

RESOLUTION NO. 14-15
CITY OF CENTERVILLE, OHIO

SPONSORED BY COUNCILMEMBER Paul Graham ON THE 16th DAY OF March, 2015.

A RESOLUTION AUTHORIZING AND DIRECTING THE CITY MANAGER TO ENTER INTO AN EXCLUSIVE BEVERAGE MARKETING AGREEMENT WITH BOTTLING GROUP LLC (PEPSI BEVERAGES COMPANY) AND FINDING THAT COMPETITIVE BIDDING IS INAPPROPRIATE.

WHEREAS, this council has determined that the City is in need of a marketing organization to market beverages at The Golf Club at Yankee Trace; and

WHEREAS, proposals were solicited from various beverage marketers; and

WHEREAS, the said process produced only one proposal acceptable to the City; and

WHEREAS, this City as a charter city with full home rule powers as authorized by Section 3, Article XVIII of the Constitution of the State of Ohio which powers would allow the City to waive the requirements of competitive bidding and award said contract if this council determines such a procedure is in the best interests of the citizens of Centerville; and

WHEREAS, this council has determined that it is in the best interests of the City to award said contract without competitive bidding.

NOW, THEREFORE, THE MUNICIPALITY OF CENTERVILLE HEREBY RESOLVES:

Section 1. That the City Manager is authorized and directed to enter into an exclusive beverage marketing agreement with Bottling Group LLC (Pepsi Beverages Company) on behalf of the City. A copy of said Agreement is attached hereto as Exhibit "A".

Section 2. This resolution becomes effective on the earliest date allowed by law.

PASSED THIS 16th day of March, 2015.



Mayor of the City of Centerville, Ohio

ATTEST:

Debra A. James
Clerk of Council
City of Centerville, Ohio

CERTIFICATE

The undersigned, Clerk of Council of the City of Centerville, Ohio, hereby certifies the foregoing to be a true and correct copy of Resolution No. 14-15, passed by the Council of the City of Centerville, Ohio on the 16th day of March, 2015.

Debra A. James
Clerk of the Council

Approved as to form, consistency
with existing ordinances, the Charter
and Constitutional Provisions.
Department of Law
Scott A. Liberman
Municipal Attorney

Customer Information

Name of Business: YANKEE TRACE GOLF CLUB
 Primary Contact: JASON PAJARI
 Address: 10000 YANKEE ST
 City: CENTERVILLE
 State: OH
 Zip: 45458

Customer E-mail: JPajari@yankeetrace.org
 COF Number(s):
 (Include all numbers) 9204414
 Fed Tax Id #:
 State Tax Id #:
 Business Phone: (937) 438-3585 Cell #:
 Business Owner: x4901

PBC Information

Agreement Term


PBC Location(s): DAYTON OH
 Created By: JIM WILLIAMS Zone #: 14072
 PBC Market Unit: SOUTHERN OHIO MKT Phone # _____

Agreement Start Date: 3/15/2015
 Agreement End Date*: 3/25/2020

Sales Method: (check one) Pepsi Direct Pre-Sell (Route # _____) *See Volume Based Term Section, or Agreement automatically renews yearly unless Cancellation is received at least ninety (90) days prior to term.

(Check Boxes and Specify, as applicable)

PBC Agrees To:

X	Loan at no charge (except where prohibited by law - In which event PBC shall charge the minimum legal rental fee allowed), where and as necessary coolers, fountain or other equipment to the Customer, to be placed and operated pursuant to the terms and conditions of this Agreement (as specified on reverse side). Initial Equipment Placement shall be as follows (fill out as applicable): Coolers: One-Door Two-Door Three-Door Counter-top Energy Fountain: 6 Valve 8 Valve Bar guns (button) Special: Lipton Brewed Iced Tea Juice Frozen Slush FUB Unit 1 Valve Urn 2 Valve Urn Other (Specify):
X	PBC shall provide, at no charge to the Customer (except where prohibited by law), periodic maintenance, necessary service and repairs to all Equipment loaned to Customer pursuant to this Agreement.
X	PBC shall make available for purchase by Customer Pepsi branded cups and CO ₂ ("Ancillary Products") at prices as determined by PBC. (Based on availability)
X	Provide Customer with the opportunity to participate as a member of  pepsirewards + plus * If unredeemed, earned points will expire after two years * Visit www.pepsirewardsplus.com for full program details
	For additional local PBC Field Input:

Customer Agrees To:

X	EXCLUSIVE - Customer agrees to exclusively serve the Products indicated below at the Customer's Outlet. The Products shall be the only beverages 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 Customer's Outlet.
	NON-EXCLUSIVE - Customer agrees to grant PBC the right to have its Products sold, dispensed or otherwise made available, and advertised, displayed, represented or promoted at or in connection with the Customer's Outlet. Notwithstanding the foregoing, if PBC has provided Customer with fountain Equipment, Customer agrees to serve PBC's postmix Products exclusively at its Outlet.
X	DSD - Customer agrees to purchase all Products directly from the PBC Location(s) indicated above, and sell only those Products purchased from PBC from the Equipment provided to the Customer by PBC. Customer shall not stock any non-PBC Products (food or beverages) in Equipment.
X	MINIMUM THRUPUT - In order to qualify for applicable Equipment, Customer shall purchase a minimum annual average of 100 Cases per door for each cooler, 100 Gallons per each FB unit, 150 Gallons per each urn, and 500 Gallons per each fountain dispensing unit (minimum requirement may exclude bar guns at PBC's discretion) at the Outlet.
X	REQUIRED PRODUCTS. Purchase, stock and distribute at least each of the Products (as specified below) at all times during the Term.

Required Packages for this Agreement:

<input checked="" type="checkbox"/> Fountain Postmix/BtB	<input checked="" type="checkbox"/> 20oz	<input checked="" type="checkbox"/> 2 Liter	<input checked="" type="checkbox"/> Cans
Fountain Premix/Tanks (Limited Market Availability) <input checked="" type="checkbox"/> Cups <input checked="" type="checkbox"/> CO ₂			
Other:			

FOUNTAIN/POSTMIX SKU REQUIREMENTS: (Must carry minimum of Six) (Based on availability)

Pepsi Dt Pepsi Sierra Mist Mtn. Dew Dt. Dew SoBe Life Water
 Brisk Tea Lipton Brewed Iced Tea: Sweet UnSweet Other
 Dr Pep Dt. DRP Mug CF Dt Pepsi Dt Sierra Mist Crush
 Lemonade Wild Cherry Pepsi Fruit Punch
 Frozen Slush Juice BIB Juice Cartridge Other Innovation

20oz. BOTTLE SKU REQUIREMENTS: Must Check One Level

(All shall be 20 oz bottles unless otherwise indicated)

X	Platinum: Must Purchase Pepsi, Dt Pepsi, Sierra Mist, Mountain Dew, Aquafina plus any three additional skus from brands below:
	Gold: Must Purchase any five skus from brands below:
	Silver: Must Purchase any three skus from brands below:

Pepsi Dt Pepsi Mtn. Dew Dt. Dew Sierra Mist Aquafina Dr. Pep
 Dt. DRP Crush Max Next Lipton: Iced Tea Brisk Pure Leaf
 Gatorade G2 PropelZero SoBe LifeWater SoBe Dole/Ocean Spray
 KickStart (16oz.) Starbucks (11oz/13.7oz.) Energy (16oz.)

Comply with the Terms of this Agreement

AGREED TO AND ACCEPTED BY:

For Pepsi Beverages Company	
Signature:	Date
Print Name	Title
For Customer	
CITY of CENTERVILLE D.N.A. Golf Club 2 YANKEE TRACE	
Signature:	Date <u>3-16-2015</u>
Print Name <u>GREGORY S. HOLM</u>	Title <u>CITY MANAGER</u>

COF: 9204414

This sets forth the agreement ("Agreement") between Bottling Group, LLC, on behalf of itself and its affiliates and/or their respective subsidiaries collectively comprising Pepsi Beverages Company ("PBC") and the Customer identified on the front page of this Agreement (the "Customer"), with respect to the purchase of Products.

1. **Definitions.** As used in this Agreement, the following capitalized terms shall have the respective meanings assigned thereto below.
 - a. "Agreement Year" shall mean each twelve-month period beginning with the Agreement Start Date.
 - b. "Beverages" means all carbonated and non-carbonated, non-alcoholic drinks, however dispensed, within the following categories: (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) bottled or canned water whether carbonated or still (spring, mineral or purified), (viii) liquid concentrate teas ("LCT"), (ix) frozen non-carbonated beverages ("FUB"), and (x) any future categories of nonalcoholic beverage products that may be distributed by PBC.
 - c. "Cases" shall mean the number of cases of bottle & can Products purchased by the Customer from PBC to be delivered in sizes, quantities and types of containers as determined by PBC from time to time.
 - d. "Equipment" shall mean all coolers, fountain and other beverage dispensing equipment loaned or rented to the Customer by PBC during the Term.
 - e. "Gallons" shall mean the gallons of Postmix, LCT and FB Products purchased by the Customer from PBC.
 - f. "Outlet" shall mean the Customer's outlet located at the address indicated under the Customer information section, and any expansions thereof, including any restaurant, outlet or other facility in the Customer's system that may be opened or acquired by the Customer within PBC's bottling territory during the Term (the "Outlets"). In the event that new Outlets are added during the Term of this Agreement, the parties shall create and attach an updated schedule of Outlets, COFs and addresses, to be automatically included as part of the Agreement.
 - g. "Products" shall mean Beverages manufactured, sold or distributed by PBC which may be amended by PBC from time to time.
 - h. "Term" The term of this Agreement shall be for the period commencing on the Agreement Start Date and expiring on the Agreement End Date as indicated on the front page and/or "Volume Based Term" section of this Agreement, unless sooner terminated or extended as provided herein. After the expiration of the initial term, for agreements that have a time-based duration, this Agreement shall automatically renew for successive one (1) year periods unless contrary written notice is provided by one party to the other not less than 90 days prior to the end of the initial term or any renewal period. Any renewals shall be under the same terms and conditions, except that Customer shall not be entitled to receive any consideration identified as "one-time" or upfront for any renewal periods. same terms and conditions, except that Customer shall not be entitled to receive any consideration identified as "one-time" or upfront for any renewal periods.
2. **Consideration.** In consideration of the rights granted in this Agreement, and provided the Customer is not in breach of this Agreement, PBC shall provide the Customer the following – if applicable as indicated on the first two pages of this Agreement:
 - a. **Equipment.** PBC or one of its affiliates shall retain all right title and interest in the Equipment. PBC will make initial delivery of each piece of Equipment to the Customer's designated location. Prior to the delivery of the Equipment, the Customer shall complete and sign an Equipment Move Order ("EMO") or equivalent with an authorized PBC representative, providing the location name and address where the Equipment will be located. PBC shall install the Equipment at Customer's above address with no additional cost to Customer, provided that Customer shall make available necessary electrical and plumbing facilities as required by city, state and Federal regulations. At all times during the Term, Customer shall comply with PBC's Product merchandising standards, and policies and procedures regarding the operation and use of PBC's Equipment, as such standards and policies may be updated or modified by PBC from time to time. Customer agrees not to remove or cause to be removed or otherwise encumber the Equipment from the location above designated without the written consent of PBC. Customer agrees to promptly notify PBC if the Equipment needs to be repaired or serviced. Customer further agrees to fully cooperate with PBC in effecting any necessary repairs or service. Provided the Customer is in compliance with all terms and conditions of this Agreement, PBC agrees to provide free service and repair of the Equipment (except where prohibited by law). Customer shall keep the Equipment free from any liens or encumbrances except those caused by PBC. Customer shall be liable to PBC for careful use and return of the Equipment in good condition, and any Equipment or parts lost or damaged by fire, theft, accident, or for any other reason, shall be paid for, at the time of loss, by Customer. All reasonable expenses incurred by PBC in securing return of the Equipment, including but not limited to hourly charges for PBC's employees, shall be Customer's responsibility. PBC shall have the right, during Customer's usual business hours, to enter the premises where the Equipment is located and shall have free access thereto for purposes of inspecting or removing the Equipment. Failure to comply with this provision shall be deemed a material breach of this Agreement.
 - b. **Funding.** As set forth in this Agreement, Funding, as applicable, may consist of: (1) an Upfront Development Fund payment in the amount indicated in this Agreement, payable as specified herein and earned over the duration of the Term as stated below; (2) Rebates payable for applicable Cases or Gallons or Products purchased by Customer from PBC during the applicable funding period; (3) a one-time only Signing Bonus in the amount indicated in this Agreement, payable within ninety (90) days of the later of installation of Equipment or signing of this Agreement by both parties, and earned over the duration of the Term; and (4) such other consideration as indicated on the first two pages of this Agreement, including that based on exclusive/non-exclusive status of the Customer. For funding consisting of item (1) or (3) above, the funding will be earned by Customer on an equal monthly basis over the initial Term if the Agreement has only a "time-based" duration, and will be earned on an equal per Gallon/Cases basis if the Agreement has a "later of time or Gallons/Cases purchased" duration; and
 - c. The Customer acknowledges and agrees that all consideration set forth herein is to be earned by the Customer based on its full compliance with the terms, and requirements of this Agreement and PBC shall provide such consideration provided the Customer (1) has paid in full, without offsets, auto or other deductions, all invoices for Products delivered to the Customer, and (2) is not in breach of its obligations under this Agreement.
3. **Product Price.** Prices for Products (including for Ancillary Products, if applicable) shall be at the discretion of PBC and subject to change from time to time.
4. **General Terms**
 - a. **Breach and Termination.** In the event either party breaches a provision of this Agreement, the non-breaching party shall give the other party written notice of such breach. Upon receipt of such written notice, the breaching party shall have thirty (30) days to cure such breach. If such breach is not cured within the specified time period, the non-breaching party may terminate this Agreement upon the expiration of such cure period upon written notice to the breaching party.
 - b. **Remedies.** If PBC terminates this Agreement due to Section 4(a) above or Customer terminates this Agreement for any reason other than default by PBC, then in addition to any other remedies to which PBC may be entitled by reason of any breach, Customer shall immediately reimburse PBC for the following: (i) an amount representing reimbursement for the cost of installation and removal of the Equipment provided to Customer by PBC pursuant to this Agreement; and (ii) Customer shall reimburse PBC for a prorated portion of any funding or upfront payment advanced by PBC and not earned by Customer as of the time of termination, with such prorated amount based upon the number of remaining months in the Term as of the date of termination if the Agreement has a time-based duration, or based upon the number of outstanding Gallons/Cases remaining to be purchased as of the date of termination, as applicable if the Agreement has a later of time or Gallons/Cases duration; and (iii) an amount as liquidated damages, for lost sales suffered by PBC as a result of such termination, equal to the sum of: (1) the product of \$5 multiplied by the projected number of Gallons of Postmix, LCT and FB Products that Customer would have been expected to purchase during the remainder of the Term based on the Customer's average annualized purchase rate, and (2) the product of \$10 multiplied by the projected number of 24-pk case equivalents of Packaged Products that Customer would have been expected to purchase during the remainder of the Term based on Customer's average annualized purchase rate. In addition to the foregoing, Customer shall not receive any consideration pursuant to this Agreement which has not been fully earned or redeemed (including Pepsi Rewards points) by Customer as of the date of such breach.
 - c. **Failure to meet Minimum Thruput Requirement.** At the end of each Agreement Year, or at any time upon thirty (30) days notice, if Customer fails to, or if Customer purchase trends indicate that Customer will fail to, purchase the average Cases/Gallons as indicated on the front page of this Agreement, then PBC shall have the right to remove Equipment completely and terminate this Agreement pursuant to Section 4(a), or substitute/adjust Equipment placement as necessary such that the average Cases/Gallons is achieved. The Customer shall return the Equipment within 20 days after written notice from PBC. At the end of the initial Term, or any renewal period thereafter, if Customer has failed to purchase the aggregate (e.g. for 2-year term, 1000 Gallons per fountain dispensing unit) volume threshold requirements stated herein, PBC shall have the option, in lieu of termination, to extend the respective term of the Agreement until such time as the Customer's purchases reach the applicable aggregate volume thresholds ("Automatic Extension"). Renewals after any Automatic Extension periods shall be treated under Section 1(g), above.
 - d. **Equipment upon Expiration or Termination of this Agreement.** If this Agreement is terminated or expires and the parties do not enter into a subsequent agreement, then the Customer shall fully cooperate with PBC to insure that PBC is able to pick up its Equipment. Within 15 days after the expiration or termination the Customer shall coordinate with PBC so that PBC may pick up its Equipment at the Customer's locations. Once PBC has picked up and inspected the Equipment, PBC shall notify the Customer of any damage to or missing Equipment/parts (excluding reasonable wear and tear). Customer shall immediately pay to PBC all applicable costs, expenses, and fees associated with the repair/replacement of the Equipment or associated parts. Failure make such payment shall be deemed a material breach of this Agreement.
 - e. **Right of Offset.** PBC reserves the right to withhold payments due hereunder as an additional remedy for breach, or as an offset (partial or whole) against any amounts not paid by Customer to PBC pursuant to this Agreement, including the payments set forth in Sections 4(b) and 4(d), above.
 - f. **Customer Representation.** Customer represents and warrants to PBC that the execution, delivery and performance of this Agreement by Customer will not violate any agreements with, or rights of, third parties.
 - g. **Non-Disclosure.** Except as may otherwise be required by law or legal process, Customer shall not disclose to unrelated third parties the terms and conditions of this Agreement without the written consent of PBC.
 - h. **Assignment/Acquisition.** The Customer shall not sell, assign, transfer or otherwise encumber any interest in the Agreement without prior written consent of PBC. In the event that the Customer sells, assigns or transfers its assets to a third party or there is a change in control of the Customer, the Customer shall cause the transferee to assume all of the Customer's obligations under this Agreement prior to such sale, assignment or transfer. In the event the transferee has an existing local agreement with PBC or national agreement with PepsiCo (which agreement covers the purchase of Products), the agreement with the transferee shall continue and PBC's obligations under this agreement shall terminate. PBC may assign this Agreement at any time to an affiliate without any prior consent.
 - i. **Unauthorized Reselling and/or Transshipment.** PBC reserves the right to limit quantities, deduct/withhold funding, charge transshipment fines, or terminate this Agreement immediately (i.e., without notice/cure period as set forth in Section 4(a), above) if the Customer: (i) resells Products in a manner not authorized by this Agreement, including to other resellers/distributors; (ii) sells Products directly or indirectly for resale outside of the PBC Location's exclusive territory; or (iii) purchases same-branded products as the PBC Products outside PBC Location's exclusive territory and resells such products within such exclusive territory. PBC will have the right to inspect Customer's warehouse for the purpose of verifying product production codes.
 - j. **Right of First Refusal.** Upon expiration or termination of this Agreement, 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 sales at the Outlets. The Customer shall provide Pepsi with details of any such bona fide offers, and Pepsi shall have a thirty (30) 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.
 - k. **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, including prior funding commitments relating to the purchase of the Products by Customer. This Agreement may be amended or modified only by a writing signed by each of the parties.

Pepsi Beverages Company		Customer	CITY of CENTREVILLE OH 6017 2/13 01	
Signature:		Signature:	Jenny Han CITY MCA	
Date:		Date:	3-16-2015	