Agenda Item: ID#18-1012 (1-A)
Date: 9/20/18

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City of FRESNO

Supplemental Information Packet

Agenda Related Item(s) – ID#18-1012 (1-A)

Contents of Supplement: Signed Sponsorship Agreement

Item(s)

Approve Sponsorship Agreement with Pepsi Beverages Company to be Exclusive Non-Alcoholic Beverage Provider for the Fresno Convention & Entertainment Center

Supplemental Information:

Any agenda related public documents received and distributed to a majority of the City Council after the Agenda Packet is printed are included in Supplemental Packets. Supplemental Packets are produced as needed. The Supplemental Packet is available for public inspection in the City Clerk's Office, 2600 Fresno Street, during normal business hours (main location pursuant to the Brown Act, G.C. 54957.5(2). In addition, Supplemental Packets are available for public review at the City Council meeting in the City Council Chambers, 2600 Fresno Street. Supplemental Packets are also available on-line on the City Clerk's website.

Americans with Disabilities Act (ADA):

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PEPSI BEVERAGES COMPANY

SPONSORSHIP AGREEMENT

This sets forth the agreement ("***Agreement***") between Bottling Group, LLC., and its affiliates and/or respective subsidiaries collectively comprising Pepsi Beverages Company, with an office located at 2945 S. East Avenue, Fresno, A 93725 ("***Pepsi***") and SMG, a Pennsylvania general partnership, as the manager of the Fresno Convention & Entertainment Center, its place of business at 848 Main Street, 2nd Floor, Fresno, CA 93721 (the "***Customer***"), and the City of Fresno, a California municipal corporation (the "City").

WHEREAS, Pepsi desires the right to be the exclusive supplier of Beverages (as defined below) to the Facilities (as defined below); and

WHEREAS, Customer manages the Facilities for the City; and

WHEREAS, Pepsi has submitted to Customer a bid in response to an invitation to bid issued by the Customer for the exclusive right to develop and carry out a program for the sale of its beverage products in all Facilities; and

WHEREAS, Pepsi is experienced in installing, operating, servicing and maintaining equipment for dispensing beverage products and the Customer has determined that it is in the best interests of the Customer to contract with Pepsi to provide services for the sale of beverage products; and

WHEREAS, Pepsi wishes to identify itself with the Facilities and to have its products promoted and sold at the Facilities (as defined below) and further wishes to receive the other promotional benefits provided for by the Customer in this Agreement; and

NOW, THEREFORE, in consideration of the terms, covenants and conditions herein contained, and the other mutual promises set forth herein, the parties agree as follows:

AGREEMENT

1. DEFINITIONS.

"***Approved Cups***" means the disposable cups approved by Pepsi from time to time as its standard trademark cups and other containers approved by Pepsi from time to time and bearing the trademark(s) of Pepsi and/or other Products. In addition, Pepsi agrees that the Customer shall have the right to produce limited-run commemorative plastic cups reasonably acceptable to Pepsi for use at the Facilities and that such cups shall also be considered to be Approved Cups, provided that Pepsi's trademark(s) for Pepsi® shall be included on such commemorative cups. The use and size of Pepsi's trademark(s) on such commemorative cups shall be subject to the prior approval of Pepsi.

"***Beverage***" or "***Beverages***" means all carbonated and non-carbonated, non-alcoholic drinks, however dispensed, including but not limited to, (i) colas and other flavored carbonated drinks; (ii) fruit juice, fruit juice containing and fruit flavored drinks; (iii) chilled coffee drinks; (iv) chilled tea products; (v) hypertonic, isotonic and hypotonic drinks (sports drinks and fluid replacements); (vi) energy drinks, (vii) packaged carbonated or still water

(including spring, mineral or purified), (viii) liquid concentrate teas ("***LCT***"), (ix) frozen carbonated and non-carbonated beverages ("***FB***") .

"***Cases***" shall mean the number of cases of Packaged Products purchased by the Customer from Pepsi, 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 Pepsi, from time to time.

"***Competitive Products***" shall mean any and all Beverages other than the Products.

"***Customer Marks***" shall mean (i) the Designations (as defined below) and (ii) the Customer's characters, colors, emblems, designs, identifications, logos, mascots, name, service marks, symbols, trademarks, all trade names, uniforms, and other proprietary designations which are owned, licensed to or controlled by the Customer and which relate to the Facilities and which are in existence on at the beginning of the Term or which will be created during the Term. For clarity purposes, Customer Marks shall include, without limitation, characters, colors, emblems, designs, identifications, logos, mascots, name, service marks, symbols, trademarks, all trade names, uniforms and other proprietary designations associated with or related to all intercollegiate athletic teams associated with the Customer, at the beginning of the Term or which will be created during the Term, if any.

"***Designations***" shall include, but not be limited to, the following: "A Proud Sponsor of the Fresno Convention & Entertainment Center" and "Official Water and Soft Drink of the Fresno Convention & Entertainment Center."

"***Equipment***" means the following types of equipment owned and operated by Pepsi and used to sell or dispense the Products: (i) full service vending machines ("***Vending Machines***"); (ii) retail single-serve food service equipment and (iii) fountain service equipment.

"***Facilities***" shall mean the entire premises of the Fresno Convention & Entertainment Center now or in the future, including all buildings, the grounds, parking lots, dining facilities, snack bars, food carts, book stores, athletic facilities and concession stands, and, for each building, the grounds, parking, lots, dining facilities, unbranded and branded food service outlets and vending areas. "***Facilities***" shall also be deemed to include retail operations and restaurants initiated during the Term of this Agreement in space leased to third-party commercial tenants within Customer-owned buildings.

"***Food Service Provider***" shall mean any and all food service provider which may serve at the Facilities at any point during the Term. The Customer acknowledges and agrees that this Agreement, including the pricing, funding, and other consideration provided for herein is based on the Customer's current operating model/use of third party Food Service Providers. Thus, in the event that: (i) if the Customer is currently self-operated, the Customer switches to a Food Service Provider, or (ii) if the Customer currently uses a Food Service Provider to operate its concessions, such agreement between the Customer and the current Food Service Provider expires or is terminated, and the Customer enters into a new arrangement with a Food Service Provider; then any such new or subsequent agreement between the Customer and any Food Service Provider (pursuant to either (i) or (ii) above)

shall require such Food Service provider to abide by the applicable pricing and other terms set forth in this Agreement to the exclusion of all other benefits, and shall specifically require such Food Service Provider to affirm that it will not be entitled or seek to receive any funding or other benefits/consideration in connection with any agreement such Food Service Provider may separately have with Pepsi or Pepsi's affiliates. In the event that the Customer fails to adhere to this requirement (or the Food Service Provider refuses to abide accordingly), then Customer hereby authorizes Pepsi, and Pepsi shall be entitled to adjust its pricing, funding or other consideration provided to the Customer by an amount equal to the incremental costs incurred by Pepsi as a result of the Customer's change in Food Service Providers.

"***Gallons***" shall mean the number of gallons of the Postmix Products purchased by the Customer from Pepsi.

"***Packaged Products***" shall mean Beverages that are distributed in pre-packaged form (*i.e.*, Bottles & Cans). A current list of Pepsi's Packaged Products is found in attached **Exhibit A** which may be amended by Pepsi from time to time.

"***Postmix Products***" shall mean beverage products used to create and dispense fountain beverages. A current list of Pepsi's Postmix Products is found in attached **Exhibit A** which may be amended by Pepsi from time to time.

"***Products***" shall mean Postmix Products and Packaged Products manufactured, bottled, sold, and/or distributed by Pepsi.

"***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 September 1, 2018 and expire upon the later of December 31, 2027, or at such time as Customer's collective purchases of Products meets or exceeds a volume threshold (the "***Volume Threshold***") of 40,600 Gallons (including equivalent Cases) (the "***Term***"). For the purposes of measuring the Volume Threshold only, 1 Case of Packaged Product shall be deemed equal to 1 Gallon of Postmix Product. Thus, in the event the Volume Threshold is not met on or before the date indicated above, then the Term shall automatically extend for the period of time necessary until the Volume Threshold has been met (the "***Automatic Extension***"). Except for applicable Commissions and Rebates, which may be earned during the Automatic Extension, Pepsi shall not provide any other consideration to Customer. When fully executed, this Agreement will constitute a binding obligation of parties until expiration or termination except as provided in Section 16 below.

3. GRANT OF BEVERAGE AVAILABILITY AND MERCHANDISING RIGHTS.

During the Term, Customer hereby grants to Pepsi the following exclusive Beverage availability and exclusive Beverage merchandising right as set forth and described below:

A. Beverage Availability at the Facilities.

(1) Grant of Rights.

(a) Pepsi shall have the exclusive right to make Beverages available for sale and distribution throughout the Facilities, including the right to provide all Beverages sold at athletic contests (*i.e.*, concession stands, sales in stands (hawking) or other means), booster club activities, and all other special events conducted at or any location on the Facilities ("***Special Events***"). The Products shall be the only Beverages sold, dispensed or served at the Facilities (*i.e.*, at concession stands, sales in stands (hawking) or other means), and the Products shall be sold at all food service concession or vending locations located within the Facilities; and

(b) Pepsi shall have the exclusive right to install the Equipment throughout the Facilities at locations within the Facility mutually agreed to by the parties. Pepsi shall have the further right to install additional Equipment in buildings and facilities acquired and/or constructed by the Customer after the date of this Agreement. Pepsi shall install the Equipment at its sole expense; *provided, however*, that the Customer will be responsible for all electrical hook-ups and charges related thereto. Pepsi shall have the right to place full trademark panels on all sides of its Equipment. Pepsi, or one of its affiliates, shall retain title to all Equipment.

(2) Purchasing of Postmix Products.

The Postmix Products shall be purchased by Customer or the Food Service Provider from Pepsi at the prices established by Pepsi. Current pricing for Postmix Products is as set forth in **Exhibit A** attached hereto. Pepsi shall have the right to increase pricing each Year during the term.

(3) Purchasing of Packaged Products.

The Packaged Products shall be purchased by Customer or the Food Service Provider from Pepsi at prices established by Pepsi. Current pricing for Packaged Products is as set forth in **Exhibit A** attached hereto. Pepsi shall have the right to increase pricing each Year during the term.

(4) Food Service.

During the Term, Pepsi shall work directly with, Customer and the Food Service Provider for the Facilities, to provide all of its requirements for the Products. Customer shall cause its Food Service Provider to purchase the Product from Pepsi at prices as determined by Pepsi. The Customer shall make reasonable efforts to cause its Food Service Provider to purchase Products from Pepsi in sufficient quantities to ensure the regular and continuous distribution of the Products at the Facilities. Pepsi shall work directly with Customer and its Food Service Provider to promote sales of the Products through appropriate point-of-

sale and other advertising materials bearing the trademarks of the Products at Pepsi's expense.

(5) Vending.

Pepsi shall have the exclusive right to place Beverage Vending Machines at the Facilities for dispensing the Products; *provided, however*, that Pepsi shall work with Customer to identify optimal locations for such equipment. Pepsi shall not be assessed common area maintenance fees, taxes or other charges based on its occupation of the space allocated to Vending Machines.

B. Product Merchandising Rights.

During the Term and subject to the terms and conditions contained in this Agreement, Customer grants Pepsi the exclusive right to merchandise Beverages at the Facilities as set forth and described below:

(1) Menu Board Advertising.

Customer agrees that Pepsi's trademarks for products shall be listed on the menu boards at concession locations in which Products are served to customers at the Facilities. All brand identification containing Pepsi trademarks and/or service marks for menu boards set forth herein will be prepared and installed by Customer at Customer's sole cost and expense.

(2) Approved Cups; Product Hawking and Catering.

Customer agrees that all Products served, sold or dispensed at concession locations in which Products are served to customers at the Facilities shall be served in Approved Cups and all other Beverages served, sold or dispensed within the Facilities shall be served in either Approved Cups or other disposable cups which do not bear, display or contain the trademarks or service marks of a manufacturer of Competitive Products. Pepsi agrees to make Approved Cups available for purchase and the Customer shall purchase, and shall require that all concessionaires, Food Service Providers, booster clubs and other third parties selling Beverages at the Facilities purchase all Products, cups, lids and carbon dioxide directly from Pepsi at prices determined by Pepsi. Customer shall cause Products to be "***hawked***" at the Facilities at all events taking place at the Facilities (including, without limitation, at all home games of all intercollegiate athletic teams associated with the Customer, if any), and served as part of the catering selection in private boxes, suite, backstage areas, locker rooms and press areas. Customer further agrees that Products to be "***hawked***" in the stands shall be sold only in Approved Cups. As used herein, "***hawking***" shall refer to the sale of single servings of a product in the seating areas of the Facilities through the use of vendors circulating through such seating areas.

4. GRANT OF ADVERTISING AND PROMOTIONAL RIGHTS.

During the Term, Customer hereby grants to Pepsi the right to advertise and promote Products in and with respect to the Customer and the Customer Marks upon the terms and conditions contained in this Agreement and as set forth and described below.

A. Advertising

(1) Facilities and Print Advertising.

Pepsi shall have the right to Facilities and print advertising as mutually agreed between the parties and as further outlined in Exhibit B.

(2) Design and Installation of Customer Advertising.

Pepsi agrees, at its own cost, to provide Customer with the general design of all Customer Advertising. The Customer Advertising shall be constructed and installed by Customer (or an agent thereof) at Customer's sole cost and expense. All Customer Advertising shall be in conformity with the general scheme and plan of the Customer and the surrounding areas.

(3) Advertising/Signage Changes/Removal.

Customer recognizes Pepsi's right to change, modify, alter or remove its advertising for, or identification of, any of the Products or to discontinue the manufacture of any of the Products. Pepsi shall reimburse Customer for all reasonable costs and expenses incurred by Customer in changing, modifying, altering or removing any Facilities Advertising, menu boards and other Pepsi identification or references to any of the Products necessitated by Pepsi's changes to or removal of the advertising, trademarks or trade names, designations or identification thereof. Pepsi shall have the right to modify, change, alter, or remove the promotional messages appearing thereon and all such modifications, changes, alterations, and/or removals shall be at Pepsi's sole cost and expense. Customer shall use reasonable efforts to minimize the cost to Pepsi for changing, modifying, altering and/or removing Pepsi's advertising.

(4) Maintenance of Signage.

Customer shall maintain all Facility Advertising and other signs and advertising for Products in good order. Customer shall affect any necessary repairs reasonably determined by Customer at Customer's sole cost and expense. Where practical, Customer shall consult with Pepsi prior to incurring any material signage or other related maintenance expenses.

B. Promotional Rights.

(1) General Sponsorship Designation.

Customer hereby agrees that Pepsi shall have the right to promote the fact that Pepsi is an official sponsor of the Customer and its intercollegiate athletic teams, if any, and that the Products are available at the Facilities, including the right of Pepsi to refer to itself using the Designations. Such promotion may be conducted through the distribution channels of television, radio, and print media, on the packaging of (including cups and vessels) and at the point-of-sale of any and all Products wherever they may be sold or served.

(2) Grant of License to Use the Customer Marks for Promotional Activities.

Customer hereby grants to Pepsi a nonexclusive license to use the name of the Facilities and the Customer Marks for the limited purposes of promoting Products within the context of promotional activities. Customer acknowledges that, in order to make full use of the rights granted in this Agreement, Pepsi may conduct the promotional activities through its primary distribution channels in which Pepsi sells Products to the ultimate consumer, such as at the retail level, within drug stores and other retail outlets, by and through mass merchandise campaigns and together with Pepsi's food service accounts and customers.

C. Representations, Warranties, and Covenants regarding the Ownership and Protection of the Customer Marks and Related Proprietary Rights.

Customer represents and warrants that it is the sole and exclusive owner of all right, title and interests in and to the Customer Marks (including without limitation, all goodwill associated therewith) and Pepsi's use of the Customer Marks pursuant to this Agreement will not infringe the rights of any third parties. Pepsi acknowledges that nothing contained in this Agreement shall provide Pepsi with any right, title, or interest to the Customer Marks other than the right to use such Customer Marks granted under this Agreement. Pepsi (on behalf of itself and its affiliates) agrees that it shall not attack the title or any rights of Customer and its affiliates and cooperate with Customer and its affiliates to procure any protection or to protect any of the rights of Customer and its affiliates in and to the Customer Marks. Pepsi shall cause to appear on all materials incorporating the Customer Marks such legends, markings and notices as Customer or its affiliates may request in order to give appropriate notice of any trademarks, service mark, trade name, copyright, or other right with respect to the Customer Marks. Pepsi shall not make any alterations or changes to the design or type of the Customer Marks without the prior written consent of Customer.

D. Representations, Warranties and Covenants regarding the Ownership and Protection of Proprietary Rights of Pepsi.

Pepsi represents and warrants that Pepsi is authorized to use certain names, logos, service marks and trademarks of PepsiCo, Inc. (including without limitation, all goodwill associated therewith) (the "***Pepsi Marks***") under a license from PepsiCo, Inc. Customer acknowledges that nothing contained in this Agreement shall provide

Customer with any right, title, or interest to the names, logos, service marks, and trademarks of PepsiCo, Inc. without the prior written approval of PepsiCo, Inc. Customer (on behalf of itself and its affiliates) agrees that it shall not attack the title or any rights of PepsiCo, Inc., Pepsi and its affiliates and cooperate with PepsiCo, Inc., Pepsi and its affiliates to procure any protection or to protect any of the rights of PepsiCo, Inc., Pepsi and its affiliates in and to the Pepsi Marks. Customer shall cause to appear on all materials incorporating the Pepsi Marks such legends, markings and notices as Pepsi or its affiliates may request in order to give appropriate notice of any trademarks, service mark, trade name, copyright, or other right with respect to the Pepsi Marks. Customer shall not make any alterations or changes to the design or type of the Pepsi Marks without the prior written consent of PepsiCo, Inc.

5. GRANT OF OTHER RIGHTS.

A. Sampling.

Customer agrees to permit to conduct, at Pepsi's sole cost and expense, limited sampling of Pepsi products at the Facilities in a form and manner as specifically authorized and approved by Customer and in accordance with rules and procedures established by Customer, in its sole discretion, as may be amended or supplemented from time to time by Customer.

B. Additional Rights.

Customer agrees to provide Pepsi with the additional rights set forth on **Exhibit B.**

6. EXCLUSIVITY.

A. During the Term, Customer, its agents, representatives and staff (i) shall not themselves nor shall they permit a third party to, sell, serve, promote, market, advertise, sponsor or endorse Competitive Products at the Facilities or in connection with the Customer or the Facilities and (ii) shall not enter into an agreement with third parties where Competitive Products are sold, distributed, advertised, merchandised, sponsored or endorsed, at the Facilities or in connection with the Customer or the Facilities.

B. Customer recognizes that Pepsi has paid valuable consideration to ensure an exclusive associational relationship with the Facilities, Customer, and/or Customer Marks with respect to Beverages and that any dilution or diminution of such exclusivity seriously impairs Pepsi's valuable rights. Accordingly, the Customer will promptly oppose Ambush Marketing (as defined below) and take all reasonable steps to stop Ambush Marketing and to protect the exclusive associational rights granted to Pepsi pursuant to this Agreement. In the event any such Ambush Marketing occurs during the Term, each party will notify the other party of such activity immediately upon learning thereof. As used herein, "***Ambush Marketing***" shall mean an attempt by any third party, without Pepsi's consent, to associate Competitive Products with the Facilities, Customer, and/or Customer Marks, or to suggest that Competitive Products

are endorsed by or associated with the Facilities, Customer, and/or Customer Marks by referring directly or indirectly to the Facilities, Customer, and/or Customer Marks.

7. **CONSIDERATION.**

In consideration for the advertising, merchandising, promotional rights, and the other related rights and benefits provided to Pepsi by Customer as described herein, and provided Customer is not in breach of this Agreement, Pepsi agrees to pay to Customer:

A. Initial Support Funds.

An Initial Support Fund in the amount of Twenty Thousand Dollars ($20,000), payable to the Customer within sixty (60) days of the signing of this Agreement by both parties (the "***Initial Support Funds***"). The Initial Support Funds are earned by the Customer over the Term. In the event Pepsi terminates this Agreement due to the Customer's failure to cure a breach hereof, the unearned Initial Support Funds will be repaid to Pepsi pursuant to the terms of Section 10.D herein.

B. Annual Sponsorship Fees.

In each of Years Two through Ten, an annual sponsorship fee, payable pursuant to the following (the "***Annual Sponsorship Fee***"):

Year	***Applicable Time Period***	***Amount***	***Due Date: within 60 days after:***
2	January 1, 2019 – December 31, 2019	$20,000	January 1, 2019
3	January 1, 2020 – December 31, 2020	$20,000	January 1, 2020
4	January 1, 2021 – December 31, 2021	$20,000	January 1, 2021
5	January 1, 2022 – December 31, 2022	$20,000	January 1, 2022
6	January 1, 2023 – December 31, 2023	$20,000	January 1, 2023
7	January 1, 2024 – December 31, 2024	$20,000	January 1, 2024
8	January 1, 2025 – December 31, 2025	$20,000	January 1, 2025
9	January 1, 2026 – December 31, 2026	$20,000	January 1, 2026
10	January 1, 2027 – December 31, 2027	$20,000	January 1, 2027

The Annual Sponsorship Fee is earned throughout the Year in which it is paid. In the event Pepsi terminates this Agreement due to the Customer's failure to cure a breach hereof, the unearned Annual Sponsorship Fees will be repaid to Pepsi pursuant to the terms of Section 10.D herein.

C. Annual Recycling Support Fund.

In each of Years Two through Ten, an annual recycling support fund in the amount of One Thousand Dollars ($1,000), payable within sixty (60) days of the beginning of each such Year (the "***Annual Recycling Support Fund***"). The Annual Recycling Support Fund is earned throughout the Year in which it is paid. In the event Pepsi terminates this Agreement due to the Customer's failure to cure a breach hereof, the unearned Annual Recycling Support Fund will be repaid to Pepsi pursuant to the terms of Section 10.D herein.

D. Commissions.

Commissions, as a percentage of the actual cash ("***cash in bag***" or "***CIB***") collected by Pepsi from the Vending Machines placed at the Facilities, plus actual amounts received by Pepsi in connection with credit card or debit card sales (collectively with CIB, "***Revenue***"), less any applicable fees or deposits ("***Commissions***"). Such Commissions shall be at the rate(s) set forth below (the "***Commission Rate***") and shall be calculated as follows:

(Revenue * Commission Rate) – applicable CRV = Commission Due

Applicable Products	*Minimum Vend Price*	*Commission Rate**
20 oz. Carbonated Soft Drinks	$3.00	25%
20 oz. Aquafina	$3.00	25%
16 oz. Rockstar	$4.00	25%
*Commission Rate stated above shall only apply to Products sold by Pepsi through its Vending Machines at the beginning of the Term. If Pepsi proposes any new Products to the Customer during the Term, then Pepsi shall have the right to apply a different Commission Rate and/or Minimum Vend Price for such new Product.		

(1) **Commissions Payment**. Commissions shall be remitted by Pepsi to the Customer within thirty (30) days of the end of each 4-week accounting period established by Pepsi. Pepsi shall make all pertinent revenue and sales records respecting the Vending Machines available to Customer. Customer agrees that it is responsible for reviewing such records and that any claim or dispute relating to the Commissions must be brought by Customer in writing within one (1) year of the date such Commissions payment is due. Customer further acknowledges and agrees that it shall not receive any Commissions payment from Pepsi if Commissions fail to reach a certain threshold amount per period or quarter. The applicable threshold amounts vary based on the payment period and will be established and communicated pursuant to Pepsi's policies and procedures related to its Full Service Vending business, as may be revised by Pepsi from time to time.

(2) **Change to Commission Rate**. Customer acknowledges and agrees that Pepsi established the Commission Rate based on any applicable sales tax associated with the sale of the Products through the Vending Machines as of the commencement

date of this Agreement. If, during the Term, applicable sales taxes should increase by more than five percent (5%), then Pepsi shall have the right to automatically reduce the Commission Rate by the same percentage amount.

(3) **Change to Commission Formula**. In addition to the above, Customer agrees that Pepsi shall have the right to change its formula/method for calculating Commissions at any time in its reasonable discretion provided that any such formula adjustments shall not result in a material change to the Commissions due with respect to the same sales of Products.

(4) **Vend Price**. The minimum vend price necessary for Customer to qualify for any Commissions is set forth above. Pepsi shall have the right to change such vend prices as it deems appropriate in light of cost of goods increases or to otherwise stay reasonably consistent with applicable vending prices for similar accounts operating in the relative geography.

E. Rebates.

Each Year throughout the Term, Pepsi shall calculate the total applicable Cases of Packaged Products and applicable Gallons of Postmix Products purchased from Pepsi by the Customer and its Food Service Provider pursuant to this Agreement, and shall provide the Customer with rebates calculated based on applicable amounts set forth below (the "***Rebates***"). The Rebates, if applicable, shall be paid by Pepsi within sixty (60) days of the end of each applicable Year during the Term.

Rebate Amount	Applicable Products
$3.00/Case	Cases of 24-Pk (or equivalent) of Packaged Products
$3.00/Gallon	Gallons of Postmix Products

8. EQUIPMENT AND SERVICE.

A. Beverage Dispensing and Other Equipment.

(1) Pepsi shall, based upon Pepsi's survey of the Facilities' needs, provide and install all Equipment at the Facilities for the dispensing of Product during the Term. Title to all Equipment shall be with Pepsi or its affiliates.

(2) During the Term Pepsi will provide, at no charge to the Customer, preventative maintenance and service to the Equipment. Pepsi will service and stock, if necessary, (i) the Equipment and (ii) any additional Equipment determined by the parties to be installed at new locations on the Facilities.

(3) The Equipment may not be removed from the Facilities without Pepsi's written consent, and the Customer agrees not to encumber the Equipment in any manner or permit other equipment to be attached thereto except as authorized by Pepsi. At the end of the Term, Pepsi shall have the right to, and

shall upon request of the Customer, remove all Equipment from the Facilities at no expense to the Customer.

(4) Pepsi 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. The Customer agrees to provide reasonable assistance to Pepsi in apprehending and prosecuting vandals. Pepsi shall not be obligated to pay commissions as provided in this Agreement on documented revenue losses resulting from vandalism or theft of product with respect to any Vending Machines on the Facilities.

(5) Pepsi reserves the absolute right to remove any glass front Vending Equipment that sells less than eight (8) cases of Product per week or any other Vending Equipment that sells less than two (2) cases of Product per week.

B. Service to Equipment.

Other than routine maintenance, which shall be the responsibility of and completed by Customer or its designee, Pepsi or its designated agents shall be responsible for maintaining, repairing, and replacing the Equipment. Pepsi shall provide Customer with a telephone number to request emergency repairs and receive technical assistance related to the Equipment. Pepsi shall respond to each Customer request and use reasonable efforts to remedy the related Equipment problem as soon as possible.

9. REMEDIES FOR LOSS OF RIGHTS - TERMINATION.

A. Customer's Termination Rights.

Without prejudice to any other remedy available to Customer at law or in equity in respect of any event described below, this Agreement may be terminated by Customer at any time effective thirty (30) days following written notice to Pepsi from Customer if:

(1) Pepsi fails to make any payment due hereunder, and such default shall continue for thirty (30) days after written notice of such default is received by Pepsi; or

(2) Pepsi breaches or fails to perform any other material term, covenant or condition of this Agreement or any representation or warranty shall prove to have been false or misleading in any material respect and Pepsi fails to cure such breach within thirty (30) days after written notice of default is delivered to Pepsi. If such cure cannot reasonably be accomplished within such thirty (30) day period, this provision shall not apply where Pepsi shall have, in good faith, commenced such cure and thereafter shall diligently proceed to completion; *provided, however*, that such cure is completed to the reasonable satisfaction of Customer within sixty (60) days from the date of Pepsi's receipt of such written notice of default.

B. Pepsi's Termination Rights.

Without prejudice to any other remedy available to Pepsi at law or in equity in respect of any event described below, this Agreement may be terminated in whole or in part by Pepsi at any time, effective thirty (30) days following written notice to the Customer if (i) any of the Products are not made available as required in this Agreement by the Customer, their agents or concessionaires; (ii) any of the rights granted to Pepsi herein are materially restricted or limited during the Term of this Agreement; (iii) a final judicial opinion or governmental regulation prohibits, or materially impacts or impairs (*e.g.*, beverage tax or size restriction) the availability or cost of Beverages, whether or not due to a cause beyond the reasonable control of the Customer; or (iv) Customer breaches any or fails to perform any other material term, covenant or condition of this Agreement or any representation or warranty shall prove to have been false or misleading in any material respect. In connection with the foregoing, Pepsi shall give Customer notice of the event and where applicable (for events within Customer's control), shall provide Customer thirty (30) days to cure such breach. If the identified breach/event is not remedied with the applicable notice period, then Pepsi may terminate this Agreement and recover from the Customer a reimbursement in accordance with Section D below. In addition to the termination rights set forth herein, in the event of any of the occurrences outlined in subsections (i) – (iii) above, Pepsi shall have the right, at its discretion and in lieu of termination, to mandate that the Customer meet and engage in good faith negotiations aimed at modifying the Agreement to reduce Pepsi's ongoing support of the Customer by an amount that is equitable in light of the diminution of right to Pepsi (*e.g.*, equivalent to the percentage volume decline on campus). If such negotiations fail, then Pepsi shall have the right to terminate the Agreement upon thirty (30) days' notice.

C. Additional Termination Rights Available to Pepsi and Customer.

Without prejudice to any other right or remedy available to either party at law or in equity of any event described below, this Agreement may be terminated by either party if the other party, or any parent of such other party, shall: (i) have an order for relief entered with respect to it, commence a voluntary case or have an involuntary case filed against it under any applicable bankruptcy, insolvency or other similar law now or hereafter in effect (and such order or case is not stayed, withdrawn or settled within sixty (60) days thereafter) it is the intent of the parties hereto that the provisions of Section 365(e)(2)(A) of Title 11 of the United States Code, as amended, or any successor statue thereto, be applicable to this Agreement; or (ii) file for reorganization, become insolvent or have a receiver or other officer having similar powers over it appointed for its affair in any court of competent jurisdiction, whether or not with its consent (unless dismissed, bonded or discharged within 60 days thereafter); or (iii) admit in writing its inability to pay its debts as such debts become due.

D. Sponsorship Fees in the Event of Termination.

If Pepsi terminates this Agreement pursuant to Section ~~9~~10 or Customer terminates this Agreement without cause, then Pepsi shall be entitled to from

Customer, without prejudice to any other right or remedy available to Pepsi, and Customer shall pay to Pepsi all funding paid by Pepsi to the Customer which remains unearned as of the time of termination. With regard to the Initial Support Funds, the amount of such reimbursement shall be determined by multiplying the Initial Support Funds by a fraction, the numerator of which is the number of months remaining in the Term at the time such termination occurs and the denominator of which is 120. With regard to the Annual Sponsorship Fee and the Annual Recycling Support Fund, the amount of such reimbursement shall be determined by multiplying the total of the Annual Sponsorship Fee and the Annual Recycling Support Fund by a fraction, the numerator of which is the number of months remaining in the Year in which the Agreement is terminated at the time such termination occurs and the denominator of which is twelve (12).

10. TAXES.

Customer acknowledges and agrees that neither Pepsi nor its affiliates shall be responsible for any taxes payable, fees or other tax liability incurred by the Customer in connection with any fees payable by Pepsi under this Agreement. In addition, Pepsi shall be responsible only for the payment of taxes on the sales of Products through Vending Machines. Pepsi shall not be assessed common area maintenance fees, taxes or other charges based on its occupation of the space allocated to its Equipment.

11. CONFIDENTIALITY.

A. Except as otherwise required by law, including the California Public Records Act (Gov. Code section 6250 et seq.), court order, or the rules or regulations of any national securities exchange or the rules or regulation of the Customer, the Customer and Pepsi agree not to disclose Confidential Information (as hereinafter defined) to any third party other than to their respective directors, officers, employees and agents (and directors, officers, employees and agents of their respective affiliates) and advisors (including legal, financial and accounting advisors) (collectively, "***Representatives***"), as needed.

B. "***Confidential Information***" shall include all non-public, confidential, or proprietary information that Customer or its Representatives make available to Pepsi or its Representatives or that Pepsi or its Representatives make available to Customer or its Representatives in connection with this Agreement. "***Confidential Information***" shall include, but not be limited to, the terms and conditions of this Agreement. It is expressly understood that the disclosure in or pursuant to this Agreement by Customer, Pepsi or their respective Representatives of Confidential Information is not a public disclosure thereof, nor is a sale or offer for sale of any product, equipment, process or service of Customer or Pepsi.

C. These Confidentiality provisions and the obligations of the parties hereunder will survive the expiration or sooner termination of this Agreement for a period of three (3) years following such date of expiration or termination of this Agreement.

12. REPRESENTATIONS, WARRANTIES AND COVENANTS.

A. Each party represents and warrants to the other: (1) it has full power and authority to enter into this Agreement and to grant and convey to the other the rights set forth herein; and (2) all necessary approvals for the execution, delivery and performance of this Agreement have been obtained and this Agreement has been duly executed and delivered by the parties and constitutes the legal, valid and binding obligation, enforceable in accordance with its terms, and nothing contained in this Agreement violates, interferes with or infringes upon the rights of any third party; (3) the respective signatory of this Agreement is duly authorized and empowered to bind the party to the terms and conditions of this Agreement for the duration of the Term; and (4) the parties have complied with all applicable laws, ordinances, codes, rules and regulations relating to its entering into this Agreement and its performance hereunder.

B. In addition to the representations set forth above, Customer represents to Pepsi that it has the authority to act on behalf of the City and the Facilities to grant the exclusive Beverage rights set forth herein to Pepsi throughout the entire Term of the Agreement.

C. Each of the parties hereto agree that: (1) the representations, warranties and covenants contained herein shall survive the execution and delivery of this Agreement, and (2) except as expressly set forth herein, neither party has made, and neither party is relying on, any representation or warranty, express or implied, with respect to the subject matter hereof.

13. INDEMNIFICATION.

A. Pepsi will indemnify and hold the Customer 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 Products purchased directly from Pepsi; and/or (iii) the negligence or willful misconduct of Pepsi, (excluding claims arising out of the Customer's negligence or willful misconduct).

B. To the extent permitted by applicable law, the Customer will indemnify and hold Pepsi, 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 Customer (excluding claims arising out of Pepsi's negligence or willful misconduct).

C. The provisions of this Section shall survive the termination of this Agreement.

14. **INSURANCE.**

A. Each party hereto maintains and agrees to maintain, at all times during the Term and for a period of three (3) years thereafter, a comprehensive program of risk retention and insurance with such insurance carriers and in such amounts of insurance coverage reasonably acceptable to the other party. Each party agrees to name the other and each of its affiliates, and their respective officers, directors, employees, agents, representatives and successors and assigns on a certificate of insurance, as additional insureds with respect to the certificate holder's negligence.

B. Either party shall have the right, during the Term from time to time, to request copies of such certificates of insurance and/or other evidence of the adequacy of the above insurance coverages.

15. **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 when deposited with a public telegraph company for immediate transmittal, charges prepaid, or by telecopier, with a confirmation copy sent by recognized overnight courier, next day delivery, addressed as follows:

If to Pepsi:

Pepsi Beverages Company
2945 S. East Avenue
Fresno, CA 93725
Attn: Director, Food Service

With a copy to (which shall not constitute notice):

Pepsi Beverages Company
1111 Westchester Avenue
White Plains, NY 10604
Attn: Legal Department

If to SMG:

SMG
c/o Fresno Convention & Entertainment Center
848 Main Street
Fresno, CA 93721
Attn: _____

16. ASSIGNMENT.

This Agreement or any part hereof or interest herein shall not be assigned or otherwise transferred by either party without the prior written consent of the other party nor shall the same be assignable by operation of law, without the prior written consent of the other party; *provided, however*, that Pepsi may assign and transfer this Agreement (in whole and not in part) to an affiliate without the consent of Customer hereto; *provided, however*, that, (x) such affiliate is capable of fully performing all obligations of the assignor hereunder and (y) such affiliate agrees, under a separate agreement acceptable to the other party and signed by such affiliate, to perform all of the obligations and assume all liabilities of the assignor hereunder. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective permitted successors and assigns. Customer represents and warrants to Pepsi that any change in the Food Service Provider at the Facilities shall not affect Pepsi's rights or obligations hereunder. The parties expressly acknowledge that SMG is a party to that certain Management Agreement with the City of Fresno. Upon the termination of the Management Agreement when SMG is no longer serving as the manager of the Facilities, SMG shall have no further obligation or liability under this Agreement whatsoever.

17. GOVERNING LAW.

This Agreement shall be governed by and construed in accordance with the laws of the State of New York without regard to conflicts of laws principles. Any legal proceeding of any nature whatsoever brought by either party against the other to enforce any right or obligation under this Agreement, or arising out of any matter pertaining to this Agreement, shall be submitted for trial, without jury, before the Courts of the State of California, or the United States District Court for the Eastern District of California, or, if neither of such courts shall have jurisdiction, then before any court sitting in Fresno County, California having subject matter jurisdiction. The parties consent and submit to the jurisdiction of any such court and agree to accept service of process inside or outside the State of California in any manner to be submitted to any such court pursuant hereto, and the parties hereto expressly waive all rights to trial by jury regarding any such matter.

18. FORCE MAJEURE.

If the performance by either party hereto of its respective nonmonetary obligations under this Agreement is delayed or prevented in whole or in part by acts of God, fire, floods, storms, explosions, accidents, epidemics, war, civil disorder, strikes or other labor difficulties, or any law, rule, regulation, order or other action adopted or taken by any federal, state or local government authority, or any other cause not reasonably within such party's control, whether or not specifically mentioned herein, such party shall be excused, discharged and released of performance only to the extent such performance or obligation is so delayed or prevented by such occurrence without liability of any kind. Nothing contained herein shall be construed as requiring either party hereto to accede to any demands of, or to settle any disputes with, labor or labor unions, suppliers or other parties that such party considers unreasonable.

19. 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.

20. PRIOR NEGOTIATIONS; ENTIRE AGREEMENT.

This Agreement and the exhibits attached hereto, set forth the entire understanding between the parties in connection with respect to the subject matter hereof, and no statement or inducement with respect to the subject matter by either party hereto or by any agent or representative of either party hereto which is not contained in this Agreement shall be valid or binding among the parties. This provision shall not be read to invalidate or amend any other written agreements between Pepsi and/or any of its affiliates and any affiliate of Customer.

21. 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.

22. 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.

23. 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.

24. SEVERABILITY.

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.

25. AMENDMENTS.

No provision of this Agreement may be modified, waived, or amended except by a written instrument duly executed by each of the parties hereto. Any such modifications, waivers, or amendments shall not require additional consideration to be effective.

26. 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.

27. 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.

PEPSI BEVERAGES COMPANY

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

CITY OF FRESNO,
A California municipal corporation

By: _____
[Name],
[Title]

Dated: _____

APPROVED AS TO FORM:
DOUGLAS T. SLOAN
City Attorney

By: _____ 9-17-18
[Name] John Hastings Date
Deputy City Attorney

ATTEST:
YVONNE SPENCE, CRM MMC
City Clerk

By: _____ Date
Deputy

BOTTLING GROUP, LLC.,
a Delaware corporation

By: _____

Name: Aimee Johns

Title: Sr. Sales Manager
(If corporation or LLC., Board Chair, Pres. or Vice Pres.)

Dated: 9-12-18

By: _____

Name: Paul Sloan

Title: Food Service Rep.
(If corporation or LLC., CFO, Treasurer, Secretary or Assistant Secretary)

Dated: 9/14/18

SMG, a Pennsylvania general partnership, as the manager of the Fresno Convention & Entertainment Center

Name: William C Bryant

Title: G. M.

Dated: 9/27/18

Attachments:
Exhibit A
Exhibit B

PEPSI BEVERAGES COMPANY

Exhibit A

Current description & pricing for Postmix Products and Packaged Products

Customer acknowledges and agrees (and shall require that any third parties or Food Service Providers purchasing Products through this Agreement agree) that Pepsi shall be entitled to pass-through any incremental fees, deposits, taxes or other governmentally imposed charges (whether local, state, federal or judicially imposed) and that the pass-through of any such governmentally imposed fees, deposits, taxes or charges on the Products shall not be deemed as a price increase subject to any pricing cap or notification restrictions that may be specified in this Agreement.

PEPSI BEVERAGES COMPANY

FoodService Bottle and Can Pricing - Tier 4
Effective 8/1/2017

Brand	Package	#/Case	Your Price	Per Unit
Carbonated Soft Drinks / Tropicana / Lipton Mainstream	12oz Cans	24	$ 11.52	$ 0.48
	12oz Cans - Lipton	24	$ 11.52	$ 0.48
	20oz PET	24	$ 27.08	$ 1.13
Aquafina	20oz PET	24	$ 15.15	$ 0.63
Gatorade	20oz PET	24	$ 22.09	$ 0.92
SoBe	20oz PET - Juices & Teas	12	$ 18.32	$ 1.53
	20oz PET - Lifewater	12	$ 15.65	$ 1.30
Energy Drinks	16oz Cans - Mt. Dew Kickstart	12	$ 15.45	$ 1.29
	16oz Cans - Rockstar	24	$ 33.99	$ 1.42
Ocean Spray	15.2oz PET	12	$ 17.19	$ 1.43

PEPSI BEVERAGES COMPANY

Effective with deliveries on or after JANUARY 1, 2018, prices are position sales, except where otherwise noted

	5 Gal. Bib	3 Gal. Bib
Pepsi / Caffeine Free	$15.10	$15.62
Caffeine Free Pepsi / Diet Pepsi	$15.10	$15.62
Wild Cherry Pepsi	$15.10	$15.62
Pepsi Zero Sugar	$15.10	$15.62
Mountain Dew / Diet Dew	$15.10	$15.62
Mountain Dew Code Red	$15.10	$15.62
Mt Dew Kickstart Black Cherry		$15.62

	5 Gal. Bib	3 Gal. Bib
Mt Dew Gaji Citrus Strawberry		$15.62
Mt Dew Pitch Black		$15.62
Mist Twist	$15.10	$15.62
Mug Root Beer	$15.10	$15.62
Trop Twister	$15.10	$15.62
Manzanita Sol	$15.76	$15.85
Mirinda Strawberry	$15.10	$15.62

See your PepsiCo sales representative for program & pricing details

	5 Gal. Bib	3 Gal. Bib
Brisk Raspberry Tea	$15.10	$15.62
Brisk Sweetened Tea	$15.10	$15.62
Brisk Sweetened with Lemon Tea	$15.10	$15.62
No Calorie Green with Peach Tea	$15.10	$15.62
Brisk Strawberry Melon Tea		$15.62
Brisk Half and Half	$15.20	$15.62
Brisk Unsweetened Tea	$14.08	$14.58

	5 Gal. Bib	3 Gal. Bib
Tropicana Lemonade	$15.10	$15.62
Tropicana Pink Lemonade	$15.10	$15.62
Tropicana Light Lemonade	$15.51	$16.11
Dole Old Fashioned Lemonade		$16.32

	3 Gal. Bib
Liquid Concentrate Tea	
Lipton LC Sweetened Tea	$18.58
Lipton LC Green Tea w/ Citrus	$18.36
Lipton LC Peach Tea	$18.58
Lipton LC Unsweetened Tea	$16.86

PURE LEAF · Lipton · Tazo · LEAFCRAFT · MIGHTY LEMON

See your PepsiCo sales representative for program & pricing details

	5 Gal. Bib	3 Gal. Bib	1 Gal. Bib
Tropicana Fruit Punch	$15.33	$15.85	
Dole Juice Drinks		$29.05	$31.47

	3 Gal. Bib	1.5 Gal. Bib
Amp Energy		$60.11
Gatorade / G2	$15.92	
Sobe Lean	$16.87	

Frozen Carbonated Beverages

	5 Gal. Bib	3 Gal. Bib
	$17.13	$17.60

New Pepsi Freeze · Blue Raspberry · Mt Dew Freeze · Red Cherry · Peach Lemonade · Orange Cream

Frozen Uncarbonated Beverages

Raspberry Blast · Orange Frost · Mangonana Mango · Jonechiller Cherry · Strawberry Melonade · Serious Strawberry

	1 Gal. Bib
Flavor Shots Flavor Enhancer	$21.97

Only available with Spire Unit

See your PepsiCo sales representative for program & pricing details

Price adjustment may also apply for certain non-Gold beverage items and flavor enhancers in certain geographies.

Frozen Carbonated, Juice Beverages, Lipton Iced Tea, Lipton Tea & Honey, Gatorade, G2, Sobe Lean, Sobe Life Water and Amp Energy are not available in Alaska, Hawaii and Puerto Rico. Call 1-800-426-4125 for more information or details.

Exhibit B

Facilities & Printing Advertising and Additional Rights to be Provided to Pepsi

A. Facilities and Print Advertising.

(1) Facilities Advertising.
Such advertising as may be mutually agreed upon between the parties

(2) Print Advertising.
Such advertising as may be mutually agreed upon between the parties

B. Additional Rights.

(1) Tickets and Hospitality.

Customer will provide Pepsi with tickets to events conduct at the Facilities as reasonably requested by Pepsi from time to time during the Term.