

AGREEMENT FOR GOODS AND SERVICES

This Agreement for goods and services (this "Agreement") is entered into on May 1 2024 (the "Effective Date"), by and between the City of South Bend, acting through its Board of Parks Commissioners on behalf of Venues Parks and Arts ("VPA"), and Pepsi Beverage Company, a Limited Liability Company, with its Principal place of business located at 5435 Dylan Dr, South Bend, IN 46628 (the "Provider") (each a "Party" and collectively the "Parties").

For and in consideration of the mutual covenants and promises contained herein, the Parties agree as follows:

1. Goods and Services. The Provider will provide to the City the goods and services ("Goods") set forth as follows:

- a. The Provider will keep all vending and concessions fully supplied including but not limited to all cans, bottles, syrups, carbonation, and all other necessary supplies. The Provider will fully supply all products and fill all machines in a timely manner. The Provider will maintain all machines in clean, safe, and sanitary condition that meet or exceed government or industry standards. The Provider will provide 24 hour, seven days a week technical support by phone and service by certified and trained PepsiCo technicians seven days a week, including unlimited service calls and parts. The Provider will also provide installations and recycling services. The Provider agrees to allow the City to purchase the Goods at a reduced cost for use in conjunction with VPA's operated and non-vending concession areas.
- b. Provider will deliver the following Goods:
 - Soda
 - Isotonic Water
 - Juice
 - Water
 - Other goods upon reasonable request of the City
- c. The services shall be provided to the following venues:
 - Savor @ Century Center
 - O'Brien Fitness Center
 - Martin Luther King Jr. Community Center
 - Charles Black Community Center
 - Howard Park Community Center
 - Byers Softball Complex
 - Erskine Golf Course
 - Studebaker Golf Course
 - Elbel Golf Course
 - Morris Performing Arts Center
 - Palais Historic Ballroom

- Other VPA-owned events (Including but not limited to Fusion Fest., Kids' Triathlon, Community Dances)

2. Compensation. Upon delivery of the Provider's satisfactory performance and subject to the terms and conditions of this Agreement, the City will pay the Provider in accordance with the fees stated in Exhibit A for year 1 of this Term and resubmitted to City by Provider annually. Upon delivery of the Goods, the Provider will remit an invoice to the City, payable on delivery of the Goods. Payment will be remitted every thirty (30) days or upon receipt of an invoice, and the Provider will not charge the City any penalty or late fees. The City will not be required to pay any invoice if any material default or breach of this Agreement by the Provider exists.

Additional benefits associated with vendor's sponsorship may be negotiated after the commencement of the Agreement and could include tickets/passes to events, signage, etc. Sponsorship may be a combination of product donation and cash.

3. Term; Termination. Unless earlier terminated in accordance with its terms, this Agreement will commence on the Effective Date and end five (5) years from the Effective Date and the City's final payment thereafter or at such time as City's collective purchases of products meets or exceeds a volume threshold of 17,400 Gallons/Cases whichever occurs later ("Term"). Notwithstanding the foregoing, effective immediately upon delivery of a written termination notice to the Provider, the City may terminate this Agreement, in whole or in part, for any reason, if the City determines that such termination is in the best interest of the City. In addition, in accordance with Ind. Code 6-1.1-18-4, payments are subject to annual appropriation by the City. If the City makes a written determination that funds are not appropriated or are otherwise unavailable to support the continuation of this Agreement, it shall be cancelled. A determination by the City that funds are not appropriated or are otherwise unavailable to support the continuation of performance shall be final and conclusive. The City will not be required to pay any additional fees, excluding any invoice remitted for Goods provided prior to the effective date of termination of this Agreement, or be otherwise liable for any cost associated with the Provider's performance under this Agreement after the effective date of termination.

4. Remedies for Breach of Contract. Failure to provide the Goods in accordance with this Agreement will be considered a material breach. In the event of such breach, the City may suspend all payments to the Provider and may pursue any and all remedies available at law or in equity.

5. Point of Contact. The City employee identified in Section 10 below will serve as the City's principal point of contact for purposes of this Agreement.

6. Relationship. The Provider shall at all times be an independent contractor for all services performed and goods supplied rather than an employee of the City, and no act or omission to act by the Provider shall in any way bind or obligate the City. This Agreement is strictly for the benefit of the Parties and not for any third party or person. This Agreement was negotiated by the Parties at arm's length and each of the parties hereto has reviewed the Agreement after the opportunity to consult with independent legal

counsel. Neither party shall maintain that the language in the Agreement shall be construed against any signatory hereto. The City and the Provider hereby renounce the existence of any form of agency relationship, joint venture, or partnership between the Provider and the City and agree that nothing contained herein or in any document executed in connection herewith shall be construed as creating any such relationship between the City and the Provider.

7. Indemnification of City. The Provider hereby agrees to defend, indemnify, and hold harmless the City, its officials, employees, and agents from any and all claims of any nature which arise from the performance by the Provider under this Agreement and from all costs and attorney fees in connection therewith, excepting for claims arising out of the negligence of the City, its officials, directors, employees, and agents, including for any claims arising from preparation or service of food or beverage products. The obligations of the Provider under this section shall survive the termination of this Agreement.

8. Certificate of Insurance. During the term of this Agreement, the Provider shall at its own expense procure and maintain insurance through companies licensed to do business in the State of Indiana.

9. Assignment. The Provider may assign or subcontract the whole or any part of this Agreement or its obligations hereunder without the prior written consent of the City provided that such assignment or subcontract does not unduly burden the City

10. Notices. Any notice required or permitted to be delivered hereunder shall be deemed to be delivered, whether or not actually received, when deposited in the United States Postal Service, postage prepaid, registered or certified mail, return receipt requested, addressed to the City or the Provider, as the case may be, at the address set forth below.

Provider:
Pepsi Beverage Company
5435 Dylan St
South Bend, IN 46628

City:
City of South Bend
Venues, Parks and Arts
301 S. St. Louis Blvd.
South Bend, IN 46601
Attn: Jordan Gathers
Director of Venues, Parks & Arts

11. Equal Opportunity; Non-Discrimination; Compliance. The Provider shall comply with all applicable laws and regulations in its hiring and employment practices and policies for any activity covered by this Agreement. The Provider shall comply with all state, federal, and municipal laws, regulations, and standards applicable to its activities pursuant to this Agreement including, but not limited to, the requirements imposed by Ind. Code 22-9-1-10 (non-discrimination), the provisions of Ind. Code 5-22-16.5 (disqualification for dealings with the government of Iran), and the provisions of Ind. Code 22-5-1.7 (requiring E-Verify for new employees and prohibiting employment of unauthorized aliens). Each of the foregoing provisions is incorporated herein as if set forth

in full, and the Provider certifies that it is in compliance with each such provision and shall remain in compliance through the term of this Agreement.

12. Drug-Free Workplace. The Provider hereby agrees to make a good faith effort to provide and maintain a drug-free workplace. The Provider will give written notice to the City within ten (10) days after receiving actual notice that the Provider or an employee of the Provider within the State of Indiana has been convicted of a criminal drug violation occurring in the workplace.

13. Entire Agreement; Amendment; Applicable Law. This Agreement sets forth the entire agreement and understanding between the parties as to the subject matter hereof, and merges and supersedes all prior discussions, agreements, and understanding of any and every nature between them. This Agreement may be amended only by separate writing, signed by authorized representatives of both the Provider and the City. This Agreement will be construed and interpreted according to the laws of the State of Indiana, and any dispute arising out of this Agreement or otherwise concerning the Provider's rendering of the Services will be resolved in the courts located in St. Joseph County, Indiana, unless the Parties mutually agree to a different method of dispute resolution.

14. Severability. All provisions of this Agreement shall be considered as separate terms and conditions, and in the event any one shall be held illegal, invalid or unenforceable, all the other provisions hereof shall remain in full force and effect as if the illegal, invalid, or unenforceable provision were not a part hereof, unless the provision held illegal, invalid or unenforceable is a material provision of this Agreement, in which case the Provider and the City agree to amend this Agreement with replacement provisions containing mutually acceptable terms and conditions.

15. Force Majeure. The Provider shall not be responsible for any failure or delay in the performance of any obligation hereunder, if such failure or delay is due to a cause beyond the Provider's reasonable control, including, but not limited to acts of God, flood, fire, volcano, war, third-party suppliers, labor disputes or governmental acts.

[Signature page follows.]

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement for Goods and Services to be effective as of the Effective Date stated above.

PEPSI BEVERAGE COMPANY

Signature

Pepsi Beverage Company
Printed Name and Title

5435 Dylan Rd
Street Address

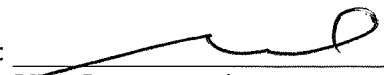
South Bend, IN 46628
City, State Zip

Telephone

Fax

**CITY OF SOUTH BEND, INDIANA
BOARD OF PARKS COMMISSIONERS**

By: _____


VPA Representative

**CITY OF SOUTH BEND, INDIANA
PURCHASING**

By: _____

Purchasing Representative

EXHIBIT A

Provider will pay the City the following:

Rebates. Each Year throughout the Term, Provider agrees to calculate the total number of eligible cases and gallons of products purchased by each of the applicable facilities/outlets from Provider pursuant to this Agreement, and will provide City with rebates calculated based on applicable rates set forth below (the "*Rebates*"). The Rebates, as applicable, will be paid by Provider within sixty (60) days after the end of each year throughout the 5 years in the Term. The parties agree that Provider will not accrue or pay any Rebates for sales to facilities/outlets that are in breach of the this Agreement

Annual Support Funds. In each of Years 1 through 5, Provider agrees to provide City with annual support funds in the amount of one thousand US Dollars (\$1,000) (the "*Annual Support Funds*"). The Annual Support Funds will be paid to City within sixty (60) days after the end of each applicable year throughout the Term, except that in the event Annual Support Funds are payable for year one, such payment will be made within sixty (60) days of the later of (i) the first day of the Term or (ii) the signing of this Agreement by both parties.

Product Free of Charge. Upon request from Customer, Provider agrees to provide up to a total value of 100 Cases of 16.9oz Aquafina per Year at no additional charge to City, provided, however, that City will administer all requests through a central contact so that City may prioritize the requests. City acknowledges and agrees that unrequested product in any year shall not be carried over to the subsequent year or be redeemable for cash payment.

Marketing Support. Each year during the Term, Provider agrees to provide City with marketing support, valued at up to three hundred US Dollars (\$300) ("*Marketing Support*"). The Marketing Support will be used and spent by Provider to pay for point-of-sale materials and promotional programs in support of the sale of the products at the facilities/outlets, as mutually agreed to by the parties. City acknowledges and agrees that unused Marketing Support in any year will not be carried over to a subsequent year and will not be redeemable for a cash payment.

Products and Prices effective for Year 1 only

City acknowledges that Provider has the right to pass through any incremental fees, deposits, taxes or other governmentally imposed charges (whether local, state, federal or judicially imposed on manufacturers, distributors, consumers or otherwise). The pass-through of any such governmentally imposed fees, deposits, taxes or charges on the Products will be in addition to any increases set forth herein or notification restrictions that may be specified in this Agreement.

I Pepsi_TotalFTN	BIB 5G	\$2.00	Per gallon
Dr_Pepper_Total FTN	BIB 5G	\$2.00	Per gallon
Pepsi_DL_TotalF TN	BIB 5G	\$2.00	Per gallon
Mt_Dew_TotalFT N	BIB 5G	\$2.00	Per gallon
Crush_TotalFTN	BIB 3G	\$2.00	Per gallon
Slarry_TotalFTN	BIB 3G	\$2.00	Per gallon
Pepsi_Zero_Suga r_TotalFTN	BIB 3G	\$2.00	Per gallon
Aquafina_Base_I otal	20oz 24L	\$5.00	per case
Corp_CSD_TOTA L	20oz 24L	\$5.00	per case
Aquafina_Base_T otal	16.9oz 24P	\$7.00	per case
Corp_CSD_TOTA L	Can 12oz 12P 12M	\$5.00	per case
Lipton_Pure_Lea r_Total	18.5oz 12P	\$5.00	per case
Rockstar_Total	Can 16oz 12P	\$5.00	per case
Odslus_Total	Can 12oz 12L SLK	\$5.00	per case
Gatorade_Total	20oz 24P	\$5.00	per case
Frappuccino_Tot al	13.7oz 12L	\$3.00	per case

