

OPERATING AGREEMENT – FOOD, SNACKS & BEVERAGES VENDING SERVICES

This **OPERATING AGREEMENT** (the “Agreement”) is made as of April, 2008 between the **County of Champaign**, with offices at 1776 East Washington Street, Urbana, Illinois 61802 and Pepsi-Cola Champaign-Urbana Bottling Company, a Delaware Corporation, hereinafter known as Pepsi-Cola, having its principal place of business at 1306 West Anthony Drive, Champaign, Illinois.

WITNESSETH:

1. AGREEMENT & TERM: The County hereby grants to Pepsi-Cola the exclusive right to provide food, snacks & beverage vending services for County staff and visitors at Champaign County buildings located in Urbana, Illinois. Pepsi-Cola hereby agrees to furnish a variety of food, snacks and beverages to County staff and visitors in accordance with this Agreement.

The term of this agreement will be for a two year period with the County reserving the right to renew the agreement for an additional 12 months. In no event shall the term plus renewal exceed three years.

2. OPERATIONAL RESPONSIBILITIES:

A. Facilities & Equipment: Pepsi-Cola shall at its expense provide Champaign County with adequate, state of the art beverage, snack, sandwich and coffee equipment by mutual agreement at the County’s facilities completely equipped and ready to operate as required for the efficient performance of the Agreement.

Pepsi-Cola will provide a lease agreement for each machine placed on County property. Each agreement will detail the location of each machine as well as the serial number of each machine. Each agreement will be signed by the County Administrator and Pepsi-Cola. A sample lease agreement is attached to this operating agreement as Exhibit A. The vending equipment will be owned throughout the contract period by Pepsi-Cola, the County shall have no title to the vending equipment during the contract period.

Pepsi-Cola will notify the proper County personnel of the need for equipment repairs or replacement. Service calls on an emergency basis will be handled immediately, within the hour, and County personnel will be notified when action has been taken. Non-emergency items are handled within two hours, and County personnel will be notified when action has been taken. Any repeat call for a non-emergency item will be considered an emergency. In addition, Pepsi-Cola will provide County personnel with “out of order” signage to be affixed to the vending equipment as needed.

B. Refund Policy: Pepsi-cola will provide County personnel with a refund bank, the amount to be determined by Pepsi-Cola. The refund bank will be used to refund County employees. There will be a decal located on each machine providing a local phone number for the general public to use when calling in a complaint or requesting a refund. Champaign County will not provide refunds to the general public.

C. Vending Services: Pepsi-Cola will be responsible for ensuring vending machines are stocked with nationally advertised products meeting USDA requirements. All products must be date coded where appropriate to ensure quality of freshness. Pepsi-Cola shall maintain a product balance of 30% low fat products in all vending machines. Offered products will be approved by the proper County personnel. Pepsi-Cola will keep all machines adequately stocked at all times with quantities and products consistent with demand in each building. Pepsi-Cola will work to accommodate all reasonable requests for products made by the proper County personnel. Pepsi-Cola personnel will fill machines twice per week or as needed. Deliveries and restocking of machines must be schedule to not occur or interfere with individual County start and closing times.

D. Personnel: Pepsi-Cola shall provide to the County Administrator a list of all personnel who will be servicing this Agreement, with this list to be updated with information as to any new Pepsi-Cola personnel who are servicing this Agreement, during this Agreement term. The names will be forwarded to the Sheriff for review. Any individual failing a background screening will not be allowed access to County facilities. The County Administrator shall be notified immediately of deletions or additions to the personnel list. Pepsi-Cola employees will wear the firm's uniforms and display identification.

3. FINANCIAL ARRANGEMENTS:

A. Cost & Pricing Issues: Cost for the food, snack & beverage products, for the first six months of the Agreement, to be provided by Pepsi-Cola to the County will conform to the response made by Pepsi-Cola to RFP 2008-001 as detailed in their proposal and further described in attachment G.

After the first six months of this Agreement, should Pepsi-Cola desire to negotiate a cost increase for these products with the County, the said cost increase will be negotiated between the County & Pepsi-Cola, with cost increases to be limited to cost increases in the normal retail prices at area supermarkets in Champaign County, Illinois. Pepsi-Cola must provide a comparison of the product cost pursuant to this agreement, retail price in vending machines, and average retail price for the same period in area supermarkets, with the said retail prices not to include special promotions or weekend or holiday specials.

B. Commission: Pepsi-Cola will pay the County a commission of 20% on all snack & sandwich revenues and 25% on all beverage revenues. Pepsi-Cola will submit quarterly sales data by facility and per vending machine, which said report shall detail calculation of commission amounts and total paid per machine, to the County Administrator, together with the commission check. Champaign County will have the right to audit these reports.

4. TERMINATION OF AGREEMENT:

A. Termination for default: Either party may terminate this Agreement upon a breach or default of this Agreement by the other party which is not cured within sixty (60) days after receipt by the defaulting party of a notice from the non-defaulting party, specifying the nature of such breach or default.

B. Termination for Convenience: Either party may terminate this Agreement for convenience, at any time during the term or any renewal or extension, upon one hundred twenty (120) days notice to the other party.

C. Consequences of Termination: If this Agreement is terminated under any circumstances, the County shall pay Pepsi-Cola for any products provided pursuant to this Agreement prior to the termination date in accordance with the terms and conditions of this Agreement.

5. INSURANCE & INDEMNIFICATION:

Pepsi-Cola shall furnish certificates of insurance as follows:

Worker's Compensation insurance as required by law.

Comprehensive General (Public) Liability to include (but not be limited to) the following: Premises/operation; independent contractors; personal injury; products/completed operation; contractual liability with a combined single limit for bodily injury and property damage of \$1,000,000.00 per occurrence. Pepsi-Cola may satisfy these requirements through a combination of primary and excess coverage.

Pepsi-Cola shall at all times during the duration of this agreement keep its equipment fully covered by its own insurance for any losses or damages caused by theft, vandalism, fire and other hazards.

Pepsi-cola agrees to defend, indemnify and hold harmless the County, its officers, employees, agents and servants for claims for death, bodily injury and damage to tangible property caused by the sole negligence or a wrongful act of Pepsi-Cola in the performance of this Agreement, and to pay all claims, damages, judgments, legal costs, adjuster fees and attorney fees related thereto. None of the County's officers, employees, agents, servants or contractors are or will be deemed to be agents or employees of Pepsi-Cola and no liability is or will be incurred by Pepsi-Cola to such persons, except for bodily injury to such persons caused by Pepsi-Cola's sole negligence. The County agrees to defend, indemnify and hold Pepsi-Cola harmless from any liability claim caused by the County's officers, employees, agents, servants or contractors. Each party shall promptly notify the other of any claim for which indemnity is sought, and shall cooperate with the other party in the defense of such claim. The indemnifying party shall have the sole discretion to defend and settle such claim.

6. ENTIRE AGREEMENT: This Agreement represents the entire Agreement and understanding between the County and Pepsi-Cola and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both the County and Pepsi-Cola.

7. SEVERABILITY: If any provision hereof or the application thereof to any person or circumstance is held to any extent, to be void, invalid or unenforceable, the remainder of this Agreement, and the application of such provision to other persons or circumstances, shall not be affected thereby, and shall be valid and enforceable to the fullest extent permitted by law.

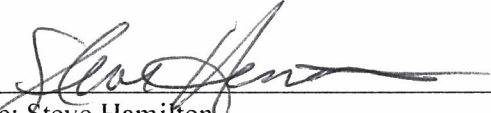
8. **WAIVER:** The failure of Pepsi-Cola or the County to exercise any right or remedy available under this Agreement upon the other party's breach of the terms, covenants and conditions of this Agreement or the failure to demand the prompt performance of any obligation under this Agreement shall not be deemed a waiver of such right or remedy; or the requirement of punctual performance; or of any subsequent breach or default on the part of the other party.

9. **ASSIGNMENT:** Pepsi-Cola may not assign this Agreement without the County's prior written consent.

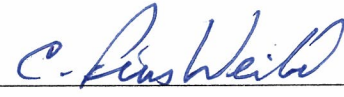
10. **GOVERNING LAW:** This Agreement shall be construed, enforced, and considered made in accordance with the laws of the State of Illinois. Any lawsuit filed in connection with this Agreement may be brought in, or removed to, the appropriate state court or the federal court situated in Illinois.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be signed by their duly authorized representatives as of the day and year first above written.

**Pepsi-Cola Champaign-Urbana Bottling Co.
A Delaware Corporation**

By: 
Name: Steve Hamilton
Title: Vice-President/General Manager

**County of Champaign
State of Illinois**

By: 
Name: C. Pius Weibel
Title: Champaign County Board Chair

By: 
Champaign County Clerk

Witness: _____

Witness: _____

Pepsi-Cola Champaign-Urbana Bottling Co.
1306 West Anthony Drive
Champaign, Illinois 61821
217.352.4126



Full Service Vending Machine Lease Agreement

(Single machine)

1. Lessor shall deliver to Champaign County Administration at 1776 East Washington Urbana, IL , a SN 167with serial number 167065283 keyed to Full Service, all hereinafter referred to as the "leased equipment".
2. The Lessor will install the leased equipment without charge to Lessee, and will maintain the leased equipment in good operating condition at all times. The leased equipment shall at all times remain the property of the Lessor, and upon the termination of this Agreement, the Lessor shall have the right to enter the premises where the equipment is located and remove all such leased equipment.
3. The Lessee shall not move or alter the location of the leased equipment, or permit it to be moved from the above-described premises without prior written consent from the Lessor. The Lessee shall take good care of the leased equipment, and upon termination of this agreement, will return the leased equipment to the Lessor in good condition, normal wear and tear excepted.
4. The Lessee shall at all times during the duration of this agreement keep the equipment fully covered by primary insurance against loss or damage caused by theft, vandalism, fire and any other hazards, and shall maintain adequate primary insurance coverage protecting both the Lessee and the Lessor against liability for damage to property and bodily injury, including death.
5. This Agreement shall take effect upon the delivery of the leased equipment by the Lessor to the Lessee, and continue in effect until terminated by either party at any time, by giving fifteen- (15) days prior written notice to the other party. This Agreement shall automatically transfer to any successor in interest of Lessee through stock or asset purchase, unless otherwise terminated by the parties.
6. Except as provided for above in Section #5, this Agreement may not be transferred or assigned in whole or in part by the Lessee without the prior written consent of Lessor. This Agreement constitutes the entire agreement of the parties and may not be modified except by written instrument duly signed on behalf of both parties.
7. "Leased equipment" as defined in paragraph 1 of this Agreement shall include all ancillary and incidental equipment used in connection with the leased equipment, including but not limited to: CO2 canister, CO2 regulator and gauges, air/syrup lines and hoses, pumps, racks, carbonaters and product container/shells. In the event Lessor and Lessee are not able to resolve any dispute arising under this Agreement, and any collection action, enforcement suit or other judicial proceeding is commenced, the prevailing party in such action, suit or judicial proceeding shall be entitled to recover from the other its costs and reasonable attorneys fees.

Date: February 28, 2007

Pepsi Cola Champaign-Urbana
Bottling Co., as Lessor.

Lessee: Champaign County Administration

By: _____
(signature and title)

By: *Jamie B. Michales, asst. office mgr.*
(signature and title)

Form: MFSCONT..DOC