

City of Scottsbluff, Nebraska

Monday, May 4, 2015

Regular Meeting

Item Reports2

Council to consider the beverage contract with Pepsi Cola of Western Nebraska for city park facilities and authorize the Mayor to execute the contract.

Staff Contact: Perry Mader, Park and Rec Director

Agenda Statement

Item No.

For meeting of: May 4th, 2015

AGENDA TITLE: Council to approve beverage contract for City Parks and Recreation facilities.

SUBMITTED BY DEPARTMENT/ORGANIZATION: Parks and Recreation

PRESENTATION BY: City Manager Rick Kuckkahn

SUMMARY EXPLANATION: The Parks and Recreation Department would like to enter into a contract with PEPSI to be our beverage provider for our department. We have used Pepsi for several years now. We solicited for proposals and heard back from Coke and Pepsi locally. Attached is a copy of the Pepsi contract. The department was more comfortable with Pepsi because of our familiarity with their staff and product. We also liked that they were willing to list specific donated items and specific dollar amounts. Coke was proposing that we be paid based on sales, which is unpredictable and significantly less than years past because we no longer offer concessions at the outdoor Splash Arena.

EXHIBITS

Resolution x

Ordinance ☐

Contract ☐

Minutes ☐

Plan/Map ☐

Other (specify) _____

NOTIFICATION LIST: Yes ☐ No ☐ Further Instructions ☐

APPROVAL FOR SUBMITTAL: _____
City Manager

Rev 3/1/99CClerk

EXCLUSIVE LICENSE AGREEMENT

Pepsi-Cola of Western Nebraska, LLC (“**Supplier**”) and City of Scottsbluff (“**Customer**”) located in Scottsbluff, NE hereby agrees as follows:

1. **Term.** The term of this Agreement will be for a period of Three (3) years beginning on May 1, 2015 and will continue through April 31, 2018 (the “**Term**”).
2. **Scope.** During the Term, Customer shall purchase from Supplier (i) Pepsi-Cola’s and Dr Pepper’s corporate branded premix and postmix products, as listed in Exhibit A, for use in preparing fountain beverage products sold under the trademarks of Pepsi-Cola and Dr Pepper; and (ii) Pepsi-Cola’s corporate branded packaged beverage products (including carbonated soft drinks, waters, isotonic, juices, juice drinks and/or coffee based beverages), as listed in Exhibit B, (collectively the “**Beverage Products**”) to be sold in each of the Customer’s existing and after-acquired outlets (collectively the “**Outlets**”). Supplier reserves the right to amend from time to time the Beverage Products listed on Exhibits A and B.
3. **Exclusive License.** Customer hereby grants to Supplier an exclusive license with respect to the Beverage Products as follows: the Beverage Products distributed by Supplier shall be the exclusive beverage products of their respective types sold, dispensed or otherwise made available in any manner or form, including vending machines, coolers and fountain equipment, or in any way displayed, represented or promoted at or in connection with Customer and/or Outlets (the “**Exclusive License**”).
4. **Equipment.** Equipment relating to the Beverage Products shall be provided, maintained, and repaired at Supplier’s expense. At all times, legal title to the Equipment shall belong to Supplier.
5. **Advertising.** The Exclusive License shall include the right of Supplier to be the sole advertiser of fountain and packaged beverage products at Outlets.
6. **Pricing.** A current delineation of the prices charged for the Beverage Products is set forth on Exhibit A attached hereto. Any changes to the pricing of the Beverage Products shall be mutually determined by both parties; provided, Supplier reserves the right to increase prices due to any increase in the prices it pays for Beverage Products.
7. **License Fee.** In consideration of the Exclusive License, Supplier shall pay Customer: (i) on or before May 1, 2015, the sum of two thousand dollars (\$2,000); and (ii) on or before May 1 of each year, beginning May 2016, the sum of one thousand two hundred dollars (\$1,200) (collectively the “**License Fee**”).
8. **Additional Consideration.** In addition to the License Fee, Supplier agrees to pay and provide to Customer the amounts, items, products and/or services set forth in Exhibit C attached hereto.
9. **Termination.** This Agreement may be terminated by either party if the other party shall be in breach or default under any one or more of its covenants or agreements contained

herein and such breach or default is not cured within thirty (30) days after written notice to the defaulting party.

10. **Remedies.** In the event of a default by a party, the non-defaulting party may exercise any and all rights and remedies allowed by law and/or equity.

11. **Binding Effect.** This Agreement shall be binding upon and inure to the benefit of the parties hereto and their successors and assigns.

DATED: _____

Pepsi-Cola of Western Nebraska, LLC

City of Scottsbluff

By _____

By _____

Print _____

Print _____

Title _____

Title _____

EXHIBIT A

Not applicable to this agreement.

EXHIBIT B

City of Scottsbluff AG 15

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Packages	Units	Wholesale	Discount	Invoice Cost	Unit Cost
Carbonated Soft Drinks					
CSD PET 12 oz 3/8 Pack	12oz 3/8 pk	\$ 20.00	\$ 3.50	\$ 16.50	\$ 0.69
Mt Dew Kickstart 16/12 oz 12L	16 oz 12L	\$ 22.00	\$ 8.00	\$ 14.00	\$ 1.17
CSD PET 20 oz Bottles 24L	20 oz 24L	\$ 35.00	\$ 11.60	\$ 23.40	\$ 0.98
CSD PET Bottles 2 Liter 8L	2 Ltr 8L	\$ 20.00	\$ 8.95	\$ 11.05	\$ 1.38
Aquafina, Klarbrunn, Gatorade, Propel and Schweppes					
Aquafina 12 oz 3/8 Pack	12 oz 3/8 pk	\$ 20.00	\$ 3.85	\$ 16.15	\$ 5.38
Aquafina FlavorSplash 20 oz 24L	20 oz 24L	\$ 35.00	\$ 12.50	\$ 22.50	\$ 0.94
Aquafina 20 oz 24L	20 oz 24L	\$ 35.00	\$ 12.50	\$ 22.50	\$ 0.94
Aquafina 16.9 oz 24 Pack	16.9 oz 24L	\$ 20.00	\$ 11.70	\$ 8.30	\$ 8.30
Klarbrunn Vita Ice Bottles 17 oz 12L	17oz 12L	\$ 20.00	\$ 12.50	\$ 7.50	\$ 0.63
Propel Fitness Water 20 oz 24L	20 oz 24L	\$ 35.00	\$ 10.50	\$ 24.50	\$ 1.02
Gatorade 20 oz 24L	20 oz 24L	\$ 35.00	\$ 11.20	\$ 23.80	\$ 0.99
Lipton Tea					
Lipton Pure Leaf 18.5 oz 12L	18.5 oz 12L	\$ 20.00	\$ 5.30	\$ 14.70	\$ 1.23
Lipton Iced Tea 20 oz 24L	20 oz 24L	\$ 35.00	\$ 11.60	\$ 23.40	\$ 0.98
Rockstar, AMP and No Fear Energy					
Rockstar 16 oz 24L	16 oz 24L	\$ 50.00	\$ 16.00	\$ 34.00	\$ 1.42
Mt Dew AMP / No Fear 16 oz 12L	16 oz 12L	\$ 25.00	\$ 7.50	\$ 17.50	\$ 1.46
All Other Non-Carbonated Beverage					
Hog Wash 10 oz 12L	10 oz 12L	\$ 10.00	\$ 1.40	\$ 8.60	\$ 0.72
Muscle Milk 14 oz 12L	14 oz 12L	\$ 33.00	\$ 6.25	\$ 26.75	\$ 2.23
Ocean Spray 15.2 oz 12L	15.2 oz 12L	\$ 20.00	\$ 5.30	\$ 14.70	\$ 1.23
SoBe Lifewater 20 oz 12L	20 oz 12L	\$ 20.00	\$ 6.50	\$ 13.50	\$ 1.13

EXHIBIT C

Additional Programs and Support

- Annual Free Product for Athletics or Special Events \$ 500 Value