



March 4, 2020

Liat Segal  
8141 Austin Ave.  
Morton Grove, IL 60053

**VIA EMAIL – liat@yamivending.com**

Re: FOIA Request Dated February 27, 2020 and received February 27, 2020

Subject: A request for current vending/office coffee service contract(s) and most recent RFP documents pertaining to same services.

Dear Mr. Segal:

This letter will serve as Oswego Community Unit School District 308's response to your February 27, 2020 request under the Freedom of Information Act (5 ILCS 140/1 et seq.), in which you asked for the above referenced information. The information responsive to your request is attached.

To promote district transparency and assist others who may have a similar question, this responsive document will be posted online on the district's website. To access it, go to [www.sd308.org](http://www.sd308.org) and select *Our District > Freedom of Information Act Request > FOIA Request Responses*, then select *FOIA ID #20-14*.

Please be advised that to comply with your FOIA request, the district incurred an expense that comprised of the cost of labor and resources used to search for records responsive to your request

Please let me know if you have additional questions. Thank you.

*Mary Anne Buckley*

Mary Anne Buckley  
Freedom of Information Officer

## BEVERAGE PROVIDER AGREEMENT

This agreement (the “**Agreement**”) is made by and between Great Lakes Coca-Cola Distribution, L.L.C., a Delaware limited liability company (“**Beverage Provider**”), and Oswego East High School having its principal place of business at 1525 Harvey Rd, Oswego, IL 60543.

### WITNESSETH:

WHEREAS, Beverage Provider is dedicated to being responsive to local school needs and to improving the communities in which it does business, including by supporting youth development and education, and Oswego East High School has requested a variety of beverages for the use of students, faculty and staff;

WHEREAS, the Beverage Provider has adopted the Alliance for a Healthier Generation School Beverage Guidelines which were announced on May 3, 2006 by former President Clinton and Governor Huckabee of Arkansas, co-chairs of the Alliance for a Healthier Generation. Working together with Oswego East High School to implement these guidelines, this school wellness effort supports teaching kids to consume a balanced diet and be physically active;

WHEREAS, Oswego East High School grants Great Lakes Coca-Cola Distribution, L.L.C., Exclusive Beverage Pouring Rights.

WHEREAS, Oswego East High School duly awards the beverage contract to Great Lakes Coca-Cola Distribution, L.L.C.

WHEREAS, such award complied with all applicable laws and the contract as embodied in this agreement is either not subject to or is exempt from any statutory or other rules, regulations or policies requiring any competitive bidding;

WHEREAS, Oswego East High School is vested with the appropriate authority and wishes to grant to Beverage Provider the exclusive beverage availability rights described herein with respect to Oswego East High School and with respect to all other facilities owned or operated by Oswego East High School.

NOW, THEREFORE, in consideration of the promises herein contained, the parties hereto agree as follows:

1. Definitions.

(a) “Agreement Year” means each twelve-month period beginning with the first day of the Term.

(b) “Beverages” means all non-alcoholic beverages (i.e. anything consumed by drinking), whether or not such beverages (i) contain nutritive, food, or dairy ingredients, OR (ii) are in a frozen form. This definition applies without regard to the beverage's labeling or marketing. Powders, syrups, grounds (such as for coffee), herbs (such as for tea), concentrates, K-Cups®, pods and all other beverage bases from which Beverages can be made are deemed to be included in this definition. For the avoidance of doubt, “flavor enhancers”, “liquid water enhancers”, brands and products of water purification and Beverage making systems (e.g. Brita®, Soda Stream®), and non-alcoholic beverages sold as “shots” or “supplements” are considered Beverages.

(c) "Campus" means the entire premises of the School and facility owned or operated by Oswego East High School either now or in the future, including without limitation, athletic facilities, offices, maintenance facilities, and including, the grounds, parking lots, all buildings which are a part of the location, faculty and staff lounges, branded and unbranded food service outlets, concession stands, press rooms, sky boxes, stadium suites, vending locations, and players' benches, sidelines and locker rooms. The defined terms "School" and "Stadium" are included within the collective term "Campus."

(d) "Competitive Products" means any and all Beverages other than Products (as defined herein).

(e) "Concessionaire" means any third party providing services under contract with Oswego East High School on Campus or to Team that directly or indirectly relates to the service of Beverages.

(f) "Products" shall mean Beverage products purchased directly from Beverage Provider or sold through vending machines owned and stocked exclusively by Beverage Provider.

(g) "Stadium" shall mean the Oswego East High School Football Stadium, which is located at 1525 Harvey Rd, Oswego, IL 60543 and all other stadiums within the Campus including, but not limited to, the grounds, parking lots, all buildings which are part of the Stadium, all concession stands, dining facilities, branded and unbranded food service outlets, press rooms, sky boxes, stadium suites, vending and players' benches, sidelines and locker rooms.

(h) "Team" or "Team(s)" means all interscholastic athletic teams associated with Oswego East High School.

2. Term. Beverage Provider shall have the rights provided herein for a term of Five (5) years, beginning December 1<sup>st</sup>, 2016 ("Term") through 11/30/2021 ("Fee Period"), or until such time as School has purchased and paid for 10,020 standard physical cases of Products ("Volume commitment"), whichever time period is longer ("Term").

3. Consideration.

In order to advance the educational mission of Oswego East High School, to benefit Oswego East High School, its students and educators, to support school wellness efforts and in exchange for the rights granted to Beverage Provider hereunder, Beverage Provider agrees to provide the following funding, programs and other support described below. The parties intend that the use of funding will be focused on some or all of the following:

- Academic enrichment and scholarships
- Improvement of technology at the School
- Additional or improved educational materials
- School and Campus improvements
- Student extra-curricular activities
- Educator and Student reward and recognition programs
- Physical fitness and nutrition education programs
- Teaching kids to consume a balanced diet and be physically active

(a) Sponsorship Funding. Beverage Provider agrees to pay Oswego East High School an aggregate of **Two Thousand Five Hundred** Dollars (\$2,500.00) for the entire Term (the "**Sponsorship Funding**"). The Sponsorship Funding will be in equal annual installments of **Five Hundred** Dollars (\$500.00). The first installment will be paid within sixty (60) days of the date that this Agreement is fully

executed and subsequent payments shall be due on the anniversary date. The Sponsorship Funding shall be deemed earned evenly on a monthly basis over the Agreement Year in which they are paid;

(c) Marketing Fund. Each Agreement Year, during the Fee Period, Bottler shall establish a marketing fund in the maximum amount of Two Hundred Fifty Dollars (\$250.00) ("Marketing Fund"). The Marketing Fund will be used to support Powerade sideline kits at Oswego East High School, including 24oz Powerade squeeze bottles, 10 gallon Powerade coolers, and 9oz Powerade disposable paper cups. Any amounts remaining unused in the Marketing Fund at the end of the Agreement Year will be retained by Bottler.

(d) Commissions. Beverage Provider shall pay Oswego East High School commissions on full-service Beverage vending sales based on the following rates and initial vend prices:

	Agreement Year one	Agreement Year two	Agreement Year three	Agreement Year four	Agreement Year five
<u>Vend Price</u>	Commission %	Commission %	Commission %	Commission %	Commission %
\$1.25 20oz KO CSD & NCB	30	30	30	30	30
\$1.25 20oz PET Dasani	30	30	30	30	30
\$1.50 20oz PET Powerade	30	30	30	30	30

Vend rates will automatically be increased by Twenty Five Cents (\$0.25) at the commencement of Agreement Year 2, to adjust for cost of goods and operating expenses, except that Beverage Provider may at any time increase vend rates by more than Twenty Five Cents (\$0.25) in the event of a substantial increase of a material component of Beverage Provider's cost of goods, manufacture or delivery. Beverage Provider shall notify Oswego East High School thirty (30) days in advance prior to the date any such substantial increase takes effect.

Commissions are paid based upon cash collected, after deducting legally imposed taxes, deposits, recycling fees, other handling fees, communication charges and credit and debit card fees, if any.

Commissions shall not be payable on any sales from vending machines not filled or serviced by Beverage Provider. Vend prices and packages shall be in effect for the current Agreement Year. Commissions will be paid in arrears, on or about the 20th of each month with an accounting of all sales and monies.

4. Grant of Beverage Availability and Beverage Merchandising Rights. Oswego East High School hereby grants to Beverage Provider the following exclusive Beverage availability and merchandising rights.

(a) Beverage Availability on Campus. Beverage Provider shall have the exclusive right to make Beverages available for sale and distribution on Campus. Oswego East High School agrees that Products shall be the exclusive Beverages sold, dispensed, served or sampled at all locations and at all functions on the Campus. Oswego East High School agrees that the School and all other persons serving Beverages on Campus, including without limitation Concessionaires, food service vendors, teams, and booster clubs, shall purchase all (100%) of their requirements for Products, Approved Cups and carbon dioxide from Beverage Provider. In particular, Oswego East High School shall cause the School administration to do the following:

- (i) Offer a selection of Beverage Provider's Products to comply with the following standard Beverage guidelines (the "Guidelines") at the Schools indicated below:

### **High Schools**

- Bottled water
- No or low calorie Beverages with up to 10 calories per 8-ounce serving
- Up to 12 ounce servings of milk, 100% juice, light juice and sports drinks
  - Low fat and nonfat regular and flavored milk with up to 150 calories per 8-ounce serving
  - 100% juice with no added sweeteners and up to 120 calories per 8-ounce serving
  - Light juices and sports drinks with no more than 66 calories per 8-ounce serving
- At least 50% of Beverages on Campus must be water and no or low calorie options

Products offered at the School in compliance with the Guidelines shown above shall be available during the regular and extended school day and at all locations in the School, except where not permitted by federal or state regulations. The extended school day includes, but is not limited to, activities such as clubs, athletic practices, yearbook, band and choir practice, student government, drama, and childcare/latchkey programs. Oswego East High School represents and warrants that current federal and state regulations permit the sale of Beverages in Schools at least in accordance with the above Guidelines;

(ii) Obtain Beverage vending services from Beverage Provider, which shall have the exclusive right to provide Beverage vending on Campus;

(iii) Offer juice Products, juice-containing Products and other Products in cafeteria lines of School, if such Products meet state, and federal nutrition and procurement regulations and the above Guidelines;

(iv) Permit Beverage Provider to place a minimum of Eight (8) Beverage vending machines in mutually agreed upon locations as required to meet Beverage availability needs on Campus;

(v) Permit Beverage Provider to place vending machines in all athletic facilities operated by Oswego East High School, including the Stadium;

(vi) Cause Products to be hawked in stands in Approved Cups and plastic bottles (currently twenty-ounce) at all sporting events and during all events when any items of any make or description are hawked on the Campus.

(b) Beverage Merchandising Rights. Beverage Provider shall have the exclusive right to merchandise Beverages on Campus including the following specific rights:

(i) Trademarks for Products shall be prominently listed on the menu boards of all food refreshment outlets on Campus;

(ii) Oswego East High School shall ensure that all post-mix Beverages served or pre-mix Beverages served, sold or dispensed at concessions and for Team use (including Beverages sold, served or made available in locker rooms, sidelines and players' benches) shall be served in Approved Cups.

5. Signage for Products.

Beverage Provider shall be entitled to signage locations as selected by Beverage Provider at the School and athletic facilities, including but not limited to advertising panels located on the Scoreboard. Such signage shall meet Beverage Provider's reasonable specifications as to design, construction, and general appearance. The location, size and appearance of any sign are subject to Oswego East High School approval, not to be unreasonably withheld. Without the express written consent of Beverage Provider, Beverage Provider's signage on the Campus shall not be altered, obscured in any way or draped at any time or for any reason by any person or entity, including any broadcaster. Oswego East High School shall maintain the Scoreboard, all signs and other promotional materials for Products in good order and repair. All lighted signs and panels promoting Products (including lighted concession advertising) shall be fully illuminated at all events on the Campus for which any signs are illuminated. Beverage Provider shall have the right of access to its permanent signage at all reasonable times for the purpose of replacement or removal of the same or to modify, change or alter the promotional messages appearing thereon at Beverage Provider's cost and discretion, subject to Oswego East High School approval of content, not to be unreasonably withheld.

6. Competitive Products. During the entire Term and any renewal or extension thereof:

(a) No Competitive Products may be sold, dispensed or served anywhere on the Campus.

(b) No permanent or temporary advertising, signage or trademark visibility for Competitive Products will be displayed or permitted anywhere on the Campus, including locker rooms, sidelines and players benches.

(c) No agreement or relationship will be entered into or maintained by Oswego East High School pursuant to which Competitive Products are associated in any manner with the Campus, School, Stadium, Teams and/or events at the Stadium in any advertising, promotional activity or other endeavor which creates or tends to create the impression of a relationship or connection between Competitive Products and Campus, School, Stadium, Teams and/or events at the Stadium.

7. Pricing. During Agreement Year one, Beverage Provider agrees to offer Oswego East High School pricing as set forth in **Exhibit A**. During the remainder of the Term, Beverage Provider shall be entitled to increase prices for Products once per Agreement Year by Five Percent (5%).

8. Concessionaires. If, during the Term, Oswego East High School elects to contract with a Concessionaire, Oswego East High School will cause Concessionaire to purchase from Beverage Provider all requirements for Products, Approved Cups, lids and carbon dioxide, as applicable. Such purchases will be made at prices and on terms set forth in Beverage Provider's existing agreement with such Concessionaire, if any. If no agreement exists between Concessionaire and Beverage Provider, such purchases will be made at prices and on terms set forth in this Agreement. Oswego East High School acknowledges that there will be no duplication of allowances, funding or benefits (including pricing) to Oswego East High School or a Concessionaire if such Concessionaire has an existing agreement with Beverage Provider. If such Concessionaire requires Beverage Provider to pay Concessionaire funding or to provide Products pursuant to prices under the separate agreement with Concessionaire, then Oswego East High School agrees that Beverage Provider may deduct such duplicate funding and lost margin on such lower cost Products paid or sold to Concessionaire from any payment made by Beverage Provider to Oswego East High School.

9. Equipment and Service

(a) During the Term, Beverage Provider will loan to Oswego East High School pursuant to the terms of Bottler's Equipment Placement Agreement, at no cost all Beverage dispensing equipment ("**Equipment**") which is reasonably required in Beverage Provider's discretion to dispense Products at the Campus. Oswego East High School represents and warrants that electrical service on the Campus is proper and adequate for the installation of Equipment, and Oswego East High School agrees to indemnify and hold harmless Beverage Provider from any damages arising out of defective electrical services.

(b) Oswego East High School agrees (i) it will execute documents evidencing Beverage Provider's ownership of the Equipment, (ii) upon request of Beverage Provider, Oswego East High School will execute Beverage Provider's Equipment Placement Agreement ("BPEPA"), however, if any of the terms of the BPEPA are in conflict with the terms of this Agreement, this Agreement will control, (iii) the Equipment may not be removed from the Campus without Beverage Provider's written consent, (iv) Oswego East High School will not encumber the Equipment in any manner or permit any attachment thereto except as authorized by Beverage Provider for the Equipment, and (v) Oswego East High School will be responsible to Beverage Provider for any loss or damage to the Equipment, reasonable wear and tear excepted.

(c) Beverage Provider will provide Oswego East High School with reasonable, free service to its Equipment. All equipment service will be provided during normal business hours. Beverage Provider shall not be obligated to provide service hereunder during periods in which it is prevented from doing so due to strikes, civil disturbances, unavailability of parts or other causes beyond the control of Beverage Provider. Beverage Provider shall not be liable for damages of any kind arising out of delays in rendering service.

10. 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 Beverage Provider:

Great Lakes Coca-Cola Distribution L.L.C.  
6250 N. River Road Suite 9000  
Rosemont, Illinois 60018  
Attention: Danny O'Shea

with a copy to:

Great Lakes Coca-Cola Distribution L.L.C.  
6250 N. River Road Suite 9000  
Rosemont, Illinois 60018  
Attention: General Counsel

If to Oswego East High School:

Oswego East High School  
1525 Harvey Rd  
Oswego, IL 60543  
Attention: Jeff Ryder

## TERMS AND CONDITIONS

### Representations, Warranties and Covenants

(a) Representations, Warranties and Covenants of Oswego East High School. Oswego East High School represents, warrants and covenants to Beverage Provider as follows:

(i) Oswego East High School Authority. Oswego East High School has full power and authority to enter into this Agreement and to grant and convey to Beverage Provider the rights set forth herein.

(ii) Oswego East High School Binding Obligation. All necessary approvals for the execution, delivery and performance of this Agreement by Oswego East High School have been obtained, and this Agreement has been duly executed and delivered by Oswego East High School and constitutes the legal and binding obligation of Oswego East High School enforceable in accordance with its terms.

(iii) No Conflict With Other Agreements. Oswego East High School has not entered into, and during the Term of this Agreement, will not enter into (a) any other agreements (including agreements with any broadcaster or any other Beverage providers of the Campus, School, Stadium and/or the Teams) which would prevent it from fully complying with the provisions of this Agreement or (b) any agreement granting Beverage availability and merchandising rights that are inconsistent with the rights granted to Beverage Provider pursuant to this Agreement, including any agreements with Concessionaires or third party food service operators, vending companies, boosters, parents and student groups, and/or other entities which sell, distribute or advertise Beverages and/or food (including agreements with broadcasters or other Beverage Providers of the Campus, School, Stadium and/or the Teams). Oswego East High School further covenants that it will require compliance with the relevant provisions of this Agreement by third party food service operators, vending companies, Concessionaires, boosters, parent and student groups, and/or other entities which sell, distribute or advertise Beverages and/or food on the Campus, or which sponsor events on the Campus.

(iv) The Agreement and the undertakings of the Beverage Provider set forth therein are exempt from any laws relating to the payment of a prevailing wage, i.e., 820 ILCS 130/0.01, et seq., and the Beverage Provider is not therefore required to comply with any such laws.

(v) Oswego East High School has complied in all respects with Article 33E of the Illinois Criminal Code, 720 ILCS 5/33E-1, et seq. and certifies that neither Oswego East High School nor the Beverage Provider has engaged in conduct which could be construed to constitute a violation of the foregoing Article 33E.

(b) Representations and Warranties and Covenants of Beverage Provider. Beverage Provider hereby represents, warrants and covenants as follows:

(i) Authority. Beverage Provider has full power and authority to enter into and perform this Agreement.

(ii) Binding Agreement. All necessary approvals for the execution, delivery and performance of this Agreement by Beverage Provider, have been obtained, and this Agreement has been duly executed and delivered by Beverage Provider, and constitutes the legal and binding obligation of Beverage Provider, enforceable in accordance with its terms.

(iii) No Conflict With Other Agreements. Beverage Provider has not entered into and during the Term of this Agreement, will not enter into, any other agreements which would prevent it from fully complying with the provisions of this Agreement.

(c) General. Each of the parties hereto agree that the representations, warranties and covenants contained herein shall survive the execution and delivery, and if appropriate the termination, of this Agreement.

Assignment. This Agreement or any part hereof shall not be assigned or otherwise transferred by either party without the prior written consent of the other party. Notwithstanding the foregoing, Beverage Provider shall be entitled to assign its rights and obligations under this Agreement pursuant to the sale of substantially all of its assets.

Claims. In no event will Beverage Provider accept any audits of, or claims of discrepancies or errors in, pricing, rebates, commissions, funding, discounts, or other consideration provided under this Agreement ("Claims") more than one (1) year from the date of invoice or the date of funding or consideration, as applicable. In order to present Claims within forty-five (45) days of the date of invoice, commission report, check or other applicable documentation, Oswego East High School shall provide Beverage Provider a detailed, written request specifying the particular price, commission, funding, product, amount in dispute and reason for dispute, along with a true copy of the original invoice, commission report, check or other applicable documentation. In order to present Claims later than forty-five (45) days from the date of invoice (but not more than one (1) year from the date of invoice), Oswego



East High School shall provide to the Beverage Provider a request as specified above, and, in addition, submit true copies of any check remittances, and any other relevant documentation showing proof of Claim. Beverage Provider will review each Claim in good faith and provide responses to each properly-made Claim. Beverage Provider will work directly with the Oswego East High School to resolve any Claims or audit issues, but will not interact with third-party auditors or contractors. Any audits requested by Oswego East High School shall take place during normal business hours and shall be conducted at Beverage Provider's place of business.

**Modifications.** 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 executed by each of the parties hereto. This Agreement may be amended only in writing signed by each of the parties hereto.

**Relationship of Parties.** The parties are acting herein as independent contractors and independent employers. Nothing herein contained 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.

**Retention of Rights.** Oswego East High School shall not obtain, by this Agreement, any right, title or interest in the trademarks of The Coca-Cola Company, nor shall this Agreement give Oswego East High School the right to use, refer to, or incorporate in marketing or other materials the name, logos, trademarks or copyrights of The Coca-Cola Company.

**Governing Law; Venue.** This Agreement shall be governed by and construed in accordance with the laws of the State of Illinois without reference to its conflict of law rules. Any litigation arising from or related to this Agreement shall be brought exclusively in Federal or State Court in Chicago, Illinois and the parties agree to submit to the jurisdiction of such courts. The prevailing party in any litigation shall be entitled to an award of its reasonable attorney's fees and costs and expenses.

**Applicable Law.** Each of the parties hereto agrees that it will, in its performance of its obligations hereunder, fully comply with all applicable laws, regulations and ordinances of all relevant authorities and shall obtain all licenses, registrations or other approvals required in order to fully perform its obligations hereunder.

**Confidentiality** During the Term, and for a three (3) year period thereafter, the parties shall keep the terms of this Agreement confidential.

**Jury Waiver.** EACH PARTY, TO THE EXTENT PERMITTED BY LAW, KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVES ITS RIGHT TO A TRIAL BY JURY IN ANY ACTION OR OTHER LEGAL PROCEEDING ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT AND THE TRANSACTIONS IT CONTEMPLATES. THIS WAIVER APPLIES TO ANY ACTION OR LEGAL PROCEEDING, WHETHER ARISING IN CONTRACT, TORT OR OTHERWISE.

**Captions.** The captions used in this Agreement are for convenience only and shall not affect in any way the meaning or interpretation of the provisions set forth herein.

**Entire Agreement.** This Agreement shall constitute the complete and exclusive written expression of the intentions of the parties hereto and shall supersede all previous communications, representations, Agreements, promises or statements, either oral or written, by and between either party.

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

**Beverage Provider:**

**Oswego East High School:**

By: \_\_\_\_\_

By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

## SCHOOL DISTRICT AGREEMENT

This Agreement ("*Agreement*") is made effective as of July 1, 2017 between **Bottling Group, LLC** and its affiliates and/or respective subsidiaries collectively comprising Pepsi Beverages Company, with an office located at 1475 E Woodfield Rd., Schaumburg, IL 60173 ("*Pepsi*") and **Community Unit School District No. 308**, having its principal place of business at 4250 IL-71, Oswego, IL 60543 ("*Customer*").

### RECITALS

**WHEREAS**, Pepsi desires the right to be the exclusive supplier of Beverages (defined below) to the Customer.

**WHEREAS**, Pepsi has submitted a bid in response to an invitation to bid issued by the Customer for the exclusive right to develop and carry out a program for the sale of its Products (defined below) in the Facilities (as hereinafter defined).

**WHEREAS**, Pepsi is experienced in installing, operating, servicing and maintaining equipment for dispensing Beverage products and the Customer determined that it is in the best interests of the Customer to contract with Pepsi to provide services for the sale of Beverage products.

**WHEREAS**, the parties desire to confirm the terms and conditions under which the Customer will contract with Pepsi to install, operate, service and maintain all equipment dispensing Beverage products.

**NOW, THEREFORE**, in consideration of the mutual promises herein contained, the parties hereto agree as follows:

#### 1. Definitions.

"*Beverage*" or "*Beverages*" means all carbonated and non-carbonated, non-alcoholic drinks, however dispensed, including but not limited to, (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) packaged carbonated or still water (including spring, mineral or purified), (viii) liquid concentrate teas ("*LCT*"), (ix) frozen carbonated and non-carbonated beverages ("*FB*"), and (x) any future categories of nonalcoholic beverage products that may be distributed by Pepsi.

"*Cases*" shall mean the number of cases of Packaged Products purchased by the Customer from Pepsi, initially delivered in quantities of 24, 15, and 12 bottle/can units, and thereafter in such other size, quantity and type of containers as determined by Pepsi, from time to time.

"*Competitive Products*" means any and all Beverages that are not Products (as defined herein), excluding hot coffee, hot tea and non shelf-stable, non-flavored fluid milk as currently defined by the USDA (i.e., milk beverages containing at least 6.5% non-fat milk solids).

**“Equipment”** means the following types of equipment owned and operated by Pepsi and used to sell or dispense the Products: (1) full service vending machines (**“Vending Machines”**); (2) retail single-serve food service equipment and (3) fountain service equipment.

**“Facilities”** means the Vending Machines located on the premises of Oswego High School as well as all locations on the premises of Oswego High School when being used by that school’s All Sports Boosters organization to sell beverages.

**“Gallons”** shall mean the number of gallons of Postmix Products purchased by the Customer from Pepsi.

**“Packaged Products”** shall mean Beverages that are sold and/or distributed by Pepsi in pre-packaged form (e.g., Bottles & Cans). A current list of Pepsi’s Packaged Products is found in attached Exhibit B which may be amended from time to time by Pepsi to include Beverages permitted pursuant to the then-current School Policy.

**“Postmix Products”** shall mean beverage products sold and/or distributed by Pepsi and used to create and dispense fountain Beverages. A current list of Pepsi’s Postmix Products is found in attached Exhibit B which may be amended by Pepsi from time to time by Pepsi to include Beverages permitted pursuant to the then-current School Policy.

**“Products”** shall mean Postmix Products and Packaged Products manufactured, bottled, sold and/or distributed, now or in the future, by Pepsi. A current list of Products is attached hereto as **Exhibit B**, which may be amended from time to time by Pepsi to include Beverages permitted pursuant to the then-current School Policy (defined below).

**“Special Events”** means any athletic contests, booster club activities, and all other special events conducted at the Facilities where parents and other adults are a significant part of an audience.

**“Units”** means Gallons and Cases (including Cases sold through Vending Machines). For the purposes of determining Units sold, 1 Case shall equal 1 Gallon.

**“Year”** means each 12-month period during the Term commencing on the first day of the Term or an anniversary thereof.

## **2. Term.**

The term of this Agreement shall be for five (5) years, commencing on July 1, 2017 and expiring on June 30, 2022 (**“Term”**), unless sooner terminated as provided herein.

## **3. Exclusive Beverage Availability Rights.**

The Customer hereby grants to Pepsi the following exclusive Beverage availability rights:

(A) Pepsi shall have the exclusive right to make the Beverages available for sale and distribution at the Facilities, including the right to provide all Beverages sold at Special Events. Subject to the terms and conditions set forth in this Agreement, the Customer agrees that Products shall be the exclusive Beverages sold, dispensed or served or available at the Facilities. The hours

during which the Products will be available for sale, both through Vending Machines are attached hereto as **Exhibit C**.

(B) Pepsi shall have the exclusive right to install Equipment throughout the Facilities. Pepsi shall have the further right to install additional Equipment in buildings and facilities acquired and/or constructed by the Customer after the date of this Agreement. Pepsi shall install Equipment at its sole expense, except where otherwise prescribed by law. Pepsi shall have the right to place full trademark panels on all sides of its Equipment. Pepsi, or one of its affiliates, shall retain title to all Equipment. The Customer shall not permit the operation of any other equipment used for the sale of Beverages at the Facilities without the prior written consent of Pepsi.

(C) The Customer shall purchase, and shall require that all concessionaires, Food Service Operators, booster clubs or other third parties selling Beverages at the Facilities purchase all Products, cups, lids and carbon dioxide directly from Pepsi.

(D) The Customer agrees to comply with Pepsi's School Policy, attached hereto as Exhibit D ("**School Policy**") as may be updated from time to time during the Term. A copy of the Policy in effect as of the beginning of the Term is attached hereto as **Exhibit D**. The Customer agrees that it shall at all times during the Term comply with the School Policy, including applicable Beverage type, size and timing requirements/restrictions. The Customer's failure to comply with the School Policy shall be a material breach of this Agreement.

(E) The Customer shall permit Pepsi, its employees, agents and representatives, during normal school hours, to enter the Facilities for purposes of servicing and stocking the Equipment, and verifying the Customer's compliance with the School Policy.

#### **4. Pricing.**

(A) Products sold through Vending Machines. The price for Products sold from Pepsi's Vending Machines shall be determined by Pepsi from time to time during the Term.

(B) Products purchased by the Customer. Pricing for Products purchased by the Customer or any other party from Pepsi for sale at the Facilities are listed on **Exhibit B**. The Customer recognizes that such pricing is available for the first Year of this Agreement, thereafter, the pricing may increase at Pepsi's sole discretion and Pepsi shall provide the Customer with notice of any increases.

(C) The Customer acknowledges that the Annual Sponsorship Fee (as herein defined) was calculated based on the Customer and its purchasing representatives purchasing Products directly from Pepsi at the pricing structure established by this Agreement during the entire Term.

#### **5. Consideration.**

In consideration of the exclusive rights granted in this Agreement and provided the Customer is not in breach of this Agreement, Pepsi shall provide to the Customer the following:

(A) **An Annual Sponsorship Fee**, payable annually pursuant to the following:

Year	Applicable Time Period	Amount *	Due Date: within 60 days after:
1	July 1, 2017 – June 30, 2018	\$1200	The execution of this Agreement by both parties
2	July 1, 2018 – June 30, 2019	\$1200	July 1, 2018
3	July 1, 2019 – June 30, 2020	\$1200	July 1, 2019
4	July 1, 2020 – June 30, 2021	\$1200	July 1, 2020
5	July 1, 2021 – June 30, 2022	\$1200	July 1, 2021

\*The Annual Sponsorship Fee is earned throughout the Year in which they are paid. In the event Pepsi terminates this Agreement due to the Customer's failure to cure a breach hereof, the unearned Annual Sponsorship Fees will be repaid to Pepsi pursuant to the terms of Section 8(B)(2)(b) herein.

(B) **Commissions**, as a percentage of the actual cash ("*cash in bag*" or "*CIB*") collected by Pepsi from the Vending Machines placed at the Facilities, less any applicable government imposed taxes/fees and deposits, as applicable ("*Commissions*"). Such Commissions shall be at the rate(s) set forth below (the "*Commission Rate*") and shall be calculated as follows:

$$(\text{CIB} - \text{applicable taxes/fees/deposits}) * \text{Commission Rate} = \text{Commission due}$$

Product	Minimum Vend Price*	Commission Rate**
20oz Diet CSD	1.25	35%
20oz Gatorade	1.50	35%
20oz Aquafina	1.25	35%

\*The Vend Prices stated herein will each increase by \$0.25 at the commencement of Year 2  
 \*\*Commission Rate stated above shall only apply to Products sold by Pepsi through its Vending Machines at the beginning of the Term. If Pepsi proposes any new Products to the Customer during the Term, then Pepsi shall have the right to apply a different Commission Rate and/or Minimum Vend Price for such new Product.

(1) **Commissions Payment.** Commissions shall be remitted by Pepsi to the Customer within thirty (30) days of the end of each 4-week accounting period established by Pepsi. Pepsi shall make all pertinent revenue and sales records respecting the Vending Machines available to Customer. Customer agrees that it is responsible for reviewing such records and that any claim or dispute relating to the Commissions must be brought by Customer in writing within one (1) year of the date such Commissions payment is due. Customer further acknowledges and agrees that it shall not receive any Commissions payment from Pepsi if Commissions fail to reach a certain threshold amount per period or quarter. The applicable threshold amounts vary based on the payment period and will be established and communicated pursuant to Pepsi's policies and procedures related to its full service vending business, as may be revised by Pepsi from time to time.

(2) **Change to Commission Rate.** Customer acknowledges and agrees that Pepsi established the Commission Rate based on any applicable tax associated with the sale of the Products through the Vending Machines as of the commencement date of this Agreement. If, during the Term, applicable sales taxes should increase by more than five



percent (5%), then Pepsi shall have the right to automatically reduce the Commission Rate by the same percentage amount.

(3) **Change to Commission Formula.** In addition to the above, Customer agrees that Pepsi shall have the right to change its formula/method for calculating Commissions at any time in its reasonable discretion provided that any such formula adjustments shall not result in a material change to the Commissions due with respect to the same sales of Products.

(4) **Vend Price.** The minimum vend price necessary for Customer to qualify for any Commissions is set forth above. Pepsi shall have the absolute right, at its sole discretion, to change such vend prices as it deems appropriate in light of cost of goods increases or to otherwise stay reasonably consistent with applicable vending prices for similar accounts operating in the relative geography.

6. **Competitive Products.** During the entire Term of this Agreement:

(A) No Competitive Products shall be sampled, sold, served or dispensed anywhere at the Facilities;

(B) No permanent or temporary advertising, signage or trademark visibility for Competitive Products shall be displayed anywhere at the Facilities.

(C) No agreement will be entered into or maintained by the Customer pursuant to which Competitive Products will be associated with the Customer or the Facilities in any advertising or promotional activity that creates a relationship or connection between Competitive Products and the Customer or the Facilities.

7. **Equipment and Service.**

(A) Pepsi shall place Equipment based upon Pepsi's survey of the Customer's needs, and shall have the right to replace all current beverage vending, retail and dispensing equipment located at the Facilities that is not identified as equipment of Pepsi with Equipment owned by Pepsi. Pepsi shall be allowed to place and maintain a minimum of seven (7) Vending Machines at the Facilities during the Term. Notwithstanding the foregoing, Pepsi reserves the absolute right to remove any glass front Vending Machines that sells less than eight (8) cases of Product per week or any other Vending Machines that sells less than two (2) cases of Product per week.

(B) Pepsi or one of its subsidiaries or affiliates shall retain ownership in and title to all Equipment.

(C) The Equipment may not be removed from the Facilities without Pepsi's written consent, and the Customer agrees not to encumber the Equipment in any manner or permit other equipment to be attached thereto except as authorized by Pepsi in writing. At the end of the Term, Pepsi shall have the right to, and shall upon request of the Customer, remove all Equipment from the Facilities at no expense to the Customer.

(D) Pepsi will provide, at no charge to the Customer, preventative maintenance

and service to the Equipment. Pepsi's service of the Equipment will be provided during normal school hours, and Pepsi will not be obligated to provide service during periods in which it is prevented from doing so due to strikes, civil disturbances, unavailability of parts or other causes beyond the control of Pepsi, and shall not be liable for damages of any nature arising out of delays in rendering service.

(E) Pepsi shall be responsible for collecting, for its own account, all cash monies from the Vending Machines and for all related accounting for all cash monies collected therefrom. Customer agrees to provide reasonable assistance to Pepsi in apprehending and prosecuting vandals. Pepsi shall not be obligated to pay Commissions on documented revenue losses resulting from vandalism or theft of Product with respect to any Vending Machines.

#### **8. Breach of Contract and Termination.**

The Customer may terminate this Agreement for any breach of this Agreement's material terms by Pepsi, provided that the Customer shall first provide Pepsi with written notice of the breach and a thirty (30) day opportunity for Pepsi to cure such breach. If Pepsi fails to cure the breach within the thirty (30) day period, the Customer may terminate the Agreement upon written notice to Pepsi; or, subject to the remedies set forth in Section 8(B)(2)(b) below, if there is a change in any applicable federal or State law or regulation prohibiting the sale of sugary or carbonated drinks on school premises.

(B) If any of the material terms of this Agreement, including but not limited to the exclusive rights to sell any one or more of the Products, are terminated, violated, prohibited or limited during the Term of this Agreement for any reason, other than by Pepsi, including but not limited to: (1) if Pepsi is restricted from vending or the Customer is restricted from selling any of the Products on **Exhibit B**, or (2) if Pepsi is restricted from vending or Customer is restricted from selling one or more of the Products during the permitted hours set forth in **Exhibit C** ("**Affected Rights**"), then Pepsi may give the Customer written notice of such event and the Customer shall have a thirty (30) day period within which to cure such breach. If the Customer fails to cure such breach within a thirty (30) day period, Pepsi shall have the right to:

(1) (a) reduce Pepsi's ongoing fees including support and Commissions payable hereunder to an amount equal to the then-current ongoing fees and Commissions Pepsi would pay for the right to market, sell or distribute the remaining Products as a result of such Affected Rights; and

(b) recover, if applicable, an amount pursuant to Subsection (2)(b) below relative to the Products subject to such Affected Rights, as determined by Pepsi.

or

(2) (a) terminate this Agreement in its entirety; and

(b) then, if applicable, Pepsi shall, without prejudice to any other right or remedy available to Pepsi, obtain a reimbursement from the Customer of any unearned funding paid by Pepsi to the Customer which remains unearned as of the time of termination. With respect to the Annual Sponsorship Fee, the amount of such reimbursement shall be determined by multiplying the Annual Sponsorship Fee paid in

the Year during which such termination occurs by a fraction, the numerator of which is the number of months remaining in such Year at the time of such termination or limitation and the denominator of which is twelve.

**9. Taxes.**

Customer acknowledges and agrees that neither Pepsi nor its affiliates shall be responsible for any taxes payable, fees or other tax liability incurred by the Customer in connection with any fees payable by Pepsi under this Agreement. In addition, Pepsi shall be responsible only for the payment of taxes on the sales of Products through Vending Machines. Pepsi shall not be assessed common area maintenance fees, taxes or other charges based on its occupation of the space allocated to its Equipment.

**10. Representations and Warranties**

(A) Each party represents and warrants to the other: (1) it has full power and authority to enter into this Agreement and to grant and convey to the other the rights set forth herein; and (2) all necessary approvals for the execution, delivery and performance of this Agreement have been obtained and this Agreement has been duly executed and delivered by the parties and constitutes the legal, valid and binding obligation, enforceable in accordance with its terms, and nothing contained in this Agreement violates, interferes with or infringes upon the rights of any third party; (3) the respective signatory of this Agreement is duly authorized and empowered to bind the party to the terms and conditions of this Agreement for the duration of the Term; and (4) the parties have complied with all applicable laws, ordinances, codes, rules and regulations relating to its entering into this Agreement and its performance hereunder.

(B) Each of the parties hereto agree that: (1) the representations, warranties and covenants contained herein shall survive the execution and delivery of this Agreement, and (2) except as expressly set forth herein, neither party has made, and neither party is relying on, any representation or warranty, express or implied, with respect to the subject matter hereof.

**11. Indemnification.**

(A) Pepsi will indemnify and hold the Customer 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 Products purchased through this Agreement; and/or (iii) the negligence or willful misconduct of Pepsi or any of its employees, agents and representatives, (excluding claims arising out of the Customer's negligence or willful misconduct).

(B) To the extent permitted by applicable law, the Customer will indemnify and hold Pepsi, 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, including failure to comply with the School Policy; and/or (ii) the negligence or willful misconduct of the Customer (excluding claims arising out of Pepsi's negligence or willful misconduct).



(C) The provisions of this Section shall survive the termination of this Agreement.

**12. Injunctive Relief.**

It is understood that the rights granted to Pepsi in this Agreement are special, unique and extraordinary, and are of peculiar value, the loss of which cannot be fully compensated by damages in an action at law or any application of any of the other remedies described herein. Accordingly, in the event the Products are not made available as provided in this Agreement or if any of the provisions concerning Competitive Products are not complied with, the Customer acknowledges and agrees that Pepsi shall be entitled to seek and obtain equitable relief including an injunction requiring the Customer to comply fully with its obligations under this Agreement to the extent permitted by law.

**13. Relationship of Parties.**

(A) The Customer and Pepsi 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. Pepsi and any person employed by or conducting business with the Customer shall not be a partner, employee, agent or joint venturer of the Customer. 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 Customer by Pepsi or any person employed by or conducting business with Pepsi nor shall any goods or equipment be purchased by the Customer in the name of Pepsi. 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 therefor.

**14. Retention of Rights.**

The Customer shall not obtain by virtue of this Agreement, any right, title or interest in the trademarks of Pepsi or PepsiCo, Inc., nor shall this Agreement give the Customer the right to use, refer to, or incorporate in marketing or other materials the name, logos, trademarks or copyrights of Pepsi or PepsiCo, Inc.

**15. Confidentiality.**

(A) Except as otherwise required by law or the rules or regulations of any national securities exchange or the rules or regulations of the Customer, the Customer and Pepsi agree not to disclose Confidential Information (as hereinafter defined) to any third party other than to their respective directors, officers, employees and agents (and directors, officers, employees and agents of their respective Affiliates) and advisors (including legal, financial and accounting advisors) (collectively, "*Representatives*"), as needed.

(B) "*Confidential Information*" shall include all non-public, confidential or proprietary information that the Customer or its Representatives make available to Pepsi or its Representatives or that Pepsi or its Representatives make available to Customer or its Representatives

in connection with this Agreement. "**Confidential Information**" shall include, but not be limited to, the terms and conditions of this Agreement. It is expressly understood that the disclosure in or pursuant to this Agreement by the Customer, Pepsi or their respective Representatives of Confidential Information is not a public disclosure thereof, nor is a sale or offer for sale of any product, equipment, process or service of the Customer or Pepsi.

(C) The provisions of this Section and the obligations of the parties hereunder will survive the expiration or sooner termination of this Agreement for a period of three (3) years following such date of expiration or termination of this Agreement.

**16. Governing Law.**

This Agreement shall be governed by and construed in accordance with the laws of the State of Illinois without regard to conflicts of laws principles.

**17. Insurance.**

(A) Each party hereto maintains and agrees to maintain, at all times during the Term and for a period of three (3) years thereafter, a comprehensive program of risk retention and insurance with such insurance carriers and in such amounts of insurance coverage reasonably acceptable to the other party. Each party agrees to name the other, and each of its Affiliates, and their respective officers, directors, employees, agents, representatives and successors and assigns, as additional insureds on such insurance during the Term. Such insurance will contain a waiver of subrogation with respect to the additional insureds.

(B) Either party shall have the right, during the Term from time to time, to request copies of certificates of insurance and/or other evidence of the adequacy of the above insurance coverages.

**18. 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.

**19. Assignment; Binding Nature; Multiple Originals.**

To the extent permitted by law, this Agreement shall be binding upon and inure to the benefit of Pepsi and the Customer and its respective successors and permitted assigns. The Customer may not subcontract or assign its rights or obligations under this Agreement to any other entity or

person without the express written consent of Pepsi, which consent may be withheld at its sole discretion. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument.

**20. Savings 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.

**21. Waiver.**

No waiver of any breach of any provision of this Agreement shall operate as a waiver of such provision of this Agreement or as a waiver or subsequent or other breaches of the same or any other provisions of this Agreement, nor shall any action or non-action by either party be construed as a waiver of any provisions of this Agreement or of any breach thereof unless the same has been expressly declared or recognized as a waiver by such party in writing.

**22. Right of Offset.**

Pepsi reserves the right to withhold payments due hereunder as an offset against amounts not paid by Customer for Products ordered from and delivered by Pepsi pursuant to this Agreement.

**23. 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 Pepsi:                      Pepsi Beverages Company  
    1475 E Woodfield Rd. \_\_\_\_\_  
    Schaumburg, IL 60173 \_\_\_\_\_  
    Attn: Director, Food Service

With a copy to:                Pepsi Beverages Company  
    1111 Westchester Avenue  
    White Plains, NY 10604  
    Attn: General Counsel

If to the Customer:        Community Unit School District No. 308  
    4175 IL-71 \_\_\_\_\_  
    Oswego, IL 60543 \_\_\_\_\_  
    Attn: Assistant Superintendent for Business Services & Operations

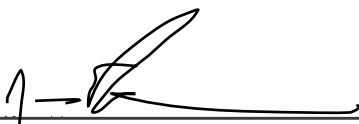
**24. Sex Offender Status.**

To the extent required by law, Pepsi shall not send to any school building or school

property any employee or agent who would be prohibited from being employed by District 308 due to a conviction of a crime listed in 105 ILCS 5/21B-80, or who is listed in the Illinois Sex Offender Registry or the Illinois Murderer and Violent Offender Against Youth Registry.

IN WITNESS WHEREOF, the undersigned have caused this Agreement to be duly executed on the dates set forth below.

Bottling Group, LLC

By:  \_\_\_\_\_

Print Name: Jason Schramm

Title: KAM

Date: 9/7/17

Community Unit School District No. 308

By:  \_\_\_\_\_

Print Name: Asif Dada

Title: Assist. Sup for Bus. Serv. + Oper.

Date: 9/5/17

**EXHIBIT A**

**Oswego High School**  
4250 IL-71  
Oswego, IL 60543

**Exhibit B**

**Products & Pricing**

Customer acknowledges and agrees (and shall require that any third parties or Food Service Providers purchasing Products through this Agreement agree) that Pepsi shall be entitled to pass-through any incremental fees, deposits, taxes or other governmentally imposed charges (whether local, state, federal or judicially imposed) and that the pass-through of any such governmentally imposed fees, deposits, taxes or charges on the Products shall not be deemed as a price increase subject to any pricing cap or notification restrictions that may be specified in this Agreement.

**Exhibit C**

**Vending and Food Service Hours**

All hours permitted under applicable laws, unless otherwise stated below.

**Exhibit D****PepsiCo U.S. School Policy for Beverages**  
*(Updated as of September 2014)***SUMMARY**

PepsiCo follows all federal, state and local regulations governing beverage sales in schools and the company's Global School Beverage Policy (available on [pepsico.com](http://pepsico.com)). In addition, PepsiCo will not offer caffeinated beverages that are marketed as energy drinks for sale to students in elementary, middle or high schools, even if they meet the nutrition thresholds in these standards.

**PERMITTED PRODUCTS**

Consistent with federal regulations issued by the U.S. Department of Agriculture (USDA) and PepsiCo's Global School Beverage Policy, PepsiCo will offer schools only those beverage products that meet the following standards, if such products are to be sold to students. In addition, PepsiCo will not offer caffeinated beverages that are marketed as energy drinks for sale to students in elementary, middle or high schools, even if they meet these standards, and will follow state and local regulations if stricter than these standards.

**Elementary School**

- Plain water or plain carbonated<sup>1</sup> water (no size limit)
- 100% fruit/vegetable juice (up to 8-ounce)
- 100% fruit/vegetable juice diluted with water - with or without carbonation<sup>1</sup> - and no added sweeteners (up to 8-ounce)
- Low-fat milk, unflavored (up to 8-ounce)
- Non-fat milk, flavored or unflavored, including nutritionally equivalent milk alternatives (up to 8-ounce)

**Middle School**

- Same as elementary school except that juice and milk meeting elementary school criteria may be up to 12-ounce
- If a middle school and high school are in the same building and students of all ages have access to the areas where beverages are sold, beverages must meet the middle school standards. If, in the above situation, the middle school students do not have access to the area where beverages are sold to high school students, high school beverage standards may be implemented for that area.

**High School**

Same as middle school except that the following beverages are also permitted:

- Zero-calorie beverages with or without flavors and with or without carbonation up to 20-ounce. (As defined by U.S. Food and Drug Administration (FDA), "zero-calorie" beverages are labeled to contain less than 5 calories per 8-ounce, or no more than 10 calories per 20-ounce)
- Low-calorie beverages with or without flavors and with or without carbonation up to 12-ounce. (As defined by FDA, "low calorie" beverages are labeled to contain no more than 40 calories per 8-ounce, or no more than 60 calories per 12-ounce)
- Sports drinks with more than 40 calories per 8-ounce: only before, during and after physical activity/exposure to heat (such as at sport practices, training sessions and competitions), when such



sales take place either (1) during the “extended day” (as defined in this policy below) in those schools not subject to USDA regulations, or (2) outside of the “school day” (as defined by USDA<sup>1</sup>) in those schools subject to USDA regulations

#### **APPLICATION OF POLICY**

**Schools:** This school beverage policy applies to all elementary, middle and high schools in the United States, whether public or private and whether or not such schools participate in the reimbursable school breakfast or lunch plan run by the Federal government.

**Time of Day:** This policy applies to beverages sold to students on school grounds during the school day as well as the extended school day. The “extended school day” is the time before and after school when students are involved in events (e.g., clubs, yearbook, band and choir practice, student government, drama and childcare programs) that are primarily under the control of the school or third parties on behalf of the school.

As noted above, the inclusion of the extended day in this school beverage policy does not prohibit sales of sports drinks with more than 40 calories per 8-ounce during the extended school day to student athletes at practices, training sessions and competitions or to other students engaged in physical activity/exposed to heat, except in those schools subject to the USDA regulations where sports drinks may be sold to these students only during the period from 30 minutes after the school day until midnight prior to the next school day.

**Special Circumstances:** This policy does not apply to the sale of beverages: (1) in staff areas of schools that are not accessible to students; (2) at, or immediately before or after, school-related events where parents and other adults are a significant part of an audience (e.g., sporting events, school plays and band concerts); or (3) for fundraisers held at schools (other than fundraising through vending machines, school stores, snack bars, à la carte sales).

#### **Providing Choice and Information**

PepsiCo will work to provide vending machines in a variety of graphic designs, including designs featuring low-calorie brands; to show calorie counts on vendor selection buttons; and to include a calorie awareness message such as “Calories Count – Check then Chose” (or similar) on vendor fronts.

#### **Promoting Wellness and Education**

PepsiCo will encourage schools to use contract-related sponsorship and marketing funds, if any, to promote student fitness, wellness and health education programs in schools.

#### **Independent Bottlers and Third Party Distributors**

Independent bottlers and third-parties that distribute PepsiCo products to schools should comply with all federal, state and local regulations governing the sale of beverages in schools. In addition, PepsiCo encourages independent bottlers and third-party distributors to follow the product standards and other guidance outlined within PepsiCo’s policy above.

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#### **Notes:**

*1. The USDA regulations which took effect July 1, 2014 do not apply to (1) beverages sold to students in schools that do not participate in the reimbursable school breakfast or lunch plan run by the Federal government; or (2) beverages sold to students outside the “school day” (“school day” is defined by USDA as the period from midnight before, to 30 minutes after the end of the official school day).*

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