

**BOARD OF REGENTS**  
**EASTERN MICHIGAN UNIVERSITY**

<b>SECTION: 28</b>
<b>DATE:</b> <b>June 16, 2015</b>

**RECOMMENDATION**

**CONTRACT EXTENDING UNIVERSITY BEVERAGE RIGHTS**

**ACTION REQUESTED**

It is recommended that the Board of Regents authorize the President to extend the contract with Pepsi Cola for University-Wide beverage rights. The contract extension is for ten (10) years through October 17, 2025.

**STAFF SUMMARY**

In October 2008, the Board of Regents approved PepsiCo Bottling Group to become the exclusive supplier of beverages to EMU. This agreement offered Pepsi the ability to have its products promoted and sold across a number of EMU dining and vending locations. Pepsi would identify itself with the university and its intercollegiate teams and would provide financial and other promotion benefits. The original sponsorship agreement was for a ten (10) year term commencing on October 17, 2008 and ending on October 17, 2018.

With this extension, PepsiCo Bottling will continue to have exclusive rights to provide beverages for sale and distribution at all University facilities. In addition, this exclusive right will expand PepsiCo's current Retail Share from 80% to 100% of shelf space. The University will continue to maintain the pricing cap embedded within the current contract, as well as Vending Commission Sharing, and product enhancements. PepsiCo will continue to provide all vending equipment, along with expanding offerings for product in both vending and kiosk locations.

**FISCAL IMPLICATIONS**

Over the ten year term, Sponsorship Revenues to the University will be \$ 2.8 million, a 22% increase over the original agreement (\$2.3 million). In addition, the University will continue to benefit from Vending Commissions (\$800,000) as well as pricing certainty for product.

**ADMINISTRATIVE RECOMMENDATION**

The proposed Board action has been reviewed and is recommended for Board approval.

\_\_\_\_\_  
**University Executive Officer**

\_\_\_\_\_  
**Date**

## **FIRST EXTENSION**

**THIS FIRST EXTENSION** (this "First Extension") is made by and between Bottling Group LLC with offices located at 1 Pepsi Way, Somers, NY 10589 and 3400 Auburn Road, Auburn Hills, 48326 ("Pepsi") and Eastern Michigan University, with its principal place of business in Ypsilanti, MI (the "Customer").

**WHEREAS**, Pepsi and Customer are parties to an existing University Sponsorship Agreement, the Term of which commenced on October 17, 2008 and expires on October 16, 2018 (the "Agreement"); and

**WHEREAS**, the parties wish to extend the Term, make other modifications to the Agreement, and memorialize the same in writing.

**NOW, THEREFORE**, in consideration of these premises and the covenants herein contained, it is hereby agreed that the Agreement is hereby extended as follows. As used in this First Extension, capitalized terms defined in the Agreement and not otherwise defined in this First Extension shall have the respective meanings assigned thereto in the Agreement.

1. Effective immediately, the Term of the Agreement shall be extended for an additional 7 year period to expire on October 16, 2025;
2. Effective June 1, 2015 and continuing until the expiration of the Term, Section II.(A)(5) of the Agreement shall be deleted in its entirety and replaced with the following language:

**Exclusive rights to 100% of the refrigerated shelf space in coolers (except dairy coolers), and warm single serve and multi-pak beverages offered that compete with Pepsi brands, in all University Convenience Stores, to provide can and bottled beverages in the following categories: carbonated beverages, non-carbonated beverages, teas, isotonic beverages, new age beverages, energy drinks, and bonled water. Pepsi shall choose the location of shelf space that equals 100%, by shelf, of the available space in each store. Pepsi's Beverages shall be the only beverages advertised in the store.**

3. Effective immediately, Section VI.(A) of the Agreement shall be deleted in its entirety and replaced with the following language:

**A Sponsorship fee in the total amount of Two Million Three Hundred Thousand Dollars to be paid as follows: ("Annual Sponsorship Fee"). The Annual Sponsorship Fee shall be deemed earned based on full performance by the University during the Year(s) in which it is paid.**

**\$460,000 for Agreement Years 1 and 2 - payable within sixty (60) days of the beginning of this Agreement or execution of this contract, whichever occurs later.**

**\$230,000 for each of Agreement Years 3 through 7 - with each \$230,000 payment payable within sixty (60) days of the beginning of each of those respective Agreement Years.**

**In Agreement Years 8-17 (2015-2025) the Annual Sponsorship Fee shall be \$280,000. This payment shall be made in arrears in two equal semi-annual installments of \$140,000. For purposes of clarity, payment of the 2015 Annual Sponsorship Fee shall be made within 60 days of April 16, 2016 (\$140,000) and October 16, 2016 (\$140,000.)**

**At University's sole option, the University reserves the right to direct Pepsi to annually expend up to \$200,000 to purchase tickets to University's Football Team's home games. The annual payment due the University shall be reduced by the total amount expended by Pepsi pursuant to this provision for tickets to University's Football Team's home games. Tickets purchased by Pepsi may be distributed to community groups identified by Pepsi and University.**

4. The parties acknowledge and agree that in addition to any price increases permitted by the Agreement that Pepsi shall be permitted to take an additional one-time price increase up to 9% on fountain Products in 2021.
5. The parties acknowledge and agree that commencing by June 1, 2015, Customer shall add at least three additional (incremental) SKUs to the portfolio of Products sold through concession stands at athletic events.
6. All other terms and conditions of the Agreement that are not amended by this First Extension shall remain in full force and effect.

**IN WITNESS WHEREOF, Pepsi and Customer have caused this First Extension to be executed by the authorized persons set forth below.**

**Bottling Group LLC,**

**Eastern Michigan University**

By \_\_\_\_\_

By \_\_\_\_\_

Print name: \_\_\_\_\_

Print name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

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

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