

AN ORDINANCE ACCEPTING THE PROPOSAL OF BID AWARD TO OZARKS COCA-COLA / DR PEPPER BOTTLING COMPANY FOR VENDING FOR THE NEW RECREATION CENTER COMPLEX OF THE CITY OF BRANSON, AND AUTHORIZING THE MAYOR TO EXECUTE THE AGREEMENT.

WHEREAS, the City of Branson advertised for proposals for a vending contract for the Recreation Center Complex; and

WHEREAS, of the proposals which were received, Ozarks Coca-Cola / Dr Pepper Bottling Company has been recommended for approval by staff; and

WHEREAS, the Board of Aldermen desire to award the contract for a vending operations to Ozarks Coca-Cola / Dr Pepper Bottling Company for the new Recreation Center Complex.

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF ALDERMEN OF THE CITY OF BRANSON, MISSOURI, AS FOLLOWS:

Section 1: That the Board of Aldermen hereby accepts the proposal of Ozarks Coca-Cola / Dr Pepper Bottling Company to the City of Branson, pursuant to Contract, as attached hereto and incorporated herein by reference, for vending operations for the Recreation Center Complex, and authorizes the Mayor to execute the agreement on behalf of the City of Branson.

Section 2: This ordinance shall be in full force and effect from and after its passage and approval.

Read this first time on _____ day of _____, 2004.

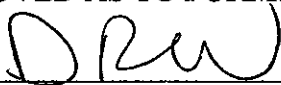
Read this second time, passed, and truly agreed to by the Board of Aldermen of the City of Branson, Missouri, on this _____ day of _____, 2004.

Louis E. Schaefer, Mayor

ATTEST:

APPROVED AS TO FORM:

Sandra L. Williams, C.M.C.
City Clerk



Daniel R. Wichmer
City Attorney

October 19, 2004

Branson Parks and Recreation
Branson, Mo. 65616

Park Board;

The purpose of the document is to set forth the agreement ("Agreement") among Ozarks Coca Cola/Dr Pepper Bottling Company, a Missouri corporation of Springfield, Missouri ("Ozarks"), and Branson Parks and Receptions, Branson, Mo., relating to the exclusive Beverage vending rights at new facility being built.

1. Term

This Contract will be in effect for a period of ten (10) years, the base year plus up to nine (9) additional one (1) years, subject to all terms and conditions set forth herein.

2. Product Packaging and Pricing

Product pricing is listed on Exhibit A. Product pricing is subject to a maximum of 3% cost of goods increase per year, starting May 1, 2006, or one year from opening date.

3. Exclusivity

Except as otherwise specifically provided herein, Branson Parks and Recreation agrees that at all times during the Term of this Agreement (and any renewal Term), all beverages sold, distributed, dispensed, sampled advertised, marketed or promoted at or in connection with any of the Branson Parks and Recreation Departments will be Ozarks Coca Cola/Dr Pepper Bottling Company products. If any beverages other than Ozarks Coca Cola/Dr Pepper Bottling Company products are sold, distributed, dispensed, sampled, advertised, marketed or promoted in any fashion with respect to the Branson Parks and Recreation location, Ozarks Coca Cola/Dr Pepper shall have the right to immediately terminate this agreement and be entitled to proceed against Branson Parks and Recreation, Branson, Missouri, for all legal or equitable remedies available to Ozarks Coca Cola/Dr Pepper Bottling Company. Use of property that is

authorized by Branson Parks and Recreation Department with other organizations will not be governed by this contract.

4. Equipment

During the Term, Ozarks will loan all necessary equipment that is reasonably required in to dispense the products at all locations. It is expressly agreed that all equipment shall at all times remain the sole and absolute property of Ozarks Coca Cola/Dr Pepper Bottling Company. Ozarks Coca Cola/Dr Pepper Bottling Company will provide reasonable service to the Equipment at no charge. Branson Parks and Recreation agrees that no equipment is to be moved or removed from any location without prior written consent of Ozarks Coca Cola/Dr Pepper Bottling Company.

5. Commissions

Commission payments will be based on gross sales receipts at a rate of fifty-five percent (55%) on all vending machines. First (1st) through Second (2nd) year vending machines will dispense product at a rate of One (1) Dollar per vend. Years Three (3) through Ten (10) the rate per vends will be One Dollar and Twenty-Five Cents (\$1.25). Commission Payments will be made in the month following sales on or about the 15th day of the month and will be accompanied by a sales/commission breakdown.

Ozarks further agrees to accrue an annual support fund for Branson Parks and Recreation at a rate of Three Dollars and Fifty Cents (\$3.50) per case. Accrued amount will be based on all cases sold thru concessions and vending to the Parks and Recreation Facility for a full calendar year.

6. Termination and Remedies

- (a) In addition to any other legal or equitable remedy, Branson Parks and Recreation will have the right to terminate this Agreement if at any time Ozarks Coca Cola/Dr Pepper breaches any material term or condition of this Agreement, and Ozarks Coca Cola/Dr Pepper fails to cure such breach within thirty (30) calendar days from the date of Ozarks' receipt of written notice of such breach.
- (b) In addition to any other legal or equitable remedy, Branson Parks and Recreation will have the right to terminate this Agreement if at any time Branson Parks and Recreation breaches any material term or condition of the Agreement, or if Branson Parks and Recreation breaches any warranty or representation made herein, and Branson Parks and Recreation fails to cure such breach within thirty (30)

calendar days from the date of Branson Parks and Recreation's receipt of written notice of such breach.

- (c) The parties acknowledge that the rights granted to Ozarks Coca Cola/Dr Pepper Bottling Company herein are special, unique and extraordinary, and of peculiar value, the loss of which cannot be fully compensated by monetary damages in an action at law or any application of other remedies described herein. As a result, Branson parks and Recreation acknowledges and agrees that, in addition to any other available remedies, in the event of a material impairment, restriction or limitation of any of Ozarks Coca Cola/Dr Pepper rights hereunder, Ozarks Coca Cola/Dr Pepper will be entitled to seek and obtain equitable relief, including an injunction requiring full compliance with this Agreement along with all of Ozarks Coca Cola/Dr Peppers' costs, expenses and reasonable attorney fees.

7. Confidentiality

Branson Parks and Recreation agrees that the terms and conditions of this Agreement will be kept confidential and will not be disclosed in any manner whatsoever, whether in whole or in part, to any third party by Branson Parks and Recreation, its officers, employees, directors or agents without prior written consent of Ozarks Coca Cola/Dr Pepper Bottling Company. The foregoing obligation regarding confidentiality will remain in effect after the expiration or earlier termination of this agreement.

8. Warranties and Representations

- (a) Branson Parks and Recreation has full power and authority to enter into this Agreement and to grant and convey to Ozarks Coca Cola/Dr Pepper the rights set forth herein.
- (b) All necessary approvals for the execution, delivery and performance of this Agreement by Branson Parks and Recreation have been obtained, and this Agreement has been duly executed and delivered by Branson Parks and Recreation and constitutes a legal and binding obligation of Branson Parks and Recreation enforceable in accordance with its terms.
- (c) Branson Parks and Recreation has not entered into, and will not enter into during the Term (1) any agreement with any third party which would prevent it from fully complying with the terms and conditions of this Agreement, or (2) any agreement with any third party granting any rights, which are inconsistent with the rights, granted to Ozarks Coca Cola/Dr Pepper pursuant to this Agreement.
- (d) That at all times during the Term of this Agreement, the locations will be continuously operated in a first-class manner.

9. Right of First Negotiation

Prior to termination of the Agreement, Branson Parks and Recreation agrees to negotiate with Ozarks Coca Cola/Dr Pepper Bottling Company in good faith regarding any similar agreement. As used herein, the Right of First Negotiation means that Branson Parks and Recreation shall negotiate with Ozarks Coca Cola/Dr Pepper for a period of thirty (30) days prior to the expiration of this Agreement and thereafter Branson Parks and Recreation shall be free to negotiate with any person or authority.

10. Miscellaneous

Except as otherwise provided herein, neither this agreement nor any part thereof shall be assigned or otherwise transferred by one party without the prior written consent of the other party. This Agreement shall constitute the final, complete and exclusive written expression of the intentions of the parties hereto with respect to this subject matter of this Agreement and supersedes all previous communications, representations, agreements, promises or statements either oral or written by or between each party. This Agreement may be amended only by writing, which is executed by each of the parties hereto. The parties herein are acting as independent contractors and independent employers. Nothing herein contained shall create or be construed as creating a partnership, joint venture arrangement or agency relationship between the parties, and no party shall have the authority to bind the other in any respect. Except as otherwise provided herein, no party shall obtain, by this Agreement, any right, title or interest in or to the trademarks of the other, nor shall this Agreement give any party the right to use, refer to or incorporate in marketing or other materials the names, logos, trademarks or copyrights of the other.

Exhibit A – Product Pricing Full Service

| | Profit Per Unit | Commission Per Case |
|-----------------------------------|------------------------|----------------------------|
| 20-ounce Carbonated Soft Drinks * | \$.55 | \$13.20 |
| 20-ounce Water * | \$.55 | \$13.20 |
| 20-ounce Powerade * | \$.55 | \$13.20 |
| 16-ounce Minute Maid and Nestea * | \$.55 | \$13.20 |

*Commissions would vary depending on vend price

Pricing is subject to a maximum of 3% cost of goods increase per year

Beverages purchased for resale

| | Unit Cost | Case Cost |
|---------------------|------------------|------------------|
| 20-ounce CSD* | \$.46 | \$11.00 |
| 20-ounce Powerade | \$.54 | \$13.00 |
| 20-ounce Dasani | \$.46 | \$11.00 |
| 16-ounce Juice 100% | \$.54 | \$13.00 |
| 16-ounce Tea | \$.54 | \$13.00 |

*\$2.00 Shell deposit is required on 20 oz CSD only. Amount is credited when shell is returned.

If you are in agreement with the terms and conditions contained in this Agreement, please have both copies of the Agreement executed by an authorized representative of Branson Parks and Recreation and return one fully executed Agreement.

BRANSON PARKS AND REC

**OZARKS COCA COLA/Dr PEPPER
BOTTLING COMPANY**

By _____ By _____

Its _____ Its _____

Date _____ Date _____