

**CONTRACT APPROVAL COVER SHEET
SWIRE PACIFIC HOLDINGS INC.**

CUSTOMER(S): Weber County Ice Sheet (2024)

Parent Company Corollary Attached: Yes No **Acceleration Funding DFSOP:**

TO: Sandra Bence, Swire Pacific Holdings Inc., USA/Corporate Office sbence@swirecc.com

Date:

April 15, 2024

Initial:

SB

(Brent O. Hatch)

Please initial and date to indicate your approval

Hatch Law Group: 801.869.1919
swirecontracts@hatchpc.com

See attached time stamp. Last approval:



Requestor, Division FSOP Manager,
Sales Center Manager, Division Manager,
Division Finance Manager

6/18/2024

DocuSigned by:

Kim Snider

C7C9D778368740B...

Kimberly Snider, Director FSOP Field Sales

Wendy Sanuik, V.P. / GM

Brendan Cranna, Chief Sales Officer

Andrea Kendell, Chief Financial Officer

Rob Gehring, President, and CEO

Sandra Bence, Submit PAT

6-19-2024

SB

Originator: Tyler Baker, 801-381-5240, tylbaker@swirecc.com

DATE: April 12, 2024

FOR Pricing Dept. Use:

Key Account Number: _____ Outlet Number: _____

Imaged in Division(s): PHX Metro AZ ID/EWA WW/OR CO UT/NV

Send Contract to: _____ **Sales Center**

INSTRUCTIONS:

- All contracts should be reviewed with legal counsel prior to finalizing.
- Contract cover sheet filled out with Key Account and Outlet number.
- Originator should identify Division and/or Divisions document should be imaged into.
- PAT time stamp for Requestor, Division FSOP Manager, Sales Center Manager, Division Manager, Division Finance Manager. All Others please date and initial next to your title on the Contract Cover Sheet to indicate that you have reviewed and approved the proposed Contract.
- Swire to be first to sign, then customer must sign the two original contracts. One may be given to the Customer.
- The other signed original is to be returned to Sandra Bence. She will then give the contract to imaging department for imaging.
- One fully signed original Contract accompanied by the Cover Page and the PA will then be forwarded by Imaging to Sandra Bence to be retained by the Corporate office

Signature Approvals for White Truck Outlets

Sale Center/Division FSOP Manager
Division Finance Manager
Division Vice President

2024 – 2029 Exclusive Beverage Agreement

“Customer”: **Weber County Ice Sheet**

“Coca-Cola”: Swire Coca-Cola, USA

“Locations” of Customer covered under this Agreement:

4390 Harrison Blvd.
Ogden, UT 84403
Coca-Cola Outlet # 600059964

Any new locations opened during the Term shall automatically become Locations under this Agreement.

Customer Fed. Tax ID # (EIN): [REDACTED]

Customer Contact: Mariko Rollins

Customer Phone #: 801-391-1036

1. TERM: The “Term” of the Agreement shall commence on April 2, 2024, and shall continue until the later of April 1, 2029, or Customer has met its “Volume Commitment” below. If the Term extends past April 1, 2029, to meet the Volume Commitment, Customer is not entitled to further Marketing Funding under Section 5 except PBF.

2. VOLUME COMMITMENT Customer agrees to purchase from Coca-Cola a minimum total “Volume Commitment” of
Fountain Syrup: 2,000 gallons (400 annually)
Bottle/Can: 2,600 cases (520 annually)
Vended bottle/can: 775 cases (155 annually)

Should purchases fall more than ten percent (10%) below the annual volume in any year, Coca-Cola may reduce or cease Section 5 funding under and/or terminate the Agreement. Customer represents that it has independently determined the Volume Commitment is reasonable and acknowledges that the funding and pricing provided herein are based on Customer fulfilling the Volume Commitment.

3. EXCLUSIVITY: (a) Customer shall purchase, sell, and advertise exclusively fountain, bottle, can and other beverage “Products” from Coca-Cola. “Products” includes, without limitation, carbonated and non-carbonated, soft drinks, water, mineral & flavored waters, juices, sports drinks, energy drinks, mixers, protein drinks, iced teas, iced coffees, and similar beverages, CO₂, cups, lids and straws, but not including unflavored dairy products, alcoholic beverages, and tap water.

(b) Customer agrees to display a minimum of five (5) images of Coca-Cola Products (which shall be provided by Coca-Cola) on its online menu and/or delivery service.

4. PRICING AND PAYMENT TERMS:

(a) Customer will be charged Coca-Cola’s Preferred Customer Pricing for Products. Coca-Cola may set minimum Product case delivery quantities.

(b) Payment is due upon delivery. If Customer applies for and is granted a credit account, payment shall be due within 30 days of the date of delivery.

(c) All pricing terms are subject to yearly price increases. Additionally, if Coca-Cola is subject to extraordinary increases in cost of fuel, materials, and other products necessary for manufacture and distribution of Products, Coca-Cola may increase any pricing terms to reflect the increase in costs.

(d) Customer agrees that the invoice is accurate and the Products are acceptable unless it provides written objection w/in 30days of the statement.

(e) Customer is responsible for any federal, state and/or local sales, excise, property or other taxes and licenses related to the Products and Equipment.

(f) Customer warrants that the Products purchased are solely for resale.

5. MARKETING FUNDING: Coca-Cola will provide Customer, if current on Volume Commitment, the following funding:

(a) Marketing Funding in the one-time amount of Twenty Thousand Dollars (\$20,000) to be used to promote Customer’s Locations in conjunction with Coca-Cola Products as mutually agreed. Coca-Cola shall be the exclusive soft drink and water sponsor of Customer’s Locations and may advertise itself as such. Customer will allow Coca-Cola to prominently display signage and other promotional material at the Location(s).

(b) Performance Based Funding (“PBF”) as follows:

Fountain Syrup	\$2.25	per gallon
20oz SSD	\$3.00	per 24ct case
20oz Dasani	\$5.00	per 24ct case
0.5Ltr Dasani	\$3.00	per 24ct case
16oz Monster	\$3.00	per 24ct case
20oz Powerade	\$3.00	per 24ct case
12oz Minute Maid Juice	\$3.00	per 24ct case
10.1oz Tum-E	\$1.50	per 24ct case

PBF for each gallon/case purchased from Coca-Cola will be reflected on invoice as a price reduction.

(c) Commission: Coca-Cola will provide Customer with a commission on Vending Machine sales (after deducting from the commission any applicable sales and use taxes and lost product) at the minimum required vending price as set forth below. Coca-Cola will collect all monies deposited in the Vending Machines. Where appropriate, Coca-Cola will pay the sales and use taxes deducted from the commission to the appropriate government authorities on behalf of Customer. Coca-Cola will have the sole right to set vending prices for the vended Products.

Vended Product	Min. Vend Price	Commission
20oz SSD	\$2.50	35%
20oz Dasani	\$2.50	35%
20oz Vitamin Water	\$2.50	35%
16oz Full Throttle / NOS	\$3.00	25%
16oz Monster	\$3.00	25%
20oz Powerade	\$2.50	35%

6. EQUIPMENT RENTAL PROGRAM:

(a) Coca-Cola will provide Customer with the use of the following “Equipment” during the Term.

Qty.	Name of Equipment (incl. existing)	Total Value
2	6-Valve CTN (reman.)	\$1,100
2	GDM-10 (reman.)	\$1,020
5	D276E (reman.)	\$4,400

(b) Customer acknowledges that the Equipment is being provided for the purpose of exclusively dispensing Coca-Cola Products. Customer acknowledges that the Equipment bears Coca-Cola Product trademarks, logos, and slogans that advertise to consumers the availability of Coca-Cola Products from Customer. In order to protect Coca-Cola’s trademarks, name, reputation, and goodwill with consumers, Customer agrees to ensure that **only Coca-Cola trademarked Products are used in the Equipment.**

(c) Equipment is, and will remain, personal property of Coca-Cola.

(d) Customer shall not transfer, pledge, lease, sell, mortgage, assign or in any other way encumber or dispose of any of the Equipment.

(e) Customer shall make no alteration in the Equipment or remove, deface, or alter any identification or trademarks appearing on the Equipment. All parts added to the Equipment through alterations, repairs, additions or improvements will constitute accessions to, and will be considered an item of the Equipment and title to such will immediately vest in Coca-Cola.

(f) Coca-Cola will service and maintain the Equipment during the Term and to provide service calls, so long as Customer uses the Equipment only for the sale of Products distributed by Coca-Cola and provided such service calls are not the result of Customer’s negligence. All service calls must be exclusively handled through Coca-Cola’s service dispatch.

(g) If for any reason Products are purchased from anyone other than Coca-Cola, in addition to its rights set forth herein, Coca-Cola may charge Customer the following additional fees: An additional charge of \$125.00 on each piece of Equipment for each month in which Customer was in noncompliance and an additional charge of \$75.00 per service call.

(h) Customer shall use the Equipment only at the Location(s) and shall not remove the Equipment except as permitted by Coca-Cola in writing. Customer is responsible for all utilities. Coca-Cola shall have the right during Customer’s regular business hours to inspect the Equipment.

(i) Risk of loss, damage or destruction of the Equipment will be borne solely by Customer from the time the Equipment is delivered to Customer until returned to and accepted by Coca-Cola.

(j) Upon any termination of Agreement, Customer shall return Equipment to Coca-Cola in as-received condition, reasonable wear and tear excepted.

(k) NO WARRANTIES: CUSTOMER ACKNOWLEDGES COCA-COLA IS NOT A MANUFACTURER OF THE EQUIPMENT AND HAS MADE NO REPRESENTATIONS OR WARRANTIES OF ANY NATURE PERTAINING TO THE EQUIPMENT WHETHER EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, COMPLIANCE OF THE EQUIPMENT WITH ANY APPLICABLE GOVERNMENT REQUIREMENTS OR REGULATIONS, OR ANY OTHER WARRANTIES RELATING TO THE DESIGN, CONDITION, QUALITY, CAPACITY, MATERIAL, OR WORKMANSHIP OF THE EQUIPMENT OR ITS PERFORMANCE, OR ANY WARRANTY AGAINST INTERFERENCE, INFRINGEMENT, OR WITH RESPECT TO PATENT RIGHTS.

7. **HIATUS IN OPERATIONS:** If Customer's Location ceases or materially reduces operations, events, and performances due to COVID-19, or any similar future epidemic, pandemic, health outbreaks or due to a force majeure that has a material impact on Customer's business, then the parties, each acting in good faith, shall agree (1) on an extended Term to compensate for the hiatus in Customer's business, and/or (2) to reduce or cease any funding and other payments by Coca-Cola under Section 5 and Customer shall provide Coca-Cola a pro-rated refund (as applicable) of funding paid by Coca-Cola.

8. **BUSINESS REVIEW:** Coca-Cola may conduct business reviews with Customer on a quarterly or annual basis to review the Volume Commitment and any opportunities at the Location(s) to increase sales.

9. **DEFAULT/REMEDIES:** In addition to Coca-Cola's rights stated in this Agreement, Coca-Cola may terminate this Agreement upon the occurrence of any of the following events of default:

(a) Customer is in breach of the Agreement and fails to cure such breach within 10 days of notice from Coca-Cola.

(b) The Equipment is levied, seized, or attached, whether by operation of law or otherwise.

(c) Customer is adjudicated insolvent, files a voluntary petition in bankruptcy, enters into an arrangement with its creditors, applies for or consents to the appointment of a receiver or trustee of itself or its property, makes an assignment for the benefit of creditors, suffers or allows entry of an order adjudicating it bankrupt or insolvent, or a receiver or trustee is appointed of itself or its property.

In addition to termination, Coca-Cola may (1) take possession of any or all Equipment without demand or notice, wherever the same may be located, without any court order or other process of law. Customer hereby waives any and all damages occasioned by such taking of possession unless caused by Coca-Cola's gross negligence or willful misconduct, and/or (2) pursue any other remedy at law or in equity.

10. **LIMITATION OF LIABILITY.** COCA-COLA SHALL NOT BE LIABLE TO CUSTOMER FOR ANY CLAIMS BASED UPON OR ARISING OUT OF INJURY TO PERSON OR PROPERTY IN ANY WAY RELATING TO THE INSTALLATION, USE, OR OPERATION OF THE EQUIPMENT, EXCEPT ARISING SOLELY OUT OF COCA-COLA'S GROSS NEGLIGENCE. IN NO INSTANCE SHALL COCA-COLA BE RESPONSIBLE FOR ANY LOSS OF PROFITS, ANY DIRECT, INCIDENTAL, OR CONSEQUENTIAL LOSSES OR DAMAGES OF ANY NATURE, RESULTING FROM THE DELIVERY, INSTALLATION, MAINTENANCE, OPERATIONS, SERVICE, OR USE OF ANY EQUIPMENT.

11. **NO ASSIGNMENT:** Customer may not assign this Agreement without the prior written consent of Coca-Cola, which may be withheld for any reason.

12. **EARLY TERMINATION OF AGREEMENT:** Except for a termination under Section 15, if the Agreement is terminated for any reason prior to meeting the total Volume Commitment, Customer agrees to promptly return the Equipment, pay 25% of the value of the Equipment in Section 6(a) to refurbish and restock the Equipment, and to immediately refund to Coca-Cola in cash the cash value of all funding of all types provided to Customer in Section 5.

13. **ENTIRE AGREEMENT:** This Agreement is the full agreement and no collateral agreement will be binding upon the parties unless in writing and properly signed by duly authorized officers of the parties.

14. **REPRESENTATION:** Customer represents that the execution of this Agreement will not result in a breach of any other agreement, including without limitation an exclusive agreement with any other beverage provider.

15. Customer's performance under this Agreement depends upon the continued appropriation of funds by either the Utah Legislature or the Weber County Commission. If the legislating body fails to appropriate the funds necessary for the performance, then this Agreement may be terminated by the Customer by providing written notice to Coca-Cola without further obligation. Said termination shall not be construed as breach of or default under this Agreement and said termination shall be without penalty, additional payments, or other charges to Customer of any kind whatsoever, and no right of action for damages or other relief shall accrue to the benefit of any party, their successors or assigns, as to this Agreement, or any portion thereof, which may so terminate and become null and void.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed.

Customer Signature

Printed Name of Customer's Authorized Signatory

Dated: _____

DocuSigned by:

Kim Snider

Director, FSOP Field Sales

C7C9D778368740B
Swire Coca-Cola, USA Signature

6/18/2024

Dated: _____

2024 – 2029 Exclusive Beverage Agreement

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(b) The Equipment is levied, seized, or attached, whether by operation of law or otherwise;

(c) Customer is adjudicated insolvent, files a voluntary petition in bankruptcy, enters into an arrangement with its creditors, applies for or consents to the appointment of a receiver or trustee of itself or its property, makes an assignment for the benefit of creditors, suffers or allows entry of an order adjudicating it bankrupt or insolvent, or a receiver or trustee is appointed of itself or its property.

In addition to termination, Coca-Cola may (1) take possession of any or all Equipment without demand or notice, wherever the same may be located, without any court order or other process of law. Customer hereby waives any and all damages occasioned by such taking of possession unless caused by Coca-Cola's gross negligence or willful misconduct, and/or (2) pursue any other remedy at law or in equity.

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IN WITNESS WHEREOF, the parties have caused this Agreement to be executed

Customer Signature

Printed Name of Customer's Authorized Signatory

Dated: _____

DocuSigned by:

Kim Snider

Director, FSOP Field Sales

Swire Coca-Cola, USA Signature

6/18/2024

Dated: _____