

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

A RESOLUTION APPROVING THE SECOND AMENDMENT TO THE AGREEMENT WITH PEPSICO BEVERAGE SALES, LLC FOR SALES AT THE KINGSPORT AQUATIC CENTER; 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) for a period of ten years; and

WHEREAS, on June 20, 2026, the board approved Resolution No.: 2023-286 authorizing the mayor to sign an amendment to the agreement with Pepsi Beverages Company or Bottling Group, LLC, sometimes referred to as PepsiCo, for pouring rights at the Kingsport Aquatic Center (KAC) to extend the agreement for three years; and

WHEREAS, staff recommends amending the agreement again to extend it for a period of five years and update the financial terms to continue the marketing support as well as extending the Annual Support Funds to continue for the period of the extended term; and

WHEREAS, the second amendment amends the determination of Annual Support Funds to be based on maintaining the annual volume threshold of 1,300 cases per year.

Now therefore,

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

SECTION I. That the second amendment to the agreement with PepsiCo Beverage Sales, LLC for the Kingsport Aquatic Center, 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, the second amendment to the agreement with PepsiCo Beverage Sales, LLC for the Kingsport Aquatic Center, 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:

**SECOND AMENDMENT**

**THIS SECOND AMENDMENT** (this "**Amendment**") effective as of March 1, 2026 (the "**Effective Date**") by and between **PEPSICO BEVERAGE SALES, LLC**, a Delaware limited liability company, and its affiliates and/or their respective subsidiaries collectively comprising Pepsi Beverages Company, with an office 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 ("**Customer**").

**WHEREAS**, Pepsi and Customer are parties to the Foodservice Beverage Sales Agreement commencing on June 1, 2013 (as amended a first time on June 26, 2023, the "**Agreement**"); and

**WHEREAS**, Pepsi and Customer wish to modify certain terms of the Agreement and memorialize the same in writing.

**NOW, THEREFORE**, in consideration of these premises and the covenants herein contained, it is hereby agreed that, as of the Effective Date, the Agreement is hereby amended as set forth below. As used in this Amendment, capitalized terms defined in the Agreement and not otherwise defined in this Amendment, shall have the respective meanings assigned thereto in the Agreement.

1. Pepsi and Customer agree to extend the Term for an additional five year period, expiring on February 28, 2031.
2. For the purpose of clarity, the Marketing Support of \$2,500 per Year, as defined in Section 7(B) of the Agreement, will continue through the newly extended Term.
3. As of the Effective Date, Section 7(C) of the Agreement is hereby deleted in its entirety, and replaced with the following:

**“(C) Annual Support Funds.** In each of Years fourteen (14) through eighteen (18), Pepsi agrees to provide Customer with annual support funds in the amounts set forth below, not to exceed five (5) consecutive payments (the **“Annual Support Funds”**). The Annual Support Funds will be paid to Customer within sixty (60) days after the end of each applicable Year.

Applicable Agreement Year	For This Date Range	Amount of Annual Support Funds*
#14	March 1, 2026 through February 28, 2027	\$2,000
#15	March 1, 2027 through February 29, 2028	\$2,000
#16	March 1, 2028 through February 28, 2029	\$2,000
#17	March 1, 2029 through February 28, 2030	\$2,000
#18	March 1, 2030 through February 28, 2031	\$2,000
*Based on the Customer reaching at least 95% of the Annual Cases Threshold, as further defined below		

Customer acknowledges and agrees that each Annual Support Fund, payable to Customer herein, will be adjusted based on the number of Cases purchased from Pepsi during the applicable Year, as compared to an annual Case threshold, provided Customer’s volume maintains 95% of existing baseline volume of 1,300 Cases (**“Annual Cases Threshold”**). Therefore, if during any Year the number of Cases purchased from Pepsi falls below 95% of the Annual Cases Threshold, then the Annual Support Funds payable at the end of that Year will be reduced by a percentage equal to the percentage decrease between the Annual Cases Threshold and the actual number of Cases sold during such Year. For example, if the total Annual Support Fund is equal \$1,000 and the Annual Cases Threshold is 500 Cases, and during Year 14 the actual Cases sold is 250 Units, then the total Annual Support Funds payable at the end of Year 14 will be \$500 (reduced by 50%). The Annual Support Funds are deemed earned upon payment.”

4. As of the Effective Date, Section 7(D) of the Agreement is hereby deleted in its entirety, and replaced with the following:

**“(D) Rebates.** Each Year throughout the Term, Pepsi agrees to calculate the total number of eligible Cases and Gallons purchased by each of the applicable Facilities from Pepsi pursuant to this Agreement and will provide Customer with rebates calculated based on applicable rates set forth below (the **“Rebates”**). The Rebates, as applicable, will be paid by Pepsi within sixty (60) days after the end of each Year.

Rebates Rates	Eligible Products
\$3.00/Case	24-pack Cases of 20oz Packaged Products
\$1.50/Case	12-pack Cases of 12oz Poppi, 18.5oz Lipton Pure Leaf, 15.2oz Dole, 700mL Gatorade, 20oz Gatorade Water, and 12oz Celsius Packaged Products

5. As of the Effective Date, the following new funding item, the Renewal Support Funds, is hereby as Section 7(F) of the Agreement is hereby:

**(F) Renewal Support Funds.** Pepsi shall provide Customer with renewal support funds in the amount of Ten Thousand Dollars (\$10,000), payable to the Customer to be used at the Facility for programs for the Facility within sixty (60) days of the signing of this Agreement by both parties (the **“Renewal Support Funds”**). The Renewal Support Funds are earned by the Customer over the five Year renewal Term (March 1, 2026 through February 28, 2031). In the event Pepsi terminates this

Agreement due to the Customer's failure to cure a breach hereof, the unearned Renewal Support Funds will be repaid to Pepsi pursuant to the terms of Section 10(B)(1) herein.

6. As of the Effective Date, the following is hereby added to the end of Section 10(B)(1):

"With regard to the Renewal Support Funds, the amount of such reimbursement shall be determined by multiplying the Renewal Support Funds by a fraction, the numerator of which is the number of months expected to remain in the Term at the time such termination occurs and the denominator of which is the higher of 60 or the number of months expected to comprise the Term (expected length of Term shall be calculated based on volume trends as of the time of termination and the Volume Threshold)."

7. Each party represents and warrants to the other that it has the authority to enter into and perform under this Amendment; and that the execution and performance under this Amendment will not violate any agreements with, or rights of, any third party. This Amendment may be amended or modified only by a writing signed by each of the parties.

**8. Except as may be expressly set forth herein, all terms and conditions of the Agreement shall remain in full force and effect.**

[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 21st day of April, 2026.

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PAUL W. MONTGOMERY, 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