

BEVERAGE SALES AGREEMENT

This sets forth the agreement (“**Agreement**”) between Bottling Group, LLC, a Delaware limited liability company, and its affiliates and/or respective subsidiaries collectively comprising Pepsi Beverages Company with an office located at 5435 Dylan Drive, Suite 100, South Bend, IN 46628 (“**Pepsi**”) and City of South Bend Venues Parks & Arts, with its principal place of business at 321 E. Walter Street, South Bend, IN 46614 (the “**Customer**” or “**City**”) relating to (i) the purchase by the Customer from Pepsi of the Products and (ii) the sale by Pepsi of Products through full service vending machines. The support described below is in lieu of any other discounts, allowances or rebates to which the Customer might otherwise be entitled from time to time.

Definitions

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

“**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**”), and (x) any future categories of nonalcoholic beverage products that may be distributed by Pepsi.

“**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.

“**Equipment**” means all types of equipment owned and/or operated by Pepsi 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.

“**Facilities**” shall mean the entire premises of every facility controlled or managed, now or in the future, by the Customer or its Food Service Provider and includes all city building locations affiliated with the Customer; including all buildings, athletic fields, concert venues, 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. A current list of the Facilities is set forth in attached Exhibit A. New Facilities operated by Customer during the Term will be added to Exhibit A.

“**Food Service Provider**” shall mean any 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 sold and/or distributed by Pepsi in pre-packaged form (e.g., bottles and cans). A current list of Pepsi's Packaged Products is listed in attached Exhibit B which may be amended by Pepsi from time to time.

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

"Products" shall mean Postmix Products, Packaged Products and LCT 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.

1. **Term**

The term of this Agreement shall commence on February 1, 2019 and expire on January 31, 2024 (the "**Term**"). Upon expiration of the Term, the parties shall have the option to extend the term upon mutual written consent of the parties. When fully executed, this Agreement will constitute a binding obligation of both parties until expiration or termination.

2. **Scope**

(A) **Exclusive Pouring Rights**

Except for the Permitted Exceptions set forth in Section 3(A), during the Term of this Agreement Pepsi 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 Customer's Facilities, including at all locations located within the Facilities where Beverages are sold and catering operations for Customer or its Facilities as specifically listed in Exhibit A. Accordingly, the Products shall be the only Beverages of their respective type sold, dispensed or served anywhere at the Facilities, and Customer will cause the purchasing representative for each of the Facilities to purchase all its respective requirements for such Products directly and exclusively from Pepsi.

(B) **Ancillary Products**

During the Term, Customer will cause the purchasing representative for each of the Facilities to purchase all its respective requirements for carbon dioxide and branded disposable cups ("**Ancillary Products**") exclusively from Pepsi.

(C) **Advertising Rights**

Pepsi may advertise and promote its Products in and with respect to the Customer and its Facilities upon mutually agreed to terms and conditions.

3. Performance

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

(A) **Exclusivity.** Except for the Permitted Exceptions set forth below, 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. In no event shall there be served, dispensed or otherwise made available, or in any way advertised, displayed, represented or promoted, beverage products licensed by, or produced by bottlers licensed by, The Coca-Cola Company or any affiliate thereof, or any other supplier of competitive nonalcoholic Beverages. Notwithstanding the foregoing, Pepsi agrees to the following limited exceptions to its exclusive Beverage rights at the Facilities (the "**Permitted Exceptions**"):

- (i) Savor at Century Center will operate under its current agreement with Pepsi until its expiration on December 31, 2019. After such date, Savor at Century Center will be governed by the terms of this Agreement.
- (ii) Palais Royale and Morris Performing Arts Center, currently operated by Navarre Group, will operate under its current agreement with Pepsi until its expiration on July 16, 2022 or sooner if Navarre Group is replaced by Customer as the Food Service Provider at Palais Royale. After such date, Palais Royale and Morris Performing Arts Center will be governed by the terms of this Agreement.

(iii) If a third party rents space at the Facilities for a private party and requests that competitive Beverages be served at such private party, Customer may comply with such event specific requests.

(B) **Product Mix.** The Customer represents that it shall purchase and shall cause its Facilities and its Food Service Provider to purchase Products exclusively from Pepsi and that it shall use reasonable efforts to maintain a mix of both Postmix Products and Packaged Products at each of the Facilities throughout the Term.

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

(D) **Brand ID.** The Customer shall have appropriate brand identification, as identified by Pepsi, for each Beverage Product served on all menus (including catering, except with regard to the Permitted Exception set forth in Section 3(A)(iii)), menuboards and postmix dispensing valves at each of the Facilities throughout the Term.

(E) **Changes in Facilities.** The Customer agrees that it shall promptly notify Pepsi, in writing, of each new Facility in which beverages are to be sold which is opened or acquired during the Term, as well as of any Facility which is closed, sold or otherwise disposed of during the Term so that the parties may promptly update Exhibit A.

(F) **Minimum SKU Requirement.** At all times during the Term, the Customer agrees to mandate the distribution of a minimum core assortment of Products as follows:

20 oz. Pepsi, Diet Pepsi, Mountain Dew, Sierra Mist, Aquafina and Gatorade
Additional SKUs will be sold at Facilities upon mutual agreement of parties

(G) **Hospitality.** Each Year during the Term, Customer will provide Pepsi with twelve (12) complimentary rounds of golf passes to the Facilities.

4. Consideration

In consideration of the exclusive rights granted to Pepsi by Customer over the Term of this Agreement, and provided Customer is not in breach of this Agreement, Pepsi shall provide Customer with the following:

(A) **Annual Support Funds.** In each of Years One through Five, Pepsi shall provide Customer with annual support funds in the amount of Four Thousand Dollars (\$4,000), payable to the Customer within sixty (60) days after the signing of this Agreement with respect to Year 1; and within sixty (60) days following commencement of each Year of Years Two through Five, not to exceed five (5) consecutive payments (the “*Annual Support Funds*”). The Annual Support Funds are earned throughout the Year in which they are paid. In the event Pepsi

terminates this Agreement due to the Customer's failure to cure a breach hereof, the unearned Annual Support Funds will be repaid to Pepsi pursuant to the terms of Section 7(B)(1) herein.

(B) **Annual Merchandise Fund.** Each Year during the Term, Pepsi will provide Customer with a merchandise fund valued at up to One Thousand Dollars (\$1,000) per Year (the "**Annual Merchandise Fund**"). The Annual Merchandise Fund will be held by Pepsi, and accessed by Pepsi, to pay for Pepsi merchandise (e.g. t-shirts) for Customer events and special functions. Customer acknowledges and agrees that any unused portion of the Annual Merchandise Funds in any Year will not be carried over to a subsequent Year and will not be redeemable for a cash refund.

(C) **Marketing Support Funds.** Each Year throughout the Term, Pepsi shall calculate the total number of applicable Cases of Packaged Products purchased by each of the applicable Facilities from Pepsi pursuant to this Agreement, and shall provide the Customer with marketing support funds calculated based on applicable amounts set forth below (the "**Marketing Support Funds**"). The Marketing Support Funds, if applicable, shall be paid by Pepsi within sixty (60) days of the end of each applicable Year during the Term. In the event that any Facility is closed during the Term of this Agreement, Pepsi agrees to provide Customer with all Marketing Support Funds accrued on behalf of that applicable Facility as of the time of closing, provided that such Facility was in full compliance with the terms and conditions of this Agreement.

Marketing Support Funds Amount	Applicable Products
\$1.00/Case	Cases of 20 oz. Carbonated Soft Drinks and Aquafina
\$3.00/Case	Cases of 20 oz. Gatorade

The parties agree that Pepsi shall not accrue or pay any Marketing Support Funds for sales to Facilities that are in breach of the Performance Requirements listed in Section 3 above. Customer agrees that the Marketing Support Funds shall be used in part to help offset costs associated with mutually agreed upon marketing programs and promotions throughout the Term.

(D) **Commissions.** Pepsi agrees to pay to Customer a commission, as a percentage of the actual cash ("**cash in bag**" or "**CIB**") collected by Pepsi from the vending machines placed at the Facilities, less any applicable taxes, fees and/or deposits ("**Commissions**"). Such Commissions shall be at the rate(s) set forth below (the "**Commission Rate**") and shall be calculated as follows:

$$(\text{CIB} - \text{applicable taxes/fees/deposits}) * \text{Commission Rate} = \text{Commission due}$$

Product	Minimum Vend Price*	Commission Rate*
20 oz. Carbonated Soft Drinks	\$2.00	30%
20 oz. Aquafina	\$2.00	30%
20 oz. Gatorade	\$2.00	30%

*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) *Commission Payment.* Commissions shall be remitted by Pepsi to the Customer within 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 commission 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%) above the current rate of seven percent (7%), 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 competitive with applicable vending prices for similar accounts operating in the relative geography.

(E) **Product Donations.** Pepsi will provide annual Product donations of up to a total value of Three Thousand Dollars (\$3,000) per Year across the Facilities upon request of the Customer; *provided, however,* that the Customer will administer all requests through a central contact so that the Customer may prioritize the requests and that the Customer will provide Pepsi with a minimum of one (1) week prior notice with regard to all requests. Customer acknowledges and agrees that unrequested Product in any Year shall not be carried over to the subsequent Year and will not be redeemable or a cash refund.

(F) **Free Equipment Loan and Service.** As further outlined in Section 5 below, Pepsi shall provide at no cost to Customer or the Facilities necessary dispensing/selling Equipment for Beverages at the Facilities. Such Equipment shall be in sufficient quantities (in light of sales volume) as determined by Pepsi to satisfy the Facilities reasonable needs.

5. Equipment

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

Pepsi will provide, at no charge to the Customer, preventative maintenance and service to the Equipment. Pepsi will also provide Customer with a telephone number to request emergency repairs and receive technical assistance related to the Equipment after business hours. Pepsi will promptly respond to each applicable Customer request, and will use reasonable efforts to remedy the related Equipment problem as soon as possible.

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

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. Customer agrees to provide reasonable assistance to Pepsi in apprehending and prosecuting vandals. Pepsi shall not be obligated to pay Commissions on documented revenue losses resulting from vandalism or theft of Product with respect to any 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 at the Facilities.

6. Pricing

Pepsi will provide Customer/Facilities a complete supply of Products during the Term of this Agreement and shall deliver such Products in a timely manner (based on mutually agreed upon delivery schedules) and in good and sanitary condition. The Products and Ancillary Products shall be purchased by the Customer or its Food Service Provider from Pepsi at prices established by Pepsi. The current pricing schedule for Products is set forth on attached Exhibit B. Pepsi shall have the right to increase Product pricing by up to four percent (4%) per Year.

7. General Terms

(A) **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. If for any reason the Customer closes one or more

of its Facilities for a period of ten (10) business days or more, then such event shall be deemed a material breach of this Agreement, and Pepsi shall have the right to immediately terminate this Agreement upon five (5) days prior written notice.

In the event of breach of this Agreement by one or more Facilities, the parties agree that Pepsi shall have the option, in lieu of termination of the entire Agreement, to terminate the Agreement only as it pertains to the applicable breaching Facilities and to obtain an equitable reimbursement for the portions of funding and other costs attributable to such breaching Facilities.

(B) **Remedies.** If Pepsi terminates this Agreement as a result of default by Customer or its Facilities, or if Customer terminates this Agreement for a reason other than uncured default, unexcused material nonperformance by Pepsi, or product contamination not caused by Customer, then Customer and its Facilities will surrender to Pepsi all Equipment provided by Pepsi and shall forfeit all funding not paid as of the date of termination. In addition, without prejudice to any other right or remedy available to Pepsi, Pepsi shall have the right to immediately seek reimbursement from Customer and the Facilities for the following:

(1) An amount reflecting reimbursement for all funding previously advanced by Pepsi but not earned by the Customer pursuant to the terms of this Agreement. With regard to the Annual Support Funds, the amount of such reimbursement shall be determined by multiplying Annual Support Funds 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); and

(2) An amount reflecting reimbursement for the cost of removal of all Equipment that has been installed in the Facilities, if applicable.

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

(D) **Right of Offset.** Pepsi reserves the right to withhold payments due hereunder as an offset against amounts not paid by Customer or its Facilities for Products ordered from and delivered by Pepsi pursuant to this Agreement.

(E) **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.

(F) **Indemnification.** 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 the Products; and/or (iii) the negligence or willful misconduct of Pepsi. 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.

(G) **Assignment.** In the event that a third party acquires Customer or all or a group of the Facilities, or if Customer is acquired or merges with a third party, Customer 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 Customer hereunder. In the event that Customer 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, Pepsi may, at its option, terminate this Agreement effective immediately and Customer will pay to Pepsi all sums specified in Section 7(B) herein. The Agreement shall not be otherwise assignable without the express written consent of Pepsi. 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.

(H) **Governing Law.** This Agreement shall be governed by the laws of the State of Indiana without regard to conflict of laws principles.

(I) **Price Discrepancy.** Any price discrepancy claim must be submitted to Pepsi within 365 days of the date of the invoice in question. If the Customer makes a price discrepancy claim within 90 days of the invoice date, the Customer must submit a written request specifying the particular Beverage Product, amount in dispute and reason for the dispute. This request should be addressed to:

Accounts Receivable
Pepsi-Cola Customer Service Center
P.O. Box 10
Winston-Salem, North Carolina 27102.

If the Customer makes a price discrepancy claim from 91 to 365 days after the date of invoice, in addition to the written request as specified above, the Customer must submit to Pepsi a copy of the invoice in question, copies of any check remittances pursuant to the invoice in question and any additional supporting documentation.

(J) **Tax.** The 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 the consideration or any other fees payable by Pepsi under this Agreement. Pepsi 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.

(K) **Force Majeure.** Pepsi will not be responsible for any delay or lack of delivery resulting directly or indirectly from any foreign or domestic embargo, product detention, seizure, act of God, insurrection, war and/or continuance of war, the passage or enactment of any law ordinance, regulation, ruling, or order interfering directly or indirectly with or rendering more burdensome the purchase, production, delivery or payment hereunder, including the lack of the

usual means of transportation due to fire, flood, explosion, riot, strike or other acts of nature or man that are beyond the control of Pepsi or that of the suppliers to Pepsi unless such contingency is specifically excluded in another part of this Agreement. Subject to the provisions below, this Agreement will be suspended as to both Beverage Product and delivery during any of the above force majeure contingencies. Any and all suspended deliveries will resume after such contingencies cease to exist, if possible, and this Agreement will resume in accordance with its terms, unless otherwise provided for herein.

(L) **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.

(M) **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.

(N) **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.

(O) **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.

(P) **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.

(Q) **Non-Collusion and Acceptance.** The undersigned attests, subject to the penalties for perjury, that such person is the properly authorized representative, agent, member or officer of Pepsi, that they have not, nor has any other member, employee, representative, agent or officer of Pepsi, directly or indirectly, to the best of the undersigned's knowledge, entered into or offered

to enter into any combination, collusion, or agreement to receive or pay, and that they have not received or paid, any sum of money or other consideration for the execution of this Agreement other than that which appears upon the fact of this Agreement.

(R) **E-Verify.** Pepsi affirms under the penalties of perjury that it does not knowingly employ an unauthorized alien. Pepsi shall enroll in and verify the work eligibility status of all its newly hired employees who will be working under this contract through the E-Verify program as defined in IC 22-5-1.7-3. Pepsi shall not knowingly employ or contract with an unauthorized alien. In the performance of this contract Pepsi shall not retain an employee or contract with a person that Pepsi subsequently learns is an unauthorized alien.

Pepsi is not required to participate in the E-Verify program should the E-Verify program cease to exist. Additionally, Pepsi is not required to participate if Pepsi is self-employed and does not employ any employees.

Pepsi shall require its subcontractors, who perform work under this contract, to certify to Pepsi that the subcontractor does not knowingly employ or contract with an unauthorized alien and that the subcontractor has enrolled and is participating in the E-Verify program. Pepsi agrees to maintain this certification throughout the duration of the term of a contract with a subcontractor.

The City may terminate this Agreement if Pepsi fails to cure a breach of this provision no later than thirty (30) days after being notified by the City.

(S) **Minority and Women's Enterprise Diversity Development.** Persons, partnerships, corporations, associations, or joint venturers awarded a contract by the City of South Bend through its agencies, boards, or commissions shall not discriminate against any employee or applicant for employment in the performance of a City contract with respect to hire, tenure, terms, conditions, or privileges of employment, or any matter directly or indirectly related to employment because of race, sex, religion, color, national origin, ancestry, age, disability, and low income that does not affect that person's ability to perform the work.

In awarding contracts for the purchase of work, labor, services, supplies, equipment, materials, or any combination of the foregoing including, but not limited to, public works contracts awarded under public bidding laws or other contracts in which public bids are not required by law, the City, its agencies, boards, or commissions may consider Contractor's good faith efforts to obtain participation by those Contractors certified by the State of Indiana as a Minority Business Enterprise ("MBE") or as a Women's Business Enterprise ("WBE") as a factor in determining the lowest, responsible, responsive bidder.

In no event shall persons or entities seeking the award of a City contract be required to award a subcontract to an MBE/WBE; however, it may not unlawfully discriminate against said WBE/MBE. A finding of a discriminatory practice by the City's MBE/WBE Utilization Board shall prohibit that person or entity from being awarded a City contract for a period of one (1) year from the date of such determination, and such determination may also be grounds for terminating the contract for which the discriminatory practice or noncompliance pertains.

Notwithstanding the foregoing, the award and performance of all City contracts shall comply with applicable federal, state, and local laws.

(T) **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.

(U) **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 Pepsi:

Pepsi Beverages Company
5435 Dylan Drive, Suite 100
South Bend, IN 46628
Attn: Director, FoodService

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

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

If to Customer:

City of South Bend Venues Parks & Art
321 Walter Street
South Bend, IN 46614
Attn: Jeff Jarnecke

(V) **Right of First Negotiation/Refusal.** As of the commencement of this Agreement until ninety (90) days prior to the expiration of the Term, the Customer hereby agrees to grant Pepsi exclusive negotiation rights with respect to extending the current Agreement or entering into a new agreement for Beverage pouring rights at the Facilities upon expiration of the current Term. Thereafter, if the parties have not entered into a new agreement, the Customer shall be free to enter into discussions/negotiations with third parties except that Customer shall grant Pepsi the absolute right of first refusal to match any bona fide offers made by a third party with respect to Beverage pouring rights/sales at the Facilities. The Customer shall provide Pepsi with details of any such bona fide offers, and Pepsi shall have a fifteen (15) day window to decide whether it will match such offer and exercise its right of first refusal. The parties agree that beverage type/category and not brand names shall be considered for the purposes of determining a match.

In the event that Pepsi declines to match such offer, or fails to respond within the fifteen (15) day period, then Customer shall be free to enter into an agreement with any third party based on terms and conditions equal or favorable to those presented to Pepsi in connection with the notice specified herein.

(W) **Limitations/Offset Rights.** Pepsi reserves the right to limit quantities, withhold or deduct funding as an offset to amounts not paid by Customer or terminate this Agreement if the Customer (i) sells Products directly or indirectly for resale outside of the Pepsi's exclusive territory where the Facilities operate, (ii) purchases Products outside Pepsi's exclusive territory where the Facilities operate and resells such Products within Pepsi's exclusive territory or (iii) does not comply with Pepsi's payment terms or makes an unauthorized deduction from amounts due.

(X) **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.

(Y) **Customer Representations.** Customer represents and warrants to Pepsi that the execution, delivery and performance of this Agreement by Customer will not violate any agreements with, or rights of, third parties. The Customer and undersigned represent that the undersigned is duly authorized and empowered to bind the Customer 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.

BOTTLING GROUP, LLC

**CITY OF SOUTH BEND
VENUES PARKS & ART**

By: _____
Name: _____
Title: _____
Date: _____

By: _____
Name: _____
Title: _____
Date: _____

Exhibit A
City of South Bend
Venues Parks & Arts Original Request for Proposal

Exhibit B
Products and Prices

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.

Exhibit C
Products and Prices

Pepsi response to Venues Parks & Arts RFP