RESOLUTION NO. _______________

A RESOLUTION OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AMENDING RESOLUTION NO. 2022-32091, AND APPROVING THE NEGOTIATED TERMS OF THE CITY'S AGREEMENT WITH PEPSICO FOR THE EXCLUSIVE NON-ALCOHOLIC BEVERAGE POURING RIGHTS (EXCLUDING THE ENERGY DRINK CATEGORY); AND FURTHER AUTHORIZING THE CITY MANAGER AND CITY CLERK TO EXECUTE THE FINAL AGREEMENT WITH PEPSICO, CONSISTENT WITH THE TERMS SET FORTH HEREIN.

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 $325,000.00; and reducing the Sponsorship Fee that Coca-Cola would have to pay the City for the 2021 Agreement Year from $325,000.00 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 City 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 (excluding the energy drink category), based on their proposals (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); and

WHEREAS, on March 9, 2022, the Mayor and City Commission adopted Resolution No. 2022-32091, waiving, by 5/7th vote, the formal competitive bidding requirement, 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 following essential terms:

(1) Term: 10 years;
(2) Sponsorship fee*: $70,000.00 per year, starting in 2022, with a $5,000.00 increase each year, resulting in $155,000.00 in Year 10. This sponsorship fee is contingent on the City hitting its annual volume requirements;
(3) Rebate Bonus-: $1/case or gallon purchased;
(4) Marketing Funds - $0.75/case or gallon;
(5) Full Service Vending Commissions - 40% of all vending case sales;
(6) Complimentary Product - estimated $4,000.00/year - up to 400 cases of free product to be used to support CMB initiatives to include 12 oz carbonated soft drink cans and 16 oz Proud Source Aluminum Bottles (not cash convertible);
(7) Sustainability Fund - $25,000.00/year to purchase mutually agreed upon items to support sustainability initiatives (not cash convertible);
(8) Community Outreach Programs - $20,000.00/year (not cash convertible);
(9) Equipment & Free Service - $150,000.00 in Year 1 + $15,000.00/following year for equipment, service and repair (not cash convertible);
(10) Value of sponsorship over term of the Agreement (for cash and non-cash), in the amount of $2,330,000.00, inclusive of the annual sponsorship fees ($925,000.00); can rebate ($240,000.00); commissions ($210,000.00); marketing support funds ($180,000.00); and sample product value ($40,000.00); sustainability fund ($250,000.00); community outreach program ($200,000.00); and equipment and maintenance ($285,000.00); and

*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 could be reduced by the same percentage. Should the City exceed our commitment, we could 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.

WHEREAS, following the March 9, 2022 City Commission meeting, the City and PepsiCo entered into further negotiations, and agreed to additional essential business terms, which include providing PepsiCo with certain benefits in order to incentivize PepsiCo to bring large events, meetings and sampling activations to Miami Beach; increase awareness of the partnership; increase brand awareness around both brands; and drive sales, therefore increasing revenues for both the City and PepsiCo; and

WHEREAS, in addition to the benefits outlined in their Proposal, the City and PepsiCo have agreed to the following additional essential business terms:

1. PepsiCo Corporate Entity. contract entity to be PepsiCo Beverage Sales, LLC, a Delaware limited liability company;

2. Additional Excluded Beverages. The agreement also excludes hot coffee and iced coffee, hot tea and hot cocoa;

3. Pricing. on Packaged Products may be changed by PepsiCo each Year during the Term, provided however, price increases in any Year shall not exceed 4% from the prior Year;

4. Waiver of Special Event Permit and/or Permit Application Fees. PepsiCo shall have the use for up to one (1) mutually agreed upon event per year, based on availability, for a value of up to a maximum of $25,000.00 per event, all in accordance with the City Code, and will not include the waiver of any hard costs, all of which shall be the responsibility of PepsiCo;

5. One (1) Product Sampling Permit per Month. PepsiCo shall have the right to use a maximum of twelve (12) product sampling permits per year, which will not include all other fees and costs of production, including but not limited to taxes, police, security, sanitation, etc., all of which shall be the responsibility of PepsiCo; said permit waivers having a value to PepsiCo, in the amount not to exceed $30,000.00, based upon 12 waivers per year, with an approximate value of $2,500.00 each;

6. Waiver of any rental or use fees for Miami Beach Convention Center Facilities. PepsiCo's shall have the use of certain Miami Beach Convention Center Facilities (ballroom space or meeting room space) for one (1) mutually agreed upon event per year, based on existing bookings and building availability, up to a maximum of $25,000.00 per event;

7. Advertising Benefits. PepsiCo shall have the following advertising benefits, which do not have an actual out-of-pocket expense to the City: (1) one (1) royalty free advertisement in any City-produced event collateral as the "Official Non-Alcoholic Beverage of Miami Beach"; (2) one (1) royalty free PepsiCo PSA or message per year to be aired on MBTV; and (3) one (1) royalty free PepsiCo PSA or message per year to be aired on the Miami

Beach trolley video screens, with above advertising benefits having no additional costs to the City; and

8. Rounds of Golf. PepsiCo shall be granted up to twelve (12) rounds of golf each Agreement Year, with a maximum of six during peak season, and no more than six at Miami Beach Golf Course, with an approximate value of $131.00 - $235.00 per round of golf, depending on the season; and

WHEREAS, based upon the foregoing, the City Manager recommends approving the additional essential business terms for the agreement with PepsiCo.

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 amend Resolution No. 2022-32091, and approve the negotiated terms of the City's Agreement with PepsiCo for the exclusive non-alcoholic beverage pouring rights (excluding the energy drink category); and further authorize the City Manager and City Clerk to execute the final agreement with PepsiCo, consistent with the terms set forth herein.

PASSED and **ADOPTED** this 22nd day of June 2022.

ATTEST:

Dan Gelber, Mayor

Rafael E. Granado, City Clerk

APPROVED AS TO
FORM & LANGUAGE
& FOR EXECUTION

City Attorney 6-10-22
Date