



CITY OF SAINT PAUL AGREEMENT

PURCHASER (Referred to as "The City")
City of Saint Paul
15 W Kellogg Blvd
Room 280 City Hall Courthouse
Saint Paul, MN 55102
Phone: 651-266-8900

CONTRACTOR
Bottling Group, LLC "Pepsi"
1300 E Cliff Rd
Burnsville, MN 55337
952-895-1388
john.scobie@pepsico.com

Contract No: 1689
Effective Date: March 22, 2018
Expiration Date: February 28, 2023
Contract Description: RFP-PARKS-EXCLUSIVE BEVERAGE SUPPLIER

Contacts

Buyer Contact Information:
Paul Dotson - Paul.Dotson@ci.stpaul.mn.us

City Project Manager Contact Information:
Paul Prior - Paul.Prior@ci.stpaul.mn.us

Contractor Project Manager Contact information:
Brandon Jacobson - Brandon.Jacobson@pepsico.com
John Scoble - John.Scobie@pepsico.com

City Contract

THIS AGREEMENT, made and entered into on the effective date above by and between the City of Saint Paul, Minnesota, a municipal corporation under the laws of the State of Minnesota, hereinafter referred to as "City," and the above-named Contractor, hereinafter referred to as "Contractor" or "Pepsi."

The City and Contractor, in consideration of the mutual terms and conditions, promises, covenants, and payments hereinafter set forth, agree as follows:

Contractor agrees to provide the services comprised of tasks, deliverables, and time lines described in this Agreement.

Section 1. Time For Completion.

The services rendered by Contractor shall be commenced upon execution of the Agreement and notification by the City to proceed and will be completed in accordance with the schedule mutually agreed upon with the City which follows, but no later than the expiration above.

In the event that there are delays caused by actions of the City or which may be reasonably requested by the Contractor which can change the completion date, Contractor shall request an extension of time for completion of the project. The Project Manager will review the request and may grant to the Contractor such extensions of contract time as may be reasonable.

Section 2. Project Management.

The City requires the Contractor to assign specific individuals as account representatives and to assure that the major work and coordination will remain the responsibility of these individuals during the term of the Agreement. Removal of any principal project member without replacement by equally qualified individuals or without the prior written approval of the City is grounds for termination of the Agreement by the City.

The City has designated the individual on Page 1, as the Project Manager for this Agreement, and the individual to whom all communications pertaining to the Agreement shall be addressed. The Project Manager shall have the authority to transmit instructions, receive information, and interpret and define the City's policy and decisions pertinent to the work covered by this Agreement.

Section 3. Billings and Payment.

Contractor shall submit an itemized invoice upon delivery of Product. The City shall make payment to Contractor in accordance with the Account Terms executed by the City.

The amounts herein shall fully compensate Contractor for all work and associated costs. The City will honor no claim for services and/or costs provided by the Contractor not specifically provided for in this Agreement. Total costs for the project shall not exceed the amount referenced herein.

Contractor shall submit an itemized invoice monthly or after services are complete. Upon receipt of the invoice and verification of the charges by the Project Manager, the City shall make payment to Contractor within thirty-five (35) days.

In the event the Provider fails to comply with any terms or conditions of the contract or to provide in any manner the work or services as agreed to herein, the City reserves the right to withhold any payment until the City is satisfied that corrective action has been taken or completed, provided that the Contractor has been notified in writing of such non-compliance with a thirty (30) day opportunity to cure prior to any corrective action. This option is in addition to and not in lieu of the City's right to termination as provided in the sections of this Agreement.

Section 4. City Responsibilities.

The City agrees to provide Contractor with access to any information from City documents, staff, and other sources needed by Contractor to complete the work described herein.

Section 5. Amendment or Changes to Agreement.

A. City or Contractor may request changes that would increase, decrease, or otherwise modify the Scope of Services. Such changes and method of compensation must be mutually agreed upon in writing; provided however, the product prices may be changed from time to time at Pepsi's discretion, not to exceed an annual maximum increase of five (5) percent over the previous year's price, throughout the term.

B. Except for permissible price increases as stated above, any alterations, amendments, deletions, or waivers of the provisions of this Agreement shall be valid only when reduced to writing and duly signed by the parties.

C. Modifications or additional schedules shall not be construed to adversely affect vested rights or causes of action which have accrued prior to the effective date of such amendment, modification, or supplement. The term "this Agreement" as used herein shall be deemed to include any future amendments, modifications, and additional schedules made in accordance herewith.

Section 6. Notices.

Except as otherwise stated in this Agreement, any notice or demand to be given under this Agreement shall be delivered in person or deposited in United States Certified Mail, Return Receipt Requested. Any notices or other communications shall be addressed to the individuals and addresses listed above for the City and to the addresses below if to Pepsi:

Pepsi Beverages Company
1300 East Cliff Road
Burnsville, MN 55337
Attn: Director, Foodservice

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

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

Section 7. Survival of Obligations.

- A. The respective obligations of the City and Contractor under these terms and conditions, which by their nature would continue beyond the termination, cancellation, or expiration hereof, shall survive termination, cancellation or expiration hereof.
- B. B. If a court or governmental agency with proper jurisdiction determines that this Agreement, or a provision herein is unlawful, this Agreement or that provision, shall terminate. If a provision is so terminated but the parties legally, commercially, and practicably can continue this Agreement without the terminated provision, the remainder of this Agreement shall continue in effect.

Section 8. Entire Agreement.

It is understood and agreed that this entire Agreement, together with the Account Terms, supersedes all oral agreements and negotiations between the parties relating to the subject matters herein.

City Terms & Conditions (No Labor with Insurance)

Section 9. Commencement of Work.

Contractor shall not perform any work pursuant to this Agreement without the specific prior agreement of the designated representative of the City of Saint Paul. No claim for services or products provided by the Contractor not specifically provided for in this Agreement, or not specifically agreed to in advance will be honored by Saint Paul.

Section 10. Invoicing and Payment.

Contractor shall submit invoices to the City department making the purchase clearly itemizing all goods and/or services provided. The City of Saint Paul will make payment in accordance with Chapter 471.425. Such payment may be made using a pay voucher, purchase order, or authorized procurement card, or department shall notify Contractor of any problems, omissions, or defects in the goods and/or services received.

Section 11. Records, Dissemination of Information.

A. For purposes of this Agreement, the following words and phrases shall have the meanings set forth in this section, except where the context clearly indicates that a different meaning is intended.

"Work product" shall mean any report, recommendation, paper, presentation, drawing, demonstration, or other materials, whether in written, electronic, or other format that results from Contractor's services under this Agreement.

"Supporting documentation" shall mean any surveys, questionnaires, notes, research, papers, analyses, whether in written, electronic, or in other format and other evidences used to generate any and all work performed and work products generated under this Agreement.

"Business records" shall mean any books, documents, papers, account records and other evidences, whether written, electronic, or in other forms, belonging to Contractor and pertaining to work performed under this Agreement.

B. No work product will be created or delivered in connection with this Agreement.

C. The Contractor agrees not to release, transmit, or otherwise disseminate information associated with or generated as a result of the work performed under this Agreement without prior knowledge and written consent of the City.

D. Intentionally omitted.

E. The Contractor agrees to maintain all business records in such a manner as will readily conform to the terms of this Agreement and to make such materials available at its office at all reasonable times during this Agreement period and for six (6) years from the date of the final payment under the contract for audit or inspection during normal business hours and upon reasonable written notice by the City, the Auditor of the State of Minnesota, or other duly authorized representative.

F. The Contractor agrees to abide strictly by Chapter 13, Minnesota Government Data Practices Act, and in particular Minn. Stat. §§ 13.05, subd. 6 and 11; and 13.37, subd. 1 (b) and Minn. Stat. §§ 138.17 and 15.17. All of the data created, collected, received, stored, used, maintained, or disseminated by the Contractor in performing functions under this Agreement is subject to the requirements of the Minnesota Government Data Practices Act and Contractor must comply with those requirements as if it were a governmental entity. If any provision of this Agreement is in conflict with the Minnesota Government Data Practices Act or other Minnesota state laws, state law shall control.

Section 12. Human Rights/Affirmative Action/Economic Opportunity.

Contractors must comply with the City of Saint Paul's Human Rights Department's Affirmative Action Requirements in Employment pursuant to Section 183.04 of the Saint Paul Legislative Code, the Rules Governing Affirmative Requirements in Employment, and Chapter A-17 of the Saint Paul Administrative Code governing racial harassment. The Contractor agrees to comply with all federal, state and local laws, resolutions, ordinances, rules, regulations and executive orders pertaining to unlawful discrimination on account of race, creed, religion, color, sex, sexual or affectional orientation, national origin, ancestry, familial status, age, disability, marital status, or status with regard to public assistance and will take affirmative steps to ensure that applicants are employed and employees are treated during employment without regard to the same.

Section 13. Affirmative Action Contract Specifications.

Every contractor or subcontractor whose total accumulated contract awards from the City of Saint Paul over the preceding twelve months have met or exceeded \$50,000 must complete and submit to the Department an Affirmative Action Program Registration form along with a \$75 registration fee (City of Saint Paul Administrative Code Ordinance 86.06 and City of Saint Paul Legislative Code Ordinance 183.04).

Section 14. Compliance With Applicable Law.

The Contractor agrees to comply with all federal, state and local laws or ordinances, and all applicable rules, regulations and standards established by any agency of such governmental units, insofar as they relate to the Contractor's performance of the provisions of this Agreement. It shall be the obligation of the Contractor to apply for, pay for and obtain all permits and/or licenses required.

Section 15. Conflict of Interest.

Contractor's acceptance of this agreement indicates compliance with Chapter 24.03, City of Saint Paul Administrative Code: "Except as permitted by law, no city official or employee shall be a party to or have a direct financial interest in any sale, lease, or contract with the City. The contractor also affirms that to the best of the Contractor's knowledge, their involvement in this contract does not result in a conflict of interest with any part or entity which may be affected by the terms of this contract. The Contractor agrees that should any conflict or potential conflict of interest become known to the contractor, they will immediately notify the Purchasing Systems Manager of the situation so that a determination can be made about Contractor's ability to continue performing services under this contract."

Section 16. Hold Harmless.

The Contractor shall defend and indemnify the City of Saint Paul, its officers, agents, and employees from all claims, actions, or suits of any character brought for or on account of any claimed or alleged injuries or damages received by any person or property, resulting from any negligent act or omission by the contractor or any person employed by Contractor in carrying out the terms of this Contract.

Section 17. Assignment.

The City and Contractor each binds itself and its successors, legal representatives, and assigns of such other party, with respect to all covenants of this Agreement; and neither the City nor the Contractor will assign or transfer their interest in this Agreement without the written consent of the other.

Section 18. Termination.

This Agreement will continue in full force and effect until completion of the project as described herein unless either party terminates early for cause.

A. With Cause.

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.

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. In the event of termination, the City will pay Contractor for all services and/or products, actually, timely, and faithfully rendered up to the receipt of the notice of termination and thereafter until the date of termination. The Contractor will deliver all ordered up to the time of termination prior to the City rendering final payment for service.

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

Section 19. Alterations.

Any alteration, variation, modification or waiver of the provisions of the specifications that may have occurred during the bidding process or amendments to this Contract shall be valid only when reduced to mutual written agreement.

Section 20. Interpretation of Agreement, Venue.

This Agreement shall be interpreted and construed according to the laws of the State of Minnesota. All litigation regarding this agreement shall be venued in the District Court of the County of Ramsey, Second Judicial District, State of Minnesota.

Section 21. Independent Contractor.

It is agreed by the parties, that at all times and for all purposes, within the scope of the Agreement resulting from this solicitation, the relationship of the Contractor to the City is that of independent contractor and not that of employee. No statement contained in the specification or resulting Agreement shall be construed so as to find the Contractor an employee of the City, and Contractor shall be entitled to none of the rights, privileges, or benefits of Saint Paul employees.

Section 22. Waiver.

The waiver by either party of any breach under the terms of this Agreement or the foregoing by either party of any of the rights or remedies arising under the terms of this Agreement shall not constitute a waiver of such party's right to any rights and/or remedies with respect to any subsequent breach or default of the terms of the contract. The rights and remedies of either party provided or referred to under the terms of the contract are cumulative and not mutually exclusive.

Section 23. Additions.

During the contract period, the City reserves the right to request pricing for and request addition to the contract a limited number of like items to accommodate the need for any items that may have been inadvertently omitted from the lists included in this request document.

Section 24. Subcontracting.

The Contractor agrees not to enter into any subcontracts for any of the work contemplated under this Agreement without obtaining prior written approval of the City.

Section 25. Force Majeure.

Neither the City nor the Contractor shall be held responsible for performance if its performance is prevented by acts or events beyond the party's reasonable control, including, but not limited to: severe weather and storms, earthquake or other natural occurrences, strikes and other labor unrest, power failures, electrical power surges or current fluctuations, nuclear or other civil military emergencies, or acts of legislative, judicial, executive.

Section 26. Entire Agreement.

The specifications and other solicitation materials associated with this Agreement and these General Terms and Conditions shall constitute the entire Agreement between the parties and shall supersede all prior oral or written negotiations.

Section 27. Insurance.

A. Contractor shall be required to carry insurance of the kind and in the amounts shown below for the life of the Agreement. Certificates for General Liability Insurance should state that the City of Saint Paul, its officials, employees, agents and representatives are Additional Insureds.

1. General or Business Liability Insurance

- \$1,500,000 per occurrence
- \$2,000,000 aggregate per project
- \$2,000,000 products/completed operations total limit
- \$1,500,000 personal injury and advertising

2. Automobile Insurance - (When Commercial vehicles are used in connection with a contract)

- a. \$1,000,000 combined single limit
- b. Coverage shall include: hired, non-owned and owned auto

3. Automobile insurance – When Personal vehicles are used in connection with a contract, the City is not required to be named as Additional Insured, but proof of insurance is required prior to commencement of activities. Contractor must provide City with Endorsements from insurance company.

- a. Bodily Injury \$30,000 per person \$60,000 per accident
- b. Property Damage \$20,000 per accident

4. Automobile Insurance – When Rental vehicles are used in connection with a contract, the Contractor shall either purchase insurance from the rental agency, or provide City with proof of insurance as stated above.

5. Worker's Compensation and Employer's Liability

- a. Worker's Compensation per Minnesota Statutes
- b. Employer's Liability shall have minimum limits of \$500,000 per accident; \$500,000 per employee; \$500,000 per disease policy limit.
- c. Contractors with 10 or fewer employees who do not have Worker's Compensation coverage are required to provide the City with a completed "Certificate of Compliance" (State of Minnesota form MN LIC 04) verifying their number of employees and the reason for their exemption.
- d. Intentionally Omitted

7. General Insurance Requirements

- a. All policies shall be written on an occurrence basis. Certificate of insurance must indicate if the policy is issued on a claims-made or occurrence basis.
- b. The Contractor may not commence any work until Certificates of Insurance covering all of the insurance required for this project is approved and the Project manager has issued a notice to proceed. Insurance must remain in place for the duration of the original contract and any extension periods.
- c. Intentionally Omitted.
- d. Nothing shall preclude the City from requiring Contractor to purchase and provide evidence of additional insurance after requested in writing if the scope of services change, if the amount of the contract is significantly increased, or if the exposure to the City or its citizens is deemed to have increased.
- e. Satisfaction of policy limits required above for General Liability and Automobile Liability Insurance, may be met with the purchase of an umbrella or excess policy. Any excess or umbrella policy shall be written on an occurrence basis, and if such policy is not written by the same insurance carrier, the proof of underlying policies shall be provided with any certificate of insurance.

Exhibit A - SOW

Work Scope Pursuant to Event #592 specifications, addenda, all related documents to include Pepsi's proposal response, and negotiated language incorporated into this Agreement.

BRIEF DESCRIPTION OF PROJECT:

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 City's Facilities, excluding the facilities set out below. 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. 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.

Excluded Facilities

The Department has established multi-year contracts, leases and management agreements with outside interests for the provision of recreation activities and services. The following facilities and programs will not be included in the beverage exclusivity agreement which results from this RFP. However, in the past Responders have expressed an interest in participating subject to the level of available support. Although the listed agreements are in effect and the participation of these facilities cannot be guaranteed, the Department will work with the successful Responder in establishing contact with the representatives of the outside interests in order to discuss extending the benefits of the Department's beverage exclusivity agreement.

- Como Park Zoo & Conservatory
- CHS Field/Saint Paul Saints Baseball
- Spring Café
- Watergate Marina/Allied Management Company
- Circus Juventas (Highland Park)
- Padelford Packet Boat Company (Harriet Island)
- Covington Inn (Harriet Island)
- Magnolia Blossom Cruises (Watergate Marina)
- Red River Kitchen

Likewise, the Department has also made commitments to participate in future events as either a programming partner or facility provider. Many of these events utilize multiple venues. This contract does not include these events:

- Hmong Sport Festival - annual (Como Regional Park)
- Irish Fair annual - annual (Harriet Island Regional Park)
- Saint Paul Winter Carnival - annual (various Saint Paul venues)
- Red Bull Events (e.g. Red Bull Flugtag)

DEFINITIONS:

"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" 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.

"Customer" means the Department of Parks and Recreation.

"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 a building owned, leased, occupied, operated, by the Customer or its Food Service Provider and includes buildings, the grounds, parking lots, dining/cafeteria facilities, snack bars, food carts, retail locations, the grounds, unbranded and branded food service outlets, and all vending areas located at or around the Facilities. A current list of the Facilities is set forth in attached.

"Food Service Provider" shall mean any food service provider which may serve at the Facilities at any point during the Term, exclusive of catering services for private rentals of Customer's facilities. 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 (e.g., bottles and cans). A current list of Pepsi's Packaged Products is listed in attached Error! Reference source not found. which may be amended by Pepsi from time to time.

"Postmix Products" shall mean Beverages 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 Error! Reference source not found. 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.

COMPENSATION/PAYMENT TERMS:

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. Thereafter, the prices may be changed from time to time at Pepsi's discretion, except that Pepsi shall provide thirty (30) days' notice of any price increases during the Term and any price increase shall not exceed an annual maximum increase of five percent over the previous year's price, throughout the term.

Account terms will be governed by Customer's application and execution of Pepsi's standard Account Terms, subject to Pepsi approval.

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.** Pepsi shall provide Customer with annual support funds in the amount of Twenty-Five Thousand Dollars (\$25,000), payable to the Customer within sixty (60) days after the latter of execution or March 1, 2018 with respect to Year 1 and sixty (60) days after the commencement of Year 2 and each anniversary thereafter until the end of the Term of this Agreement not to exceed five (5) total 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 the Remedies Section in the City Agreement Terms and Conditions set forth herein.

(B) **Marketing Support Funds.** Each Year throughout the Term, Pepsi shall provide Customer with Ten Thousand Dollars (\$10,000) of marketing support to be used and spent by Pepsi, toward mutually approved miscellaneous advertising and marketing promotional purposes during the respective Year ("Marketing Support Funds"). Amounts remaining unspent, if any, at the end of any given Year, will not carry forward to the subsequent Year; and amounts remaining unspent at the end of the Term will remain the property of Pepsi.

(C) **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 fees or deposits ("Commissions"). Such Commissions shall be at the rate(s) set forth below (the "Commission Rate") and shall be calculated as follows:

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

Product	Minimum Vend Price*	Commission Rate*
20 oz. Pepsi Corp CSDs	\$1.75	30%
20 oz. Aquafina	\$1.75	30%
20 oz. Gatorade	\$2.00	30%
12 oz. can Pepsi Corp CSD	\$0.75	30%
15.2 oz. Ocean Spray	\$2.25	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, including a graphic representation of any price increases which affect the CIB formula, to be provided annually or as increases occur. 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%), 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.
- (5) **Annual Report on Marketing Supporting Funds.** On each anniversary date of this Agreement Pepsi shall provide the Customer with an annual report detailing the previous year's Marketing Support Funds used and the remaining balance available.

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.

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.

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.


CONTRACT LINES

Item	Item Description	Unit of Measure	Base Cost
NOT APPLICABLE	NOT APPLICABLE	8P	1.00000

City of Saint Paul
15 W Kellogg Blvd
Saint Paul, MN 55102

Pepsi Beverages Company
1300 E Cliff Rd
Burnsville, MN 55337
952-895-1388

City:
This Agreement has been duly executed by the
City of Saint Paul via electronic approval

Contractor 

Signature
Brandon Jacobson

Printed Name
FSR

Title
3/28/2018

Date

EXHIBIT A

Central Services Facility (1100 North Hamline, Saint Paul, MN 55108)

Gary Korum e-mail: gary.korum@ci.stpaul.mn.us telephone: 651-632-2402

- 1 – indoor vending machine

Como Campus (1225 Estabrook Drive, Saint Paul, MN 55103 – employee only back lot area)

Michelle Furrer e-mail: michelle.furrer@ci.stpaul.mn.us telephone: 651-207-0003

- 1 – indoor vending machine

Como Regional Park Golf Course Club House (1431 North Lexington Parkway, Saint Paul, MN 55103)

Don Siggelkow e-mail: don@mnpartnerships.com telephone: M. 612-760-4459 O. 651-488-9679

Tim Kuebelbeck e-mail: timKuebelbeck@envisioncatering.com telephone: O. 651-774-9456

- 1 – tall bottle beverage floor cooler (refrigerator-like)
- 1 - beverage pour gun (SEE ATTACHED Photograph)

Would like PepsiCo to install two (2) tall bottle beverage floor coolers (refrigerator-like) and one (1) fountain pour set-up.

Highland Park National Golf Course Club House (1403 Montreal Avenue, Saint Paul, MN 55103)

- 2 - short bottle beverage coolers
- 2 – beverage pour gun (SEE ATTACHED Photograph)
- 2 – bottle beverage counter top coolers
- 1 – tall bottle beverage floor cooler (refrigerator-like)

Highland Park Golf Course Maintenance Facility (enter off Snelling Avenue – adjacent to Highland Park National Golf Course at 1403 Montreal Avenue, Saint Paul, MN 55103)

- 1 – vending machine

Highland Park Nine Hole Golf Course (1795 Edgcumbe Road, Saint Paul, MN 55116 – across the street from the Highland Park National Golf Course)

- 1 – beverage pour gun (SEE ATTACHED Photograph)

Highland Park Driving Range (1403 Montreal Avenue, Saint Paul, MN 55103 – 1 block west of the Highland Park National Golf Course Club House)

- 1 – short cooler

Phalen Regional Park Golf Course Club House (1615 Phalen Drive, Saint Paul, MN 55106)

Don Siggelkow e-mail: don@mnpartnerships.com telephone: M. 612-760-4459 O. 651-488-9679

Tim Kuebaelbeck e-mail: timKuebelbeck@envisioncatering.com telephone: O. 651-774-9456

- 2 – single door tall bottle beverage floor cooler (refrigerator-like)
- 2 – double door tall bottle beverage floor cooler (refrigerator-like)

- 1 - beverage pour gun (SEE ATTACHED Photograph)

Como Regional Park Pool (1151 Wynne Avenue, Saint Paul MN 55103)

Tyler McKean e-mail: tyler.mckean@ci.stpaul.mn.us telephone: M. 612) 590-3467

- 1 – fountain pour machine (with attached City owned ice maker – Parks Building Trades will remove)
- 1 – outdoor vending machine (at PepsiCo’s option, they do not need to replace this outdoor vending machine, as Coca-Cola machine did not produce much revenue)

Highland Park Aquatic Center (1840 Edgcumbe Road, Saint Paul, MN 55104)

Tyler McKean e-mail: tyler.mckean@ci.stpaul.mn.us telephone: M. 612) 590-3467

- 1 – fountain pour machine (with attached City owned ice maker – Parks Building Trades will remove)

Phalen Regional Park Beach House (1400 Phalen Drive, Saint Paul, MN 55106)

Tyler McKean e-mail: tyler.mckean@ci.stpaul.mn.us telephone: M. 612) 590-3467

- 1 – fountain pour machine (with attached City owned ice maker – Parks Building Trades will remove)

Recreation Centers:

<u>AREA/SITE</u>	<u>ON SITE CONTACT</u>	<u>ADDRESS-551xx</u>	<u>CENTER</u>
<u># EQUIPMENT/BEST Days/DATES TO MOVE</u>			
<u>NORTHEAST</u>			
Arlington Hills CC	Teresa Little	1200 Payne Ave, 30	632-3861
		• 2 – indoor vending machines (M-F 9a – 9p)	
Battle Creek	Dan Aliperto	75 S. Winthrop St, 19	501-6347
		• 2 – indoor vending machines (2-9 pm M-TH, 2-6 F)	
		• 1 – large standup sliding glass door cooler	
Dayton's Bluff	Michelle Freeman	800 Conway St, 06	793-3885
		• 1 – indoor vending machine (12:30-9 M-TH, 9:30 – 6 F)	
Duluth & Case	Kong Chang	1020 Duluth St, 06	298-5709
		• 1 – indoor vending machine (M-F 3 – 9 p.m.)	
Hayden Heights	Ezekiel Stanley	1965 E. Hoyt Ave, 19	298-5716

- **2 – indoor vending machines (M-TH 3-9, F 3-6)**

Hazel Park Jamie Anderson 945 N. Hazel St, *19* 501-6350

- **1 – indoor vending machine (remove 3 -9 M-TH, 3-6 F)**

Phalen Peter Felion 1000 E. Wheelock Pkwy, *06* 793-6600

- **1 – indoor vending machine (remove 3-9 M-TH, 3-6 F)**

Wilder Nate Kastle 958 Jessie St, *01* 298-5727

- **No machines**

NORTHWEST

Hancock Matthew Lassegard 1610 Hubbard Ave, *04* 298-4393

- **No machines (attached to Saint Paul Public School)**

Langford Courtney Moriarty 30 Langford Park, *08* 298-5765

- **1 – indoor vending machine (remove Friday's from 9 – 11 a.m.)**

McDonough Courtney Lovelace 1544 Timberlake Rd, *17* 558-2171

- **1 – indoor vending machine (remove M-Th 3-9pm or F 3-6pm)**

Municipal Athletic Andre Lanoue 1500 Rice Street, *17* 558-2256

- **1 – indoor vending machine (8a-8p M-TH, 8-6 F)**

North Dale Brian Tobritzhofer 1414 N. St. Albans St, *17* 558-2329

- **1 – indoor vending machine (remove anytime during building hours, 9-9 M-TH, 11-9 F)**

Northwest Como John Haldeman 1550 N. Hamline Ave, *08* 298-5813

- **1 – indoor vending machine (remove before 3 p.m. M-F)**

Rice / Teen Zone Alyssa Lasar 1021 Marion St, *17* 558-2392

- **1 – indoor vending machine (remove any time after 12 pm M-F)**

Scheffer Torria Randall 237 Thomas Ave, *03* 298-5820

- **1 – indoor vending machine (3-9 M-TH, 3-6 F)**

West Minnehaha Bilal Muhammad 685 W. Minnehaha Ave, *04* 298-5823

- **1 – indoor vending machine (any time after 10 a.m. M-F)**

SOUTH

Edgumbe Jess Harkcom 320 S. Griggs St, *05* 695-3711

- **1 – indoor vending machine (9 -4 or 6 - 9 M-TH, 9 – 6 F)**

- El RioVista** Will Xiong 179 E. Robie St, **07** 789-3692
 • 1 – indoor vending machine (9 – 9 M-TH, 9-6 F)
- Groveland** Koami DaCruz 2021 St. Clair Ave, **05** 695-3714
 • 1 – indoor vending machine (pick up 1-3p M-F)
- Highland Park CC** Crystal Graham 1978 Ford Pkwy, **16** 695-3706
 • 2 – indoor vending machines (9-5:30pm M-F)
- Jimmy Lee/Oxford** Kirsten Lindsey 270 N. Lexington Pkwy, **04** 642-0650
 • 2 - indoor vending machines (remove Tuesday or Thursday mornings)
 • 1 – fountain pour machine (with attached City owned ice maker – Parks Building Trades will remove)
 • 1 – tall bottle beverage floor cooler (refrigerator-like)
- Linwood** Phillip McGraw 860 St. Clair Ave, **05** 298-5660
 • 1 – indoor vending machine (8-noon M-F)
- Martin Luther King** TBD 271 Mackubin St, **02** 290-8695
 • 1 – indoor vending machine (M, W, F 10-noon)
- Merriam Park** Danielle Fleming 2000 St. Anthony Ave, **04** 298-5766
 • 1 – indoor vending machine (11 – 5 pm M-F)
- Palace** Camolly Williams 781 Palace Ave, **02** 298-5677
 • 1 – indoor vending machine (3 p.m. M-F)

CITYWIDE PROGRAMMING

- Griggs** Colleen Tusa 1188 Hubbard Ave, **04** 298-5755
 • None
- Watergate Marina** JP Lindrud 2500 Crosby Farm Road **16** 651-695-3780
 • 1 – outdoor vending machine

EXHIBIT B

Size	Cups			Lids		
	Quantity per Case	Line Code	Price	Quantity per Case	Line Code	Price
9 Oz.	2,000	16173	\$82.65	N / A	N / A	N / A
12 Oz.	2,000	80142	\$93.94	2,400	148781	\$84.90
16 Oz.	1,200	148782	\$77.95	2,400	148781	\$84.90
24 Oz.	1,000	68754	\$77.71	2,400	148781	\$84.90
32 Oz.	480	63072	\$64.09	960	32407	\$53.50
44 Oz.	480	67858	\$67.97	960	39576	\$53.50

** Universal 12 oz., 16 oz. and 24 oz. Lid*

5-Gallon Flavors	Price /Gallon.	Price /5-Gallon BIB
Pepsi Cola, Diet Pepsi, Mountain Dew, Mist Twist, Tropicana Pink Lemonade	\$17.38	\$86.90
Dr Pepper	\$18.03	\$90.15

3-Gallon Flavors	Price /Gallon	Price /3-Gallon BIB
Mountain Dew Diet, Wild Cherry Pepsi, Mug Root Beer, Crush Orange, Mist Twist Diet, Diet Dr. Pepper	\$17.76	\$53.28
Kickstart Black Cherry	\$17.35	\$52.05
Sethness Sour	\$17.76	\$53.28
Lifewater 0 Cal Yumberry Pomegranate	\$17.76	\$53.28
Brisk Unsweet No Lemon Iced Tea	\$17.76	\$53.28
Brisk Raspberry Iced Tea	\$17.76	\$53.28
Brisk Iced Tea & Lemonade (02 & 03)	\$17.76	\$53.28
Lipton Brewed Unsweet No Lemon Tea	\$18.73	\$56.19
Lipton Brewed Sweet Tea	\$19.99	\$59.97
Tropicana Yellow Lemonade	\$18.95	\$56.85
Tropicana Fruit Punch	\$19.34	\$58.02
Schweppes Ginger Ale, Tonic	\$17.76	\$53.28
Gatorade G2 Fruit Punch	\$19.80	\$59.40
Siberian Chill 0.5oz Raspberry / Very, Very Cherry / Orange Cranachola / Straw Series	\$37.12	\$111.36
Dole Cranberry 15%	\$28.36	\$85.08
Dole 100% Orange Juice	\$35.66	\$106.98
Dole Old Fashioned Lemonade	\$18.95	\$56.85

1-Gallon Flavors	Price /Gallon	Price /1-Gallon BIB
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Flavorworks (Spiral) Cherry, Lemon, Strawberry, Vanilla	\$21.73	\$21.73
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CO ₂ Pricing	Size	Price
CO ₂	20 lb Tank	\$28.68