RESOLUTION NO. 2022-32091

A RESOLUTION OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, WAIVING, BY 5/7TH VOTE, THE FORMAL COMPETITIVE BIDDING REQUIREMENT, FINDING SUCH WAIVER TO BE IN THE BEST INTEREST OF THE CITY, AND AUTHORIZING THE CITY MANAGER TO NEGOTIATE AN AGREEMENT WITH PEPSICO INC, FOR AN EXCLUSIVE NON-ALCOHOLIC BEVERAGE (EXCLUDING THE ENERGY DRINK CATEGORY) MUNICIPAL MARKETING AGREEMENT, FOR VENDING AND DISPENSING ON CERTAIN CITY-OWNED PROPERTIES, BASED UPON THE ESSENTIAL TERMS SET FORTH IN THE CITY COMMISSION MEMORANDUM ACCOMPANYING THIS RESOLUTION, FOR A TERM OF TEN (10) YEARS; AND FURTHER, AUTHORIZING THE CITY MANAGER TO FINALIZE AND EXECUTE THE AGREEMENT, SUBJECT TO FORM APPROVAL BY THE CITY ATTORNEY.

WHEREAS, the City of Miami Beach (the "City") entered into a sponsorship agreement, dated March 14, 2012 (the "Agreement"), with Coca-Cola North America, a division of the Coca-Cola Company, and Coca-Cola Refreshments USA, Inc. d/b/a Florida Coca-Cola Bottling Company (the "Bottler") (collectively, "Coca-Cola") for a term beginning January 1, 2012 and ending on December 31, 2021; and

WHEREAS, on March 1, 2017, the Mayor and City Commission adopted Resolution No. 2017-29774, approving the assignment of the Bottler's interest in the Agreement to Coca-Cola Beverages Florida, LLC, as the successor Bottler, in connection with the sale of Bottler's assets to the successor Bottler; and

WHEREAS, the parties executed an assignment and assumption agreement, dated March 29, 2017, assigning Bottler's interest in the Agreement to the successor Bottler; and

WHEREAS, on January 13, 2021, the Mayor and City Commission adopted Resolution No. 2021-31541, approving an amendment to the Agreement ("Amendment No. 1"); said Amendment removing the City's requirement to purchase a minimum of 22,500 cases of Coca-Cola product per Agreement Year for the 2020 and 2021 Agreement Years; guaranteeing that the City would receive the full Sponsorship Fee for the 2020 Agreement Year, in the amount of $325,000; and reducing the Sponsorship Fee that Coca-Cola would have to pay the City for the 2021 Agreement Year from $325,000 to $195,433.33; and

WHEREAS, the Agreement expired on December 31, 2021; and

WHEREAS, in order to explore all opportunities for a non-alcoholic pouring rights partnership, while ensuring continuity of services and maintenance of existing equipment, the City and Coca-Cola agreed to extend the Agreement, on a month to month basis, commencing on January 1, 2022, for a period not to exceed six (6) months (June 30, 2022), and to remove the energy beverage category from the scope of the Agreement; and

WHEREAS, Spectra Partnerships initiated a selection process to identify and recommend an exclusive / official non-alcoholic beverage partner for the City, with the goal of identifying a partner that would be interested in a brand affiliation relationship with the City, while removing all plastics included in the proposals for the soda and water categories, and providing a marketing benefit to both parties, as well as revenue generation for the City; and

WHEREAS, Spectra Partnerships initiated a process that involved the initial identification of potential respondents; an invitation for those companies to submit proposals; and invited entities in the nonalcoholic beverage category to submit "best and final" offers; and

WHEREAS, On February 25, 2022, at the Finance and Economic Resilience Committee, the Administration discussed the topic and was given the direction to bring back a recommendation to the March 9, 2022 Commission Meeting for a Pouring Rights sponsor, provided that recommendation was a proposal that included 100% plastic free options for the water and soda categories, while plastics for certain categories like isotonics (sports drinks) would be acceptable as plastic-free alternatives were not yet available in the quantities needed; and

WHEREAS, subsequent to their submission and presentation, Spectra Partnerships recommended to the City the selection of PepsiCo as the City's exclusive non-alcoholic beverage sponsor, to exclude the energy drink category, based on their proposals attached to the City Commission Memorandum accompanying this Resolution (the "Proposals"); and advised City staff that an agreement with PepsiCo would provide a financial, marketing and in-kind benefit of an approximate amount of $1,595,000.00 to the City over the proposed ten-year term of the partnership (cash and non - cash value).

WHEREAS, based upon the foregoing, the City Manager recommends waiving, by 5/7th vote, the formal competitive bidding requirement, as permitted in Section 2-367(e) of the City Code, and authorizing the City Administration to negotiate an agreement with PepsiCo for a term of ten (10) years, based upon the essential terms set forth in the City Commission Memorandum accompanying this Resolution.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, that the Mayor and City Commission hereby waive, by 5/7th vote, the formal competitive bidding requirement, finding such waiver to be in the best interest of the City, and authorize the City Manager to negotiate an agreement with PepsiCo for an exclusive nonalcoholic beverage municipal marketing partnership for vending and dispensing in certain city owned properties, but to exclude the energy drink category, based upon the essential terms set forth in the City Commission Memorandum accompanying this Resolution, for a term of ten (10) years; and further, authorize the City Manager to finalize and execute the agreement subject to form approval by the City Attorney.

PASSED and **ADOPTED** this 9th day of March 2022.

ATTEST:

Dan Gelber, Mayor

MAR 1 4 2022

Rafael E. Granado, City Clerk

MIAMI BEACH INCORPORATED MARCH 26 1915

APPROVED AS TO
FORM & LANGUAGE
& FOR EXECUTION

City Attorney

3-1-22
Date

MIAMIBEACH

COMMISSION MEMORANDUM

TO: Honorable Mayor and Members of the City Commission

FROM: Alina T. Hudak, City Manager

DATE: March 9, 2022

SUBJECT: A RESOLUTION OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, WAIVING, BY 5/7TH VOTE, THE FORMAL COMPETITIVE BIDDING REQUIREMENT, FINDING SUCH WAIVER TO BE IN THE BEST INTEREST OF THE CITY, AND AUTHORIZING THE CITY MANAGER TO NEGOTIATE AN AGREEMENT WITH PEPSICO INC, FOR AN EXCLUSIVE NON-ALCOHOLIC BEVERAGE MUNICIPAL MARKETING AGREEMENT (EXCLUDING THE ENERGY DRINK CATEGORY), FOR VENDING AND DISPENSING ON CERTAIN CITY-OWNED PROPERTIES, BASED UPON THE ESSENTIAL TERMS SET FORTH IN THE CITY COMMISSION MEMORANDUM ACCOMPANYING THIS RESOLUTION, FOR A TERM OF TEN (10) YEARS; AND FURTHER, AUTHORIZING THE CITY MANAGER TO FINALIZE AND EXECUTE THE AGREEMENT, SUBJECT TO FORM APPROVAL BY THE CITY ATTORNEY.

RECOMMENDATION

The Administration recommends that the Mayor and Commission waive the formal competitive bidding requirement and authorize the City Manager to negotiate an agreement with PepsiCo Inc, for an exclusive non-alcoholic beverage Pouring Rights sponsorship agreement, to exclude the energy drink category, based upon the essential terms set forth in the City Commission memorandum accompanying this resolution, for a term of ten (10) years; and further, authorizing the City Manager to finalize and execute the agreement, subject to form approval by the City Attorney.

BACKGROUND/HISTORY

On March 14, 2012, the City of Miami Beach entered into a sponsorship agreement with Coca-Cola North America, for Pouring Rights exclusivity, for a term beginning on January 1, 2012 and ending on December 31, 2021.

On March 1, 2017, as per Resolution No 2017-29774, the Mayor and Commission approved the assignment of Coca-Cola North America's interest in the Pouring Rights agreement, to Coca-Cola Beverages Florida.

On January 13, 2021, due to COVID-19, the Mayor and City Commission adopted Resolution No. 2021-31541, approving an amendment to the Agreement ("Amendment No. 1"); removing the City's requirement to purchase a minimum of 22,500 cases of Coca-Cola product per Agreement Year for the 2020 and 2021 Agreement Years; guaranteeing that the City would receive the full Sponsorship Fee for the 2020 Agreement Year, in the amount of $325,000; and reducing the Sponsorship Fee that Coca-Cola would have to pay the City for the 2021 Agreement Year from $325,000 to $195,433.33.

On December 8, 2021, the Mayor and City Commission adopted Resolution No. 2021-31966, authorizing the City Manager to negotiate and execute Amendment No. 2 to the Agreement, in order to extend the Agreement, on a month to month basis, commencing on January 1, 2022, for a period not to exceed six (6) months (June 30, 2022), and removing the energy beverage category from the scope of the Agreement. Following the December 8, 2021 meeting, further discussions with Coca-Cola Florida resulted in the need to make additional changes to the month to month agreement in order to execute Amendment No. 2, including:

(1) removal of Coca-Cola Florida's obligation to pay the City a Sponsorship Fee per Agreement Year, and removal of the City's requirement to purchase 22,500 cases of bottles/cans per Agreement Year, both pursuant to Section 5 ("Sponsorship Fee") of Attachment A ("Term Sheet") to the Agreement;

(2) removal of Coca-Cola Florida's requirement to provide the City with $17,500 in cash for the purchase of equipment and other products, pursuant to Section 7 ("Complimentary Product") of Attachment A to the Agreement;

(3) removal of Coca-Cola Florida's requirement to provide the City with in-kind marketing support fund, pursuant to Section 11 ("Marketing Program") of Attachment A to the Agreement; and

(4) removal of the City's requirement to provide support, pursuant to Section 14 ("City Support") of Attachment A to the Agreement.

Throughout November and December 2021, the City, through our municipal sponsorship consultant, Spectra Partnerships, initiated a new round of negotiations to select a non-alcohol pouring rights partner based on the best financial model and revenues for the City. Each company was invited to submit proposals, including a 'best and final offer'. Coca-Cola Beverage Florida, LLC (Coke Florida) and PepsiCo (Pepsi) submitted ten-year proposals; Dr. Pepper did not submit a proposal, and Red Bull North America, Inc. (Red Bull) submitted a five-year proposal for the energy drink category.

Each proposal provided a combination of an annual sponsorship fee, as well as a structure for additional revenues to the City from sale of products (either vending or dispensed), and potential marketing opportunities. Spectra Partnerships evaluated the short and long-term benefits, both financial and intangible, to the City, and recommended that the City enter negotiations with Coke Florida and Red Bull as the City's official non-alcohol beverage and energy drink partners.

Upon further review and consultation with stakeholders and members of the Commission, the administration was provided with feedback regarding the proposals, and felt that further consideration would be prudent, in order to explore concerns around plastics and sustainability.

In order to explore these options, the City withdrew the Coke Florida sponsorship agreement from the December 8, 2021 Commission agenda, while a referral was made to the Finance and Economic Resilience Committee to gain direction from the Committee on what an ideal Pouring Rights agreement would look like.

Following the December 8, 2021 Commission meeting, the administration began a new round of negotiations with various beverage suppliers to request proposals that were plastic free for the water and soda categories, and ensure more of a focus on sustainability.

As part of the current month to month extension with Coke Florida, the City receives approximately $100,000 worth of vending equipment, as well as all inventory management and maintenance services for that equipment across City facilities. It is the expectation of the administration that any new pouring rights partner would need to supply the same level of vending service, inventory management and maintenance, as has been provided by Coke Florida for the last ten years so as not to affect the services currently provided in various city owned properties.

Coke Florida's contract expired on December 31, 2021.

There was no Finance and Economic Resilience Meeting in January 2022.

On February 25, 2022, the administration discussed the topic with the FERC Committee and was given the direction to bring back a recommendation to the March 9, 2022 Commission meeting, provided that recommendation was a proposal that included 100% plastic free options for the water and soda categories. The Committee agreed that plastics for certain categories like isotonics (sports drinks) would be acceptable as plastic-free alternatives were not yet available in the quantities needed.

ANALYSIS

Comparable to the previous partnership, the selected entity would have exclusive vending rights at all City facilities, as well as "pouring rights" at certain City-owned facilities, including those currently managed by third parties, including, but not limited to the Miami Beach Convention Center, the North Beach Bandshell and Flamingo Park Tennis Center. Pouring rights refers to dispensed non-alcoholic beverages or beverages sold via concession, as compared to being sold through a vending machine.

The contracted management companies for these respective City facilities will be required to participate in the City's selected pouring rights beverage program, with all revenues relating to sponsorship and commissions, as well as marketing support, to benefit the City directly. Spectra Partnerships has managed the process on behalf of the City. The process has involved the initial identification of potential respondents; an invitation for those companies to submit proposals; the selection of the best potential partnership offers for the submission of a "best and final" offer; and the recommendation of a final offer for consideration.

Spectra Partnerships' involvement has included analysis of comparable partnerships, negotiation on sponsorship deal points, and providing these potential partners with information relating to the City and opportunities. They remained in contact with potential partners before and during this process. This included gathering information on current venues, volumes and deal structures.

Spectra Partnerships advised prospective proposers of the City's interest in an exclusive non-alcoholic beverage partner partnership that must meet our plastic free initiatives as it relates to the soda and water categories, and all other categories, when possible. In addition to information on volumes, venues, current pricing, etc., Spectra Partnerships recommended a minimum ten-year term for the partnership which is not only consistent with typical non-alcoholic beverage partnerships, but also creates an incentive for prospective proposers — as the selected partner will have exclusive rights for an extended time — sufficient to amortize any capital investment, and to establish their presence in the market.

Based on Spectra Partnerships review, PepsiCo presented the best proposal that provided a combination of an annual "sponsorship" fee, commissions on sales, and a rebate program. The sponsorship fee was reduced in all proposals as the requirement of becoming plastic free required higher production costs for aluminum, especially considering the current shortage in the supply chain.
Below are the major components of the PepsiCo proposal:

PepsiCo Deal Points:

Term: 10 years

Sponsorship fee*: $70,000 per year, starting in 2022, with a $5,000 increase each year, resulting in $155,000 in Year 10. This sponsorship fee is contingent on the City hitting our annual volume requirements.

Commissions / Pricing / Rebates:

Rebate Bonus**: $1 / case or gallon purchased.

Marketing Funds - $0.75 / case or gallon

Full Service Vending Commissions - $21,000 / year on 1,000 case annual volume at 40%

Complimentary Product - estimated $4,000 / year - up to 400 cases of free product to be used to support CMB initiatives to include 12oz carbonated soft drink cans and 16 oz Proud Source Aluminum Bottles (not cash convertible).

Sustainability Fund - $25,000 / year to purchase mutually agreed upon items to support sustainability initiatives (not cash convertible)

Community Outreach Programs - $20,000 / year (not cash convertible)

Equipment & Free Service - $150,000 in Year 1 + $15,000 / following year for equipment, service and repair (not cash convertible).

*Full Sponsorship fee contingent on the City achieving our required 24,000 case / gallon commitment. Should the City fall short on that commitment, the sponsorship fee would be reduced by the same percentage. Should the City exceed our commitment, we would receive increased sponsorship fees.

**Rebates estimated on 24,000 cases and gallon annual volume. In 2019, the City of Miami Beach averaged 19,000 cases and gallon volume, but we believe that with the new addition of PepsiCo products - Gatorade and Starbucks - we will hit the increased target numbers, especially in the MBCC and Beachfront.

PepsiCo South Florida Market Share for Liquid Beverage Refreshment Category:

Non Carbonated Category (Isotonics, Teas, Water, Juice, Coffee) - 80% of market share
Carbonated Soft Drink Category (Pepsi, Diet Pepsi, Mountain Dew, Brisk Iced Tea) - 20% of market share

Category	**Pepsi Share**	**Coke Share**
Sports	73.9	10.0
Coffee	86.2	7.0
Value Added Protein	36.4	26.0
Juice & Juice Drinks	36.3	10.1
Tea	31.2	9.9
Water	6.7	18.9
Soft Drinks	21.2	60.0
Liquid Refreshment Beverage (LRB) Total	**22.9**	**17.9**

Proposals:

Attached to this agenda item, you will find the proposals of both PepsiCo and Coke Florida for the Pouring Rights category and Open Water, Icelandic. Pathwater, Nestle USA (Perrier, San Pellegrino, Acqua Panna), and Mananalu in the Water Category. The proposals delineate the general responsibilities of each party during the term of the Agreement to be confirmed in the verbiage included in the final contract. The final contract will also include all confirmed locations of potential vending equipment within City owned facilities.

NOTE ON WATER PROPOSALS: While we received some great proposals for the water category, both PepsiCo and Coke Florida confirmed that the removal of the water category from their proposals would result in their inability to participate as a Pouring Rights sponsor. Considering that vending within City facilities, including but not limited to the Miami Beach Convention Center, tennis centers, golf clubs, and community and recreation centers is a large portion of this contract and revenue stream for the City, we have had to disregard any separate water category bids in order to ensure continuity in our vending business, as no water specific company was able to undertake our city wide vending business.

Proposal Comparisons:

The following charts provide a breakdown of the value of the proposed partnership between the City of Miami Beach and PepsiCo versus Coke Florida (cash and non-cash):

PROPOSALS FOR CITY OF MIAMI BEACH NON-ALCOHOLIC POURING RIGHTS - FEBRUARY 2022

PEPSI

	Contract Year										
	1	2	3	4	5	6	7	8	9	10	TOTAL
Annual Support Funds	$70,000	$75,000	$80,000	$85,000	$90,000	$95,000	$100,000	$105,000	$110,000	$115,000	$925,000
Rebates - per case/gallon	$24,000	$24,000	$24,000	$24,000	$24,000	$24,000	$24,000	$24,000	$24,000	$24,000	$240,000
Marketing Support Funds $.75/case and gallo	$18,000	$18,000	$18,000	$18,000	$18,000	$18,000	$18,000	$18,000	$18,000	$18,000	$180,000
Complimentary Product Value	$4,000	$4,000	$4,000	$4,000	$4,000	$4,000	$4,000	$4,000	$4,000	$4,000	$40,000
FSV Commission (40%)	$21,000	$21,000	$21,000	$21,000	$21,000	$21,000	$21,000	$21,000	$21,000	$21,000	$210,000
Totals	$137,000	$142,000	$147,000	$152,000	$157,000	$162,000	$167,000	$172,000	$177,000	$182,000	**$1,595,000**

Notes:
No exclusivity in energy category
Does not include 3rd party events. City events from a marketing standpoint should be included in rights they get

Volume requirement and rebates are based on 24,000 gallons annually

COKE FLORIDA

	Contract Year										
	1	2	3	4	5	6	7	8	9	10	TOTAL
Annual Sponsorship	$50,000	$50,000	$50,000	$50,000	$50,000	$50,000	$50,000	$50,000	$50,000	$50,000	$500,000
Projected Bottle/Can Rebates**	$15,547	$15,547	$15,547	$15,547	$15,547	$15,547	$15,547	$15,547	$15,547	$15,547	$155,470
Projected FSV Commissions***	$31,406	$31,406	$31,406	$31,406	$31,406	$31,406	$31,406	$31,406	$31,406	$31,406	$314,060
Marketing Fund Value	$50,000	$50,000	$50,000	$50,000	$50,000	$50,000	$50,000	$50,000	$50,000	$50,000	$500,000
Complimentary Product Value	$5,000	$5,000	$5,000	$5,000	$5,000	$5,000	$5,000	$5,000	$5,000	$5,000	$50,000
Totals	$151,953	$151,953	$151,953	$151,953	$151,953	$151,953	$151,953	$151,953	$151,953	$151,953	$1,519,530

Notes
No exclusivity in energy category
**Projections based on estimated volume; actual payments will be based on actual volume purchased
***Projected FSV Commissions based on a 30% rate contingent on the placement of Unattended Retail/Micro-market.
****Payment for Smartwater activation at Muscle Beach (w/Boucher Bros.)
*****Value of gifted co-brander trailer for Recycling program on beach
Term is 10 years or until MB purchases 224,546 cases 3560 gallons of syrup

Estimated Total Value:
As reflected in the above chart, the estimated total value of the proposed Pouring Rights sponsorship partnership with PepsiCo over the term of the agreement (for cash and non-cash) is approximately $1,595,000.00, inclusive of the annual sponsorship fees ($925,000); can rebate ($240,000), commissions ($210,000) marketing support funds ($180,000) and sample product value ($40,000).

SUPPORTING SURVEY DATA
N/A

FINANCIAL INFORMATION
N/A

Amount(s)/Account(s):
All details regarding the fiscal impact of this item can be found within the "Analysis" section.

Applicable Area
Citywide

Is this a "Residents Right to Know" item, pursuant to City Code Section 2-14?	Does this item utilize G.O. Bond Funds?
No	No

Strategic Connection
Non-Applicable

Legislative Tracking
Marketing and Communications

ATTACHMENTS:

Description
- PepsiCo Pouring Rights Proposal
- Coke Pouring Rights Proposal
- Icelandic Water Proposal
- Mananalu Water Proposal
- Nestle USA Water Proposal
- Open Water Proposal
- Path Water Proposal
- Resolution