

January 23, 2020

**SPONSORSHIP AGREEMENT BETWEEN THE CITY OF MYRTLE BEACH & PEPSI  
BOTTLING VENTURES, LLC – CONWAY- MYRTLE BEACH**

This letter sets forth the agreement (the "Agreement") between PBV Conway-Myrtle Beach LLC ("PBV"), a Delaware limited liability company and a subsidiary of Pepsi Bottling Ventures LLC, and **City of Myrtle Beach, a South Carolina Corporation**, with its principal place of business at **937 Broadway, Myrtle Beach, South Carolina**, on its own behalf, on behalf of its affiliates and wholly-owned subsidiaries, and on behalf of its individual franchisees and licensees, if any, now or hereafter in existence (the "Customer"), relating to the sale of PBV's beverage products throughout all the facilities at city properties including sports facilities, and at any other facility now or hereafter maintained by Customer (the "Premises"). Throughout this Agreement, PBV and the Customer may be referred to individually as a "Party" or collectively as the "Parties." In consideration of the mutual promises and covenants sets forth herein, the Parties hereto agree as follows:

1. **Term.** The initial term of this Agreement will be for a period of five (5) year(s), commencing January 1, 2020, and expiring December 31, 2024 (the "Initial Term"). Customer may, by giving written notice to PBV at least thirty (30) days prior to the end of the Initial Term, extend the term of this Agreement on the same terms set forth herein for an additional one year to December 31, 2025 ("Option Year One"). In the event Customer exercises Option Year One, Customer may also, by giving written notice to PBV at least thirty (30) days prior to the end of Option Year One, extend the term of this Agreement on the same terms set forth herein for an additional one year to December 31, 2026 ("Option Year Two"). The Initial Term, together with Option Year One and Option Year Two (If exercised), shall be collectively referred to herein as the "Term." As used in this Agreement, the capitalized term "Year" shall mean each 12-month period during the Term, commencing on the first day of the Initial Term or any anniversary thereof.

2. **Scope and Exclusivity.** During the Term of this Agreement, Customer agrees to purchase its requirements of Products exclusively from PBV and that it shall not purchase Products from any other person. "Products" means all postmix or premix fountain, bottled, and canned non-alcoholic carbonated or non-carbonated or naturally or artificially flavored drinks, normally served at ambient, hot, cold or frozen temperatures, including but not limited to, carbonated and non-carbonated soft drinks, bottled water, energy drinks, still, fortified, enhanced, sparkling or flavored waters, mixers, slush/frozen beverages, fruit or vegetable juice, including but not limited to, orange juice, fruit and vegetable juice flavored drinks containing less than 100% juice, ready-to-drink tea or tea-flavored beverages, ready-to-drink lemonade or lemonade-flavored beverages, ready-to-drink coffee and coffee-flavored beverages, fortified milk and milk-flavored beverages, dairy-based beverages, nutritional supplement beverages, protein-enhanced and other functional beverages and isotonic beverages or sports drinks of any kind or form. At a minimum, the Customer agrees that the following Products will be available throughout the Term; Pepsi, Diet Pepsi, Mountain Dew, Sierra Mist (or other lemon lime soft drinks offered by PBV), Aquafina (or other bottled water available from PBV) and Gatorade plus additional carbonated or non-carbonated Product(s)

(such as, but not limited to, soft drink, tea, lemonade, fruit punch, or sports drinks) to be selected in PBV's sole discretion. The Customer agrees not to sell, serve or otherwise make available, or permit any other person to sell, serve or otherwise make available, any non-alcoholic Product other than the non-alcoholic Products sold by PBV hereunder. The Customer further agrees that no Products other than the Products sold by PBV hereunder shall be in any way advertised, displayed, represented or promoted at or in connection with the Customer by any method or through any medium whatsoever (including, without limitation, print, broadcast, direct mail, coupons, displays and signage) (the "Signage Restrictions"). PBV shall work directly with the Customer to promote Product sales through appropriate point-of-sale materials and other advertising materials bearing the trademarks of the Products.

**3. Equipment and Service Support**

**A. Vending Equipment.** During the Term of this Agreement, PBV will install and maintain, at no charge to the Customer, vending machines as needed and agreed upon by both parties on the Premises, plus additional vending machines as mutually agreed to by Customer and PBV (the "Vending Equipment"). At least ninety percent (90%) of the Product available through such Vending Equipment will be twenty ounces (20 oz.) bottled Product.

**B. Fountain Equipment.** During the Term of this Agreement, (i) PBV will, at no charge to the Customer, install and maintain all current and future postmix fountain beverage dispensing units and coolers on the Premises, plus additional units and coolers as mutually agreed to by Customer and PBV (the "Fountain Equipment"; collectively with the Vending Equipment, the "Equipment"), and (ii) Customer agrees to purchase all necessary fountain Product postmix, CO2, cups, and lids for use in connection with the Fountain Equipment or any other Products from PBV throughout the Term of this Agreement at then-current, competitive prices. Customer further agrees not to resell the postmix fountain Product to non-affiliated third parties or to consumers in any form other than as finished fountain Products. Further, Customer agrees to prepare the fountain Products (a) only in accordance with PBV's procedures and standards and (b) only for immediate or imminent consumption.

**C. Maintenance.** All Equipment shall at all times remain the sole property of PBV or its affiliate. PBV shall have the exclusive right to repair, replace, move or remove any and all Equipment. At no charge to the Customer, PBV will repair and maintain the Equipment, and agrees to keep the Equipment in good working order and condition at all times. Customer agrees to promptly notify PBV of any need for repair or service, and to fully cooperate with PBV in effecting such necessary repairs or service. Notwithstanding the foregoing, Customer agrees to use reasonable efforts to keep in clean and sanitary condition, wholly free of all Customer or third party materials at all times.

**4. Support Funds.** PBV shall provide Customer the following support funds (the "Support Funds"):

**A. Annual Support Fund.** Following the execution of this Agreement, PBV will fund Customer \$55,000 per Year during Years one (1) through five (5) (the "Annual Support Fund"), provided, however, that each Year's Annual Support Fund shall be funded only if the Customer is continuing to purchase fountain, bottle and can Product pursuant to the terms of this Agreement. In the initial Year, PBV shall pay to the Customer the Annual Support Fund within sixty (60) days of execution of this Agreement, and each Year thereafter PBV shall pay to the Customer the Annual Support Fund within forty-five (45) days of the anniversary date of the Agreement. PBV shall have no obligation to pay Customer the Annual Support Fund after termination of this Agreement. Regardless of when paid, any Annual Support Fund will be deemed to be earned over the entire Term, as applicable, and if this Agreement is terminated for any reason prior to the end of the Term, as applicable, Customer shall repay a portion of the Annual Support Fund according to the terms set forth in Section 10.

**B. Other Support Funds**

**a. Volume Incentive:** When the customer's total annual bottle, can and fountain gallons' sales reach six thousand (6,000) annual cases/gallons, then the customer will earn a six (\$6.00) dollar per case/gallon rebate on all cases/gallons thereafter beginning with case/gallon six thousand and one (6,001). i.e., if 5,001 sold, then  $1 \times \$6.00$  per case/gallon = \$6.00 payment. Paid annually (\$7,000+ annual value)

**b. Gatorade Support:** At a minimum, fifty thousand (50,000) athletes annually will receive Gatorade product on the field of play. Product and supplies shall be provided by Gatorade pursuant to a separate agreement between Customer and The Gatorade Company. Customized Gatorade Athletic Program, an estimated \$30,000 annual value.

**c. Event Sponsorship:** PBV will offer the potential of sponsorship for opportunities such as Beach Ball Classic.

**d. Marketing Support:** PBV will provide customized menu boards in the amount of up to \$2,000 for the duration of the contract.

**e. Representative:** A dedicated PBV representative will be present for the duration of the contract.

**5. Product Pricing.** With the exception of pricing for Product made available to Customer's employees addressed in Paragraph 6, the price of Product (the "Price") will be PBV's pricing as noted per the Exhibit A. A 3% annual price increase cap for the duration of the agreement will exist.

**6. Vending Equipment and Product Pricing Made Available to Customer's (City of Myrtle Beach) Employees.** During the term of the agreement, all vending equipment currently located in the Customer's offices and work stations will remain, and the pricing of the product available to the Customer's employees will also remain as set forth in the schedule below. **The selling price for the products sold through the vending equipment accessible to the Customer's employees may increase upon the mutual consent of the parties.** As the customer's needs for additional vending equipment accessible to its employees increases, PBV

agrees to provide the machines and product at no additional cost to the customer, at the established pricing.

<u>Drink Products</u>	<u>Employee Vending Price</u>
12 oz Soft Drinks	\$.65 per can
12 oz Bottled Water	\$.65 per bottle
20 oz Soft Drinks	\$.1.25 per can
20 oz Water (Regular or Flavored)	\$1.25 per can
20 oz Gatorade	\$1.50 per bottle

7. **Payment Terms.** Throughout the Term of this Agreement, Customer agrees that payment for Product purchased by Customer pursuant to Section 3.B(ii) hereof will be received by PBV within thirty (30) days of Invoice (If Customer pays by Invoice) or within fifteen (15) days of statement (If Customer pays by statement), or in accordance with such other payment terms as PBV may establish from time to time.

8. **Pricing Discrepancy Claim.** If Customer wishes to make a price discrepancy claim, Customer must submit a written request specifying the particular promotion, Product, amount in dispute and reason for the dispute. Such request must be received by PBV within ninety (90) days of the invoice date. In order to make a price discrepancy claim after ninety (90) days from the date on the invoice, in addition to the written request as specified above, the Customer must submit to PBV a copy of the invoice in question, copies of any check remittances pursuant to the invoice in question, and a copy of the deal sheet in question. Requests should be addressed to: Accounts Receivable, Pepsi Bottling Ventures LLC, 1900 Pepsi Way, Garner, North Carolina 27529. In no event will PBV accept a price discrepancy claim more than one (1) year after the date of the invoice in question. PBV shall refund to Customer any amounts it determines were overcharged. In no event shall Customer withhold or deduct payment of an amount that it claims is discrepant.

9. **Existing Agreement Exemption.** At its discretion the City may exempt from the Signage Restrictions any event for which the event promoter has a pre-existing sponsorship agreement with another beverage provider. Such exemption shall be communicated to PBV at least (15) fifteen days prior to the beginning of that event. This existing agreement exemption does not limit PBV's exclusivity when there is no pre-existing sponsorship agreement in place.

10. **Facility Rentals and Special Events.** City facilities may be rented or used by a third party pursuant to a special event or facility use permit at the City's sole discretion. PBV's exclusivity rights shall not apply to such third party rentals, provided, however, that in the event the City operates concessions stands during any such special event or other facility use, the City shall exclusively serve PBV's Products from such concession stands.

11. **Default and Termination.** A breach of any of the terms or conditions of this Agreement not cured within sixty (60) days after the non-breaching Party provides written notice of the breach to the breaching Party shall conclusively be a material breach (a "Material

Breach"). Notwithstanding the foregoing, the sale of any competitive beverages or any products which PBV may offer for sale which are purchased or otherwise received from any supplier other than PBV, or any other failure to serve exclusively Product provided by PBV pursuant to the terms of this Agreement, shall constitute a Material Breach of this Agreement. Following the occurrence of a Material Breach that is not cured within the 60-day cure period referred to in the first sentence of this paragraph, then the non-breaching Party may thereafter terminate this Agreement by giving written notice to the breaching party.

Notwithstanding the foregoing, either Party may terminate this Agreement immediately upon written notice to the other Party in the event the other Party becomes insolvent or seeks protection under any bankruptcy, receivership, trust deed, creditors arrangement, composition or comparable proceeding, or if any such proceeding is instituted against such Party and such proceeding shall continue without dismissal or stay for a period of thirty (30) consecutive days, or an order granting the relief requested in such proceeding shall be entered. The rights of termination referred to in this Agreement are not intended to be exclusive and are in addition to any other rights available to either Party in law or in equity.

IF THIS AGREEMENT IS TERMINATED FOR ANY REASON PRIOR TO THE END OF THE TERM, THEN IN ADDITION TO ANY OTHER REMEDIES TO WHICH PBV MAY BE ENTITLED, CUSTOMER SHALL IMMEDIATELY REMIT TO PBV AN AMOUNT EQUAL TO A PRORATED PORTION OF THE SUPPORT FUNDS PROVIDED BY PBV TO CUSTOMER DURING THE TERM THROUGH THE DATE OF TERMINATION BASED ON THE NUMBER OF MONTHS REMAINING IN THE TERM. CUSTOMER SHALL ALSO REIMBURSE PBV FOR THE ACTUAL AND REASONABLE COST OF THE INITIAL INSTALLATION AND DE-INSTALLATION OF THE EQUIPMENT.

**12. Rights upon Termination.** Upon termination of this Agreement by either Party, Customer shall permit PBV reasonable access to the Premises for thirty (30) days, free from any claims of trespass, for purpose of removing any Equipment. Until such time as all Equipment is removed or for thirty days, whichever comes first, Customer's obligations shall continue under the terms of this Agreement. PBV shall use commercially reasonable efforts to leave each Equipment site in the condition in which it existed prior to installation, excepting reasonable wear and tear, and excepting any damage that occurred beyond PBV's control or anticipation. Upon removal of all Equipment, PBV shall promptly issue payment to Customer for any commissions Customer has earned under Section 6.

**13. Right of Set Off.** In the event Customer is delinquent in payment for Product hereunder or is required to indemnify PBV pursuant to Section 14 hereof, PBV reserves the right to withhold Support Funds payments otherwise due hereunder as an offset against amounts owed to PBV.

**14. Customer Representations and Warranties.** The Customer represents and warrants to PBV that:

A. It has full right, power and authority to enter into this Agreement and to grant, transfer and sell to PBV all of the rights, privileges, terms and conditions set forth herein;

B. the granting of such rights and privileges to PBV shall not violate, interfere with nor infringe upon the rights of any third parties pursuant to written agreements or otherwise.

**15. Use of Trademarks.** Customer agrees that all uses of the Product brand names, logos, and trademarks (collectively "Product Trademarks") during the Term, including, but not limited to, press releases, statements or other announcements, shall be subject to PBV's prior approval or scripting, which approval shall not be unreasonably withheld or delayed. Except as set forth in the proceeding sentence, Customer shall have no right or license to use the Product Trademarks. Nothing herein, nor any act or failure to act by PBV or the Customer, shall give the Customer any proprietary or ownership interest of any kind in the Product Trademarks or in the goodwill associated therewith.

**16. Indemnification.**

A. **PBV.** PBV will indemnify and hold the Customer 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) claims for personal injury resulting from (a) the use or consumption of the Products, (b) the use of the Equipment, and/or (c) the willful or negligent acts or omissions of its agents and employees.

B. **The Customer.** Customer will be responsible for the negligence of its agents and employees, to the extent permitted by law.

**17. Insurance.** PBV may request that the Customer name PBV as an additional insured on its public liability insurance policy, which policy shall have at least a one million - dollar combined single limit coverage and shall be issued by a financially sound insurer. Upon request, the Customer shall deliver a certificate of insurance evidencing such policy.

**18. Relationship of the Parties.** The Parties are independent contractors with respect to each other; nothing contained in the Agreement will be deemed or construed as creating a joint venture or partnership between the Parties.

**19. Assignment; Change of Ownership of Customer.** This Agreement shall not be assigned by either Party hereto without the prior written consent of the other Party, which consent shall not be unreasonably withheld and which consent shall not be required with respect to the successor or purchaser of substantially all of the business of PBV, or with respect to any such assignment by PBV to any affiliate of PBV.

**20. Confidentiality.** Except as may otherwise be required by law or legal process, neither Party hereto shall disclose to any third party the terms and conditions of this Agreement.

**21. Notices.** Any notice or communication which either Party is required or permitted to give hereunder shall be given in writing and when received if delivered in person,

when receipt is acknowledged if sent by facsimile, on the next business day if timely delivered by a nationally recognized courier service that guarantees overnight delivery or two business days after deposit if mailed by first-class mail, postage prepaid, addressed as follows:

**A. If to PBV:**

Pepsi Bottling Ventures  
2380 Highway 501 W  
Conway, SC 29526  
Fax: (843)365-2123  
Telephone: (843)365-2121  
Attention: Mike Smith

**B. If to Customer:**

City Hall  
937 Broadway  
Myrtle Beach, SC 29578-2468  
Fax: (843)918-1028  
Telephone: (843)918-1002  
Attention: City Manager or their Authorized Representative

**22. Entire Agreement.** This Agreement contains the entire understanding and agreement between the Parties hereto regarding the subject matter herein and supersedes all other agreements between the Parties respecting such. This Agreement may be amended or modified only by written statement, signed by each of the Parties.

**23. Force Majeure.** Any delay in the performance of any of the duties or obligations of either Party hereto (except the payment of money) caused by an event outside the affected Party's reasonable control which it could not have avoided by the exercise of reasonable diligence shall not be considered a breach of this Agreement and the time required for performance shall be extended for a period equal to the period of such delay. Such events shall include without limitation acts of God; acts of a public enemy; insurrections; riots; injunctions; embargoes; fires; explosions; floods; or domestic acts of terrorism. The Party so affected shall give prompt notice to the other Party of such cause, and shall take whatever reasonable steps are appropriate in that Party's discretion to relieve the effect of such cause as rapidly as possible.

**24. Choice of Law.** This agreement will be governed by the laws of the State of South Carolina, without regard to conflicts of laws principles.

**25. No Waiver.** The failure of either Party to object to a breach of any representation warranty, term or condition of this Agreement will not be deemed a waiver of any right or remedy the non-breaching Party may have arising out of the breach, nor will it be deemed a waiver of its right to subsequently enforce the representation, warranty, term or

condition.

**26. Right of First Refusal.** At the conclusion of this Agreement, PBV will have the right of first refusal to match offers made by other vendors offering similar or competitive products and services as those addressed by this Agreement.

If the foregoing correctly sets forth our agreement, please so indicate by executing below, whereupon this Agreement shall constitute a binding contract between us.

**PBV Conway-Myrtle Beach LLC**

**City of Myrtle Beach**

By: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

This Instrument has been pre-audited in the manner required by the local Government Budget and Fiscal Control Act or any similar state or local law.

\_\_\_\_\_  
(Date)

\_\_\_\_\_  
(Signature of finance officer)



Exhibit A.

Pricing Agreement

<b>City of Myrtle Beach Pricing Effective: 01/01/20</b>			
<b>Fountain Products</b>	<b>3 Gallon BIB Pricing (Yields 2304 oz.)</b>	<b>5 Gallon BIB Pricing (Yields 3840 oz.)</b>	
Pepsi	N/A	\$15.79/ Gallon (\$78.95/BIB)	
Diet Pepsi	N/A		
Mountain Dew	N/A		
Diet Mountain Dew	N/A		
Mountain Dew Code Red	N/A		
Sierra Mist	N/A		
Mug Root Beer	N/A		
Wild Cherry Pepsi	N/A		
Dr. Pepper	N/A		
Diet Dr. Pepper	N/A		
Cheerwine	N/A		
Tropicana Fruit Punch	N/A		
Sunkist Orange	\$15.79/ Gallon (\$47.37/BIB)		
Nature's Twist Pink Lemonade	\$15.79/ Gallon (\$47.37/BIB)	N/A	
Lipton Iced Tea: Brewed Sweet, Brewed Unsweet, & Diet Green Tea w/Peach	\$15.79/ Gallon (\$47.37/BIB)	N/A	
Flavor Works Flavor Shots Cherry, Lime, Lemon, Raspberry, Strawberry, & Vanilla	1 gallon (\$18.00)	N/A	
Gatorade: Fruit Punch & Orange	\$21.00/ Gallon (\$63.00/BIB)	N/A	
Schweppes Tonic	\$17.00/ Gallon (\$51.00/BIB)	N/A	
Schweppes Ginger Ale	\$17.00/ Gallon (\$51.00/BIB)	N/A	
Nature's Twist Sour Mix	1.5 gal box - \$35.00 – Sour Yields 1152 oz.		
Nature's Twist 100% Orange Juice	1.5 gal box - \$45.00 BIB – Yields 768 oz.		
Nature's Twist: Cranberry & Pineapple	1.5 gal box - \$45.00 BIB – Pine & Cran Yields 960 oz.		
CO2 (20 lb. tank) \$65 deposit per tank	\$25.00 (20 lb. tank)		
<b>Delivery Fee Scale</b>	More than \$225 = NO DELIVERY FEE Less than \$225= \$10 DELIVERY FEE		
<b>Bottle &amp; Can Pricing</b>			
<b>Product</b>	<b>Case</b>	<b>Price</b>	<b>Cost Per Unit</b>
16 oz Rockstar Energy	24	\$39.80	\$1.66
9.5 oz Starbucks Frapp.	24	\$28.33	\$1.18
20 oz Aquafina	24	\$16.97	\$0.71
20 oz CSD and Non-CSD	24	\$24.57	\$1.02
20 oz Gatorade	24	\$24.57	\$1.02