

The Corporation of the Municipality of Brockton



**By-Law 2023-048**

---

Being a By-Law to Authorize the Signing of an Agreement With Pepsico Canada for the Supply of Beverages at the Cargill Community Centre and Walkerton Community Centre.

---

**Whereas** The Council for the Corporation of the Municipality of Brockton deems it expedient to enter into an agreement with Pepsico Canada with respect to supplying beverages at the Cargill Community Centre and Walkerton Community Centre;

**And Whereas** the Council of the Corporation of the Municipality of Brockton approved entering into an agreement with Pepsico Canada in 2016 which expired in 2021 and the Council of the Corporation of the Municipality of Brockton desires to enter into a new agreement;

**Now Therefore** the Council of the Corporation of the Municipality of Brockton enacts as follows;

- 1.0 That the Corporation of the Municipality of Brockton Council hereby enter into an agreement with Pepsico Canada which is attached as "Schedule A" and forms part of this By-Law;
- 2.0 That the Mayor and Clerk be authorized to sign the agreement between the Corporation of the Municipality of Brockton and Pepsico Canada as attached.
- 3.0 This By-Law shall come into full force and effect upon final passage.
- 4.0 This By-Law may be cited as the "Pepsico Canada Agreement By-Law".

**Read, Enacted, Signed and Sealed this 23rd day of May, 2023.**

---

Mayor – Chris Peabody

---

Director of Legislative and Legal Services (Clerk) –  
Fiona Hamilton

## Beverage Agreement D (Funding)

### Customer Information

**Name of Business:** Walkerton Community Centre

**Primary Contact:** Brad Thomson

**Address:** 290 Durham St W

**City:** Walkerton

**Province:** Ontario

**Postal Code:** NOG 2V0

**Customer E-mail:** bthomson@brockton.ca

**COF Number(s):**  
(include all numbers) 3617444

**Business Phone:** 519 881 0625 **Cell #:** \_\_\_\_\_

**Business Owner:** Brad Thomson

### PBC Information

### Agreement Term

**PBC Location(s):** Owen Sound

**Created By:** Mark Cameron **Route #:** 14061

**PBC Market Unit:** North East Ontario **Phone #** 519 377 4764

**Sales Method:**  **Pepsi Direct**

**Agreement Start Date:** May 1<sup>st</sup> 2023

**Agreement End Date:** April 30<sup>h</sup> 2028

(Check Boxes and Specify, as applicable)

#### PBC Agrees To:

<b>X</b>	Loan, where and as necessary, coolers, fountain or other equipment to the Customer, to be placed and operated pursuant to the terms and conditions of this Agreement (as specified on reverse side). Initial Equipment Placement shall be as follows (fill out as applicable): Coolers: <u>3</u> One-Door <u>  </u> Two-Door <u>  </u> Three-Door <u>  </u> Counter-top <u>  </u> Energy Fountain: <u>  </u> 6 Valve <u>  </u> 8 Valve <u>  </u> Bar guns ( button) Other (Specify): _____
<b>X</b>	PBC shall provide, at no charge to the Customer, periodic maintenance, necessary service and repairs to all Equipment loaned to Customer pursuant to this Agreement.
<b>X</b>	PBC shall make available for purchase by Customer Pepsi branded cups and CO <sub>2</sub> ("Ancillary Products") at prices as determined by PBC. (Based on availability)
	<b>For additional local PBC Field input:</b>

#### Customer Agrees To:

<b>X</b>	<b>Volume Based Term (Check box if applicable)</b> The Term of this Agreement shall commence on the Agreement Start Date listed above, and end on the later of (1) the Agreement End Date listed above or (2) the date on which Customer purchases from PBC _____ Gallons/Cases for sale in the Outlets ("Termination Volume").
<b>X</b>	<b>EXCLUSIVE</b> – Customer agrees to exclusively serve the Products indicated below at the Customer's Outlet. The Products shall be the only Beverages of their respective types sold, dispensed or otherwise made available, or in any way advertised, displayed, represented or promoted at or in connection with the Customer's Outlet.
	<b>NON-EXCLUSIVE</b> – Customer agrees to serve the Products indicated below at Customer's Outlet, and if PBC has provided Customer with fountain Equipment, Customer agrees to serve PBC's postmix Products exclusively at its Outlet.
<b>X</b>	<b>DSD</b> – Customer agrees to purchase all Products directly from the PBC Location(s) indicated above and sell only those Products purchased from PBC from the Equipment provided to the Customer by PBC. <b>Customer shall not stock any non-PBC Products (food or beverages) in Equipment (whether coolers or fountain equipment).</b>
<b>X</b>	<b>MINIMUM THRUPUT</b> – In order to qualify for applicable Equipment, Customer shall purchase a minimum annual average of 150 Cases per door for each cooler and 200 Gallons per each fountain dispensing unit (minimum requirement may exclude bar guns at PBC's discretion) at the Outlet.
	<b>REQUIRED PRODUCTS.</b> Purchase, stock and distribute at a minimum each of the Products (as specified below) at all times during the Term.

#### AGREED TO AND ACCEPTED BY:

FOR PEPSICO BEVERAGES CANADA	
<b>Signature:</b>	Date
Mark Cameron Print Name	FSR Title
For Customer	
<b>Signature:</b>	Date
Print Name	Title

#### Required Packages for this Agreement:

<u>  </u> Fountain Postmix/BIB	<u>  </u> 591 ml	<u>  </u> 2 Liter	<u>  </u> Cans
<u>  </u> 547 ml			
Fountain Premix/Tanks (Limited Market Availability)	<u>  </u> Cups	<u>  </u> CO <sub>2</sub>	
Other :			

#### FOUNTAIN/POSTMIX SKU REQUIREMENTS:

(Must carry minimum of Six)

Pepsi    Dt Pepsi    7UP    Mountain Dew    Brisk Tea  
Mug    Dr Pepper    Dt Dr Pepper    Crush    Lemonade    Clamato  
Orange Juice    Cranberry Juice

#### BOTTLE SKU REQUIREMENTS: Must Check One Level

(All shall be 591ml bottles unless otherwise indicated)

**Platinum:** Must Purchase Pepsi, Dt Pepsi, 7UP, Brisk Tea, Aquafina Mountain Dew **plus any two** additional skus from brands below:

**Gold:** Must Purchase **SIX** skus from brands below:

**Silver:** Silver: Must Purchase **FOUR** skus from brands below:

Pepsi    Dt Pepsi    Mountain Dew    Diet Mountain Dew    Brisk Tea    7UP  
Aquafina    Pepsi Max    Gatorade    G2    Lipton Iced Tea    Dole    Crush    Dr  
Pepper    NEXT    Starbucks 405ml    AMP Energy    Rockstar Pure Leaf

**X** **Comply with the Terms of this Agreement**



# Beverage Agreement D (Funding)

COF:

This sets forth the agreement ("Agreement") between PepsiCo Beverages Canada, a business unit of PepsiCo Canada ULC ("PBC") and the Customer identified on the front page of this Agreement (the "Customer"), with respect to the purchase of Products.

**1. Definitions.** As used in this Agreement, the following capitalized terms shall have the respective meanings assigned thereto below.

- a. **"Agreement Year"** shall mean each twelve-month period beginning with the Agreement Start Date.
- b. **"Beverages"** means all carbonated and non-carbonated, non-alcoholic drinks, however dispensed, within the following categories: (i) colas and other flavored carbonated drinks; (ii) fruit juice, fruit juice containing and fruit flavoured drinks; (iii) chilled coffee drinks; (iv) chilled tea products; (v) hypertonic, isotonic and hypotonic drinks (sports drinks and fluid replacements); (vi) energy drinks, (vii) bottled or canned water whether carbonated or still (spring, mineral or purified), and (viii) any future categories of nonalcoholic beverage products that may be distributed by PBC.
- c. **"Cases"** shall mean the number of cases of bottle/can Products purchased by the Customer from PBC to be delivered in sizes, quantities and types of containers as determined by PBC from time to time.
- d. **"Equipment"** shall mean all coolers, fountain and other beverage dispensing equipment loaned or rented to the Customer by PBC during the Term.
- e. **"Gallons"** shall mean the gallons of postmix Product purchased by the Customer from PBC.
- f. **"Outlet"** shall mean the Customer's outlet located at the address indicated under the Customer information section, and any expansions thereof, including any restaurant, outlet or other facility in the Customer's system that may be opened or acquired by the Customer during the Term (the "Outlets"). In the event that new Outlets are added during the Term of this Agreement, the parties shall create and attach an updated schedule of Outlets, COFs and addresses, to be automatically included as part of the Agreement.
- g. **"Products"** shall mean Beverage products (including postmix or bottle and can ("B&C")) manufactured, sold or distributed by PBC which may be amended by PBC from time to time.
- h. **"Term"** the term of this Agreement shall be for the period commencing on the Agreement Start Date and expiring on the Agreement End Date or per the "Volume Based Term" as indicated on the front page of this Agreement, unless sooner terminated or extended as provided for herein. In the event the Termination Volume is not met by the Agreement End Date, PBC shall have the option, in its sole and absolute discretion, in lieu of termination, to extend the respective term of the Agreement until such time as the Customer's purchases meet the Termination Volume. Where PBC exercises this right, PBC shall have no further obligation to Customer in respect of any annual fixed amounts payable hereunder or to provide any additional free product.

**2. Consideration.** The Customer acknowledges and agrees that all consideration set forth herein is to be earned by the Customer based on its full compliance with the terms, and requirements of this Agreement and PBC shall provide such consideration provided the Customer (1) has paid in full, without offsets, auto or other deductions, all invoices for Products delivered to the Customer, and (2) is not in breach of its obligations under this Agreement.

**3. Equipment.** PBC or one of its affiliates shall retain all right title and interest in the Equipment. PBC will make initial delivery of each piece of Equipment to the Customer's designated location. Prior to the delivery of the Equipment, the Customer shall complete and sign an Equipment Move Order ("EMO") or equivalent with an authorized PBC representative, providing the location name and address where the Equipment will be located. PBC shall install the Equipment at Customer's above address with no additional cost to Customer, provided that Customer shall make available necessary electrical and plumbing facilities as required by city, provincial and Federal regulations. At all times during the Term, Customer shall comply with PBC's Product merchandising standards, and policies and procedures regarding the operation and use of PBC's Equipment, as such standards and policies may be updated or modified by PBC from time to time. Customer agrees not to remove or cause to be removed or otherwise encumber the Equipment from the location above designated without the written consent of PBC. Customer agrees to promptly notify PBC if the Equipment needs to be repaired or serviced. Customer further agrees to fully cooperate with PBC in effecting any necessary repairs or service. Provided the Customer is in compliance with all terms and conditions of this Agreement, PBC agrees to provide free service and repair of the Equipment (except where prohibited by law). Customer shall keep the Equipment free from any liens or encumbrances except those caused by PBC. Customer shall be liable to PBC for careful use and return of the Equipment in good condition, and any Equipment or parts lost or damaged by fire, theft, accident, or for any other reason, shall be paid for, at the time of loss, by Customer. PBC shall have the right, during Customer's usual business hours, to enter the premises where the Equipment is located and shall have free access thereto for purposes of inspecting or removing the Equipment. Failure to comply with this provision shall be deemed a material breach of this Agreement.

**4. Product Price and Payment.**

a. The prices for Products ("Prices"), as of the Agreement Start Date, are listed in Schedule A, and are exclusive of any applicable taxes, deposits, fees or sales/excise taxes (local, provincial or federal). PBC reserves the right, at its sole discretion, to change Prices at any time during the Agreement upon 30 days written notice to Customer. Payment of PBC invoices shall be in accordance with their stated terms which, if credit is granted, are currently net 30 days from the date of invoice. Customer shall complete a PBC credit application prior to delivery of any Product and Customer shall be subject to PBC's credit policies. PBC shall extend credit payment terms, if any, in accordance with PBC's credit policies, acting reasonably. Title and risk of loss to/of ordered Products shall pass to Customer immediately upon delivery of same.

**5 General Terms**

a. **Breach and Termination.** In the event either party breaches a provision of this Agreement, the non-breaching party shall give the other party written notice of such breach. Upon receipt of such written notice, the breaching party shall have ten (10) days to cure a monetary breach, and thirty (30) days to cure any other breach. If such breach is not cured within the specified time period, the non-breaching party may terminate this Agreement upon the expiration of such cure period upon written notice to the breaching party.

**b. Remedies.**

If PBC terminates this Agreement due to Section 5(a) above or Customer terminates this Agreement for any reason other than default by PBC, then in addition to any other remedies, including but not limited to the recovery of lost profits, to which PBC may be entitled by reason of any breach, Customer shall: (i) immediately reimburse PBC for the cost of installation and removal of the Equipment; (ii) immediately reimburse PBC for the unearned portion of any payments (e.g. Initial Support Payment) provided by PBC to the Customer, prorated from the date of the breach and the expected duration of the Term; and (iii) not receive any consideration pursuant to this Agreement which has not been fully earned or redeemed by Customer as of the date of such breach.

c. **Force Majeure: Impossibility of Performance.** Neither party shall be responsible to the other or to any third party for any failure, in whole or in part, to perform any obligations hereunder, to the extent and for the length of time that performance is rendered impossible or commercially impractical, owing to acts of God, public insurrections, pandemic/epidemics, floods, fires, strikes, lockouts, or other labor disputes, disruptions in supply, shortages or scarcity of materials, crop failures, freezes, and other circumstances of a substantially similar character beyond the reasonable control of the affected party (collectively, a "Force Majeure Event"). Any party so affected shall (i) use all reasonable efforts to minimize the effects thereof and (ii) promptly notify the other party in writing of a Force Majeure Event and the effect of a Force Majeure Event on such party's ability to perform its obligations hereunder. The affected party shall promptly resume performance after it is no longer subject to a Force Majeure Event. In the event Customer's performance obligations are suspended pursuant to a Force Majeure Event as set forth herein, PBC's funding obligations will be suspended for the duration of Customer's nonperformance. Once Customer resumes performance or in the event Customer is able to perform some, but not all of its obligations herein, any fixed, advanced, or guaranteed funding will be adjusted commensurate with the decline in volume associated with the suspended or partial performance. If the Force Majeure Event period continues beyond 60 days, the parties agree to discuss in good faith potential modifications to this Agreement and in the event an agreement cannot be reached, any party may terminate the Agreement.

d. **Minimum Thruput Failure to purchase average number of Cases/Gallons.** At the end of each Agreement Year, or at any time upon thirty (30) days' notice, if Customer fails to, or if Customer purchase trends indicate that Customer will fail to, purchase the average number of Cases/Gallons as indicated on the front page of this Agreement ("Minimum Thruput"), then PBC shall have the right to remove Equipment completely and terminate this Agreement, or substitute Equipment as necessary such that the average Cases/Gallons is achieved, or renegotiate funding. The Customer shall return the Equipment within 20 days after written notice from PBC.

e. **Equipment upon Expiration or Termination of this Agreement.** If this Agreement is terminated or if at the end of the Term, the Agreement expires and the parties do not enter into a subsequent agreement, then the Customer shall fully cooperate with PBC to ensure that PBC is able to pick up its Equipment. Within 15 days after the expiration or termination the Customer shall coordinate with PBC so that PBC may pick up its Equipment at the Customer's locations. Once PBC has picked up and inspected the Equipment, PBC shall notify the Customer of any damage to or missing Equipment/parts (excluding reasonable wear and tear). Customer shall immediately pay to PBC all applicable costs, expenses, and fees associated with the repair/replacement of the Equipment or associated parts. Failure to make such payment shall be deemed a material breach of this Agreement.

f. **Right of Offset.** PBC reserves the right to withhold payments due hereunder as an additional remedy for breach, or as an offset (partial or whole) against any amounts not paid by Customer to PBC pursuant to this Agreement.

g. **Customer Representation.** Customer represents and warrants to PBC that Customer has right, power, authority and capacity to enter into this Agreement and perform its obligations hereunder and that the execution, delivery and performance of this Agreement by Customer will not violate any agreements with, or rights of, third parties.

h. **Non-Disclosure.** Except as may otherwise be required by law or legal process, Customer shall not disclose to unrelated third parties the terms and conditions of this Agreement without the written consent of PBC.

i. **Assignment/Acquisition.** The Customer shall not sell, assign, transfer or otherwise encumber any interest in the Agreement without prior written consent of PBC. In the event that the Customer sells, assigns or transfers its assets to a third party or there is a change in control of the Customer, the Customer shall cause the transferee to assume all of the Customer's obligations under this Agreement prior to such sale, assignment or transfer. In the event the transferee has an existing local agreement with PBC or national agreement with PepsiCo (which agreement covers the purchase of Products), the agreement with the transferee shall continue and PBC's obligations under this agreement shall terminate. PBC may assign this Agreement at any time to an affiliate without any prior consent.

j. **Unauthorized Reselling and/or Transshipment.** PBC reserves the right to limit quantities, deduct/withhold funding, charge transshipment fines, or terminate this Agreement immediately (i.e. without notice/cure period as set forth above) if the Customer: (i) resells Products in a manner not authorized by this Agreement, including to other resellers/distributors; (ii) sells Products directly or indirectly for resale outside of the PBC Location's exclusive territory; or (iii) purchases same-branded products as the PBC Products outside PBC Location's exclusive territory and resells such products within such exclusive territory. PBC will have the right to inspect Customer's warehouse for the purpose of verifying product production codes.

k. **Trademarks.** All displays of PBC, PepsiCo Canada ULC and/or PepsiCo, Inc. trademarks, trade names, slogans and/or logos (whether owned or licensed) shall be subject to PBC's prior approval. Customer has no right, title or interest in or to any such trademark, trade name, slogan or logo.

l. **Governing Law.** This Agreement shall be governed by, and construed in accordance with, the laws of the Province of Ontario and the federal laws of Canada applicable therein.

m. **Right of First Negotiation.** As of the commencement of this Agreement until ninety (90) days prior to the expiration of the Term, the Customer hereby agrees to grant PBC exclusive negotiation rights with respect to extending the current Agreement or entering into a new agreement for Beverage sales/distribution rights at/to the Outlets.

n. **Entire Agreement.** This Agreement contains the entire agreement between the parties hereto regarding the subject matter hereof and supersedes all other agreements between the parties, including prior funding commitments relating to the purchase of the Products by Customer. This Agreement may be amended or modified only by a writing signed by each of the parties.

o. **Electronic Signature.** This Agreement may be executed by any form of electronic imaging and shall have the same validity and effect as an original signature.

PepsiCo Beverages Canada		Customer	
Signature:	Date:	Signature:	Date: