



City of Jonesboro

Municipal Center
300 S. Church Street
Jonesboro, AR 72401

Meeting Agenda Finance & Administration Council Committee

Tuesday, May 31, 2016

4:00 PM

Municipal Center

1. Call To Order

2. Roll Call by City Clerk Donna Jackson

3. Approval of minutes

[MIN-16:055](#) Minutes for Finance Committee Meeting on May 11, 2016

Attachments: [Minutes](#)

4. New Business

Resolutions To Be Introduced

[RES-16:066](#) A RESOLUTION AUTHORIZING THE ENTRY INTO AN AGREEMENT TO ISSUE BONDS FOR THE PURPOSE OF ASSISTING IN THE FINANCING OF INDUSTRIAL FACILITIES WITHIN THE CITY OF JONESBORO, ARKANSAS, TO BE LEASED TO FMH CONVEYORS LLC, PURSUANT TO THE AUTHORITY OF THE LAWS OF THE STATE OF ARKANSAS, INCLUDING PARTICULARLY AMENDMENT 65 TO THE ARKANSAS CONSTITUTION AND THE MUNICIPALITIES AND COUNTIES INDUSTRIAL DEVELOPMENT REVENUE BOND LAW.

Attachments: [Exhibit A - Agreement to Issue Bonds](#)
[PILOT Agreement](#)

[RES-16:070](#) A RESOLUTION TO CONTRACT WITH FAIRFIELD INN AND SUITES FOR SPONSORSHIP OF A OUTFIELD SIGN AT SOUTHSIDE SOFTBALL COMPLEX

Sponsors: Parks & Recreation
Attachments: [Fairfield Inn and Suites 2016.pdf](#)

[RES-16:071](#) A RESOLUTION TO CONTRACT WITH PEPSI BEVERAGES COMPANY FOR SPONSORSHIP OF FIELDS AND EXCLUSIVE POURING RIGHTS AT JOE MACK CAMPBELL PARK

Sponsors: Parks & Recreation
Attachments: [Joe Mack Pepsi Contract.pdf](#)

5. Pending Items

6. Other Business

7. Public Comments

8. Adjournment



City of Jonesboro

300 S. Church Street
Jonesboro, AR 72401

Legislation Details (With Text)

File #: MIN-16:055 **Version:** 1 **Name:**
Type: Minutes **Status:** To Be Introduced
File created: 5/12/2016 **In control:** Finance & Administration Council Committee
On agenda: **Final action:**
Title: Minutes for Finance Committee Meeting on May 11, 2016
Sponsors:
Indexes:
Code sections:
Attachments: [Minutes](#)

Date	Ver.	Action By	Action	Result
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Minutes for Finance Committee Meeting on May 11, 2016



City of Jonesboro

Municipal Center
300 S. Church Street
Jonesboro, AR 72401

Meeting Minutes Finance & Administration Council Committee

Wednesday, May 11, 2016

4:00 PM

Municipal Center

1. Call To Order

2. Roll Call

Present 6 - Ann Williams; John Street; Darrel Dover; Charles Coleman; Todd Burton and Rennell Woods

3. Approval of minutes

[MIN-16:044](#)

Minutes for the special called Finance Committee meeting on April 19, 2016

A motion was made by Councilman John Street, seconded by Councilman Todd Burton, that this matter be Passed . The motion PASSED with the following vote.

Aye: 5 - Ann Williams; John Street; Charles Coleman; Todd Burton and Rennell Woods

[MIN-16:048](#)

Minutes for the Finance Committee Meeting on April 26, 2016

A motion was made by Councilman John Street, seconded by Councilman Todd Burton, that this matter be Passed . The motion PASSED with the following vote.

Aye: 5 - Ann Williams; John Street; Charles Coleman; Todd Burton and Rennell Woods

4. New Business

Ordinances To Be Introduced

[ORD-16:026](#)

AN ORDINANCE AMENDING THE 2015 BUDGET ORDINANCE FOR THE CITY OF JONESBORO

Councilman John Street wanted to know what the difference was in this one and the one we did at the last meeting. He asked if it was that a line amendment last month. Finance Director Suzanne Allen said the line item amendments were to the fire pension plan, building maintenance, 2nd floor utilities and a chiller. She said the city was \$15,000 over budget for cleanup. Chairman Dover asked if this was a cleanup ordinance. Ms. Allen said yes. Councilman Street asked about the Parks Department. She said a big part of the Parks Department overage was due to the loss of part-time labor which inmates did and therefore, the parks labor expenditures went up. She stated that the revenue was way up on some extra tournaments and

the city had not budgeted for those expenses. She said there is revenue in that to offset the overage. Councilman Street asked if that was for the World Series. Ms. Allen stated yes.

Councilman Street asked about cemetery care. Mayor Harold Perrin stated that all of the cemeteries have been surveyed. Mayor Perrin stated that \$11,500 was for cemetery care. Ms. Allen said that nearly \$5,000 of that was in equipment maintenance and part-time labor extra over our budget expense.

Councilman Street asked what the General Administrative Department was. Ms. Allen said it was in professional services. She said the city hired out for the IT audit. Councilman Street asked what the other cemetery fund expense was for \$3,900. Ms. Allen asked Mike Burrows what that was for. Mr. Burrows stated it was for equipment. Mayor Perrin said it was for a mower. Ms. Allen said it was a little over budget for that piece of equipment.

Councilman Street asked about the Miracle League and the money spent. Mayor Perrin said that the city got some of the money back on that. He said we paid it out until we were refunded. He stated that we have some revenue on the line items to offset the expense. Mayor Perrin stated that these expenses exceeded the line items so we had to clean that up with one ordinance. He said at the end of the year 2015, the city had a little over \$700,000 and \$500,000 of that was for gas and diesel. Mayor Perrin said we will clarify the budget more at the next Council meeting on Tuesday. He said we will show the Council exactly what is needed and what is wanted for 2016, 2017, and 2018. He said the fund balances were not reserves and would go way down. Mayor Perrin said that he has asked Ms. Allen to have a complete bill so everything is very clear where the money will be spent.

Mayor Perrin said if they can get it worked out with the highway department that the city might need \$2.5 million for Highland and Southwest Drive improvements. He said we will get paid, but it will be several years down the road. He said it was swapping money for different years on road improvements from 2019 to 2017.

Ms. Allen said the city was \$60,000 over budget in revenue in concessions. Councilman Street asked if this was the final cleanup ordinance for the 2015 budget. Ms. Allen said yes. Mayor Perrin said yes.

A motion was made by Councilman John Street, seconded by Councilwoman Ann Williams, that this matter be Recommended to Council . The motion PASSED with the following vote.

Aye: 5 - Ann Williams; John Street; Charles Coleman; Todd Burton and Rennell Woods

Resolutions To Be Introduced

RES-16:054

RESOLUTION BY THE CITY COUNCIL OF THE CITY OF JONESBORO, ARKANSAS TO PROVIDE FOR THE EXECUTION AND MAINTENANCE OF A LETTER OF CREDIT TO BE ISSUED TO THE ARKANSAS DEPARTMENT OF ENVIRONMENTAL QUALITY (ADEQ)

Mayor Perrin said this is a letter of credit we do every year on our landfill post closure. He said he spoke with the City Engineer Craig Light on this and that the city will probably do this for another 10 years or so. He stated that it is for water quality. He said the city is working on the water cap for the methane gas. He said it costs the city around \$200 on closing costs but we never drawn on it. He said it was better than having to put up a \$500,000 bond on the landfill post closure.

A motion was made by Councilman John Street, seconded by Councilwoman Ann Williams, that this matter be Recommended to Council . The motion PASSED with the following vote.

Aye: 5 - Ann Williams;John Street;Charles Coleman;Todd Burton and Rennell Woods

RES-16:055

A RESOLUTION TO SUBMIT TO THE ARKANSAS STATE HIGHWAY AND TRANSPORTATION DEPARTMENT FOR FEDERAL-AID THROUGH THE TRANSPORTATION ALTERNATIVES PROGRAM FOR SAFE ROUTES TO SCHOOLS FOR THE THORN STREET SIDEWALKS PROJECT.

Mayor Perrin said this was the TAP Program or the Transportation Alternative Program through the Arkansas Highway and Transportation Department. He said it was for the Thorn Street sideway project by the alternative school. Mayor Perrin stated the cost would be \$71,000 and the city is responsible for 20% or \$14,200. He said the city has to move utilities and put up a retaining wall.

A motion was made by Councilman John Street, seconded by Councilwoman Ann Williams, that this matter be Recommended to Council . The motion PASSED with the following vote.

Aye: 5 - Ann Williams;John Street;Charles Coleman;Todd Burton and Rennell Woods

RES-16:056

A RESOLUTION TO SUBMIT TO THE ARKANSAS STATE HIGHWAY AND TRANSPORTATION DEPARTMENT FOR FEDERAL-AID THROUGH THE TRANSPORTATION ALTERNATIVES PROGRAM FOR SAFE ROUTES TO SCHOOLS FOR THE RAINS STREET PEDESTRIAN ROUTE.

A motion was made by Councilwoman Ann Williams, seconded by Councilman John Street, that this matter be Recommended to Council . The motion PASSED with the following vote.

Aye: 5 - Ann Williams;John Street;Charles Coleman;Todd Burton and Rennell Woods

RES-16:057

A RESOLUTION TO SUBMIT TO THE ARKANSAS STATE HIGHWAY AND TRANSPORTATION DEPARTMENT FOR FEDERAL-AID THROUGH THE RECREATIONAL TRAILS PROGRAM FOR CRAIGHEAD FOREST PARK TRAIL PHASE 3 PROJECT.

Mayor Perrin stated that this was the final phase of the Craighead Forest recreational trails phase 3 project. He said that the city will have to redo the road. The estimated cost is \$450,000 and our part of the cost is 20%. He said it will have to be bid out.

A motion was made by Councilman John Street, seconded by Councilwoman Ann Williams, that this matter be Recommended to Council . The motion PASSED with the following vote.

Aye: 5 - Ann Williams;John Street;Charles Coleman;Todd Burton and Rennell Woods

RES-16:059

A RESOLUTION TO SUBMIT TO THE ARKANSAS STATE HIGHWAY AND TRANSPORTATION DEPARTMENT FOR FEDERAL-AID THROUGH THE RECREATIONAL MOTORIZED TRAILS PROGRAM FOR THE ATV PARK TRAIL PROJECT

Mayor Perrin said this is for the ATV park project. He said this will take fencing all the way around the area and provide paved parking where they unload their ATV's. He said the cost is estimated to be \$137,500 and the city's cost is 20% or \$27,500.

A motion was made by Councilman John Street, seconded by Councilman

Rennell Woods, that this matter be Recommended to Council . The motion PASSED with the following vote.

Aye: 5 - Ann Williams;John Street;Charles Coleman;Todd Burton and Rennell Woods

RES-16:060

A RESOLUTION AUTHORIZING THE CITY OF JONESBORO TO APPLY FOR THE 2016 GENERAL IMPROVEMENT FUNDS (GIF) FOR THE MIRACLE LEAGUE PARK THROUGH EAST ARKANSAS PLANNING AND DEVELOPMENT DISTRICT (EAPPD)

Mayor Perrin said this project is for \$7,310 for Pavilions to be placed at Miracle League Park. He said we have to pay East Arkansas Planning and Development District 4% of the project cost which is \$292 our cost. He said this is the city's GIF money. Councilman Woods asked if this was an infrastructure project through the East Arkansas Planning and Development District. Mayor Perrin said the state legislature used to take the GIF money and go through the Rural Services. He said you could apply for it. He said they used to do it for free, but their board went back and passed a 4% fee to cover costs to handle the money. Mayor Perrin stated we have to write the grant and submit it to the East Arkansas Planning and Development District.

A motion was made by Councilman Rennell Woods, seconded by Councilwoman Ann Williams, that this matter be Recommended to Council . The motion PASSED with the following vote.

Aye: 5 - Ann Williams;John Street;Charles Coleman;Todd Burton and Rennell Woods

RES-16:061

A RESOLUTION AUTHORIZING THE SUBMISSION OF AN APPLICATION FOR 2016 ADVANCED TRANSPORTATION AND CONGESTION MANAGEMENT TECHNOLOGY DEPLOYMENT INITIATIVE (ATCMTD) GRANT IN REQUESTING FUNDS FOR THE JONESBORO URBANIZED AREA INTELLIGENT TECHNOLOGY TRAFFIC SYSTEM PROJECT

Chairman Dover asked if this was the grant to be able to stop traffic lights. Mayor Perrin said this is for the grant to place opticons as well as battery backups for all intersections that we don't have them at yet. He said that the city has to come up with 50% of the cost. Mayor Perrin stated that the city needs to get the City of Brookland into this because it would help get a regionalization deal and defray some costs. He said that our half of that cost can be in-kind as opposed to cash. He said CWL has an interest in doing this because of the fiber optic lines. Mayor Perrin said this would make us a model city. Mayor Perrin said it is a safety grant. Councilman Woods asked if there was a timeline. Mayor Perrin said we should know before the year end, probably September.

A motion was made by Councilman Todd Burton, seconded by Councilman Rennell Woods, that this matter be Recommended to Council . The motion PASSED with the following vote.

Aye: 5 - Ann Williams;John Street;Charles Coleman;Todd Burton and Rennell Woods

5. Pending Items

6. Other Business

7. Public Comments

8. Adjournment

A motion was made by Councilman Todd Burton, seconded by Councilman Rennell Woods, that this meeting be Adjourned . The motion PASSED with the following vote.

Aye: 5 - Ann Williams; John Street; Charles Coleman; Todd Burton and Rennell Woods



Legislation Details (With Text)

File #: RES-16:066 **Version:** 1 **Name:** Agreement to issue bonds for FMH Conveyors
Type: Resolution **Status:** To Be Introduced
File created: 5/19/2016 **In control:** Finance & Administration Council Committee
On agenda: **Final action:**

Title: A RESOLUTION AUTHORIZING THE ENTRY INTO AN AGREEMENT TO ISSUE BONDS FOR THE PURPOSE OF ASSISTING IN THE FINANCING OF INDUSTRIAL FACILITIES WITHIN THE CITY OF JONESBORO, ARKANSAS, TO BE LEASED TO FMH CONVEYORS LLC, PURSUANT TO THE AUTHORITY OF THE LAWS OF THE STATE OF ARKANSAS, INCLUDING PARTICULARLY AMENDMENT 65 TO THE ARKANSAS CONSTITUTION AND THE MUNICIPALITIES AND COUNTIES INDUSTRIAL DEVELOPMENT REVENUE BOND LAW.

Sponsors:

Indexes: Bonds - revenue/development

Code sections:

Attachments: [Exhibit A - Agreement to Issue Bonds](#)
[PILOT Agreement](#)

Date	Ver.	Action By	Action	Result
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A RESOLUTION AUTHORIZING THE ENTRY INTO AN AGREEMENT TO ISSUE BONDS FOR THE PURPOSE OF ASSISTING IN THE FINANCING OF INDUSTRIAL FACILITIES WITHIN THE CITY OF JONESBORO, ARKANSAS, TO BE LEASED TO FMH CONVEYORS LLC, PURSUANT TO THE AUTHORITY OF THE LAWS OF THE STATE OF ARKANSAS, INCLUDING PARTICULARLY AMENDMENT 65 TO THE ARKANSAS CONSTITUTION AND THE MUNICIPALITIES AND COUNTIES INDUSTRIAL DEVELOPMENT REVENUE BOND LAW.

WHEREAS, the City of Jonesboro, Arkansas, is authorized under the provisions of Amendment 65 to the Arkansas Constitution and the Municipalities and Counties Industrial Development Revenue Bond Law, Ark. Code Ann. §§ 14-164-201 to -224 (the “Act”), to own, acquire, construct, equip, and lease facilities to secure and develop industry and to assist in the financing thereof by the issuance of bonds payable from the revenues derived from such facilities; and

WHEREAS, FMH Conveyors LLC (the “Company”), has evidenced its interest in acquiring, constructing, and equipping an industrial facility within the City if the permanent financing can be provided through the issuance of bonds (the “Bonds”) under the authority of the Act; and

WHEREAS, the City desires to assist the Company in order to secure and develop industry within the City, and to aid in the financing thereof under the provisions of the Act; and

WHEREAS, it is desirable that the City enter into an Agreement to Issue Bonds for such purpose.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF JONESBORO, ARKANSAS that:

Section 1. The Mayor and the City Clerk of the City are hereby authorized to enter into an Agreement to Issue Bonds in substantially the form and substance attached as Exhibit A.

Section 2. Subject to compliance with the statutory notice requirements, Payments in Lieu of Taxes Agreements (each, a “PILOT Agreement”) shall be considered for approval at the meeting of the City Council at which the ordinance authorizing the issuance of the Bonds is considered for approval.

Section 3. The City shall hold a public hearing on the question of the issuance of the Bonds on June 21, 2016. The City Clerk and bond counsel shall coordinate the publication of the notice of public hearing.

Section 4. *Severability.* In the event any title, section, paragraph, item, sentence, clause, phrase, or word of this resolution is declared or adjudged to be invalid or unconstitutional, such declaration or adjudication shall not affect the remaining portions of this resolution, which shall remain in full force and effect as if the portion so declared or adjudged invalid or unconstitutional was not originally a part of this resolution.

Section 5. *Repealer.* All ordinances or resolutions of the City in conflict herewith are hereby repealed to the extent of such conflict.

AGREEMENT TO ISSUE BONDS

THIS AGREEMENT is made as of [June] ____, 2016, by and between the City of Jonesboro, Arkansas, a city of the first class under the laws of the State of Arkansas (the "City") and FMH Conveyors LLC (the "Company"), for the purpose of carrying out the purposes set forth in the Municipalities and Counties Industrial Development Revenue Bond Law, Ark. Code Ann. §§ 14-164-201 *et seq.* (the "Act").

WITNESSETH:

WHEREAS, the City is authorized by Amendment 65 to the Arkansas Constitution and the Act to own, acquire, construct, reconstruct, extend, equip, improve, operate, maintain, sell, lease, or contract concerning, or otherwise deal in or dispose of any land, buildings, or facilities of any and every nature that can be used in securing or developing industry within or near the City; and

WHEREAS, the City has determined that such purposes may be served by cooperation with the Company in the acquisition, construction, and equipping of an industrial facility within the City, consisting of the acquisition of leasehold rights, construction of buildings and improvements, and acquisition and installation of equipment for the fabrication of custom-engineered conveyors (the "Project"); and

WHEREAS, the City and the Company desire to cooperate in the acquisition, constructing, and equipping of the Project and to have the costs of the Project financed from the proceeds of revenue bonds of the City (the "Bonds") to be issued in one or more series pursuant to the Act in an aggregate principal amount now estimated not to exceed \$14,000,000; and

WHEREAS, the Bonds may be issued in different series to reflect the underlying business arrangements between the Company and HMD Jonesboro, LLC (the "Developer"), including, but not limited to, the ownership of the real estate and building by the Developer with a lease to the Company and the ownership of personal property by the Company; and

WHEREAS, the City, the Developer and the Company intend to enter into sublease and lease agreements (collectively, the "Lease") relating to the real and personal property constituting the Project, which contemplate that the Project will be leased to and operated by the Company and that the rental payments due thereunder

together with other moneys available shall be sufficient to pay debt service on the Bonds and all related costs.

NOW, THEREFORE, in consideration of the premises, mutual benefits, covenants, and agreements herein expressed and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the City and the Company agree as follows:

1. Proceedings. All proceedings in connection with the issuance of the Bonds shall be consistent with the requirements of the Act. All references contained herein to the issuance of the Bonds shall be subject to compliance with the formalities of the Act when the facts required to do so are determined.

2. Acquisition, Construction, and Equipping. The City, the Company and the Developer will cooperate in causing to be commenced and continued the required acquisition, construction, and equipping of the Project, and the Company or the Developer, as applicable, may provide, or cause to be provided, the necessary interim financing to permit work on the Project to commence and continue expeditiously pending the issuance of Bonds. Not later than the date of issuance of the Bonds, the Company and the Developer, as applicable, will convey and transfer or cause to be conveyed and transferred to the City, the Project or portions thereof previously acquired, constructed, and equipped. There shall also be conveyed to the City any easements and rights-of-way necessary to permit construction, equipping, installation, operation, and maintenance of the Project. The City acknowledges that the Project, or portions of the Project, may be subject to liens or security interests in favor of third party creditors at the time that the Project is transferred to the City.

3. Lease. The City, the Developer and the Company will enter into sublease and lease agreements (collectively, the "Lease") relating to the real and personal property constituting the Project, which contemplate that the Project will be leased to and operated by the Company and that the rental payments due thereunder together with other moneys available shall be sufficient to pay debt service on the Bonds and all related costs. The Lease shall include such terms and conditions as are agreed to by the City, the Developer and the Company, including, but not limited to, purchase options

for nominal consideration and transferability of ownership and leasehold rights that are consistent with the business arrangements between Company and Developer.

4. Sale of Bonds, Security. The City will take such steps as are necessary to issue, sell, and deliver the Bonds, pursuant to the terms of the Act, for the purposes of financing the costs of the Project, in each case only upon receipt of the written designation by the Company of the purchasers thereof, such Bonds to be in such series, to be in such principal amount, to mature in such amount and times, to bear interest at such rate or rates, to be payable on such dates, and to have such optional and mandatory redemption features and prices as are determined by the City and approved in writing by the Company and the Developer, as applicable. The City further agrees that it will enter into the Lease with the Company and the Developer, as applicable, for the purpose of providing rental payments sufficient, with other amounts available from the Company or directly or indirectly from the proceeds of the Bonds, to pay the principal of and interest on the Bonds as they become due, and pledging and otherwise securing the payment of such rental payments for the benefit of the holder(s) of the Bonds. The City will cooperate in consummating the transactions so contemplated.

5. Bonds to be Special Obligations. The City shall have no financial responsibility with respect to the Project, the Bonds, or the costs associated with either, and the Bonds shall be special obligations of the City and shall never constitute a general obligation, indebtedness, or pledge of the credit of the City within the meaning of any constitutional or statutory provision and shall never be paid in whole or in part out of any funds raised or to be raised by taxation or any other revenues or other funds of the City except those (including unexpended Bond proceeds) derived from or in connection with the sale or lease of the Project as provided for herein.

6. Conditions of Issuance. The Bonds may be issued either at one time or in several series from time to time, in such aggregate principal amount or amounts as the Company shall request in writing; provided, however, that all conditions of the Act shall have been met.

7. Costs to be Financed. The costs of the Project may include any costs permissible under the Act, including but not limited to reasonable and necessary costs,

expenses, and fees incurred by the City in connection with the issuance of the Bonds or in connection with the Project, including, but not limited to, fees and out-of-pocket expenses of Mitchell, Williams, Selig, Gates & Woodyard, P.L.L.C. (“bond counsel”) and other counsel to the Company and the Developer. The City will upon request provide or cause to be provided any data or information which may be reasonably required to verify any of the costs, expenses, and fees enumerated above.

8. Termination. In the event that the Bonds shall not be sold within three years from the date hereof, this Agreement shall automatically terminate unless the parties hereto shall agree in writing to its extension for a further period of time specified in such writing, which agreement on the part of the City shall not be unreasonably withheld. The Company may unilaterally terminate this Agreement without liability to the City (except for any amounts due and owing by the Company to the City arising out of the transactions occurring on or before the time of such termination, which shall be promptly paid by the Company to the City) by giving notice by ordinary mail, postage prepaid, to the City specifying therein the date of termination, which may be the date of the notice.

9. Protection to the City. The Company shall pay all of the City’s costs and expenses reasonably and necessarily incurred in connection with this Agreement or any other related document or instrument.

10. Ad Valorem Taxation Exemption. The City, the Developer and the Company recognize that under the Arkansas Constitution and decisions of the Supreme Court of Arkansas and in accordance with Ark. Code Ann. §§ 14-164-701 to -704, the Project will be exempt from ad valorem taxation. The City agrees that the Company and the Developer, as applicable, shall be required to enter into Payments in Lieu of Taxes Agreements (each, a “PILOT Agreement”) with the City providing for payments in lieu of a portion of the ad valorem taxes that would otherwise be levied by local public bodies with taxing authority. The City, the Developer and the Company agree that the final form of PILOT Agreement will be considered for approval at the meeting of the City Council at which the ordinance authorizing the issuance of the Bonds is considered for approval, subject to compliance with the terms of the Act, including, but not limited to statutory notice requirements.

11. Purpose and Effect. The Bonds are to be issued, sold, and delivered under the authority of the Act and all related actions and documents shall be in conformity therewith. The City intends this Agreement to be the expression of its present intent, pursuant to the terms hereof, to issue the Bonds in an aggregate amount not to exceed \$14,000,000 and to expend the Bond proceeds to defray the costs of the Project.

12. Assignment. The Company may assign this Agreement in whole or in part to an affiliate of the Company without the prior written consent of the City and to an entity which is not an affiliate of the Company with the prior written consent of the City, which consent shall not be unreasonably withheld. Notwithstanding the foregoing, no assignment and no dealings or transactions between the City and any assignee shall relieve the Company of any of its obligations under this Agreement.

IN WITNESS WHEREOF, the City of Jonesboro, Arkansas, acting pursuant to a Resolution of its City Council, has caused its name to be hereunto subscribed by its Mayor and City Clerk and the Company has caused its corporate name to be subscribed hereto by its duly authorized officer, all as of the year and date first above written.

CITY OF JONESBORO, ARKANSAS

ATTEST:

APPROVED:

Donna Jackson, City Clerk

Harold Perrin, Mayor

FMH CONVEYORS LLC

By: _____

Name: _____

Title: _____

PAYMENT IN LIEU OF TAXES AGREEMENT

City of Jonesboro, Arkansas
300 South Church Street
Jonesboro, Arkansas 72401

Dated: _____, 2016

Attention: Mayor

Re: Not to exceed \$[12,000,000/2,000,000] City of Jonesboro, Arkansas Taxable Industrial Development Revenue Bonds ([FMH Conveyors][HMD Jonesboro] Project), Series 2016 (the "Bonds")

Ladies and Gentlemen:

The City of Jonesboro, Arkansas (the "City") proposes to issue the Bonds identified above in one or more series under the provisions of the Municipalities and Counties Industrial Development Revenue Bond Law, Ark. Code Ann. §§ 14-164-201 *et seq.* (the "Act") for the purpose of financing a substantial industrial project consisting of acquiring, constructing, and equipping certain industrial facilities, infrastructure and improvements, for the manufacture, fabrication or processing of custom-engineered conveyors to be located at the intersection of Barnhill Road and Highland Drive in Jonesboro, Arkansas relating to the operations of FMH Conveyors (the "Project"). The Project will be [leased and/or subleased] by the City to [FMH Conveyors LLC and HMD Jonesboro, LLC] (the "Company") pursuant to a Lease Agreement (the "Lease Agreement") for a period of [15 years] for rentals sufficient to pay debt service on the Bonds. The Company will use the Project as facilities for the manufacture, fabrication or processing of custom-engineered conveyors. The Project, as defined herein, is the "Leased Premises" as defined in the Lease Agreement.

Article IV of the Lease Agreement provides that the Company is obligated to pay all taxes and assessments levied and assessed on the Project during the term of the Lease Agreement. The Company is informed and understands that, notwithstanding the provision of Article IV of the Lease Agreement, under Article 16, Section 5 of the Constitution of the State of Arkansas, as interpreted by the Arkansas Supreme Court in *Wayland v. Snapp*, 233 Ark. 57, 334 S.W. 2d 633 (1960), and *Pulaski County v. Jacuzzi Bros. Div.*, 332 Ark. 91, 964 S.W.2d 788 (1998), and Ark. Code Ann. §§ 14-164-701 *et seq.*, the Project will be exempt from ad valorem taxes because it is owned by the City and used for a public purpose within the meaning of the applicable Constitutional and statutory provisions affording the exemption.

Thus, the Company understands that it, as Lessee of the Project owned by the City, will, in fact, pay no ad valorem taxes on the Project under the provisions of Article IV of the Lease Agreement. The taxing authorities (defined below) have indicated a reluctance to lose all tax revenues which would otherwise be received by it if the property involved was privately owned.

Therefore, to induce the City to proceed with the issuance of the Bonds for the purpose indicated, which will inure to the benefit of the Company, and for other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Company agrees with the City pursuant to this Payment in Lieu of Taxes Agreement (the "Agreement") as follows:

1. In lieu of ad valorem property taxes, the Company will pay to the City an annual sum equal to 35% of the amount which would be payable as ad valorem taxes that would have to be paid on the Project to the State of Arkansas, Craighead County, the Nettleton School District, and/or other political subdivisions of the State of Arkansas (the "taxing authorities") if the Project were not exempt from ad valorem taxes under the provisions of Article 16, Section 5 of the Constitution of the State of Arkansas, as interpreted by the Supreme Court of the State of Arkansas in *Wayland v. Snapp, supra*, and *Pulaski County v. Jacuzzi Bros. Div., supra*, and Ark. Code Ann. §§ 14-164-701 *et seq.* Payments are due not later than October 10 each year commencing after completion of construction. Payments not paid when due shall bear interest at 5% per annum until paid.

The payment is based on the land, buildings, improvements and equipment comprising the Leased Premises, excluding licensed vehicles. Any expansion or improvement of the Project will become subject to this Agreement using the same formula for the term of the Bonds.

2. The payments to be made pursuant to paragraph 1 are intended to be in lieu of all ad valorem taxes that would have to be paid on the Project to the taxing authorities if the Project were not exempt from ad valorem taxes under the provisions of Article 16, Section 5 of the Constitution of the State of Arkansas, as interpreted by the Supreme Court of the State of Arkansas in *Wayland v. Snapp, supra*, and *Pulaski County v. Jacuzzi Bros. Div., supra*, and Ark. Code Ann. §§ 14-164-701 *et seq.*, but are not intended to be in lieu of (i) any licenses, occupation or privilege tax, or fee imposed upon the Company for or with respect to its right to carry on its business in the State of Arkansas, (ii) any special benefit or local improvement tax or assessment, or (iii) fees or charges for utility services rendered, such as for water or sewer services.

3. The City agrees to distribute each payment under paragraph 1 among the taxing authorities in the proportion that the millage collected bears to the total millage collected by all during the year of distribution, unless all such taxing authorities, including without limitation the school district, shall otherwise agree and document the alternate basis upon which the payments shall be distributed.

4. The City and the Company agree to cooperate in sustaining the enforceability of this Agreement. However, if by reason of a change in the Constitution of the State of Arkansas, a change by the Supreme Court of the State of Arkansas in its interpretation of the Constitution, a change by the General Assembly of the State of Arkansas, or otherwise, the Company is required to pay any tax for which the payments specified in paragraph 1 are intended to be in lieu, the Company may deduct the aggregate of any such payments made by it from any amount herein agreed to be paid

under paragraph 1. Furthermore, inasmuch as the payments in paragraph 1 herein agreed to be made are intended to be in lieu of taxes, it is agreed that said payments shall not as to any year be in an amount greater than would otherwise be payable for such year in ad valorem taxes, in the aggregate, on account of its ownership of the Project.

5. Representatives of the Company will confer at least annually with the Craighead County Assessor and determine the assessed valuation of the real and personal properties comprising the Project. The determination shall be made by mutual agreement if possible, and if not, shall be made by the Craighead County Assessor as though the Project were privately owned. Because the valuation of such property is a key factor in calculating payments due, the City agrees to cooperate with the Company in any reasonable challenge to the valuation assigned to such property by the Craighead County Assessor to the fullest extent permitted by Arkansas law.

It is recognized by the City and the Company that the payments described in paragraph 1 hereof are to be calculated on the basis of annual amounts that would otherwise be payable as ad valorem taxes under Arkansas law on the Leased Premises if such property were on the tax rolls. The amount to be paid each year shall be determined by applying the millage that would be applicable to the Project for that year if the Project were privately owned. The Company shall be entitled to any refund occasioned by overpayment or a reduction in millage which requires a refund by the taxing authorities.

6. This Agreement shall terminate and be of no further force and effect from and after the date that the Lease Agreement shall terminate for any purpose other than a default on the part of the Company, including, but not limited to, the transfer of ownership of the Leased Premises to the Company. If such termination shall be at a point constituting a portion of a year, the Company shall pay for the year in which termination occurred that portion of the specified annual payment that the number of days in such year that the Project was exempt prior to the terminations bears to 365 days (366 days in a leap year).

7. This Agreement shall be binding upon the successors and assigns of the Company, but no assignment shall be effective to relieve the Company of any of its obligations hereunder unless expressly authorized and approved in writing by the City.

8. This Agreement may be executed simultaneously in several counterparts, each of which shall be deemed an original.

9. This Agreement shall be governed by, and interpreted in accordance with, the laws of the state of Arkansas.

When executed, this Agreement shall constitute a valid and binding contract between the Company and the City.

Very truly yours,

FMH CONVEYORS LLC

By: _____
_____, _____

ACCEPTED:

CITY OF JONESBORO, ARKANSAS

By: _____
Harold Perrin, Mayor

ATTEST:

Donna Jackson, City Clerk



Legislation Details (With Text)

File #:	RES-16:070	Version:	1	Name:	Contract with Fairfield Inn for sign sponsorship at Southside
Type:	Resolution	Status:		Status:	To Be Introduced
File created:	5/24/2016	In control:		In control:	Finance & Administration Council Committee
On agenda:		Final action:		Final action:	
Title:	A RESOLUTION TO CONTRACT WITH FAIRFIELD INN AND SUITES FOR SPONSORSHIP OF A OUTFIELD SIGN AT SOUTHSIDE SOFTBALL COMPLEX				
Sponsors:	Parks & Recreation				
Indexes:	Contract				
Code sections:					
Attachments:	Fairfield Inn and Suites 2016.pdf				

Date	Ver.	Action By	Action	Result
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A RESOLUTION TO CONTRACT WITH FAIRFIELD INN AND SUITES FOR SPONSORSHIP OF A OUTFIELD SIGN AT SOUTHSIDE SOFTBALL COMPLEX

WHEREAS, the City of Jonesboro owns and maintains Southside Softball Complex located at 5301 Stadium Blvd;

WHEREAS, Fairfield Inn and Suites is seeking sponsorship recognition on one outfield sign at Southside Softball Complex; and

WHEREAS, Fairfield Inn and Suites is sponsoring the outfield sign for the sum of \$300.00 per year for a period of 3 years;

NOW, THEREFORE BE IT RESOLVED, BY THE CITY COUNCIL OF THE CITY OF JONESBORO, ARKANSAS:

SECTION 1: That the City of Jonesboro, Arkansas shall contract with Fairfield Inn and Suites for the sponsorship of a outfield sign at Southside Softball Complex. A copy of said contract is attached as Exhibit A.

SECTION 2: The Mayor, Harold Perrin and City Clerk, Donna Jackson are hereby authorized by the City Council for the City of Jonesboro to execute all documents necessary to effectuate the agreement.

EXHIBIT A

ADVERTISING AGREEMENT
FOR FIELD SIGN LOCATED AT
SOUTHSIDE SOFTBALL COMPLEX

This agreement is made by and between Fairfield Inn and Suites (SPONSOR) and the CITY OF JONESBORO PARKS AND RECREATION DEPARTMENT (CITY), on this 20th Day of May, 2016. (the "Effective Date").

WHEREAS, the CITY is the owner of certain public park amenities known as "Southside Softball Complex". And hereafter referred to as the "Facilities", and

WHEREAS, SPONSOR and the CITY desire to enter this agreement for the purpose of Evidencing the agreement of the parties with regard to advertising on the outfield fences at the Facilities by SPONSOR and the respective obligations of the parties regarding said Advertisements at the Facilities;

NOW, THEREFORE in consideration of the promises and the reciprocated covenants and obligations contained herein, the parties agree as follows:

I. Term

- (1) The term of this agreement is for a period of **(3) three years** commencing on the effective Date and ending at midnight on the **(3rd)** third anniversary thereof.

II. Advertisement at Facilities

- (1) It is agreed between the parties hereto, in return for the covenants and conditions set forth herein that the SPONSOR's logo shall be put on a sign to be displayed on chosen field at FACILITY for a period of **(3) three years**.
- (2) It is agreed between the parties that the SPONSOR shall pay over a period of **3 years** for the sign and sponsorship the total sum of **\$900.00**.
 - A sum of **\$300.00** shall be paid on **June 20th, 2016**.
 - A sum of **\$300.00** shall be paid on **June 20th, 2017**.
 - A sum of **\$300.00** shall be paid on **June 20th, 2018**.

- (3) It is agreed between the CITY and the SPONSOR that the SPONSOR shall have the right to renew this contract for an additional period of **(3) three years** at the sponsorship rate to be negotiated at the time of the renewal.
- (4) It is agreed between the CITY and the SPONSOR that this sponsorship is non-assignable without prior written approval of the CITY. It is also agreed that the CITY reserves the right to remove SPONSOR'S sign and obtain a new sponsor for designated field in the event of failure of payment on the part of the SPONSOR.
- (5) It is agreed between the parties that the CITY will furnish a 4' x 8' sign to be placed for SPONSOR'S designated field. However, it shall be the responsibility of SPONSOR to bear any expense made to said sign should changes be requested during the term of this agreement.
- (6) It is agreed by CITY and the SPONSOR that the SPONSOR shall not be responsible for the maintenance or upkeep of sign and SPONSOR shall not be responsible with regards to any liability actions which may be brought against the CITY resulting from accidents which might involve the sign.

III. Assignability and Exclusivity

This agreement is a privilege for the benefit of SPONSOR only and may not be assigned in whole or in part by SPONSOR to any other person or entity.


IV. Miscellaneous Provisions.

- (1) No Modification of this Agreement shall be effective unless it is made in writing and signed by the authorized representative's of the parties hereto.
- (2) This agreement shall be construed under and in accordance with the laws of the State of Arkansas and venue for any litigation concerning this Agreement shall be in Craighead County, Jonesboro, Arkansas.
- (3) Nothing in this Agreement shall be construed to make the CITY or its respective agents or representatives liable in situations it is otherwise immune from liability.

- (4) In case any one or more of the provisions contained in this Agreement shall for any reason be held invalid, illegal or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision thereof and this Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.
- (5) Each party represents to the other the individual signing this Agreement below has been duly authorized to do so by its respective governing body and that this Agreement is binding and enforceable as to each party.

IN WITNESS WHEREOF, the parties have executed this Agreement on the day and year set Set forth below.

BY: **Fairfield Inn and Suites**

Name: Bryce Overman 

Title: General Manager

Date: 5-20-16

CITY OF JONESBORO

By: _____

Name: Harold Perrin

Title: Mayor

Date: _____

ATTEST

Donna Jackson, City Clerk, CMC



Legislation Details (With Text)

File #:	RES-16:071	Version:	1	Name:	Contract with Pepsi for fields sponsorship and exclusive pouring right at Joe Mack Campbell Park
Type:	Resolution	Status:		Status:	To Be Introduced
File created:	5/24/2016	In control:		In control:	Finance & Administration Council Committee
On agenda:		Final action:		Final action:	
Title:	A RESOLUTION TO CONTRACT WITH PEPSI BEVERAGES COMPANY FOR SPONSORSHIP OF FIELDS AND EXCLUSIVE POURING RIGHTS AT JOE MACK CAMPBELL PARK				
Sponsors:	Parks & Recreation				
Indexes:	Contract				
Code sections:					
Attachments:	Joe Mack Pepsi Contract.pdf				

Date	Ver.	Action By	Action	Result
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A RESOLUTION TO CONTRACT WITH PEPSI BEVERAGES COMPANY FOR SPONSORSHIP OF FIELDS AND EXCLUSIVE POURING RIGHTS AT JOE MACK CAMPBELL PARK

WHEREAS, the City of Jonesboro owns and maintains Joe Mack Campbell Park located at 3021 Dan Avenue; and

WHEREAS, Pepsi Beverages Company is seeking sponsorship recognition on one baseball field and one soccer field at Joe Mack Campbell Park; and

WHEREAS, Pepsi Beverages Company is also seeking exclusive pouring rights at Joe Mack Campbell Park; and

WHEREAS, Pepsi Beverages Company is sponsoring a baseball and soccer field, along with exclusive pouring rights for the sum of \$18,750 for a period of 5 years ; and

NOW, THEREFORE BE IT RESOLVED, BY THE CITY COUNCIL OF THE CITY OF JONESBORO, ARKANSAS

SECTION 1: That the City of Jonesboro, Arkansas shall contract with Pepsi Beverages Company for the sponsorship of a one baseball field, one soccer field, and exclusive pouring rights at Joe Mack Campbell Park. A copy of said contract is attached as "Exhibit A."

SECTION 2: The Mayor, Harold Perrin and City Clerk, Donna Jackson are hereby authorized by the City Council for the City of Jonesboro to execute all documents necessary to effectuate the agreement.

Customer Information

(Required)

Name of Business: Joe Mack Cambell Park/ Jonesboro Parks & Rec.

Customer E-mail: Robert.Kiefer@pepsico.com

Primary Contact: wixson Huffstetler

COF Number(s): 9295386, 9294721

(include all numbers)

Address: 502 BELT ST

Fed Tax Id #:

City: JONESBORO

State Tax Id #:

State: AR

Business Phone: 8709326800

Cell #: 8708191213

Zip: 724012015

Business Owner:

PBC Information

Agreement Term

PBC Location(s): JONESBORO AR

Created By: Robert Kiefer Route #: _____

Agreement Start Date: 3/1/2016

PBC Market Unit: MIDSOUTH MKT Phone # 8708195141

Agreement End Date*: 2/28/2021

Sales Method: (check one) Pepsi Direct Pre-Sell (Route #)

(Agreement automatically renews each year unless Cancellation is received at least ninety (90) days prior to the end of the term)

(Check Boxes and Specify, as applicable)

PBC Agrees To:

Customer Agrees To:

X	<p>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).</p> <p>Initial Equipment Placement shall be as follows (fill out as applicable):</p> <p>Coolers: 8 One-Door 7 Two-Door Three-Door Counter-top Energy</p> <p>Fountain: 6 Valve 8 Valve Bar guns (button)</p> <p>Special: Lipton Refreshing Iced Tea Juice Frozen</p> <p>Slush FUB Unit 1 Valve Urn 2 Valve Urn</p> <p>_Other (Specify):</p>
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)
	<p>Provide Customer with the opportunity to participate as a member of</p> <p>* If unredeemed, earned points will expire after two years * Visit www.pepsirewardsplus.com for full program details</p>
	For additional local PBC Field input:

	<p>Volume Based Term (Check box if applicable)</p> <p>* The Term of this Agreement shall commence on the Agreement Start Date listed above, and end on the later of: (1) <u>2/28/2021</u> or (2) the date on which Customer purchases from PBC <u>0</u> Gallons/Cases for sale in the Outlets. No auto renewal of Term.</p>
X	<p>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.</p>
	<p>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.</p>
X	<p>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.</p>
X	<p>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.</p>
X	<p>REQUIRED PRODUCTS. Purchase, stock and distribute at least each of the Products (as specified below) at all times during the Term.</p>

Required Packages for this Agreement:

Fountain Postmix/BIB 20oz 2 Liter Cans Fountain Premix/Tanks (Limited Market Availability) Cups CO₂

Other :

AGREED TO AND ACCEPTED BY:

For Pepsi Beverages Company	
Signature:	Date
Print Name Robert Kiefer	Title
For Customer	
Signature:	Date
Print Name wixson Huffstetler	Title

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 Refreshing 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)

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

COF: 9295386, 9294721

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 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.
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. Subject to compliance with installation requirements, PBC shall deliver and install the Equipment at the approved designated Customer location, 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. **In connection with the foregoing, Customer acknowledges and agrees that Equipment shall only be used to house/dispense PBC Products and may not be safe or suitable for storage of non-Beverage items.** 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.
 - 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/Case 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.** Throughout the Term, if Customer purchase trends reasonably indicate that Customer cannot achieve 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(s) as deemed reasonably necessary by PBC. 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 Term of the Agreement until such time as the Customer's purchases reach the applicable aggregate volume thresholds, such extension to be treated under Section 1(g), above ("Automatic Extension").
 - 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 to 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) if the Customer resells Products in a manner not authorized by this Agreement, including to other resellers/distributors or for direct/indirect sale outside of the PBC Location's exclusive bottling 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. **Trademarks.** PBC shall have final authority to review and approve, in its sole discretion, all aspects of any advertising or promotion provided for under this Agreement, including of any and all promotional or other materials utilizing PepsiCo trademarks, and no documents, point of sale, coupons, sell sheets, etc. shall be released without PBC's prior written approval. Any and all trademarked, copyrighted or other material in which either party claims or has property rights shall remain the sole and exclusive property of that party and shall be used by the other solely for the purposes listed and to the extent allowed by this Agreement.
 - l. **Indemnification.** ~~Customer shall defend and indemnify PBC against all costs, expenses, claims or losses incurred through claims of third parties resulting from Customer's breach of the terms and conditions of this agreement as well as any claims for damages based on personal injury, death or property damage due to Customer's actions and/or omissions, including but not limited to any claims related to Customer's misuse of (and/or failure to adhere to PBC's quality and handling requirements related to) PBC's Equipment, Products or IP/Trademarks.~~
 - m. **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	
Signature: []	Date: []	Signature: []	Date: []