

RESOLUTION NO. \_\_\_\_\_

A RESOLUTION APPROVING AN AMENDMENT TO THE AGREEMENT WITH PEPSI BEVERAGE COMPANY; AUTHORIZING THE MAYOR TO EXECUTE THE AMENDMENT AND ALL OTHER DOCUMENTS NECESSARY AND PROPER TO EFFECTUATE THE PURPOSE OF THE AMENDMENT

WHEREAS, on April 2, 2013, the board approved Resolution No.: 2013-152 authorizing the mayor to sign an agreement with Pepsi Beverages Company or Bottling Group, LLC, sometimes referred to as PepsiCo, for pouring rights at the Kingsport Aquatic Center (KAC); and

WHEREAS, the Agreement was signed on July 24, 2013, with an initial term of ten years and required that KAC purchase \$630,000.00 worth of product during that period or buy out the remainder of the contract price if that amount has not been acquired by the end of the initial term; and

WHEREAS, as of May 31, 2023, city has not yet achieved the threshold for goods purchased and therefore PepsiCo has agreed to extend the term of the agreement for an additional three years to enable city to fulfill its purchasing obligations.

Now therefore,

BE IT RESOLVED BY THE BOARD OF MAYOR AND ALDERMEN AS FOLLOWS:

SECTION I. That an amendment to the agreement with Pepsi Beverages Company or Bottling Group, LLC, sometimes referred to as PepsiCo, is approved.

SECTION II. That the mayor, or in his absence, incapacity, or failure to act, the vice-mayor, is authorized to execute, in a form approved by the city attorney, and subject to the requirements of Article X, Section 10 of the Charter of the City of Kingsport, an amendment to the agreement for a change in term with Pepsi Beverages Company or Bottling Group, LLC, sometimes referred to as PepsiCo, to deliver the agreement and take any and all action as may be required on the part of the city to carry out, give effect to, and consummate the transactions contemplated by the agreement and this resolution, said amendment being generally as follows:

**ADDENDUM TO FOODSERVICE BEVERAGE SALES AGREEMENT**

**Effective Date:** \_\_\_\_\_, 2023.

I. **The Parties.** This Addendum hereby becomes part of the Foodservice Beverage Sales Agreement between PepsiCo Beverage Sales, LLC, formally known as Pepsi Beverages Company, on behalf of itself and its affiliates and/or their respective subsidiaries collectively comprising Pepsi Beverages Company, a Delaware limited liability company with its principal officers located at 700 Anderson Hill Road, Purchase, NY 10577 ("Pepsi") and the City of Kingsport, Tennessee, a municipal corporation of the state of Tennessee, with its principal place of business at 415 Broad Street Kingsport, Tennessee 37660 for its Kingsport Aquatic Center (the "Customer") authorized on July 24, 2013, ("Agreement") for the purchase of products from Pepsi.

II. **Amendment(s).** Customer and Pepsi agree that the Agreement shall be amended as follows:

1. **Term**

The term of this Agreement shall continue until the Customer has purchased at least Six Hundred Thirty Thousand Dollars (\$630,000) worth of Packaged Products ("Contract Value") or May 31, 2026, whichever is earlier. In the event Customer's cumulative purchases as of May 31, 2026, have not reached the Contract Value,

then the Parties shall extend the term of this Agreement by written agreement of the Parties.

All other terms and conditions of the Agreement shall remain the same. This Addendum shall go into effect on the date of the undersigned parties.

[Acknowledgements Deleted for Inclusion in this Resolution]

SECTION II. That the mayor is further authorized to make such changes approved by the mayor and the city attorney to the amendment/agreement set out herein that do not substantially alter the material provisions of the agreement, and the execution thereof by the mayor and the city attorney is conclusive evidence of the approval of such changes.

SECTION III. That the board finds that the actions authorized by this resolution are for a public purpose and will promote the health, comfort, and prosperity of the citizens of the city.

SECTION IV. That this resolution shall take effect from and after its adoption, the public welfare requiring it.

ADOPTED this the 20th day of June, 2023.

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PATRICK W. SHULL, MAYOR

ATTEST:

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ANGELA MARSHALL, DEPUTY CITY RECORDER

APPROVED AS TO FORM:

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RODNEY B. ROWLETT, III, CITY ATTORNEY