

## **UNIVERSITY SPONSORSHIP AGREEMENT**

This sets forth the agreement (“Agreement”) between Bottling Group, LLC and its affiliates and/or respective subsidiaries collectively comprising Pepsi Beverages Company, with an office located at 29000 Hesperian Blvd, Hayward CA 94545 (“Pepsi”) and Chabot College of the Chabot-Las Positas Community College District with its principal place of business at 25555 Hesperian Blvd., Hayward, CA. 94545 (the “Customer”).

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

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

**WHEREAS**, Pepsi wishes to identify itself with the Customer and the Teams (as defined below) and to have its products promoted and sold at the Facilities (as defined below) and further wishes to receive the other promotional benefits provided for by the Customer in this Agreement; and

**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**

#### **1. DEFINITIONS.**

“Approved Cups” means the disposable cups approved by Pepsi from time to time as its standard trademark cups and other containers approved by Pepsi from time to time and bearing the trademark(s) of Pepsi and/or other Products. In addition, Pepsi agrees that the Customer shall have the right to produce limited-run commemorative plastic cups reasonably acceptable to Pepsi for use at the Facilities and that such cups shall also be considered to be Approved Cups, provided that Pepsi’s trademark(s) for Pepsi® shall be included on such commemorative cups. The use and size of Pepsi’s trademark(s) on such commemorative cups shall be subject to the prior approval of Pepsi.

“Beverage” or “Beverages” means all carbonated and non-carbonated, non-alcoholic drinks, 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 and (vii) bottled or canned water whether carbonated or still (spring, mineral or purified).

“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” shall mean any and all Beverages other than the Products.

“Customer Marks” shall mean (i) the Designations (as defined below) and (ii) the Customer’s 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 Customer and which relate to the Facilities and the Teams and which are in existence on at the beginning of the Term or which will be created during the Term.

“Designations” shall include, but not be limited to, the following: “A Proud Sponsor of the Chabot College/Gladiators”, “Official Water and Soft Drink of the Chabot College Gladiators” and “Official Sponsor of the Chabot College/Gladiators.”

“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” shall mean the entire premises of every school and facility owned, leased, occupied or operated by the Customer or its Food Service Provider, now or in the future, including all buildings, the grounds, parking lots, dining facilities, snack bars, food carts, book stores, athletic facilities and concession stands, and, for each building, the grounds, parking, lots, dining facilities, unbranded and branded food service outlets and vending areas. “Facilities” shall also be deemed to include any convenience store operations and restaurants initiated during the Term of this Agreement in space leased to third-party commercial tenants within Customer-owned buildings principally utilized for educational purposes, student activities or student residences.

“Food Service Provider” shall mean Fresh and Natural or any food service provider which may serve at the Facilities at any point during the Term.

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

“Packaged Products” shall mean Beverages that are distributed in pre-packaged form (i.e., Bottles & Cans). A current list of Pepsi’s Packaged Products is found in attached Exhibit A which may be amended by Pepsi from time to time.

“Postmix Products” shall mean beverage products used to create and dispense fountain beverages. A current list of Pepsi’s Postmix Products is found in attached Exhibit A which may be amended by Pepsi from time to time.

“Products” shall mean Postmix Products and Packaged Products manufactured, bottled, sold and/or distributed by Pepsi.

“Teams” shall mean all intercollegiate athletic teams associated with the Customer.

“Team Marks” shall mean the 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 Customer and which relate to the Customer and which are in existence at the beginning of the Term or which will be created during the Term, but excluding any of such marks or other rights to the extent that such rights are controlled by the Customer.

“Year” shall mean 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 a five (5) year period beginning on September 1, 2011 and expiring on August 31, 2016 unless sooner terminated as provided herein (“Term”).

## 3. **GRANT OF BEVERAGE AVAILABILITY AND MERCHANDISING RIGHTS.**

During the Term, Customer hereby grants to Pepsi the following exclusive Beverage availability and exclusive Beverage merchandising right as set forth and described below:

### A. **Beverage Availability at the Facilities.**

#### (1) **Grant of Rights.**

(a) Pepsi shall have the exclusive right to make Beverages available for sale and distribution throughout the Facilities, including the right to provide all Beverages sold at athletic contests (i.e., concession stands, sales in stands (hawking) or other means), booster club activities, and all other special events conducted at or any location on the Facilities (“Special Events”). The Products shall be the only Beverages sold, dispensed or served at the Facilities (i.e., at concession stands, sales in stands (hawking) or other means), and the Products shall be sold at all food service concession or vending locations located within the Facilities; and

(b) Pepsi shall have the exclusive right to install the 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 the Equipment at its sole expense. 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.

(2) Purchasing of Postmix Products.

The Postmix Products shall be purchased by Customer or the Food Service Provider from Pepsi at the prices established by Pepsi from time to time, provided, however, that any annual increases to Postmix Product pricing shall not exceed more than three percent (3%) over the previous Year's pricing. Current pricing for Postmix Products is as set forth in Exhibit A attached hereto.

(3) Purchasing of Packaged Products.

The Packaged Products shall be purchased by Customer or the Food Service Provider from Pepsi at prices established by Pepsi from time to time, provided, however, that any annual increases to Packaged Product pricing shall not exceed more than three percent (3%) over the previous Year's pricing. Current pricing for Packaged Products is as set forth in Exhibit A attached hereto.

(4) Food Service.

During the Term, Pepsi shall work directly with, Customer and the Food Service Provider for the Facilities, to provide all of its requirements for the Products. Customer shall cause its Food Service Provider to purchase the Product from Pepsi at prices as determined by Pepsi. The Customer shall cause its Food Service Provider to purchase Products from Pepsi in sufficient quantities to ensure the regular and continuous distribution of the Products at the Facilities. Pepsi shall work directly with Customer and its Food Service Provider to promote sales of the Products through appropriate point-of-sale and other advertising materials bearing the trademarks of the Products at Pepsi's expense.

B. Product Merchandising Rights. During the Term and subject to the terms and conditions contained in this Agreement, Customer grants Pepsi the exclusive right to merchandise Beverages at the Facilities as set forth and described below:

(1) Menu Board Advertising.

Customer 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 Customer at Customer's sole cost and expense.

(2) Approved Cups; Product Hawking and Catering.

Customer 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. Pepsi agrees to make Approved Cups available for purchase and the Customer shall purchase, and shall require that all concessionaires, Food Service Providers, booster clubs and other third parties selling Beverages at the Facilities purchase all Products, cups, lids and carbon dioxide directly from Pepsi at prices determined by Pepsi. Customer shall cause Products to be “hawked” at the Facilities at all home games of the Teams and served as part of the catering selection in private boxes, suite, backstage areas, lockerooms and press areas. Customer further agrees that Products to be “hawked” in the stands shall be sold only in Approved Cups. As used herein, “hawking” shall refer to the sale of single servings of a product in the seating areas of the Facilities through the use of vendors circulating through such seating areas.

#### 4. **GRANT OF ADVERTISING AND PROMOTIONAL RIGHTS.**

During the Term, Customer hereby grants to Pepsi the right to advertise and promote Products in and with respect to the Customer, the Team and the Customer Marks upon the terms and conditions contained in this Agreement and as set forth and described below.

##### A. Advertising

(1) Facilities and Print Advertising. Pepsi shall have the right to Facilities and print advertising as mutually agreed between the parties and as further outlined in Exhibit B.

(2) Design and Installation of Customer Advertising.

Pepsi agrees, at its own cost, to provide Customer with the general design of all Customer Advertising. The Customer Advertising shall be constructed and installed by Customer (or an agent thereof) at Customer’s sole cost and expense. All Customer Advertising shall be in conformity with the general scheme and plan of the Customer and the surrounding areas.

(3) Advertising/Signage Changes.

Customer recognizes Pepsi’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. Pepsi shall reimburse Customer for all reasonable costs and expenses incurred by Customer in changing or modifying or altering any Facilities Advertising, menu boards and other Pepsi identification or references to any of the Products necessitated by Pepsi’s changes to the advertising, trade marks or trade names, designations or identification thereof. Pepsi 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 Pepsi’s sole cost and expense. Customer shall use reasonable efforts to minimize the cost to Pepsi for modifying, altering and/or changing Pepsi’s advertising.

(4) Maintenance of Signage.

Customer shall maintain all Facility Advertising and other signs and advertising for Products in good order. Customer shall effect any necessary repairs reasonably determined by Customer at Customer's sole cost and expense. Where practical, Customer shall consult with Pepsi prior to incurring any material signage or other related maintenance expenses.

B. Promotional Rights.

(1) General Sponsorship Designation.

Customer hereby agrees that Pepsi shall have the right to promote the fact that Pepsi is an official sponsor of the Team and the Customer and that the Products are available at the Facilities, including the right of Pepsi to refer to itself using the Designations. Such promotion may be conducted through the distribution channels of television, radio and print media, on the packaging of (including cups and vessels) and at the point-of-sale of any and all Products wherever they may be sold or served.

(2) Grant of License to Use the Team Marks and the Customer Marks for Promotional Activities.

Customer hereby grants to Pepsi a nonexclusive license to use the name of the Team, the Facilities, the Team Marks and the Customer Marks, for the limited purposes of promoting Products within the context of promotional activities. Pepsi acknowledges that, in order to make full use of the rights granted in this Agreement, Pepsi shall conduct the promotional activities through its primary distribution channels in which Pepsi sells Products to the ultimate consumer, such as at the retail level, within drug stores and other retail outlets, by and through mass merchandise campaigns and together with Pepsi's food service accounts and customers.

C. Representations, Warranties and Covenants regarding the Ownership and Protection of the Team Marks and the Customer Marks and Related Proprietary Rights.

Customer represents and warrants that it is the sole and exclusive owner of all right, title and interests in and to the Team Marks and the Customer Marks (including without limitation, all goodwill associated therewith) and Pepsi's use of the Team Marks and the Customer Marks pursuant to this Agreement will not infringe the rights of any third parties. Pepsi acknowledges that nothing contained in this Agreement shall provide Pepsi with any right, title or interest to the Team Marks or the Customer Marks other than the right to use such Team Marks and Customer Marks granted under this Agreement. Pepsi (on behalf of itself and its affiliates) agrees that it shall not attack the title or any rights of Customer and its affiliates and cooperate with Customer and its affiliates to

procure any protection or to protect any of the rights of Customer and its affiliates in and to the Team Marks and Customer Marks. Pepsi shall cause to appear on all materials incorporating the Team Marks and the Customer Marks such legends, markings and notices as Customer or its affiliates may request in order to give appropriate notice of any trademarks, service mark, trade name, copyright or other right with respect to the Team Marks and the Customer Marks. Pepsi shall not make any alterations or changes to the design or type of the Team Marks and Customer Marks without the prior written consent of Customer.

D. Representations, Warranties and Covenants regarding the Ownership and Protection of Proprietary Rights of Pepsi.

Pepsi represents and warrants that Pepsi is authorized to use certain names, logos, service marks and trademarks of PepsiCo, Inc. (including without limitation, all goodwill associated therewith) (the "Pepsi Marks") under a license from PepsiCo, Inc. Customer acknowledges that nothing contained in this Agreement shall provide Customer with any right, title or interest to the names, logos, service marks and trademarks of PepsiCo, Inc. without the prior written approval of PepsiCo, Inc. Customer (on behalf of itself and its affiliates) agrees that it shall not attack the title or any rights of PepsiCo, Inc., Pepsi and its affiliates and cooperate with PepsiCo, Inc., Pepsi and its affiliates to procure any protection or to protect any of the rights of PepsiCo, Inc., Pepsi and its affiliates in and to the Pepsi Marks. Customer shall cause to appear on all materials incorporating the Pepsi Marks such legends, markings and notices as Pepsi or its affiliates may request in order to give appropriate notice of any trademarks, service mark, trade name, copyright or other right with respect to the Pepsi Marks. Customer shall not make any alterations or changes to the design or type of the Pepsi Marks without the prior written consent of PepsiCo, Inc.

5. **GRANT OF OTHER RIGHTS.**

A. Sampling.

Customer agrees to permit to conduct, at Pepsi's sole cost and expense, limited sampling of students at the Facilities in a form and manner as specifically authorized and approved by Customer and in accordance with rules and procedures established by Customer, in its sole discretion, as may be amended or supplemented from time to time by Customer.

B. Right of First Negotiation/Refusal.

It is hereby agreed that Customer shall not enter into another agreement for the rights granted hereunder commencing within 365 days after the end of the expiration of the Term unless it shall have complied with the following procedures:

- (1) It is hereby agreed that Customer and Pepsi shall enter into negotiations to extend the terms of this Agreement no later than one hundred twenty (120) days prior to the end of the Term. In the event the parties cannot agree to the terms under which this Agreement will be continued thirty (30) days prior to the end of the Term, Customer shall be free to enter into negotiations with third parties.
- (2) In the event that Customer receives a bona fide offer for any of the rights granted under this Agreement, Customer shall notify Pepsi of such offer including the consideration payable to Customer and the length of term. Pepsi may, within sixty (60) days of such notice, notify Customer that it is willing to enter into an extension of this Agreement for the term set forth in such notice and providing for the fees and other consideration payable to Customer described in such notice.
- (3) If Pepsi fails to send the notice set forth in subparagraph (2) within the time period provided therein, Customer shall be free to enter into an agreement with any party thereafter, free and clear of any rights of Pepsi, provided, however, that such arrangement may not provide for a term, fees and other consideration payable to Customer which are less than those stipulated in Customer's notice given pursuant to subparagraph (2). Nothing herein shall preclude Customer from entering into any arrangement whatsoever (i) following a termination of this Agreement by reason of Pepsi's default; or (ii) for a period commencing more than 365 days after the expiration of the entire Term set forth herein.

C. Additional Rights.

Customer agrees to provide Pepsi with the additional rights set forth on Exhibit B.

6. **EXCLUSIVITY.**

A. During the Term, Customer, the Team and its players, coaches and staff (i) shall not themselves nor shall they permit a third party to, sell, serve, promote, market, advertise, sponsor or endorse Competitive Products at the Facilities or in connection with the Customer, the Team, the Team Marks or any of its players, coaches and staff and (ii) shall ensure that the Products are the only Beverages sold, served, promoted, marketed, advertised, merchandised, sponsored or endorsed, at the Facilities or in connection with the Customer, the Team, the Team Marks or any of its players, coaches and staff.

B. Customer recognizes that Pepsi has paid valuable consideration to ensure an exclusive associational relationship with the Facilities, Customer, Customer Marks, Team Marks, and/or the Team with respect to Beverages and that any dilution or diminution of such exclusivity seriously impairs Pepsi's valuable rights. Accordingly, the Customer will promptly oppose Ambush Marketing (as defined below) and take all reasonable steps to stop Ambush



Marketing and to protect the exclusive associational rights granted to Pepsi pursuant to this Agreement. In the event any such Ambush Marketing occurs during the Term, each party will notify the other party of such activity immediately upon learning thereof. As used herein, "Ambush Marketing" shall mean an attempt by any third party, without Pepsi's consent, to associate Competitive Products with the Facilities, Customer, Customer Marks, Team Marks, and/or the Team, or to suggest that Competitive Products are endorsed by or associated with the Facilities, Customer, Customer Marks, Team Marks, and/or the Team by referring directly or indirectly to the Facilities, Customer, Customer Marks, Team Marks, and/or the Team.

**7. CONSIDERATION.**

In consideration for the advertising, merchandising, promotional rights, and the other related rights and benefits provided to Pepsi by Customer as described herein, and provided Customer is not in breach of this Agreement, Pepsi agrees to pay to Customer:

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

Year	Applicable Time Period	Amount*	Due Date: within 45 days after:
1	September 1, 2011 – August 31, 2012	\$9,000	The execution of this Agreement by both parties.
2	September 1, 2012 – August 31, 2013	\$9,000	September 1, 2012
3	September 1, 2013 – August 31, 2014	\$9,000	September 1, 2013
4	September 1, 2014 – August 31, 2015	\$9,000	September 1, 2014
5	September 1, 2015 – August 31, 2016	\$9,000	September 1, 2015

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 10(D) herein (Sponsorship Fees in the Event of Termination).

**B. Annual Marketing Support Funds.** Each Year throughout the Term, Pepsi shall provide Customer with annual marketing support funds in the amount of One Thousand Dollars (\$1,000), payable to the Customer within sixty (60) days after the signing of this Agreement by both parties and each anniversary thereafter until the end of the Term of this Agreement not to exceed five (5) consecutive payments (the "Annual Marketing Support Funds"). Customer agrees that the Annual Marketing Support Funds shall be used in support of promoting the brand and Products throughout the Facilities during the Term. The Annual Marketing Support Funds are 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 Marketing Support Funds will be repaid to Pepsi pursuant to the terms of Section 10(D) herein.

**C. Rebates.** Each Year throughout the Term, Pepsi shall calculate the total applicable Cases of Packaged Products purchased from Pepsi by the Customer and its Food

Service Provider pursuant to this Agreement, and shall provide the Customer with rebates calculated based on applicable amounts set forth below (the “Rebates”). The Rebates, if applicable, shall be paid by Pepsi within sixty (60) days of the end of each applicable Year during the Term.

<b>Rebate Amount</b>	<b>Applicable Products</b>
\$1.00/ Case	<b>24-pk Packaged Products</b>

**8. ADDITIONAL CONSIDERATION.**

In addition to the consideration specified above, and provided Customer is not in breach of this Agreement, Pepsi shall provide the following further consideration to the Customer:

A. Pepsi will provide annual Product donations of up to a total retail value of One Thousand Four Hundred Dollars (\$1,400) per Year across the Facilities upon request of the Customer, provided however, that the Customer will administer all requests through a central contact so that the Customer may prioritize the requests. Customer acknowledges and agrees that donated Product requests not used/made in any Year shall not be carried over to the subsequent Year and shall not be redeemable for a cash payment.

**9. EQUIPMENT AND SERVICE.**

A. Beverage Dispensing and Other Equipment.

(1) Pepsi shall, based upon Pepsi’s survey of the Facilities’ needs, provide and install all Equipment at the Facilities for the dispensing of Product during the Term. Title to all Equipment shall be with Pepsi or its affiliates.

(2) During the Term Pepsi will provide, at no charge to the Customer, preventative maintenance and service to the Equipment. Pepsi will service and stock, if necessary, (i) the Equipment and (ii) any additional Equipment determined by the parties to be installed at new locations on the Facilities.

(3) The Equipment may not be removed from the Campus 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. 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.

B. Service to Equipment.

Other than routine maintenance, which shall be the responsibility of and completed by Customer or its designee, Pepsi or its designated agents shall be responsible for maintaining, repairing and replacing the Equipment. Pepsi shall provide Customer with a telephone number to request emergency repairs and receive



technical assistance related to the Equipment. Pepsi shall respond to each Customer request and use reasonable efforts to remedy the related Equipment problem as soon as possible.

10. **REMEDIES FOR LOSS OF RIGHTS - TERMINATION.**

A. Customer's Termination Rights. Without prejudice to any other remedy available to Customer at law or in equity in respect of any event described below, this Agreement may be terminated by Customer at any time effective thirty (30) days following written notice to Pepsi from Customer if:

(1) Pepsi fails to make any payment due hereunder, and such default shall continue for thirty (30) days after written notice of such default is received by Pepsi; or

(2) Pepsi breaches or fails to perform any other material term, covenant or condition of this Agreement or any representation or warranty shall prove to have been false or misleading in any material respect and Pepsi fails to cure such breach within forty-five (45) days after written notice of default is delivered to Pepsi. If such cure cannot reasonably be accomplished within such forty-five (45) day period, this provision shall not apply where Pepsi shall have, in good faith, commenced such cure and thereafter shall diligently proceed to completion; provided, however, that such cure is completed to the reasonable satisfaction of Customer within ninety (90) days from the date of Pepsi's receipt of such written notice of default.

B. Pepsi's Termination Rights.

Without prejudice to any other remedy available to Pepsi at law or in equity in respect of any event described below, this Agreement may be terminated in whole or in part by Pepsi at any time, effective thirty (30) days following written notice to the Customer if (i) any of the Products are not made available as required in this Agreement by the Customer, their agents or concessionaires; (ii) any of the rights granted to Pepsi herein are materially restricted or limited during the Term of this Agreement; or (iii) a final judicial opinion or governmental regulation prohibits the availability of Beverages, whether or not due to a cause beyond the reasonable control of the Customer, 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 Customer fails to cure such breach within a thirty (30) day period, Pepsi may terminate this Agreement and to recover from the Customer a reimbursement in accordance with Section (D) below (Sponsorship Fees in the Event of Termination).

C. Additional Termination Rights Available to Pepsi and Customer.

Without prejudice to any other right or remedy available to either party at law or in equity of any event described below, this Agreement may be terminated by either party if the other party, or any parent of such other party, shall: (1) have an order for

relief entered with respect to it, commence a voluntary case or have an involuntary case filed against it under any applicable bankruptcy, insolvency or other similar law now or hereafter in effect (and such order or case is not stayed, withdrawn or settled within sixty (60) days thereafter) it is the intent of the parties hereto that the provisions of Section 365(e)(2)(A) of Title 11 of the United States Code, as amended, or any successor statute thereto, be applicable to this Agreement; or (2) file for reorganization, become insolvent or have a receiver or other officer having similar powers over it appointed for its affair in any court of competent jurisdiction, whether or not with its consent (unless dismissed, bonded or discharged within 60 days thereafter); or (3) admit in writing its inability to pay its debts as such debts become due.

D. Sponsorship Fees in the Event of Termination.

If Pepsi terminates this Agreement pursuant to Section 10 or Customer terminates this Agreement without cause, then Pepsi shall be entitled to from Customer, without prejudice to any other right or remedy available to Pepsi, and Customer shall pay to Pepsi all funding paid by Pepsi to the Customer which remains unearned as of the time of termination. With regard to the Initial Support Funds, the amount of such reimbursement shall be determined by multiplying the Initial Support Funds by a fraction, the numerator of which is the number of months remaining in the Term at the time such termination occurs and the denominator of which is the total number of months within the Term (e.g., 5 year term is 60 months). With regard to the Annual Sponsorship Fee, the amount of such reimbursement shall be determined by multiplying Annual Sponsorship Fee by a fraction, the numerator of which is the number of months remaining in the Year in which the Agreement is terminated at the time such termination occurs and the denominator of which is 12.

11. 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. Pepsi shall not be assessed common area maintenance fees, taxes or other charges based on its occupation of the space allocated to its Equipment.

12. CONFIDENTIALITY.

A. Except as otherwise required by law or the rules or regulations of any national securities exchange or the rules or regulation 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 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 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 Customer or Pepsi.

C. These Confidentiality provisions 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.

### 13. **REPRESENTATIONS, WARRANTIES AND COVENANTS.**

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.

C. To the extent that the Team is relocated to a venue which is not within the Facilities as its home venue, Customer agrees that it shall ensure all rights of Pepsi hereunder shall be extended to such alternate venue as to the Team and any advertising and pouring rights contained herein.

### 14. **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 directly from Pepsi; and/or (iii) the negligence or willful misconduct of Pepsi, (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.

15. **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 on a certificate of insurance, as additional insureds with respect to the certificate holder's negligence.

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

16. **NOTICES.**

Unless otherwise specified herein, all notices, requests, demands, consents, and other communications hereunder shall be transmitted in writing and shall be deemed to have been duly given when hand delivered, upon delivery when sent by express mail, courier, overnight mail or other recognized overnight or next day delivery service, or three (3) days following the date mailed when sent by registered or certified United States mail, postage prepaid, return receipt requested, or when deposited with a public telegraph company for immediate transmittal, charges prepaid, or by telecopier, with a confirmation copy sent by recognized overnight courier, next day delivery, addressed as follows:

If to Pepsi:

Pepsi Beverages Company  
29000 Hesperian Blvd.  
Hayward, CA 94545  
Attn: Market Unit Manager

With a copy to (which shall not constitute notice):

Pepsi Beverages Company  
One Pepsi Way  
Somers, NY 10589  
Attn: Legal Department

If to Customer:

Chabot – Las Positas Community College District  
5020 Franklin Dr  
Pleasanton, CA 94588  
Attn: Purchasing/Contract Manager

17. **ASSIGNMENT.**

This Agreement or any part hereof or interest herein shall not be assigned or otherwise transferred by either party without the prior written consent of the other party nor shall the same be assignable by operation of law, without the prior written consent of the other party; provided however, that Pepsi may assign and transfer this Agreement (in whole and not in part) to an affiliate without the consent of Customer hereto; provided, however, that, (x) such affiliate is capable of fully performing all obligations of the assignor hereunder and (y) such affiliate agrees, under a separate agreement acceptable to the other party and signed by such affiliate, to perform all of the obligations and assume all liabilities of the assignor hereunder. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective permitted successors and assigns. Customer represents and warrants to Pepsi that any change in the Food Service Provider at the Facilities shall not affect Pepsi's rights or obligations hereunder.

18. **GOVERNING LAW.**

This Agreement shall be governed by and construed in accordance with the laws of the State of New York without regard to conflicts of laws principles. Any legal proceeding of any nature whatsoever brought by either party against the other to enforce any right or obligation under this Agreement, or arising out of any matter pertaining to this Agreement, shall be submitted for trial, without jury, before the Courts of the State of New York, or the United States District Court having jurisdiction in Westchester County, New York, or, if neither of such courts shall have jurisdiction, then before any court sitting in Westchester County, New York having subject matter jurisdiction. The parties consent and submit to the jurisdiction of any such court and agree to accept service of process inside or outside the State of New York in any manner to be submitted to any such court pursuant hereto, and the parties hereto expressly waive all rights to trial by jury regarding any such matter.

19. **FORCE MAJEURE.**

If the performance by either party hereto of its respective nonmonetary obligations under this Agreement is delayed or prevented in whole or in part by acts of God, fire, floods, storms, explosions, accidents, epidemics, war, civil disorder, strikes or other labor difficulties, or any law, rule, regulation, order or other action adopted or taken by any federal, state or local government authority, or any other cause not reasonably within such party's control, whether or not specifically mentioned herein, such party shall be excused, discharged and released of performance only to the extent such performance or obligation is so delayed or prevented by such occurrence without liability of any kind. Nothing contained herein shall be construed as

requiring either party hereto to accede to any demands of, or to settle any disputes with, labor or labor unions, suppliers or other parties that such party considers unreasonable.

20. **RELEASE, DISCHARGE OR WAIVER.**

No release, discharge or waiver of any provision hereof shall be enforceable against or binding upon either party hereto unless in writing and executed by both parties hereto. Neither the failure to insist upon strict performance of any of the agreements, terms, covenants or conditions hereof, nor the acceptance of monies due hereunder with knowledge of a breach of this Agreement, shall be deemed a waiver of any rights or remedies that either party hereto may have or a waiver of any subsequent breach or default in any of such agreements, terms, covenants or conditions.

21. **PRIOR NEGOTIATIONS; ENTIRE AGREEMENT.**

This Agreement and the exhibits attached hereto, supersede any prior agreements between the parties and set forth the entire understanding between the parties in connection with respect to the subject matter hereof, and no statement or inducement with respect to the subject matter by either party hereto or by any agent or representative of either party hereto which is not contained in this Agreement shall be valid or binding among the parties. This provision shall not be read to invalidate or amend any other written agreements between Pepsi and/or any of its affiliates and any affiliate of Customer.

22. **RELATIONSHIP OF THE PARTIES.**

The parties are independent contractors with respect to each other. Nothing contained in this Agreement will be deemed or construed as creating a joint venture partnership between the parties.

23. **EFFECT OF HEADINGS.**

The headings and subheadings of the sections of this Agreement are inserted for convenience of reference only and shall not control or affect the meaning or construction of any of the agreements, terms, covenants and conditions of this Agreement in any manner.

24. **CONSTRUCTION.**

This Agreement has been fully reviewed and negotiated by the parties hereto and their respective legal counsel. Accordingly, in interpreting this Agreement, no weight shall be placed upon which party hereto or its counsel drafted the provision being interpreted. Wherever this Agreement provides for one party hereto to provide authorization, agreement, approval or consent to another party hereto, or provides for mutual agreement of the parties hereto, such authorization, approval, agreement or consent shall, except as may otherwise be specified herein, be given in such party's reasonable judgment and reasonable discretion, and shall be in writing unless otherwise mutually agreed by the parties.



25. **SEVERABILITY.**

If any term or provision of this Agreement shall be found to be void or contrary to law, such term or provision shall, but only to the extent necessary to bring this Agreement within the requirements of law, be deemed to be severable from the other terms and provisions hereof, and the remainder of this Agreement shall be given effect as if the parties had not included the severed term herein.

26. **AMENDMENTS.**

No provision of this Agreement may be modified, waived or amended except by a written instrument duly executed by each of the parties hereto. Any such modifications, waivers or amendments shall not require additional consideration to be effective.

27. **COUNTERPARTS.**

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.

28. **FURTHER ASSURANCES.**

Each party hereto shall execute any and all further documents or instruments and take all necessary action that either party hereto may deem reasonably necessary to carry out the proper purposes of this Agreement.

**IN WITNESS WHEREOF**, the undersigned have caused this Agreement to be duly entered into as of the date above written.

Chabot – Las Positas  
Community College District

Bottling Group, LLC

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

**Exhibit A**  
**Current pricing for Postmix Products and Packaged Products**

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.

<b>CHABOT COLLEGE PRICING</b>			
<b>Product</b>	<b>Package</b>	<b>Units Per Case</b>	<b>Case Cost</b>
<b>Carbonated Soft Drinks</b>	<b>12 oz 8pk Cans</b>	<b>3</b>	<b>\$9.19</b>
	<b>20 oz Plastic</b>	<b>24</b>	<b>\$18.10</b>
	<b>1 Liter</b>	<b>15</b>	<b>\$12.64</b>
<b>Aquafina Water</b>	<b>20 oz Plastic</b>	<b>24</b>	<b>\$12.52</b>
	<b>1 Liter</b>	<b>15</b>	<b>\$13.32</b>
	<b>1.5 Liter</b>	<b>12</b>	<b>\$12.89</b>
<b>Lipton Ice Tea</b>	<b>20 oz Brisk</b>	<b>24</b>	<b>\$18.10</b>
	<b>20 oz Natural</b>	<b>12</b>	<b>\$15.70</b>
	<b>1 Liter</b>	<b>15</b>	<b>\$11.89</b>
	<b>16 oz Glass</b>	<b>15</b>	<b>\$11.41</b>
<b>Juice Products</b>	<b>20 oz Brisk</b>	<b>24</b>	<b>\$18.10</b>
	<b>15.2 oz Ocean Spray</b>	<b>12</b>	<b>\$11.41</b>
<b>Other Drinks</b>	<b>Sobe 20oz. Teas and Juices</b>	<b>12</b>	<b>\$12.98</b>
	<b>Sobe Life Water 20oz. Bottles</b>	<b>12</b>	<b>\$12.98</b>
	<b>9.5 oz Frappiccino</b>	<b>12</b>	<b>\$13.93</b>
	<b>13.7 oz Frappiccino</b>	<b>12</b>	<b>\$22.28</b>
	<b>13.8 oz Tazo Tea</b>	<b>12</b>	<b>\$16.49</b>
	<b>14oz Muscle Milk</b>	<b>12</b>	<b>\$30.24</b>
	<b>6.5oz Starbucks Double Shot</b>	<b>12</b>	<b>\$18.94</b>
	<b>15oz Starbuck Coffee Energy</b>	<b>12</b>	<b>\$21.79</b>
	<b>16 oz AMP Energy</b>	<b>12</b>	<b>\$10.59</b>
	<b>16oz Rockstar Energy Drinks</b>	<b>24</b>	<b>\$32.00</b>
	<b>20oz Gatorade/G2/Propel</b>	<b>24</b>	<b>\$18.10</b>
	<b>32oz Gatorade</b>	<b>15</b>	<b>\$20.13</b>

<b>Fountain and Supply Pricing</b>		
<b>Product</b>	<b>Package</b>	<b>Case Cost</b>
Carbonated Soft Drinks	5 Gal	\$11.12
Non Carbonated Soft Drinks	5 Gal	\$11.12
Carbonated Soft Drinks	3 Gal	\$13.36
Non Carbonated Soft Drinks	3 Gal	\$13.36
Gatorade	3 Gal	\$13.36
Juice Tyme	1 Gal	\$28.08
Polar Shock	3 Gal	\$30.00
Lipton Tea	3 Gal	\$15.00
24 oz Cup	1,000	\$62.00
32 oz Cup	480	\$55.00
44 oz Cup	480	\$60.00
24 oz Lid	2,000	\$36.19
32 oz Lid	960	\$39.69
44 oz Lid	960	\$39.69

**Exhibit B**  
**Additional Rights to be Provided to Pepsi**

**A. Tickets and Hospitality.**

Customer will provide Pepsi during the Term with:

- (1) \_\_\_\_ (\_\_) season tickets for the [Venue 1] located [Seat Location], including access to the [Club Name] Club and one (1) parking pass for every two (2) tickets.
- (2) \_\_\_\_ (\_\_) season tickets for the [Venue 2] located [Seat Location], including access to the [Club Name] Club and one (1) parking pass for every two (2) tickets.
- (3) Use of \_\_\_\_ luxury box(es)/suite(s) per game per season in [Venue] for up to \_\_\_\_ people, plus tickets, and \_\_\_\_ parking passes for every two (2) tickets.
- (4) \_\_\_\_ (\_\_) tickets to each non-athletic event located in the [Venue], e.g. concerts, “\_\_\_\_,” “\_\_\_\_,” “\_\_\_\_.”
- (5) No fewer than \_\_\_\_ (\_\_) house seats per event located in [Venue] will be made available to Pepsi for purchase for all other events at the Complex.

**B. Facilities and Print Advertising.**

- (1) Facilities Advertising.  
(to be included)
- (2) Print Advertising.  
(to be included)