

City of Jonesboro
Joe Mack Campbell Sports Complex
BEVERAGE AGREEMENT

This Beverage Agreement (the "Agreement") is made this 1st Day of March, 2011 by and between **Pepsi Beverages Company** ("Pepsi") with offices located at **1301 Aggie Rd., Jonesboro AR**, and **The City of Jonesboro -Joe Mack Campbell Sports Complex**, with facilities located at **3021 Dan Ave., Jonesboro AR**. ("the Customer").

WHEREAS, Customer 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 of Customer at **Joe Mack Campbell Sports Complex located at 3021 Dan Ave., Jonesboro AR** during the term of this Agreement (the "Facilities").

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

1. Beverages shall be defined as any and all non-alcoholic drinks except milk.
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, bottled coffee, frozen beverages, hot coffee and tea.
3. Subject to the renewal provisions set forth herein below, the term of this **five Year (5)** Agreement shall commence on **3-1-11** and terminate on **2-28-16** or when Customer has purchased a total of 8,000 20 oz. cases (the "Benchmark Requirement"), whichever comes last ("Term"). All funding provided by Pepsi in Paragraph 4 of this Agreement (with the exception of rebates paid on 20oz. cases) shall terminate on 2-29-16; however, Customer shall be required to honor the terms and conditions of the Agreement until the Benchmark Requirement has been met.
4. In exchange for Customer's **5 year** commitment and other valuable consideration and upon full execution of this Agreement, the parties agree as follows:
 - a. Pepsi agrees to pay Customer an annual marketing fund payment of **three thousand seven hundred fifty dollars (\$3750.00)** during the Term years 1

through 5. The first such payment will be made within sixty (60) days after official start date of this Agreement and thereafter, within sixty (60) days after each anniversary date of this Agreement during the Term.

- b. 2011 pricing as follows, 20 oz carbonated drinks \$20.29, 20 oz water \$18.65, 20 oz Gatorade \$19.21. All pricing adjusted annually with a 3% maximum annual increase.
- c. Pepsi agrees to pay Customer a rebate on all 20 oz 24 count cases purchased by Customer in any given year during the Term.

Rebate as follows:

\$5.00 per case on all 20 oz 24 count carbonated soft drinks and water and \$2.00 per case on all 20 oz 24 count Gatorade products (no rebates on any other packages.)

- d. Rebate payments shall be made at the end of each calendar year.
- e. Pepsi will provide all cooling equipment needed to cool Pepsi products.
- f. Pepsi will service all provided cooling equipment but will not be responsible for scoreboard maintenance / service /repairs.
- g. This agreement is for exclusive 20 oz products only. No fountain or can beverages.
- h. Failure to remain exclusive forfeits all rebates and written request for repayment of any monies paid at a prorated basis.
- i. All beverages must be purchased directly from Pepsi Beverages Company.
- j. Rebates paid on all 20 oz packages year 1,2,3,4 and 5 or until this agreement expires.
- k. A Volume Report can be provided any time requested by Customer.

- 5. All payments, including the value of donations, made by Pepsi to Customer under Paragraph 4 of this Agreement shall be deemed earned at an equal prorated rate per month for the purposes of this Agreement, notwithstanding the date of the actual payment.
- 6. Customer hereby licenses and appoints Pepsi, through its Brands, as the sole, exclusive and official Beverage supplier, distributor and advertiser of Joe Mack Campbell Park Sports Complex. Customer shall cause the Brands to be exclusively available at the Joe Mack Campbell Sports Complex 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 Joe Mack Campbell Sports Complex.

7. Customer recognizes that Pepsi has paid valuable consideration to ensure an exclusive Beverage associational relationship with Joe Mack Campbell Park Sports Complex 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 Customer or to suggest that Competitive Products are endorsed by or associated with Customer by revering directly or indirectly to Customer (all of which actions described herein are sometimes referred to as (Ambush marketing")), Customer 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.
8. All art work 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 Customer, with neither party unreasonably withholding such approval.
9. Except if prohibited by law, during the entire Term, Pepsi shall provide and supply Customer with all necessary equipment to dispense the Brands at Joe Mack Campbell Sports Complex without charge; provided that all Beverages are supplied to Customer and Joe Mack Campbell Sports Complex 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 without charge to Customer. All rights, title and interest in all Pepsi equipment supplied to Customer shall at all times remain with Pepsi.
10. Customer 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 Customer has been duly authorized by any and all persons or entities of which authorization is required to enter into this Agreement on behalf of Customer. Customer also agree that at no time will it challenge, contest, disclaim, or deny the authority of the individual signing this Agreement on behalf of Customer or use as a basis to void, cancel or nullify this Agreement a claim that the individual signing below was not authorized to sign t his Agreement on behalf of Customer. Further, Customer guarantees and warrants that the execution, delivery and performance of this Agreement by Customer will not and does not violate any agreements with or the rights of third parties.

11. In the event of 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.
12. If Customer fails to perform any of the promises set forth in this Agreement, then as an option but not as its sole remedy, Pepsi may terminate this Agreement. If this Agreement is terminated for any reason, Customer agrees to return to Pepsi a pro rata portion of all monetary payments, including the value of donations, made to but not earned by Customer under Paragraph 4 of this Agreement. Further, any such breach by Customer shall be deemed as authorization to Pepsi to allow Pepsi immediate access to Joe Mack Campbell Sports Complex to take possession of each and every piece of Pepsi's equipment without any claim of trespass.
13. If Pepsi defaults in the performance of any of the covenants, terms, conditions or provisions of this Agreement, and after written notice from the City of Jonesboro, Pepsi fails to cure such default within thirty (30) days after receipt of such notice (or fails to cure with due diligence if the default is of such nature as to require more than 30 days) then the City of Jonesboro may terminate this Agreement.
14. 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 of either party's right thereafter to enforce each and every term and condition of this Agreement.
15. It is mutually understood and agreed, and it is the intent of Pepsi and Customer that an independent contractor relationship be established and is hereby established under the terms and conditions of this Agreement: that employees of Customer 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 Customer.
16. This Agreement may not be assigned by either party hereto without the express written consent of the other.
17. This Agreement fully expresses the entire understanding of Pepsi and Customer. 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 Customer, by legally authorized officials thereof.

18. 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, AR.

Pepsi Beverages Company

By: Jan M. L.

Name: Darrell M. Nait

Title: FSSR

Mailing Address: _____

Federal ID#: _____