

**Big Walnut Local Schools  
FULL-SERVICE VENDING AGREEMENT  
WITH  
PEPSI-COLA BOTTLING COMPANY OF COLUMBUS**

THIS AGREEMENT is made effective as of July 5, 2022, by and between the Big Walnut Local Schools ("School") and Pepsi-Cola Bottling Co. of Columbus, a division of G&J Pepsi-Cola Bottlers, Inc. ("Pepsi-Cola").

WHEREAS, School, located at 110 Tippet Court, Sunbury, Ohio 43074, operates schools and athletic facilities, in Sunbury, Ohio, at the locations set forth on Exhibit A attached hereto (such locations, plus any additional schools and athletic facilities which may be constructed or occupied by School during the term of this Agreement shall hereinafter be referred to as the "Premises");

WHEREAS, School, has determined to award the contract for the provision of full-service vending beverage services on the Premises to Pepsi-Cola, subject to the terms and conditions set forth in this Agreement; and

WHEREAS, Pepsi-Cola, in consideration of the exclusive Pouring Rights (as hereinafter defined) and the advertising and promotional benefits described in this Agreement, is willing to provide School with commissions on vending sales, product pricing and other benefits described in this Agreement;

NOW, THEREFORE, the parties agree as follows:

1. **Term;**. The term of this Agreement will be for a period of five (5) years, commencing May 1, 2022, and expiring April 30, 2027 (the "Term"). As used in this Agreement, "year" shall mean each 12-month period during the Term, commencing on the first day of the Term and all subsequent anniversaries thereof. During the last six months of the Term, the parties shall enter into good faith negotiations for renewal of this Agreement, but shall not be obligated to such renewal. If School receives during the Term an offer from a competitor of Pepsi-Cola relating to Pouring Rights upon expiration of the Term, and such offer is acceptable to School, School shall disclose the terms of such offer in writing to Pepsi-Cola (the "Notice"), unless such information is confidential and not in a public document as defined in O.R.C 149.43 and Pepsi-Cola shall have the right to renew this Agreement upon such terms by giving School written notice of its election to do so within 30 days of receiving the Notice, subject to the school's content, which will not be unreasonably withheld.

2. **Authority; Validity of Agreement.** School and Pepsi-Cola each represents and warrants to the other, as a material inducement to the other to enter into this Agreement, that:

(a) The execution and delivery of this Agreement and consummation of the transactions contemplated hereby have been duly authorized by it in accordance with the requirements of applicable law and regulation and its internal governance by-laws and rules.

(b) This Agreement has been duly executed and delivered by it and (assuming due execution and delivery by the other party) is a valid, legal and binding obligation, enforceable in accordance with its terms, except as such enforceability may be limited by bankruptcy, insolvency, reorganization or similar laws affecting creditors' rights generally or by general equitable principles.

(c) It is not a party to, nor is it or its properties subject to or bound by any provision of any certificate, instrument, contract, mortgage, indenture agreement, covenant or other restriction, provision of its organizational documents, statute or regulation, or judgment, order, writ, injunction or decree of any court, governmental body or arbitrator, which would prohibit or otherwise be violated by the execution or performance by it of this Agreement or the consummation of the transactions contemplated hereby.

3. **Exclusive, Full-Service Rights; Exclusive Advertising.** (a) School hereby grants to Pepsi-Cola exclusive right during the Term to sell or otherwise distribute all soft drinks, teas, juices, isotonic sports drinks and bottled waters (the "Products") by means of vending machines, post-mix and pre-mix fountain beverage dispensers, or sideline coolers/dispensers on the Premises as set forth herein (such exclusive right is herein referred to as the "Pouring Rights"). Pepsi-Cola's Pouring Rights shall apply to all athletic events, concession sales, and any other distribution of the Products on the Premises, whether conducted by School, a concessionaire or any third party, excluding cafeteria sales.

(b) The grant of Pouring Rights in this Agreement means that School shall not permit the sale or other distribution on the Premises of (i) any soft drink other than Pepsi-Cola® products, (ii) tea drinks other than Lipton® products, (iii) juice drinks other than Dole® products, (iv) isotonic sports drinks other than Gatorade®, and (v) bottled water products other than Aquafina® (collectively the "Pepsi-Cola Products"). The parties acknowledge that Pepsi-Cola may make adjustments and substitutions among the Pepsi-Cola Products, but that the Pepsi Cola Products shall always include

a range of beverages at least as broad as set forth in the first sentence of this paragraph.

(c) During the Term, Pepsi-Cola shall have the exclusive right to advertise the Products on the Premises subject to reasonable consent of the school. School shall take all steps necessary to prevent any permanent or temporary advertising, signage or trademark visibility for products competitive with the Pepsi-Cola Products from being displayed anywhere on the Premises, including in cafeterias or on scoreboards.

4. **Equipment and Service Support.** (a) Pepsi-Cola shall install, maintain and service all vending machines (the "Vending Equipment") in at least the numbers and locations set forth on Exhibit C and as otherwise reasonably requested by School throughout the Term. Pepsi-Cola shall also install and maintain post-mix fountain beverage dispensing units and coolers, for placement on the Premises (the "Fountain Equipment") for use in such areas of the Premises as may be mutually agreed upon by the parties, and shall provide sideline coolers/dispensers for athletic events (the "Sideline Equipment") as reasonably requested by School. (The Vending Equipment, Fountain Equipment and Sideline Equipment is sometimes hereinafter referred to collectively as the "Equipment.")

(b) All Equipment shall remain the sole property of Pepsi-Cola. Pepsi-Cola shall maintain and repair the Equipment, and shall keep the Equipment in good working order and condition at all times during the Term. School shall not, nor shall it permit any third party to repair, replace, relocate, move or remove any of the Equipment (other than Sideline Equipment); provided, however, that School may request relocation of Vending Equipment with the consent of Pepsi-Cola (which shall not be unreasonably withheld) for reasons of safety, security or other necessity. School shall use its best efforts to keep the Equipment in clean and sanitary condition, free of graffiti and all school announcements, advertising or other materials, at all times. School agrees to promptly notify Pepsi-Cola of the need for any repairs or servicing, and to fully cooperate with Pepsi-Cola personnel in effecting such necessary repairs and servicing, including without limitation providing timely access to the Premises for such purposes as long as access does not interfere with district use of property for education.

All Equipment on the Premises shall be identified as dispensers of Pepsi-Cola Products.

5. **Concession and Fountain Sales.** During the Term, School shall purchase all of its requirements for Pepsi-Cola

Products from Pepsi-Cola, provided that School is not obligated to purchase any minimum amount of Pepsi-Cola Products. Current pricing for Pepsi-Cola Products is set forth on Exhibit D. Such pricing is subject to change throughout the Term, in Pepsi-Cola's sole discretion, except that such pricing shall be competitive with average market prices. The Parties acknowledge that they contemplate that at least 9,675 cases of product will be purchased from Pepsi during the term of this agreement. If 9,675 cases of product are not purchased from Pepsi during term of this agreement, said term will be automatically extended until 9,675 cases of product have been purchased from Pepsi under this agreement.

6. **Fountain Cups and Lids.** In support of the exclusive Pouring Rights provided to Pepsi-Cola under this Agreement, School agrees that, during the Term, (i) only cups bearing Pepsi-Cola Products logos shall be used to serve Pepsi-Cola Products on the Premises, and (ii) no other logo cups shall be permitted to be used on the Premises. During the Term, School shall purchase Pepsi-Cola identified cups for use in connection with the Fountain Equipment from Pepsi-Cola, provided that School is not obligated to purchase any minimum number of cups. Current pricing for cups and lids is set forth on Exhibit E and Pepsi-Cola reserves the right to change the pricing at its sole discretion, except that such pricing shall be competitive with average market prices.

7. **Vending Equipment: Commissions and Pricing.** Pepsi-Cola shall pay School commissions on Pepsi-Cola's sales from Vending Equipment located on the Premises in accordance with the commission structure set forth on Exhibit F. The initial vend prices for Pepsi-Cola Products sold through the Vending Equipment shall be the prices first listed on Exhibit F, and during the Term, Pepsi-Cola shall determine the vend prices in its sole discretion, but with the goal of remaining competitive with average market vend prices.

8. **School Support.** In consideration of the Pouring Rights granted in this Agreement, Pepsi-Cola shall furnish School with the following support, in addition to the commissions and services otherwise provided for in this Agreement:

- (a) Pepsi-Cola shall provide support to the school as detailed in Exhibit G attached hereto.

9. **Default and Early Termination.** (a) Each party shall have the right to terminate this Agreement prematurely, prior to expiration of the Term, upon a breach by the other party of any term or condition of this Agreement of such nature or magnitude as to frustrate the essential purposes and benefits of this Agreement for the complaining party. Such premature termination shall be subject to written notice by the complaining party specifying the default, and if the event of default is remedied within thirty (30) days from the date such notice is received in the case of any failure to make any payments hereunder, or sixty (60) days in the case of any other event of default, the notice shall be null and void. If the specified event of default is not remedied within the applicable cure period, then the complaining party may terminate this Agreement without further action or notice upon expiration of the cure period. The right to terminate this Agreement is not exclusive of, but is in addition to, all other rights and remedies available to the complaining party at law or in equity.

(b) Upon termination or expiration of this Agreement, School shall permit Pepsi-Cola reasonable access to the Premises for the purposes of removing any Equipment. Pepsi-Cola shall have sixty (60) days after termination or expiration to effect such removal. Until the time that all Equipment is removed, School's obligations to safeguard and keep the Equipment clean shall continue. In completing removal, Pepsi-Cola shall use its best efforts to leave each location in the condition in which it existed prior to installation except for reasonable wear and tear and except for any damage beyond Pepsi-Cola's control. Upon effecting removal of all Equipment, Pepsi-Cola shall thereupon issue final payment to School for amounts, if any, still owing to School as commissions, as provided in this Agreement.

(c) The parties acknowledge that, without the assurance of exclusive Pouring Rights for the full duration of the Term and the right of renewal as set forth in paragraph 1 above, Pepsi-Cola would be unwilling to provide the initial expenditures and other benefits set forth herein. In recognition of this fact, and the fact that the amount of damages incurred by Pepsi-Cola in the event of termination by School would be difficult to ascertain and prove, the parties agree that, if School should terminate this Agreement for any reason other than a breach in accordance with paragraph 10(a) above, School shall pay to Pepsi-Cola as liquidated damages the sum of one thousand two hundred and fifty (\$1,250) for each month or fraction thereof remaining in the year that annual payment was issued. In the event that there is a modification in any local, state or federal laws and/or regulations or a change in Customer's policy, limiting or eliminating the sale and distribution of any of the Beverages included in this Agreement,

Customer agrees that Pepsi shall have the option to either: (1) substitute for the Beverage(s) eliminated any other of Pepsi's Brands and renegotiate with Customer for revised funding, commission and/or rebate terms, as may be applicable; or (2) terminate this Agreement, without penalty.

10. **General Provisions.** (a) This Agreement shall be binding upon and inure to the benefit of the parties and their respective successors and assigns. This Agreement shall not be assigned by either party without the prior written consent of the other, except that Pepsi-Cola may assign its rights and obligations under this Agreement to any successor to substantially all of its properties and business.

(b) All notices provided for in this Agreement shall be in writing and effective upon receipt, if personally delivered to the person and address specified below, or three (3) days after placing in the U.S. Mail, postage prepaid, addressed:

If to School, to:  
Superintendent  
Big Walnut Local Schools  
110 Tippet Court  
Sunbury, Ohio 43074

If to Pepsi-Cola, to:  
Scott Brewer  
On-Premise Sales Manager  
Pepsi-Cola Bottling Co. of Columbus  
870 N 22<sup>nd</sup> St.  
Columbus, OH 43219

(c) This Agreement sets forth the entire understanding and agreement between the parties respecting its subject matter and supersedes all prior agreements, oral or written. This Agreement may be amended or modified only by a writing signed by the parties. No waiver or failure to enforce any rights under this Agreement by either party shall be deemed a continuing waiver or a waiver of any other rights under this Agreement, and any waiver must be in writing to be effective.

(d) This Agreement shall be governed by and construed in accordance with the laws of the State of Ohio.

IN WITNESS WHEREOF, the parties have executed this Agreement through their duly-authorized representatives as of the date first written above.

Big Walnut Local Schools

By: \_\_\_\_\_  
President, Board Of Education

By: \_\_\_\_\_  
Treasurer, Board Of Education

G&J PEPSI-COLA BOTTLERS, INC.

By: \_\_\_\_\_  
Scott Brewer, OP Sales Manager  
Pepsi-Cola Bottling Co. of Columbus

### LIST OF EXHIBITS

- Exhibit A -- The Premises
- Exhibit B -- Certificate of Authorization
- Exhibit C -- Numbers and locations of vending machines to be installed by Pepsi-Cola on the Premises
- Exhibit D -- Current pricing for Pepsi-Cola fountain and isotonic sports drink products
- Exhibit E -- Current pricing for Pepsi-Cola-identified cups
- Exhibit F -- Commission structure; initial vending prices
- Exhibit G -- School support



THE PREMISES

Big Walnut District Office  
Big Walnut High School  
Big Walnut Middle School  
Big Walnut Intermediate School  
Big Walnut Elementary School

CERTIFICATE

\_\_\_\_\_, [Treasurer] of the Big Walnut Local Schools, hereby certifies that the Board of Education of Big Walnut Local Schools passed the following resolution at its meeting of \_\_\_\_\_, 2022, approving the contract whereby Pepsi-Cola Bottling Co. of Columbus, a division of G&J Pepsi-Cola Bottlers, Inc., shall have rights to sell product at the schools in the District:

Dated: \_\_\_\_\_, 2022

Superintendent or Treasurer

Exhibit C

**Numbers and Locations of Vending Machines**

Placements will be at the discretion of Pepsi-Cola and  
Big Walnut Local Schools.

## Exhibit D



**G&J Pepsi Bottling Company**

School Pricing - Effective August 1, 2022



CSD's				
BRAND	PACKAGE		CASE	UNIT
CSD'S	7.5oz Cans	(24) Cans	\$11.85	\$0.49
CSD's	12oz Cans	(24) Cans	\$11.95	\$0.50
CSD's	16oz Cans	(12) Cans	\$15.75	\$1.31
CSD's	2-Ltr NR	(8) Bottles	\$15.65	\$1.96
CSD's	20oz NR	(24) Bottles	\$25.50	\$1.06
Pepsi Nitro	13.6oz Cans	(12) Cans	\$17.05	\$1.42
Energy				
SB Baya	12oz Can	(12) Cans	\$22.60	\$1.88
Double Shot	6.5oz Can	(12) Cans	\$26.50	\$2.21
Double Shot Energy	15oz Can	(12) Cans	\$29.40	\$2.45
Triple Shot Energy	15oz Can	(12) Cans	\$29.40	\$2.45
Mt Dew ENERGY	16oz Can	(12) Cans	\$17.35	\$1.45
Mt Dew Kick Start	16oz Can	(12) Cans	\$17.45	\$1.45
Mt Dew Kick Start Boost	12oz Can	(18) Cans	\$24.80	\$1.38
Mt Dew AMP	16oz Can	(12) Cans	\$19.45	\$1.62
Rockstar	16oz Can	(12) Cans	\$21.65	\$1.80
Rockstar Unplugged	12oz Can	(12) Cans	\$21.65	\$1.80
Bang & Bang Teas	16oz Can	(12) Cans	\$20.20	\$1.68
Bang Coffee	15oz Can	(12) Cans	\$31.20	\$2.60
Bang Energy Shots	3oz bottle	(12) Bottles	\$45.15	\$3.76
Juice				
Dole	10oz NR	(24) Bottles	\$23.75	\$0.99
Ocean Spray/Dole	15.2oz NR	(12) Bottles	\$16.40	\$1.37
Dole Lemonade	20oz NR	(24) Bottles	\$25.50	\$1.06
Twister	16.9oz NR	(24) Bottles	\$20.80	\$0.87
Chilled Juice TROPICANA				
Tropicana Premium Juice	12oz NR	(12pk) Bottles	\$16.90	\$1.41
Premium Juice	52oz NR	(6pk) Bottles	\$25.65	\$4.28
NAKED JUICE				
Naked Juice flavors	15.2oz NR	(8pk) Bottles	\$21.00	\$2.63
Naked Juice PROTEIN ZONE Flavors	15.2oz NR	(8pk) Bottles	\$31.15	\$3.89
Coconut Water	16.9oz NR	(12pk) Cartons	\$43.30	\$3.61
KEVITA				
Kevita Flavors	15.2oz NR	(6pk) Glass Bottles	\$15.15	\$2.53

NON-CARB				
BRAND	PACKAGE		CASE	UNIT
Water				
Aquafina	12oz NR	(3) 8pks	\$17.05	\$0.71
Aquafina	20oz NR	(24) Bottles	\$19.60	\$0.82
Aquafina	1-Ltr NR	(15) Bottles	\$22.45	\$1.50
NuRane	20oz NR	(24) Bottles	\$14.50	\$0.60
Propel Fitness Water	1-Ltr NR	(12) Bottles	\$18.85	\$1.57
Propel Fitness Water	20oz NR	(12) Bottles	\$15.50	\$1.29
LifeWTR	1-Ltr NR	(12) Bottles	\$18.50	\$1.54
LifeWTR	700ml NR	(12) Bottles	\$15.75	\$1.31
LifeWTR	20oz NR	(24) Bottles	\$22.25	\$0.93
Bubly and Bubly Bounce	12oz Cans	(24) Cans	\$12.10	\$0.50
Bubly	16oz Cans	(12) Cans	\$12.80	\$1.07
Tea				
Lipton Brisk	1 Ltr NR	(15) Bottles	\$13.45	\$0.90
Lipton Pure Leaf	18.5oz NR	(12) Bottles	\$17.45	\$1.45
Lipton Pure Leaf	64oz NR	(8) Bottles	\$19.55	\$2.44
Isotonics				
Gatorade Protein Bars	2.8oz Bar	(12) Pack	\$21.65	\$1.80
Gatorade / G2	12oz NR	(24) Bottles	\$24.00	\$1.00
Gatorade / G2	20oz NR	(24) Bottles	\$24.00	\$1.00
Gatorade	24oz NR	(24) Bottles	\$31.25	\$1.30
Gatorade	28oz NR	(15) Bottles	\$24.00	\$1.60
Gatorlyte	20oz NR	(12) Bottles	\$28.05	\$2.34
Gatorade Zero with Protein	16.9oz NR	(12) Bottles	\$24.00	\$2.00
Ready to Drink Coffee				
Frappuccino	13.7oz NR	(12) Bottles	\$26.60	\$2.22
Frappuccino	9.5oz NR	(15) Bottles	\$27.00	\$1.80
Frappuccino	9.5oz NR	(24) Bottles	\$42.00	\$1.75
SB Cold & Crafted	11 oz	(12) Bottles	\$20.10	\$1.68
SB COLD BREW	11 oz	(12) Bottles	\$30.05	\$2.50
SB Nitro	9.5oz Cans	(12) Cans	\$33.10	\$2.76
Ready to Drink Protein				
Muscle Milk Pro Series	14oz NR	(12) Bottles	\$42.00	\$3.50

Prices subject to change.

Exhibit E

Cup and Lid Pricing  
2022

<u>Double Poly</u>	<u>Quantity</u>	<u>Price</u>	<u>Unit Price</u>	<u>Product Code</u>
12oz Cups	2000	\$75.50	\$0.04	9680
12oz Lids	2000	\$43.75	\$0.02	9780
16oz Cups	1000	\$59.50	\$0.06	9676
16oz Lids	2000	\$43.75	\$0.02	9776
24oz Cups	1000	\$65.50	\$0.07	9677
24oz Lids	2000	\$43.75	\$0.02	9777
32oz Cups	480	\$52.50	\$0.11	9678
32oz Lids	960	\$35.50	\$0.04	9778
44oz Cups	500	\$54.50	\$0.11	9679
44oz Lids	1000	\$38.50	\$0.04	9779
<u>Freeze Cups</u>	<u>Quantity</u>	<u>Price</u>	<u>Unit Price</u>	<u>Product Code</u>
12oz Cups	1000	\$66.00	\$0.07	9662
12oz Lids	1000	\$32.50	\$0.03	9707
16oz Cups	1000	\$118.00	\$0.12	9672
16oz Lids	1000	\$60.00	\$0.06	9713
24oz Cups	600	\$112.00	\$0.19	9674
24oz Lids	1000	\$60.00	\$0.06	9733
<u>Specialty Cups</u>	<u>Quantity</u>	<u>Price</u>	<u>Unit Price</u>	<u>Product Code</u>
Acrylic Tumblers 24oz	72	\$83.00	\$1.15	9662
Pepsi Car Cups 32oz (free wheeler)	240	\$67.00	\$0.28	9854
Twistn Go Pepsi 32oz	120	\$77.00	\$0.64	9862
Kids Cups 12oz	500	\$80.00	\$0.16	9657

Exhibit F

Commission Structure

Product	Vend Price	Gross Sales	% Commission	Commission Per \$36 Collected
<b>Pepsi -Cola 20-oz. Bottles</b>	\$1.50	\$36.00	15%	\$5.00
<b>Gatorade</b>	\$1.50	\$36.00	15%	\$5.00
<b>16/20-oz. New Age Bottles</b> (Dole, Tropicana, Aquafina)	\$1.50	\$36.00	15%	\$5.00

Commissions are based upon total cash collected from each vending machine.

Exhibit G

Corporate Support

Year 1:	\$11,000
Year 2:	\$11,000
Year 3:	\$11,000
Year 4:	\$11,000
Year 5:	\$11,000
<b>TOTAL:</b>	<b>\$55,000.</b>

Other Support

Support listed below will be provided on an annual basis.

Support to School:

- 1.) 100 Cases of 12 oz. Pepsi Canned Product

**All financial support is contingent upon the district giving G&J Pepsi-Cola exclusive full-service vending in the high school for life of contract.**



