EXCLUSIVE BEVERAGE AGREEMENT WITH
G & J PEPSI-COLA BOTTLers, INc.

 THIS AGREEMENT is made effective as of *this* ***2/28/2024*** by and between the ***Garrad County Public Schools*** (“Institution”) and G&J Pepsi-Cola Bottlers, Inc., (“Bottler”).

 WHEREAS, Institution operates facilities at the locations set forth on **Exhibit A** attached hereto (the “Premises” – To avoid confusion, it is agreed that the Premises include each and every facility owned or operated by Institution, either now or in the future, including without limitation, all elementary, middle, high, post-secondary and alternative schools, athletic facilities, offices, maintenance facilities, and including for each such location, the grounds, parking lots, all buildings which are a part of the location, all cafeterias, faculty and staff lounges, dining facilities, branded and unbranded food service outlets, concession stands, stadiums, gymnasiums, press rooms, sky boxes, stadium suites, vending locations, players’ benches, sidelines and locker rooms); and

 WHEREAS, ***Garrard County Public Schools***, by majority vote of its Board of Education, awarded the contract for the provision of beverage services on the Premises to Bottler, subject to the terms and conditions set forth in this Agreement; and

 WHEREAS, as an inducement to Institution to provide Bottler with exclusive Pouring Rights (as defined in Section 3(a) below) and the advertising and promotional benefits described in this Agreement, Bottler is willing to provide to Institution commissions and other benefits set forth in this Agreement.

 NOW, THEREFORE, the parties agree as follows:

# **Term; Volume Requirement**

#  (a) Except as set forth in Section 1(b) below, the term of this Agreement will be for a period of **five** **(5)** years, commencing **April 1st, 2024**, and expiring **March 30th, 2029**. As used in this Agreement, “Term” shall mean the period set forth in this Section 1(a) unless the volume target set forth in Section 1(b) is not met during such Term and Bottler exercises its option thereunder, in which case the Term shall continue until the volume requirement is met.

(b) Institution shall order and cause to be placed in the Equipment a minimum of ***8500 cases (1700 cases per year*)** of Pepsi Products (as defined in Section 3(b) below) from Bottler during the Term. If Institution fails to purchase the volume requirement set forth in the preceding sentence during the initial Term for any reason, including but not limited to further restrictions being placed on the sale of soft drink beverages by legislative or other legal actions beyond the control of Institution, Bottler shall have the option, upon thirty-day notice to Institution, to extend this Agreement until the volume requirement is met.

# **Authority: Validity of Agreement** Each party represents and warrants, as a material inducement to the other to enter into this Agreement, that:

## 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.

## 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.

## It is not a party to or is it or its properties subject to or bound by any provision of any contract, mortgage, provision of its organizational documents law, or judgment or decree of any court, governmental body, or arbitrator, which would prohibit or otherwise by violated by the execution or performance by it of this Agreement or the consummation of the transactions contemplated hereby.

# **Exclusive Rights and Advertising**

## Institution hereby grants to Bottler the exclusive right during the Term to sell or otherwise distribute all soft drinks, teas, juices, isotonic sports drinks and bottled waters (the “Products”) on the Premises as set forth herein (such exclusive right is herein referred to as the “Pouring Rights”). Institution shall not permit any third party, including concessionaires, boosters or other guests to sell, distribute or otherwise make available to students, staff or guests any Products that may be deemed to be competitive with Pepsi Products.

## The grant of Pouring Rights in this Agreement means that Institution shall not permit the sale or other distribution on the Premises of any (i) soft drink other than *Pepsi-Cola ® products*, (ii) tea drinks other than *Lipton ® products*, (iii) juice products other than *Dole ® or Tropicana ® products*, (iv) isotonic sports drinks other than *Gatorade ®*, and bottled waters other than *Aquafina* ® (the Italicized words in this sentence are collectively referred to herein as the “Pepsi Products”). The parties acknowledge that Bottler may adjust and substitution among the Pepsi Products, but that the Pepsi Products shall always include a range of beverages at least as broad as set forth in the preceding sentence.

## During the Term, Bottler shall have the exclusive right to advertise the Products on the Premises. Institution shall take all steps necessary to prevent any permanent or temporary advertising, signage, or trademark visibility for Products competitive with Pepsi Products from being displayed anywhere on the Premises, including on scoreboards. The institution shall and shall use its best efforts to cause third parties using the Premises to allow no advertisements for Products competitive with the Pepsi Products from being displayed in programs, yearbooks, or similar publications. Bottler shall have the opportunity to provide a one-page advertisement for inclusion in every such program at no cost to Bottler.

## The institution shall and shall use its best efforts to cause all third parties using the Premises to purchase all Products sold or otherwise distributed on the Premises during the Term from Bottler.

### Regarding any products outside of DSD (direct store delivery) brought into the school by parents or students as a donation for teacher parties & opposing teams coming into Garrard County sporting events; all brands are preferred to be Pepsi brands however Pepsi can’t dictate donations. Garrard County to make sure that none of these donations are sold via concessions at any school event.

# **Equipment and Service**

## The bottler shall throughout the Term, at locations on the Premises agreed upon by the parties, install, maintain and service on a full-service basis vending machines and coolers (the “Equipment”). “Full-service” means that Bottler shall deliver, and fill the Equipment with, Pepsi Products, collect all the money from the Equipment; and pay the Institution monthly its commissions as set forth in Section 5 below; Institution itself shall not be obligated to purchase any Pepsi Products pursuant to this Agreement.

## All Equipment shall remain the sole property of Bottler. Bottler shall maintain and repair the Equipment and shall always keep the Equipment in good working order and condition during the Term. The institution shall not, nor shall it permit, any third party to repair, replace, relocate, move, or remove any of the Equipment. Institution shall not relocate such Equipment unless Bottler shall consent (which consent shall not be unreasonably withheld) for reasons of safety, security, or other necessity; Bottler shall be responsible for relocating such Equipment. Institution shall use its best efforts to keep the Equipment in clean and sanitary condition, free of graffiti and all announcements, advertising, or other materials, at all times. Institution agrees to promptly notify Bottler personnel of the need for any repairs or servicing of the Equipment, and to fully cooperate with Bottler personnel in effecting such necessary repairs and servicing, including without limitation providing timely access to the Premises for such purposes. All Equipment on the Premises shall be identified as dispensers of Pepsi Products. If Equipment is a Full-Service placement, it is agreed that Bottler will pay **Customer 30%** commission rate. Commission shall be calculated on cash collected, less all credit card fees and taxes. Credit card fees shall include the Monthly Service fee of Ten Dollars ($10.00) and all applicable transaction fees. All Full-Service commission payments will be made to the Customer on a quarterly basis. Payments will be made in April, July, October and January for the preceding quarter commissions earned. Additionally, Bottler will require a minimum of Fifty Dollars ($50.00) on each quarterly payment check issued to Customer. Should minimum requirement of Fifty Dollars ($50.00) not be met on a quarterly payment, the payment amount will roll forward to the next quarter and will be paid when the total for combined quarters equals more than the Fifty Dollar ($50.00) minimum requirement.

## Institution agrees to keep Equipment in the best locations for sales and will have the Vending Equipment turned on during the maximum time allowed under law.

# **Commissions and Pricing**. Bottler shall pay to Institution commissions on Bottler’s sales from Equipment located on the Premises in accordance with the commission structure set forth in **Exhibit B**. The initial vend prices for Pepsi Products sold through the Equipment shall be the prices first listed in **Exhibit B,** and during the Term, Bottler shall determine the vend prices in its sole discretion, but with the goal of remaining competitive with average market vend prices. G&J Pepsi-Cola Bottlers, Inc. reserves the right to apply commission payments to past due Accounts Receivable balances.

# **Additional Support and Benefits**. In consideration of the Pouring Rights granted in this Agreement, Bottler shall provide to Institution, in addition to the benefits otherwise provided for in this Agreement, the support set forth in **Exhibit C**. G&J Pepsi-Cola Bottlers, Inc. reserves the right to apply contract payments to past due Accounts Receivable balances.

# **Confidentiality**. The institution acknowledges and agrees that the commission and other support information relating to Pepsi Products is sensitive business information which, if disclosed to competitors of Bottler, would provide them with unfair competitive advantage. Accordingly, Institution shall use all reasonable efforts to keep confidential the terms and conditions of this Agreement relating thereto, except as may be required by law or legal process.

# **Force Majeure.** Force Majeure, if a Force Majeure Event (defined below) prohibits, significantly limits, restricts or in any other manner significantly interferes with Bottler’s performance under this agreement, the Sponsorship fee will be reduced by the total number of days out of three hundred and sixty-five (365) that sales were significantly impacted, or the length of the agreement will extend the same number of days, provided Bottler’s was not in default of this agreement, prior to the Force Majeure Event. Since Sponsorship fees are paid in advance, there will be no refund of any Sponsorship fees already paid, therefore the reduction in Sponsorship fees as permitted in this section, shall be in the form of a credit to the amount due to Customer of future Sponsorship fees or Full-Service vending commissions. The Customer shall also not be liable to Bottler’s for any losses resulting from the failure to perform its part of the agreement when such failure is due to a Force Majeure Event. Both parties shall make all reasonable efforts to remove or eliminate the Force Majeure Event, and the parties shall discuss in good faith what, if any, modification of the terms of this Agreement may be required to continue to perform their obligations under the Agreement. In such case, modification of the terms of the Agreement shall not be unreasonably withheld by either party. Upon cessation of the Force Majeure Event, the parties shall diligently pursue performance of their obligations under this agreement. As used in this paragraph “Force Majeure Event” means any event beyond the Customer’s or Bottler’s reasonable control including without limitation, fire, flood, riot, earthquake, strike, or other labor disturbance (whether by the Customer’s employees or Bottler’s employees), civil or military commotion, acts of God, war, terrorism, or any law, ordinance, rule or regulation, epidemics, pandemics (including diseases and illness), governmental action, declaration, or order (including, but not limited to any declaration or order by the president of the United States of America, the Governor of Ohio [Kentucky], or by any public health department or any of the foregoing).

# **Default and Early Termination**

## Each party shall have the right to terminate this Agreement 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.

## Upon termination or expiration of the Term of this Agreement, Institution shall permit Bottler reasonable access to the Premises for the purposes of removing any Equipment; Bottler shall have thirty (30) days after termination or expiration to affect such removal. Until the time that all Equipment is removed, Institution’s obligations to safeguard and keep the Equipment clean shall continue. In completing removal, Bottler 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 Bottler’s control. Upon effecting removal of all Equipment, Bottler shall thereupon issue final payment to Institution for amounts, if any, still owing to Institution as commissions, as provided in this Agreement.

## The parties acknowledge that, without the assurance of exclusive Pouring Rights for the full duration of the Term, Bottler would be unwilling to provide the commissions set forth in Exhibit B and the expenditures and other benefits set forth in **Exhibit C** and elsewhere in this Agreement. In recognition of this fact, the parties agree that, immediately upon Institution terminating this Agreement prior to the end of the Term for any reason other than a breach by Bottler, or upon Bottler terminating this Agreement as a result of Institution allowing third party competitors of Bottler to distribute Product on the Premises: (i) Bottler shall cause Institution to cease receiving all future commissions and other benefits under this Agreement, (ii) Institution shall pay to Bottler as liquidated damages for loss of up-front payments set forth in **Exhibit C** multiplied by the number of months remaining on the Term, and (iii) Institution shall pay to Bottler as additional liquidated damages for Bottler’s lost benefits resulting from the loss of exclusivity for the remainder of the Term, multiplied by the number of months from the first of the month of the month of termination to the end of the Term, inclusive.

# **General Provisions.**

## This Agreement shall be binding upon and insure 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 Bottler may assign its rights and obligations under this Agreement to any successor to substantially all its properties and business.

## 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 Institution, to:

Garrad County Schools

Attn: Office of Superintendent
322 W Maple Avenue

Lancaster, KY40444

If to Bottler, to: Pepsi Cola Bottling Co. of Lexington

Attn: On Premise Sales Manager

559 South Forbes Road

Lexington, Kentucky 40504

## 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.

## This Agreement shall be governed by and construed in accordance with the laws of **The Commonwealth of Kentucky***.*

## Attached hereto as **Exhibit D** is a certificate, signed by the Superintendent or Treasurer of Institution’s Board of Education, certifying that this Agreement was properly approved by the Board of Education.

## If the Institution should expand its operations to include other locations, the parties agree that such additional locations should be included in the Premises.

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

**GARRARD COUNTY PUBLIC SCHOOLS**

By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

President, Board of Education

By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_
Treasurer, Board of Education

By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_
Superintendent

**G&J PEPSI-COLA BOTTLERS, INC.**

By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_
Business Development Representative

By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

On Premise Sales Manager

**LIST OF EXHIBITS**

Exhibit A The Premises’

Exhibit B Commission Structure and Vending prices.

Exhibit C Support

Exhibit D Certificate of Authorization

**Exhibit A**

**THE PREMISES’**

 This Agreement shall apply to the following locations (the “Premises”):

PREMISES​.

 Garrard County Board of Education​

 Garrard County High School​

 Garrard County High School Food Nutrition (Cafeteria)

 Garrard County Middle School​

 Camp Dick Robinson Elementary School​

 Lancaster Elementary School​

 Paint Lick Elementary School​

 Garrard Co Area Technology Center

\*\*To include all Athletic Facilities & Booster Concessions for all sporting events in relation to Garrard Co Public Schools

\*Additional locations shall be added to this Exhibit A as set forth in Section 9(f) of the Agreement.

**Exhibit B**

**COMMISSION STRUCTURE and VENDING PRICES\***

# Commission shall be calculated on cash collected, less all credit card fees and taxes. Credit card fees shall include the Monthly Service fee of Ten Dollars ($10.00) and all applicable transaction fees. All Full-Service commission payments will be made to the Customer on a quarterly basis. G&J Pepsi-Cola Bottlers, Inc. reserves the right to apply commission payments to past due Accounts Receivable balances.

**Package** **Vend Price\*** **Commission rate/case.**

**20oz CSD/Tropicana $2.00 30%**

**20oz Aquafina $2.00 30%**

**12oz Mt Dew Kickstart $2.00 30%**

**20oz Gatorade & Propel $2.50 30%**

**18.5oz Pure Leaf $2.50 30%**

**12oz Cans $1.00 No Commission**

\*Vend prices subject to change

**Exhibit C**

**SUPPORT\***

(Including retail value)

* G&J Pepsi Cola will pay ***Garrard County Schools*** an ***upfront payment*** of $2500.
* G&J Pepsi Cola will pay Garrard County Schools an annual $500 payment towards purchase of Gatorade Kits for athletics.
* Pepsi Cola will provide *50 gratis cases* of 12oz cans or 16.9oz water annually.
* Pepsi provides $250 in signage annually years 1-5.

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\*G&J Pepsi-Cola Bottlers, Inc. reserves the right to apply contract payments to past due Accounts Receivable balances.

**Exhibit D**

**CERTIFICATE**

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, Superintendent of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, hereby certifies that the Board of Education passed the resolution, a copy of which is attached hereto as Exhibit B-1 at is meeting on \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 20\_\_\_, approving the contract whereby G&J Pepsi-Cola Bottlers, Inc., shall have the rights to sell product in accordance with this Agreement.

Signed: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Dated: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_