

BEVERAGE AGREEMENT

This Beverage Agreement (the "Agreement") is made this 24th day of July, 2009 by and between **Pepsi-Cola General Bottlers dba PepsiAmericas** ("Pepsi") with offices located at **1775 Kansas City Rd Olathe, Ks 66061** and the **City of Overland Park, Ks** with its City Hall offices located at **8500 Santa Fe Drive Overland Park, KS 66212** (the "City")

WHEREAS, the City is possessed of fee simple title to certain property known as the Overland Park Soccer Complex (the "Overland Park Soccer Complex"), located at 135th Street and Switzer, Overland Park, Kansas; and

WHEREAS, the Overland Park Soccer Complex consists of, in part, 12 tournament-quality synthetic turf fields, lighted fields for night use, a multi-purpose building, concession areas, and scoreboards, signage and other amenities; and

WHEREAS, the City and Pepsi each desire that Pepsi, through its Brands (as hereinafter defined), serve as the sole, exclusive and official Beverage (as hereinafter defined) supplier, distributor and advertiser at the Overland Park Soccer Complex including, but not limited to, each and every, Beverage fountain and vending location, special events area, concession vending area and any and all other areas and locations that become operational at the Overland Park Soccer Complex site during the term of this Agreement (the "Facilities").

NOW THEREFORE, in consideration of the mutual covenants Pepsi and the City hereby agree as follows:

1. Beverages shall be defined as any and all non-alcoholic drinks except hot brewed coffee, hot brewed tea and milk. "Beverage" does not, for the purposes of this agreement, include standard water coolers or fountains customarily installed for use by the public or meal replacement drinks (smoothies).

2. Brands shall mean any and all Beverages sold and distributed by Pepsi and any and all Beverages Pepsi may sell or distribute in the future including, but not limited to, carbonated soft drinks, non-carbonated soft drinks, juices, juice containing beverages, teas, energy drinks, sports drinks, or isotonic drinks, bottled waters and bottled coffees.

3. Subject to the renewal provisions and termination provisions set forth herein below, the term of this **five (5) year** Agreement shall commence on **August 1, 2009 and terminate on July 31, 2014**

4. The City grants to Pepsi the right of first refusal to serve as the sole, exclusive, and official Beverage sponsor, supplier, distributor, advertiser, and promoter at the Facilities for the one (1) year period immediately following the expiration of this Agreement upon such conditions as the parties mutually agree. In a Right of First Refusal, the City may accept Pepsi's proposal without competitive bidding, or in the alternative, Pepsi will be given the right to match any competitive offer made.

5. In exchange for the City's **five (5) year** commitment and other valuable consideration and upon full execution of this Agreement, the parties agree as follows:

a. Pepsi agrees to pay the City an annual marketing fund payment of **Thirty Thousand (\$30,000) Dollars** during the Term. The first such payment will be made within sixty (60) days after full execution of this Agreement and thereafter, within sixty (60) days after each anniversary date of this Agreement during the Term.

b. Pepsi agrees to pay the City a one time marketing fund payment of **Ten Thousand (\$10,000) Dollars**. The City shall internally allocate the \$10,000 sponsorship to the Overland Park Soccer Complex to compensate the purchase of signage for the three (3) Cornerkick Cafes. Café signage shall be identified as the Pepsi Café, Aquafina Café, and the Gatorade G2 Cafe. Any additional funding will be utilized for the purchase of staff uniforms with Pepsi ID logos. Logos to be mutually agreed upon by both parties.

c. Pepsi agrees to provide the City with additional marketing support at the Facilities annually during the Term in the form of 100 cases of 12 oz cans or .5-ltr complimentary product with a value of up to eight hundred (\$800) dollars each year.

d. Pepsi shall provide the City with annually published recreational pricing for Bottle and Can products for the Facilities, and annually published local fountain pricing for all post mix product.

e. Pepsi agrees to pay the City a rebate on all cases purchased for the Facilities. Rebate structure is as follows:

\$3.00 per case on all 24 pk 20 oz, CSD & NC, 16 oz Energy Products
\$1.50 per case on all 24 pk 20 oz Water
\$1.00 per gallon on all fountain products

Rebate payments shall be made within sixty (60) days after the anniversary date of each year of this Agreement based on the immediately prior year's purchases.

f. Pepsi reserves the right to increase product prices up to no more than four percent (4%) per year during the Term.

g. Pepsi will provide an annual pre-season start-up and post-season winterization of fountain equipment at all locations on a mutually agreeable date.

h. Pepsi shall provide menu boards and POP (Point of Purchase – banners, pull signs or menu stickers), as needed and available.

i. Pepsi will provide recycling barrels (minimum of ten (10) to start up). Any new or replacement barrels shall not exceed five (5) within a calendar year

6. All payments, including the value of donations, made by Pepsi to the City under Paragraph 5 of this Agreement shall be deemed earned at an equal prorated rate per month for the purposes of this Agreement, notwithstanding the date of actual payment.

7. The City hereby licenses and appoints Pepsi, through its Brands, as the sole, exclusive, and official Beverage supplier, distributor, and advertiser at the Facilities. In the event of a beverage company other than Pepsi sponsoring a tournament, Pepsi hereby authorizes through express written consent the approval for specialized signage and other tournament related paraphernalia including but not limited to hats, t-shirts, and headbands, with the exception of beverage sampling and containers. In the event of such tournaments, the City agrees to notify Pepsi in writing two weeks prior to event.

The City shall cause the Brands to be exclusively available at the Facilities and no Beverages or Beverage related items including, but not limited to, cups or premium items, that compete with or are the same as or similar to the Brands shall be made available, advertised and/or promoted at the Facilities, except as otherwise provided in this Paragraph 7.

8. The City recognizes that Pepsi has paid valuable consideration to ensure an exclusive Beverage associational relationship with the City for the Facilities with respect to an exclusive Beverage supply and distribution program and that any dilution or diminution of such exclusivity seriously impairs Pepsi's valuable rights. Accordingly, in the event another person or entity attempts, without Pepsi's explicit consent, to associate Beverages that compete with or are the same as or similar to the Brands ("Competitive Products") with the Overland Park Soccer Complex or to suggest that Competitive Products are endorsed by or associated with the Overland Park Soccer Complex by referring directly or indirectly to the Overland Park Soccer Complex (all of which actions described herein are sometimes referred to as "Ambush Marketing"), the City, upon being made aware of such actions, will promptly oppose such actions and cooperate with Pepsi's efforts to stop the Ambush Marketing and to protect the exclusive associational rights granted to Pepsi in this Agreement; provided, however, that nothing contained herein shall require the City to expend any funds or to take engage in any activity which the City in its reasonable discretion determines would not be in the best interests of the City. In the event any such Ambush Marketing occurs during the Term or any renewal thereof, immediately upon learning thereof, each party shall notify the other party hereto.

9. All artwork and logo sheets to be used in any advertisements, signage, and press releases promoting the Brands are subject to the prior mutual approval of Pepsi and the City, with neither party unreasonably withholding such approval.

10. Except if prohibited by law, during the entire Term, Pepsi shall provide and supply the City with all necessary equipment to dispense the Brands at the Facilities without charge; provided that all Beverages are supplied to the City for the Facilities by Pepsi as set forth above and that the only products dispensed from such equipment are the Brands. Pepsi will provide service on all equipment for the Facilities without charge to the City. All rights, title, and interest in all Pepsi equipment supplied to the City for the Facilities shall at all times remain with Pepsi. "Service" will include, without cost, the repair and preventive maintenance of the equipment and the replacement of any necessary parts; provided, however, that is will not include the routine regular cleaning of the equipment after use and will not include disposable parts intended to be replaced on a regular basis, such as filters.

11. The City represents and warrants to Pepsi that all appropriate approvals required to enter into this Agreement have been granted and the individual executing this Agreement on behalf of the City has been duly authorized by any and all persons or entities of which authorization is required to enter into this Agreement on behalf of the City. The City also agrees that at no time will it challenge, contest, disclaim or deny the authority of the individual signing this Agreement on behalf of the City or use as a basis to void, cancel or nullify this Agreement a claim that the individual signing below was not authorized to sign this Agreement on behalf of the City. Further, the City represents and warrants that the execution, delivery, and performance of this Agreement by the City will not and does not violate any agreements which the City has with third parties or the rights of third parties under any such agreements with the City.

12. In the event any of the covenants, agreements, terms or provisions contained in this Agreement shall be invalid, illegal or unenforceable in any respect, the validity of the remaining covenants, agreements, terms and provisions contained herein shall not in any way be affected, prejudiced or disturbed thereby.

13. If either Pepsi or the City fails to perform any of the promises set forth in this Agreement, then as an option but not as its sole remedy, the other party may terminate this Agreement; provided, however, such termination for cause must be for a material breach of this Agreement and the terminating party must have given the other party written notice of the breach and the other party has failed to remedy or cure the breach within 90 days of such notice. If this Agreement is terminated for any reason, the City agrees to return to Pepsi a pro rata portion of all

monetary payments, including the value of donations, made to but not earned by the City under Paragraphs 5 of this Agreement. Further, any such breach by the City shall be deemed as authorization to Pepsi to allow Pepsi immediate access to the Facilities to take possession of each and every piece of Pepsi's equipment without any claim of trespass.

14. The City may without reason or without cause terminate this Agreement at any time from and after the second anniversary of this Agreement for the convenience of the City. The City shall notify Pepsi 120 days prior to the termination date if it decides to terminate the Agreement pursuant to this Paragraph 13. In the event termination for convenience is effected by the City, the City will return to Pepsi a pro rata portion of all monetary payments made to but not earned by the City as described in Paragraph 12 of this Agreement. Upon the effective date of a termination notice pursuant to this Section 13, Pepsi shall remove its equipment and property from the Facilities.

15. Any failure by either party hereto to enforce at any time or for any period of time any one or more of the terms or conditions of this Agreement, shall not be a waiver of such terms or conditions or of either party's right thereafter to enforce each and every term and condition of this Agreement.

16. It is mutually understood and agreed, and it is the intent of Pepsi and the City that an independent contractor relationship be established and is hereby established under the terms and conditions of this Agreement: that employees of the City are not, nor shall they be deemed to be, employees of Pepsi; and, that employees of Pepsi are not nor shall they be deemed to be employees of the City.

17. This Agreement may not be assigned by either party hereto without the express written consent of the other.

18. This Agreement fully expresses the entire understanding of Pepsi and the City. Any and all prior understandings are hereby canceled. No future changes in the terms of this Agreement shall be valid, except when and if reduced to writing and signed by both Pepsi and the City, by legally authorized officials thereof.

19. This Agreement will be governed by the laws of the State of Kansas, without regard to its conflict of laws principles.

20. Any notice which is required or permitted to be given hereunder will be in writing, signed by the notifying party and will either delivered by hand, nationally recognized overnight delivery services or deposited in the United States Postal System, certified or registered mail, return receipt requested, postage paid, addresses as follows:

Pepsi:
PepsiAmericas
Food Service Sales Manager
1775 Kansas City Rd
Olathe, Ks 660061

For the City:
The City of Overland Park
Director of Parks and Recreation
8500 Santa Fe Drive
Overland Park, KS 66212

Notice will be deemed to have been given when delivered by hand or delivery service, or when received as evidenced by the return receipt or the date such notice is first refused, if that be the case.

21. The City and Pepsi agree that disputes relative to the services performed should first be addressed by good faith negotiations between the parties. If direct negotiations fail to resolve the dispute, the party initiating the claim that is the basis for the dispute shall be free to take such steps as it deems necessary to protect its interests; provided, however, that notwithstanding any such dispute Pepsi shall proceed with the services as per the Agreement as if no dispute existed; and provided further that no dispute will be submitted to arbitration without the parties' express written consent.

In the event the parties are unable to resolve an alleged breach of or termination of this Agreement, with the parties' express written consent the dispute may be resolved by non-binding arbitration to be conducted in Johnson County, Kansas, pursuant to the American Arbitration Association's rules of commercial arbitration before a single arbitrator.

[Signature page follows]

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date and year first above written.

City of Overland Park

**Pepsi-Cola General Bottlers dba
PepsiAmericas**

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

Attachment A

Overland Park Soccer Complex

Prices Effective 1/12/09

Package	# of units	Cost	Unit/Cost
Soft Drinks			
8 oz Cans	24 Units	\$8.75	\$0.36
*10 oz	24 Units	\$14.20	\$0.59
12 oz Cans	24 Units	\$8.90	\$0.37
12 oz PET	24 Units	\$8.88	\$0.37
20 oz Bottles	24 Units	\$22.10	\$0.91
1 - Liter Bottles	15 Units	\$18.55	\$1.24
Dole/Ocean Spray 15.2 oz Bottles	12 Units	\$13.65	\$1.12
Muscle Milk	12 Units	\$25.00	\$2.08
Aquafina			
12 oz Bottles	24 Units	\$9.30	\$0.39
20 oz Bottles	24 Units	\$14.75	\$0.55
1 - Liter Bottles	15 Units	\$18.00	\$1.20
Lipton 16 oz Bottles	12 Units	\$15.00	\$1.03
Gatorade/Propel			
Gatorade 20 oz Bottles	24 Units	\$22.90	\$0.93
Gatorade 12 oz Bottles	24 Units	\$19.65	\$0.82
Propel .5 Liter Bottles	24 Units	\$19.25	\$0.80
Sobe			
20 oz Glass Bottles	12 Units	\$16.10	\$1.34
Life Water	12 Units	\$16.10	\$1.34
Energy Cans			
16 oz Mt Dew Amp	12 Units	\$17.81	\$1.48
16 oz Rockstar	24 Units	\$34.00	\$1.42
24 oz	12 Units	\$26.20	\$2.18
Starbucks			
Double Shot 6.5 oz Cans	24 Units	\$39.24	\$1.64
Frappuccino			
9.5 oz	12 Units	\$16.35	\$1.36
13.7 oz	12 Units	\$20.75	\$1.73
BIB Fountain			
5 gallon		\$53.21	\$10.64
3 gallon		\$32.98	\$10.99
C02		\$22.00	\$75 Deposit