



City of Grand Island

Tuesday, February 26, 2008

Council Session

Item G9

#2008-62 - Approving Contract for Soft Drink Services for Aquatic Facilities

Staff Contact: Steve Paustian

Council Agenda Memo

From: Todd McCoy, Recreation Superintendent
Meeting: February 26, 2008
Subject: Soft Drink Service for Aquatic Facilities
Item #'s: G-9
Presenter(s): Steve Paustian, Parks and Recreation Director

Background

Because of the benefits of having one soft drink service at Grand Island swimming facilities, the Parks and Recreation Department usually requests proposals for this service. Contracts with soft drink suppliers have typically been for one year with the option to renew for two additional years.

Discussion

Services included in proposals included: Pop machines at Lincoln Pool, Lincoln Park wading pool, Stolley Park wading pool, Pier Park wading pool, Grace Abbott Park wading pool. Also included in the proposal was the product pricing, equipment, and marketing funding for soft drink service at Island Oasis Water Park. Companies submitting bids were: Coca Cola Bottling Company and Pepsi Bottling Company.

Alternatives

It appears that the Council has the following alternatives concerning the issue at hand. The Council may:

1. Move to approve
2. Refer the issue to a Committee
3. Postpone the issue to future date
4. Take no action on the issue

Recommendation

City Administration recommends that the Council approve the proposal from Pepsi Bottling Group and accept the terms of the Pepsi contract.

Sample Motion

Move to approve the Pepsi contract for soft drink service at Grand Island aquatic facilities.



Dale M. Shotkoski, Assistant City Attorney

*Working Together for a
Better Tomorrow, Today*

**REQUEST FOR PROPOSAL
FOR
SOFT DRINK SERVICES FOR AQUATIC FACILITIES**

RFP DUE DATE: January 24, 2008 at 4:00 p.m.

DEPARTMENT: Parks and Recreation

PUBLICATION DATE: January 4, 2008

NO. POTENTIAL BIDDERS: 2

SUMMARY OF PROPOSALS RECEIVED

Pepsi Bottling Group
Grand Island NE

Coca Cola Bottling Company
Grand Island NE

cc: Steve Paustian, Parks & Recreation Director
Patti Buettner, Parks & Recreation Secretary
David Springer, Finance Director
Wes Nespor, Assist. City Attorney

Todd McCoy, Recreation Supt.
Jeff Pederson, City Administrator
Dale Shotkoski, City Attorney
Sherry Peters, Legal Secretary

P1219

SPONSORSHIP AGREEMENT

AGREEMENT (hereinafter referred to as the "Agreement") made as of this 1st day of April, 2008 (the "Effective Date") by and between the City of Grand Island/Island Oasis, Grand Island, Nebraska, with its principal place of business at City of Grand Island/Island Oasis and Bottling Group, LLC d/b/a The Pepsi Bottling Group with its principal place of business at One Pepsi Way, Somers, New York 10589 and with an office 2422 E Hwy 30, Grand Island, NE 68801 ("PBG").

WHEREAS, the City of Grand Island/Island Oasis has the exclusive rights to the use of the Facilities (as defined herein) and to obtain sponsorships for the Facilities and arrange for the provision of soft drinks in the Facilities; and

WHEREAS, the City of Grand Island/Island Oasis wishes to have the promotional sponsorship of PBG at the Facilities and in the areas referenced in this Agreement and further wishes to have the products of PBG promoted and sold at Facilities; and

WHEREAS, PBG wishes to identify itself with the Facilities and to have its products promoted and sold in the Facilities and further wishes to receive the other promotional benefits provided for by the City of Grand Island/Island Oasis in this Agreement.

NOW, THEREFORE, in consideration of the terms, covenants and conditions herein contained, and the other mutual promises set forth herein, the parties agree as follows:

AGREEMENT

I. DEFINITIONS.

A. "Agreement Year" means each and every consecutive twelve (12) month period during the Term beginning with the Effective Date.

B. "Beverage" or "Beverages" means all carbonated and non-carbonated, non-alcoholic drinks, including but not limited to, (i) carbonated soft drinks; (ii) fruit juices and fruit drinks; (iii) ready to drink coffee products; (iv) ready to drink tea products; (v) hypertonic, isotonic and hypotonic drinks (sports drinks, energy and fluid replacements); and (vi) bottled or canned water whether carbonated or still (spring, mineral or purified).

D. "Competitive Products" means any and all Beverages other than the Products.

E. "Concessionaires" means any concessionaire selling Beverages at the Facilities.

F. "Facilities" means the City of Grand Island/Island Oasis known as City of Grand Island/Island Oasis and all of the other public concessions owned, operated leased rented or controlled by the City of Grand Island/Island Oasis, including for each facility, every building, the grounds, parking lots, dining facilities and concession stands, food service outlets and vending areas.

G. "Facilities Marks" means Facilities' characters, colors, emblems, designs, identifications, logos, mascots, name, service marks, symbols, trademarks, all trade names, uniforms and other proprietary designations which are owned, licensed to or controlled by the City of Grand Island/Island Oasis and which relate to the Facilities and which are in existence on the Effective Date or which will be created during the Term.

H. "Products" means any and all Beverage products bottled, sold or distributed by PBG.

I. "Term" means the three (3) year period beginning on the Effective Date and continuing up to and including April 1, 2010. Term of agreement will be 3 years starting in 2008 through March 31, 2010.

II. GRANT OF BEVERAGE AVAILABILITY AND MERCHANDISING RIGHTS.

During the Term, the City of Grand Island/Island Oasis hereby grants to PBG the following exclusive Beverage availability and exclusive Beverage merchandising rights as set forth and described below:

A. Beverage Availability in the Facilities.

(1) Grant of Rights.

Subject to the terms of this Agreement, the City of Grand Island/Island Oasis grants to PBG the exclusive right to make Beverages available for sale at the Facilities. The Products shall be the only Beverages sold, dispensed or served at the Facilities and the Products shall be sold at all concession or vending locations located within the Facilities.

(2) Purchase of Products.

The City of Grand Island/Island Oasis shall purchase, and shall require that all Concessionaires and other third parties selling Beverages at the Facilities purchase, all Products, cups, lids and carbon dioxide directly from PBG.

(3) Vending.

PBG shall have the exclusive right to place beverage vending machine at such Facilities for dispensing the Products. PBG shall not be assessed common area maintenance fees, taxes or other charges based on its occupation of the space allocated to vending machines.

B. Product Merchandising Rights.

During the Term and subject to the terms and conditions contained in this Agreement, the City of Grand Island/Island Oasis grants PBG the exclusive right to merchandise Products at the Facilities as set forth and described below:

(1) Menu Board Advertising.

The City of Grand Island/Island Oasis agrees that Pepsi's trademarks for products shall be listed on the menu boards at concession locations in which Products are served to customers at the Facilities. All brand identification containing Pepsi trademarks and/or service marks for menu boards set forth herein will be prepared and installed by the City of Grand Island/Island Oasis at the City of Grand Island/Island Oasis's sole cost and expense.

(2) Approved Cups

The City of Grand Island/Island Oasis agrees that all Products served, sold or dispensed at concession locations in which Products are served to customers at the Facilities shall be served in Approved Cups and all other Beverages served, sold or dispensed within the Facilities shall be served in either Approved Cups or other disposable cups which do not bear, display or contain the trademarks or service marks of a manufacturer of Competitive Products

III. GRANT OF ADVERTISING AND PROMOTIONAL RIGHTS.

During the Term, the City of Grand Island/Island Oasis hereby grants to PBG the right to advertise and promote Products in and with respect to the Facilities and the Facilities Marks upon the terms and conditions contained in this Agreement and as set forth and described below.

A. Advertising

(1) Facilities Advertising.

The Pepsi logo, as provided by PBG, shall be displayed on banners and other signage, as mutually determined by the parties during the Term.

(2) Print Advertising.

The Pepsi logo, as provided by PBG, shall be featured on printed materials made available at the Facilities, as mutually determined by the parties during the Term.

(3) Advertising/Signage Changes.

The City of Grand Island/Island Oasis recognizes PBG's right to change, modify and alter its advertising for, or identification of, any of the Products or to discontinue the manufacture of any of the Products. PBG shall reimburse the City of Grand Island/Island Oasis for all reasonable costs and expenses incurred by the City of Grand Island/Island Oasis in changing or modifying or altering any Facilities Advertising, menu boards and other PBG identification or references to any of the Products necessitated by PBG's changes to the advertising, trade marks or trade names, designations or identification thereof. PBG shall have the right to modify change or alter the promotional messages appearing thereon and all such modifications, changes and/or alterations shall be at PBG's sole cost and expense. The City of Grand Island/Island Oasis shall use reasonable efforts to minimize the cost to PBG for modifying, altering and/or changing PBG's advertising.

B. Promotional Rights.

(1) General Sponsorship Designation.

The City of Grand Island/Island Oasis hereby agrees that PBG shall have the right to promote the fact that PBG is an official sponsor of the Facilities and that the Products are available at the Facilities.

(2) Grant of License to Use the Facilities Marks for Promotional Activities.

The City of Grand Island/Island Oasis hereby grants to PBG a nonexclusive license to use the name of the Facilities and the Facilities Marks, for the limited purposes of promoting Products within the context of promotional activities.

IV. GRANT OF OTHER RIGHTS.

A. Exit Sampling.

The City of Grand Island/Island Oasis agrees to permit PBG to conduct, at PBG's sole cost and expense, sampling of the City of Grand Island/Island Oasis's patrons upon exiting the Facilities. PBG will control the design and execution of the sampling event.

B. Exclusivity.

The City of Grand Island/Island Oasis is hereby restricted from selling, serving, promoting, marketing, advertising, merchandising, sponsoring or endorsing all Competitive Products in or about the Facilities or granting the rights granted to PBG hereunder with regard to the Facilities to a seller, distributor, manufacturer, licensee or owner of Competitive Products.

V. CONSIDERATION.

In consideration for the exclusive beverage availability, advertising, merchandising, promotional rights and other related rights and benefits provided to PBG by the City of Grand Island/Island Oasis herein, PBG will provide the City of Grand Island/Island Oasis with the following:

- A. Marketing support each year will be \$1000.00 to be utilized for mutually agreed upon marketing programs by City of Grand Island/Island Oasis and PBG..
- B. PBG of Grand Island will accrue \$2.00 per gallon and per case on all gallons/cases sold, to be rebated at the end of the year.

VIII. EQUIPMENT AND SERVICE.

A. Beverage Dispensing Equipment.

Notwithstanding anything contained herein to the contrary, PBG shall, at its sole cost and expense, provide and install all fountain and related beverage dispensing equipment and all vending or other cold drink dispensing equipment (the "Equipment") within the Facilities for the dispensing of Product during the Term. Title to all Equipment shall be with PBG or its affiliates.

B. Service to Equipment.

PBG or its designated agents shall be responsible for maintaining, repairing and replacing the Equipment. PBG shall provide the City of Grand Island/Island Oasis with a telephone number to request emergency repairs and receive technical assistance related to the Equipment. PBG shall respond to each request and use reasonable efforts to remedy the related Equipment problem as soon as possible.

IX. INDEMNIFICATION.

- A. PBG will indemnify and hold the City of Grand Island/Island Oasis harmless from any and all suits, actions, claims, demands, losses, costs, damages, liabilities, fines, expenses and penalties (including reasonable attorneys' fees) arising out of: (i) its breach of any term or condition of this Agreement; (ii) product liability suits resulting from the use or consumption of PBG's products; and/or (iii) the negligence or willful misconduct of the PBG.
- B. The City of Grand Island/Island Oasis will indemnify and hold PBG, its subsidiaries, affiliates or assigns harmless from and against any and all suits, actions, claims, demands, losses, costs, damages, liabilities, fines, expenses and penalties (including reasonable attorneys' fees) arising out of : (i) its breach of any term or condition of this Agreement; and/or (ii) the negligence or willful misconduct of the City of Grand Island/Island Oasis.

X. TERMINATION.

- A. Either party may terminate this Agreement for cause, which shall include, without limitation, a material breach of this Agreement; provided, however, that the terminating party has given the other party written notice of the breach or other cause and the other party failed to remedy or cure the breach or other cause within thirty (30) days of such notice.
- B. If PBG terminates this Agreement for cause, then in addition to any other remedies to which PBG may be entitled, the City of Grand Island/Island Oasis shall immediately reimburse to PBG any unearned Annual Sponsorship Fees and Annual Marketing Fees.

XI. NOTICES.

Any notices or other communication hereunder shall be in writing, shall be sent via registered or certified mail, and shall be deemed given when received.

If to PBG:

The Pepsi Bottling Group
Attention: Vice President and General Manager
2422 east hwy 30

If to the City of Grand Island/Island Oasis: City of Grand Island/Island Oasis
Attention: _____
[address]

XII. RELATIONSHIP OF PARTIES.

- A. The parties are acting herein as independent contractors and independent employers. Nothing herein shall create or be construed as creating a partnership, joint venture or agency relationship between any of the parties and no party shall have the authority to bind the other in any respect. The sole relationship of the parties hereto created by this Agreement is that of licensor and licensee.
- B. No goods or equipment shall be purchased in the name of the City of Grand Island/Island Oasis by PBG or any person employed by or conducting business with PBG nor shall any goods or equipment be purchased by the City of Grand Island/Island Oasis in the name of PBG. No debts, liabilities, obligations or contracts of whatever kind made or incurred by either of the parties hereto or any person employed by or conducting business with said party shall be in the name or upon the credit of the other party, and the other party shall not be liable or responsible therefore.

XIII. REPRESENTATIONS AND WARRANTIES.

Each of the parties to this Agreement represent and warrant that it has the full right, power and authority to enter into, and perform its obligations under, this Agreement and that the terms and conditions of this Agreement shall not violate, interfere with or infringe upon the rights of any third parties pursuant to written agreement or otherwise. Each party further represents that it has obtained all of the necessary approvals and has complied with all laws, ordinances, codes, rules and regulations relating to its entering into this Agreement and its performance hereunder.

XV. GOVERNING LAW.

This Agreement shall be governed by and construed in accordance with the laws of the State of Nebraska.

XVI. ENTIRE AGREEMENT.

- A. This document is intended by the parties as the final and binding expression of their agreement and is a complete and exclusive statement of the terms thereof and supersedes all prior negotiations, representations, and agreements and no representations, understandings, or agreements have been made or relied upon in the making of this Agreement other than those specifically set forth herein.
- B. No modification or waiver of any of the terms and conditions of this Agreement shall be effective unless such modification or waiver is expressed in writing and signed by each of the parties. This Agreement may be amended only in writing signed by each of the parties. No course of prior dealings between the parties and no use of trade shall be relevant or admissible to supplement, explain or vary the terms of this Agreement, whether the same be consistent with the terms of this Agreement or otherwise.

XVII. ASSIGNMENT; BINDING NATURE; MULTIPLE ORIGINALS.

To the extent permitted by law, this Agreement shall be binding upon and inure to the benefit of PBG and the City of Grand Island/Island Oasis and their respective successors and permitted assigns. Neither party may subcontract or assign its rights or obligations under this Agreement to any other entity or person without the express written consent of the other, which consent may be withheld at its sole discretion. Notwithstanding the foregoing, PBG shall be entitled to assign its rights and obligations under this Agreement pursuant to the sale of

substantially all of its assets. No waiver by any party of any default or non-performance shall be deemed a waiver of any subsequent default or non-performance.

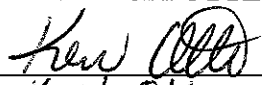
XVIII. SAVING CLAUSE.

If any provision of this Agreement shall be deemed or declared unenforceable, invalid or void, the same shall not impair any of the other provisions contained herein which shall continue to be enforceable in accordance with their respective terms, except that this clause shall not deprive any party of any remedy afforded under this Agreement.

IN WITNESS WHEREOF, the undersigned have caused this Agreement to be duly executed as of the date first above written.

**BOTTLING GROUP, LLC, doing
business as THE PEPSI BOTTLING GROUP**

**City of Grand Island/Island Oasis
of Grand Island, NE**

By: 
Name: KEN OTTO
Title: Account Sales Rep.
Date: 2-20-2008

By: _____
Name: _____
Title: _____
Date: _____

EXHIBIT A

PRODUCT PRICING



Pepsi Bottling Group of Grand Island would like to submit the following proposal for exclusive soft drink pouring rights at the Island Oasis Water Park for a three (3) year agreement

- All equipment will be provided at no charge and repaired at no charge
- Pricing: see attached
- Annual support \$1,000.00
- Marketing funds to be accrued @ \$2.00 based on the rebate per gallon and per case sold. All marketing funds to be paid at the end of the season.

Estimated rebate – 2007 volume 430 cases and gallons,
rebate at \$2.00, \$860.00

• Marketing support fixed	\$1,000.00
Marketing support, est. 2007 sales	<u>860.00</u>
	\$1,860.00

- All marketing funds may be used at the Island Oasis Water Park's discretion. In prior years funds were used to purchase radio remotes which are suggested by Pepsi Bottling Group

Products	Case Pack	Cost	Unit Cost	Suggested Retail	Margin
12oz Cans	24	\$8.75	\$0.36	\$0.75	51.39%
20oz Carbonated Soft Drinks	24	\$21.00	\$0.88	\$1.39	37.05%
2 Liter Carbonated Soft Drinks	8	\$10.00	\$1.25	\$1.79	30.17%
20oz AQUAFINA	24	\$21.00	\$0.88	\$1.29	32.17%
20oz AQUAFINA FLAVORSPLASH	24	\$21.00	\$0.88	\$1.39	37.05%
15.2oz DOLE	12	\$13.00	\$1.08	\$1.69	35.90%
16oz LIPTON TEA	12	\$13.00	\$1.08	\$1.59	31.87%
20oz TROPICANA JUICE DRINKS	24	\$21.00	\$0.88	\$1.39	37.05%
20oz GATORADE	24	\$21.00	\$0.88	\$1.59	44.97%
20oz SOBE	12	\$13.75	\$1.15	\$1.69	32.20%
20oz SOBE LIFE WATER	12	\$13.00	\$1.08	\$1.69	35.90%
13.7oz STARBUCKS FRAPPUCCINO	12	\$18.50	\$1.54	\$2.29	32.68%
9.5oz STARBUCKS FRAPPUCCINO	12	\$13.50	\$1.13	\$1.99	43.47%
9.5oz STARBUCKS FRAPPUCCINO	24	\$27.00	\$1.13	\$1.99	43.47%
6.5oz STARBUCKS DOUBLES HOT	24	\$33.50	\$1.40	\$1.99	29.86%
11oz STARBUCKS ICED COFFEE	24	\$36.00	\$1.50	\$1.99	24.62%
8.3oz SOBE ADRENALINE RUSH	24	\$34.00	\$1.42	\$2.19	35.31%
8.4oz MT DEW AMP	24	\$34.00	\$1.42	\$2.19	35.31%
24oz MT DEW AMP	12	\$24.00	\$2.00	\$2.99	33.11%
16oz Energy Drinks	12	\$20.50	\$1.71	\$2.49	31.39%
20 oz PROPEL	24	\$23.60	\$0.98	\$2.49	60.51%

Effective 12/2/2007

2007

Midwest Market Unit

Bag In The Box Cost	\$52.25	Per Gallon	\$10.45
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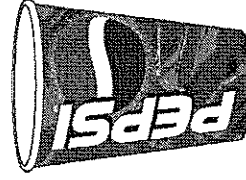
COST	12oz. CUP	16oz. CUP	22oz. CUP	32oz. CUP	44oz. CUP
Ounces/ Drink	8	11	14	21	29
Product	\$0.11	\$0.15	\$0.19	\$0.29	\$0.39
Cup	\$0.04	\$0.05	\$0.05	\$0.10	\$0.11
Lid	\$0.02	\$0.02	\$0.02	\$0.05	\$0.05
Straw/Ice*	\$0.01	\$0.01	\$0.01	\$0.01	\$0.01
Total Cost	\$0.18	\$0.23	\$0.28	\$0.44	\$0.57

* Based on 1/3 cup of ice

SIZE	Cup QUANTITY	PRICE	SIZE	Lid QUANTITY	PRICE
12oz.	2000	\$72.07	12-16-22oz.	2000	\$48.00
16oz.	1000	\$50.23	12-16-22oz.	2000	\$48.00
22oz.	1000	\$54.60	12-16-22oz.	2000	\$48.00
32oz. Tall	480	\$49.14	32oz.	960	\$45.00
44oz.	480	\$54.60	44oz.	960	\$45.00

- Postmix is brixed* at a ratio of one (1) part syrup to five (5) parts water.
- One (1) gallon of postmix (128oz) produces six (6) gallons (768 oz) of finished product.
(1 part syrup + 5 parts water)
- One (1) 5-Gallon Box of Postmix (640oz) produces 30 gallons (3840oz) of finished product.
- To find customers cost per ounce divide ounces of finished product by cost of syrup.
(\$52.25 divided by 3840 oz. = \$ 0.013 per oz.)

* Brix is the correct ratio of syrup to water



Core brands include Pepsi, Dt Pepsi, Mt Dew, Dt Mt Dew, Sierra Mist, Mug, Lipton Brisk Teas
Pepsi Wild Cherry, Tropicana Lemonade, Tropicana Pink Lemonade, Dr Pepper & Dt Dr Pepper

Pricing for other brands will be as follows:

Tropicana Fruit Punch, Tonic/Quinine - \$9.60 per gallon
All Season's Harvest Juices - \$24.75 per gallon
Sobe Lean \$11.75 per gallon, Gatorade Fruit Punch \$15.50 per gallon

CO2 Pricing will be \$20.50 per 20lb tank with a tank deposit of \$30.00

RESOLUTION 2008-62

WHEREAS, the City of Grand Island invited proposals for Soft Drink Services for the Aquatic Facilities, according to Request for Proposals on file with the Parks and Recreation Department; and

WHEREAS, on January 24, 2008, proposals were received, reviewed and evaluated in accordance with established criteria; and

WHEREAS, Pepsi Bottling Group of Grand Island, Nebraska, submitted a proposal in accordance with the terms of the Request for Proposals and all statutory requirements contained therein and the City Procurement Code.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE CITY OF GRAND ISLAND, NEBRASKA, that the proposal of Pepsi Bottling Group of Grand Island, Nebraska, is hereby approved.

BE IT FURTHER RESOLVED, that the Mayor is hereby authorized and directed to execute such contract on behalf of the City of Grand Island.

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Adopted by the City Council of the City of Grand Island, Nebraska on February 26, 2008.

Margaret Hornady, Mayor

Attest:

RaNae Edwards, City Clerk

Approved as to Form	☐
February 21, 2008	☐ City Attorney