.

### **3.3 Advertising Rights.**

Vendor may advertise and promote its Products in and with respect to the City and its Facilities upon mutually agreed to terms and conditions. The City will cooperate with the Vendor to place advertisement materials run promotions or giveaways that feature the Vendor's products and stimulate sales. All costs will be at the Vendor's expense. Vendor may add to the script of any of its media buys that "[Vendor] is the official beverage of the Panama City Beach Parks and Recreation Department." Any advertising that includes reference(s) to the City must be approved in writing by the City Manager prior to placement of the advertising.

At Vendor's expense, Vendor may supply cups or point-of-sale advertising promoting Vendor's Beverages. The City reserves the right to reject any advertising that interferes with its operations.

### **3.4 Exclusions.**

The exclusivity granted by the terms of this Agreement shall be subject to the following exclusions:

1. Beverages or services consumed on City property by City employees.
2. Beverages or services brought onto City property by participants in any sports event subject to a reservation of City facilities or City's Facilities Use Agreement provided that no sports event or tournament shall be permitted to sell beverages other than those contemplated in this Agreement.
3. Special events, as permitted in accordance with the City's Code of Ordinances, shall have the right to supply and serve brands other than those covered by this Agreement.
4. City Facilities not expressly contemplated in Exhibit A.
5. City Facilities located on the Dan Russell Pier Complex, including Hook'd Restaurant and Half Hitch Tackle, shall become subject to the provisions of this Agreement on January 1, 2021.

## **4. PERFORMANCE**

This Agreement, including all of Vendor's support to the City as described below, is contingent upon the City complying with all of the following performance criteria:

### **4.1 Exclusivity.**

Subject to the exclusions set forth in section 2(D), the Products shall be the exclusive Beverage of their respective types sold, dispensed or otherwise made available, or in any way advertised, displayed, represented or promoted at or in connection with the Facilities by any method or through any medium whatsoever (including without limitation print, broadcast, direct mail, coupons, handbills, displays and signage), whether public or private.

### **4.2 Product Mix.**

The City represents that it shall purchase and shall cause its Facilities subject to this Agreement to purchase Products exclusively from and that it shall use reasonable efforts to maintain a mix of both Fountain Products and Packaged Products at each of the Facilities throughout the Term.

#### **4.3 Fountain Products.**

The City shall only use the Fountain Products for use in preparing the fountain beverage products (the "Fountain Products"): (i) in accordance with the standards established by Vendor; and (ii) only for immediate or imminent consumption and shall not resell the Fountain Products either to nonaffiliated facilities or to consumers in any form other than the Fountain Products.

#### **4.4 Brand ID.**

The City shall have appropriate brand identification, as identified by Vendor, for each Beverage Product served on all menus (including catering), menu boards and Fountain dispensing valves at each of the Facilities throughout the Term.

#### **4.5 Changes in Facilities.**

The City agrees that it shall promptly notify Vendor, in writing, of each eligible new Facility which is opened or acquired during the Term, as well as of any eligible Facility which is closed, sold or otherwise disposed of during the Term.

### **5. CONSIDERATION**

In consideration of the exclusive rights granted to Vendor by City over the Term of this Agreement, and provided City is not in breach of this Agreement, Vendor shall provide City with the following Consideration as more fully set forth in Exhibit B:

#### **5.1 Initial Sponsorship Fee.**

Vendor shall pay to the City a sponsorship fee in the amount of \$25,000, payable to the City within sixty (60) days of the signing of this Agreement by both parties (the "Initial Sponsorship Fee"). In the event Vendor terminates this Agreement due to the City's failure to cure a breach hereof, the unearned Initial Support Funds will be repaid to Vendor as prorated over calendar year.

#### **5.2 Annual Sponsorship Fee.**

Vendor shall pay to the City an annual sponsorship fee in the amount of \$10,000 per year payable to the City within sixty (60) days after the commencement of Year 2 of the Term of this Agreement, not to exceed four (4) consecutive payments (the "Annual Sponsorship Fee"). Vendor agrees to provide to City an additional \$5,000 after the commencement of Year 3 of the Term if total purchases by City of Vendor's products have exceeded \$350,000 in the 12 months of years two of the Agreement. Vendor agrees to provide to City an additional \$10,000 after the commencement of Year 5 of the Term if total purchases by City of Vendor's products have exceeded \$500,000 in the 12 months of year four of the agreement.

#### **5.3 Commissions.**

Vendor agrees to pay to City a commission, as a percentage of the actual cash ("cash in bag" or "CIB") collected by Vendor from the bottled beverage vending machines placed at the Facilities, less any applicable taxes, fees or deposits ("Commissions"). Such

Commissions shall be at the rate(s) of 30 % to City (the "Commission Rate") of each item sold.

Vendor agrees to pay to City a commission, as a percentage of the actual cash ("cash in bag" or "CIB") collected by Vendor from the packaged snack vending machines placed at the Facilities, less any applicable taxes, fees or deposits ("Commissions"). Such Commissions shall be at the rate of 15 % to City (the "Commission Rate") of each item sold.

#### 5.4 Rebate Funds.

Each Year throughout the Term, Vendor shall calculate the total number of Cases of Packaged Products and Gallons of Post-Mix Products purchased by the Facilities from Vendor pursuant to this Agreement, and shall provide the City with rebate funds calculated based on the applicable amounts set forth below (the "Rebate Funds"). The Rebate Funds, if applicable, shall be paid by Vendor quarterly, during the Term. In the event that the Facilities are closed during the Term of this agreement, Vendor agrees to provide City with all Rebate Funds accrued on behalf of the Facilities as of the time of closing, provided that the Facilities were in full compliance with the terms and conditions of this Agreement.

Rebate Funds Amount	Applicable Products
\$ <u>8</u> /Case	<u>20oz CSD/water</u>
\$ <u>5</u> /Case-Box	<u>3 Gal Bag in Box</u>

#### 5.5 Annual Product Donation.

Vendor agrees to donate the following to City annually:

Bag-in-Box Product	12oz Can CSD 5 liter Water Bottle Product
10-3 Gal boxes Year 1 - \$4,602.00 Value	120 cases Year 1 - \$1,200.00 Value
<del>20-3 Gal boxes Year 2 - \$9,204.00 Value</del>	<del>120 cases Year 2 - \$1,200.00 Value</del>
20-3 Gal boxes Year 3 - \$9,204.00 Value	120 cases Year 3 - \$1,200.00 Value

#### 5.6 Initial Product Donation.

Vendor agrees to donate to the following to City once upon commencement of the Agreement:

10-48 quart Gatorade Coolers \$321.80  
12-Pepsi branded 10x10 Tents \$3,132.12

In the case of additional Cooler or Tent needs, Vendor agrees sell them to City at Vendor's cost.

#### 5.7 City Event Sponsorship.

Vendor agrees to sponsor the following City Events Frank Brown Park for a total contribution of \$ \$10,000 per year.

#### 6. COMMISSION PAYMENT.

Commissions shall be remitted by Vendor to the City within 30 days of the end of each calendar quarter established by Vendor. Vendor shall make all pertinent revenue and sales records respecting the vending machines available to City.

## **7. FREE EQUIPMENT LOAN AND SERVICE.**

As further outlined in Section 8 below, Vendor shall provide at no cost to City or the Facilities necessary dispensing/selling Equipment for Beverages at the Facilities. Such Equipment shall be in sufficient quantities (in light of sales volume) to satisfy the Facilities reasonable needs.

## **8. EQUIPMENT**

**8.1 Equipment Delivery.** Vendor will loan the Facilities, at no charge, appropriate Equipment for dispensing the Products during the Term. City agrees that the Equipment shall be exclusively used to display and merchandise the Products, and the City shall not use the Equipment to display, stock, advertise, sell or maintain any other products (including on the exterior of the Equipment). Title to such Equipment will remain vested in Vendor or its affiliate and all such Equipment will be returned to Vendor upon expiration or earlier termination of this Agreement. Each Year during the Term or at Vendor's request, City shall provide Vendor with a written Equipment verification list indicating the asset number, Equipment type and location of the Equipment loaned to the City pursuant to this Agreement.

**8.2 Fountain Equipment.** Vendor will be responsible for all CO2 tanks required in the dispensing systems. Some areas shall require self-contained refrigeration dispensers and stands. All dispensers should have automatic ice dispensers and equipped with separate water supply shut-off. The selection of products to be dispensed and versatility of equipment required at each location shall be determined by the City Parks and Recreation Director based upon reasonable customer needs. Specific equipment to be provided shall be agreed upon by the Vendor and the City Parks and Recreation Director or his designee. Dispensing equipment shall have a secured locking mechanism. Equipment provided must be compatible with the existing equipment or acceptable replacement agreed to by the City.

### **8.3 Vending Equipment.**

So long as Vendor does not manufacture or modify the equipment, it shall not be deemed to make any representations or warranties pertaining to the Equipment. So long as Vendor complies with its equipment service and maintenance obligations, it shall have no liability for lost sales resulting from use of the equipment

It shall be the responsibility of the Vendor to install vending machines and remove any non-working machines.

Location of any new machines will be at the discretion of the City and the City reserves the right to request the successful City to adjust service as needs develop.

The City shall supply electrical source, outlets, and other applicable connections at each beverage and snack vending location. Final connections of all equipment are to be made by the Vendor. All machines must meet current Americans with Disabilities Act (ADA) standards. All machines must be equipped with a non-reset counter for recording all sales by each machine. The City reserves the right to review these counters at any time with the Vendor. City personnel must verify the initial meter or counter reading of all vending machines in writing. The required capacity and size of each machine shall depend on the

needs and requirements of each location. There must be 18" between the top of the machine and the ceiling at each location. The exact number and locations shall be decided upon mutual agreement between Vendor and the City.

Each machine is to be clearly labeled near eye level in the vicinity of the coin/bill acceptor with the Vendor telephone number to report malfunctions.

**8.4 Equipment Condition.** All Equipment shall be like new, state-of-the-art, and shall remain in that condition through the life of this Agreement. Vendor shall recommend and provide upgrades and any other Equipment deemed necessary by the City throughout the life of this Agreement. Yearly, no later than 30 days from the anniversary date of the contract the equipment shall be examined by the City and the Vendor with the objective of providing the best possible service to the City's visitors, customers, staff, and guests

**8.5 Service.** Vendor will provide, at no charge to the City, preventative maintenance and service to the Equipment. Vendor will also provide City with a telephone number to request emergency repairs and receive technical assistance related to the Equipment after business hours. The Vendor shall provide maintenance and repair service 24 hours a day, seven days per week. For service calls placed during normal business hours (8:00 am – 5:00 pm), service is required within three (3) hours of the service call. For service calls made after hours or on weekends or holidays, service is required within twelve hours of the service call. Equipment that cannot be repaired within two (2) working days following notification of the problem is to be replaced with a similar piece of workable equipment. After hours maintenance will be limited to emergencies. If a machine is not repaired or replaced within the above specified period, the Vendor shall reimburse the City the amount equal to the annual daily commission rate for each day the machine is inoperable

Vendor shall establish and implement a preventative maintenance program for all equipment installed to ensure proper, continuous operation and minimize the out-of-service time for equipment. Each machine must be clearly identified with a number on its front so that reports of malfunctions can refer to a particular machine. The machine identifier must be approved by the City prior to application.

**8.6 Vending Collections.** Vendor shall be responsible for collecting, for its own account, all cash monies from the Vending Machines and for all related accounting for all cash monies collected therefrom. City agrees to provide reasonable assistance to Vendor in apprehending and prosecuting vandals. Vendor shall not be obligated to pay Commissions on documented revenue losses resulting from vandalism or theft of Product with respect to any Vending Machines. Vendor shall not be assessed common area maintenance fees, taxes or other charges based on its occupation of the space allocated to its Equipment at the Facilities.

## **9. DELIVERY**

Delivery includes but is not limited to stocking, cleaning, and facing displayed product on shelves and in coolers. All deliveries are to be made upon request to the Concessions locations. A minimum of two (2) delivery days per week are required.

Delivery schedules must be coordinated with each location manager to ensure delivery at the requested time. In the event deliveries are delayed due to abnormal weather conditions or other reasons, it is the responsibility of the Vendor to notify the location managers prior



to the expected delivery time.

Each delivery shall be accompanied by an official delivery ticket showing contract number, purchase order number, and quantity delivered for each item. Tickets must be priced and extended with a grand total. The ticket shall be presented to and signed by the individual authorized to accept deliveries.

## **10. PRICING**

Throughout the Term and any agreed-upon extension, the Vendor agrees that the prices charged to the City and/or its agents, shall remain at least as low as those offered to similarly situated customers under similar competitive conditions in the same geographical area as the City.

Vendor will provide City/Facilities a complete supply of Products during the Term of this Agreement. The Products and Ancillary Products shall be purchased by the City from Vendor at the prices as set forth in attached Exhibit A. Thereafter, the prices shall be increased each Year, except that Vendor shall provide thirty (30) days' notice of any price increases during the Term and the price increases for Products shall not exceed 5% per Year.

The City may dispute any proposed price increase on the grounds that the increase is not at least as low as those offered to similarly situated customers under similar competitive conditions in the same geographical area as the City.

## **11. GENERAL TERMS**

**11.1 Termination.** Either party may terminate this Agreement if the other commits a material breach of this Agreement; provided, however, that the terminating party has given the other party written notice of the breach and the other party has failed to remedy or cure the breach within thirty (30) days of such notice.

**11.3 Insurance.** Liability insurance policy acceptable to the City, with single limits of One Million Dollars (\$1,000,000) and an aggregate limit of Three Million Dollars (\$3,000,000), covering the Vending Machines, Coolers, Fountain Equipment and all other equipment and promotional items, shall be maintained by Vendor at all times. The policy shall name the City as an additional insured and include Auto Liability. Preferred Drink Vendor shall be responsible for maintaining Worker's Compensation as required by the State of Florida, which policy need not name the City as an additional insured. Preferred Drink Vendor shall be responsible for obtaining any other insurance as it may desire upon its operations, property and inventory.

**11.4 Employment Standards. 21.** Vendor shall permit no person to discharge, in whole or in part, any of the Vendor's obligations hereunder within the geographic boundaries of all City Facilities, (i) who shall have been convicted or pled guilty or nolo contendere, regardless of whether adjudication was withheld, of a crime against children (a "Disqualifying Crime"), or (ii) who shall have failed to consent in writing to a criminal history background check for a Disqualifying Crime; or (iii) who is a full-time employee of the City. From time to time at City's request, Vendor shall furnish a list of the names and addresses of all persons discharging any of its obligations hereunder within the geographic boundaries of City Facilities, together with evidence that Vendor has conducted

a criminal background check to ensure each such person is eligible under this section to discharge Preferred Drink Vendor's obligations within all City facilities.

**11.5 Remedies.** If Vendor terminates this Agreement as a result of default by City or its Facilities, or if City terminates this Agreement for a reason other than uncured default by Vendor, then City and its Facilities will surrender to Vendor all Equipment provided by Vendor and shall forfeit all funding not paid as of the date of termination.

**11.6 Public Records.** The City is a public agency subject to the Florida Public Records Law expressed in Chapter 119, Florida Statutes. Accordingly, to the extent that it is determined that Vendor is acting on behalf of City as provided under Section 119.011(2), Vendor agrees to also comply with that law, specifically including to:

A. Keep and maintain public records that ordinarily and necessarily would be required by the City in order to perform the service.

B. Upon request of the City, provide the public with access to public records on the same terms and conditions that the City would provide the records and at a cost that does not exceed the cost provided in this chapter or as otherwise provided by law, or provide the City with a copy of the requested records.

C. Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and following completion of the contract if the Consultant does not transfer the records to the City.

D. Meet all requirements for retaining public records and transfer, at no cost, to the City all public records in possession of the contractor upon termination of the contract and destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. All records stored electronically must be provided to the City in a format that is compatible with the information technology systems of the City.

IF VENDOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO VENDOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT 850.233.5100, [mjbossert@pcb.gov](mailto:mjbossert@pcb.gov), 110 S. Arnold Road, Panama City Beach, FL 32413.

**11.7 Expiration.** Upon expiration of this Agreement, if City has not entered into a further agreement with Vendor for the purchase of the Products, City shall surrender to Vendor all Equipment installed in the Facilities, whether leased, loaned or otherwise made available by Vendor.

**11.8 Non-Disclosure.** Except as may otherwise be required by law or legal process, neither party shall disclose to unrelated third parties the terms and conditions of this Agreement without the consent of the other.

**11.9 Indemnification.** Vendor will indemnify and hold the City harmless from any and all suits, actions, claims, demands, losses, costs, damages, liabilities, fines, expenses and penalties (including reasonable attorneys' fees) arising out of: (i) its breach of any term or

condition of this Agreement; (ii) product liability suits resulting from the use or consumption of the Products; and/or (iii) the negligence or willful misconduct of Vendor. The City will indemnify and hold Vendor, its subsidiaries, affiliates or assigns harmless from and against any and all suits, actions, claims, demands, losses, costs, damages, liabilities, fines, expenses and penalties (including reasonable attorneys' fees) arising out of: (i) its breach of any term or condition of this Agreement; and/or (ii) the negligence or willful misconduct of the City.

**11.10 Assignment.** In the event that a third party acquires City or all or a group of the Facilities, or if City is acquired or merges with a third party, City will, in connection with such transaction, cause the acquiring party/merged entity, in writing, to ratify this Agreement and assume all of the obligations of City hereunder. In the event that City does not deliver written evidence of such ratification and assumption of this Agreement by the acquiring party/merged entity within ten (10) days following the closing of the transaction, Vendor may, at its option, terminate this Agreement effective immediately and City will refund to Vendor any previously paid Annual Sponsorship Fee for that year, which is applicable to the portion of the year occurring after the effective date of the termination. The Agreement shall not be otherwise assignable without the express written consent of Vendor.

**11.11 Applicable Law.** The execution, interpretation, and performance of this Agreement shall in all respects be controlled and governed by the laws of the State of Florida. Any civil action or legal proceeding arising out of or relating to this Agreement shall be brought in the courts of record of the State of Florida in and for Bay County, Florida. Each party consents to the exclusive and proper jurisdiction of that court in any such civil action or legal proceeding and waives any objection to the laying of venue of any civil action or legal proceeding in that state court.

**11.12 Tax.** The City acknowledges and agrees that neither Vendor nor its affiliates shall be responsible for any taxes payable, fees or other tax liability incurred by the City in connection with the consideration or any other fees payable by Vendor under this Agreement. Vendor shall not be assessed common area maintenance fees, taxes or other charges based on its occupation of the space allocated to its Equipment at the Facilities. Notwithstanding the foregoing, Vendor shall collect and remit all applicable sales tax for any transaction that it administers at the Facilities, such as with a vending machine operated by Vendor at the Facilities.

**11.13 Force Majeure.** Any delays in the performance of any obligation of Manager under this Agreement shall be excused to the extent that the delays are caused force majeure.

**11.14 Release, Discharge or Waiver.** No release, discharge or waiver of any provision hereof shall be enforceable against or binding upon either party hereto unless in writing and executed by both parties hereto. Neither the failure to insist upon strict performance of any of the agreements, terms, covenants or conditions hereof, nor the acceptance of monies due hereunder with knowledge of a breach of this Agreement, shall be deemed a waiver of any rights or remedies that either party hereto may have or a waiver of any subsequent breach or default in any of such agreements, terms, covenants or conditions.

**11.15 Relationship of the Parties.** The parties are independent contractors with respect to each other. Nothing contained in this Agreement will be deemed or construed as creating a joint venture partnership between the parties.

**11.16 Effect of Headings.** The headings and subheadings of the sections of this Agreement are inserted for convenience of reference only and shall not control or affect the meaning or construction of any of the agreements, terms, covenants and conditions of this Agreement in any manner.

**11.17 Construction.** This Agreement has been fully reviewed and negotiated by the parties hereto and their respective legal counsel. Accordingly, in interpreting this Agreement, no weight shall be placed upon which party hereto or its counsel drafted the provision being interpreted. Wherever this Agreement provides for one party hereto to provide authorization, agreement, approval or consent to another party hereto, or provides for mutual agreement of the parties hereto, such authorization, approval, agreement or consent shall, except as may otherwise be specified herein, be given in such party's reasonable judgment and reasonable discretion, and shall be in writing unless otherwise mutually agreed by the parties. If any term or provision of this Agreement shall be found to be void or contrary to law, such term or provision shall, but only to the extent necessary to bring this Agreement within the requirements of law, be deemed to be severable from the other terms and provisions hereof, and the remainder of this Agreement shall be given effect as if the parties had not included the severed term herein.

**11.18 Counterparts.** This Agreement may be executed in two or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument.

**11.19 Further Assurances.** Each party hereto shall execute any and all further documents or instruments and take all necessary action that either party hereto may deem reasonably necessary to carry out the proper purposes of this Agreement.

**11.20 Notices.** Unless otherwise specified herein, all notices, requests, demands, consents, and other communications hereunder shall be transmitted in writing and shall be deemed to have been duly given when hand delivered, upon delivery when sent by express mail, courier, overnight mail or other recognized overnight or next day delivery service, or three (3) days following the date mailed when sent by registered or certified United States mail, postage prepaid, return receipt requested, or by facsimile, with a confirmation copy sent by recognized overnight courier, next day delivery, addressed as follows:

**If to Vendor:**

Vendor Company  
ATTN: Buffalo Rock Pepsi -PCY

**If to City:**

City of Panama City Beach Parks and Recreation Department  
ATTN: Jim Ponek  
16200 Panama Beach Parkway  
Panama City Beach, FL 32413

**11.21 Entire Agreement.** This Agreement contains the entire agreement between the parties hereto regarding the subject matter hereof and supersedes all other agreements between the parties. This Agreement may be amended or modified only by a writing signed by each of the parties.

**11.22 City Representations.** City represents and warrants to Vendor that the execution, delivery and performance of this Agreement by City will not violate any agreements with, or rights of, third parties. The City and undersigned represent that the undersigned is duly authorized and empowered to bind the City to the terms and conditions of this Agreement for the duration of the Term.

IN WITNESS WHEREOF, the undersigned have caused this Agreement to be duly executed as of the date set forth below.

**VENDOR**

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

Print Name: Chad Peak

Title: General Manager

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

**City of Panama City Beach**

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

Title: City Manager

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

**Attest:**

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

Title: City Clerk

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

**Attest:**

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

Title: City Attorney

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

**EXHIBIT A**

**CITY VENDING FACILITIES**

<b>Frank Brown Park</b>	<b>City Pier To Begin Jan 2021</b>	<b>Aaron Bessant Park</b>	<b>City Park Locations</b>	<b>Other City Locations</b>
(2) at the Recreation Office	(2) at the City Pier Main Office area	(1) at the Park Office Location	(1) at Scott Field Park	(2) at City Hall
(1) at the Playground Pavilion	(1) at the City Pier Restroom Location	(1) at the Park Stage Left Location	(1) at Maggi Still Park	(1) at the PCB Library
(1) at the Middle Grounds Pavilion			(1) at Popeye Park	(1) at Lyndell Conference Center
(1) at the Soccer fields				

**CITY CONCESSIONS FACILITIES**

<b>Locations</b>	<b>Type of Products</b>	<b>Notes</b>
Frank Brown Park: Pool Front Desk Stand	Bottled and Canned.	
Frank Brown Park: Pool Concessions	Fountain, Bottled, Canned.	(1) at the Aquatic Center Location
Frank Brown Park: Middle Grounds Concessions	Fountain, Bottled, Canned.	Operated through agreement
Frank Brown Park: North Complex Concessions	Fountain, Bottled; Canned.	Operated through agreement
City Pier: Hook'd Restaurant	Fountain, Bottled, Canned.	Available January 1, 2021
City Pier: Half Hitch Tackle	Bottled and Canned	Available January 1, 2021.