

## **AGREEMENT**

**THIS AGREEMENT** is made and entered into by and between the **CITY AND COUNTY OF DENVER**, a home rule city organized and existing pursuant to Article XX of the Colorado Constitution (the “City”), and **BOTTLING GROUP, LLC**, a Delaware limited liability company, whose address is 700 Anderson Hill Road, Purchase, NY 10577 (the “Company”) (together, the “Parties”).

### **RECITALS**

**WHEREAS**, there is a public purpose for expanding existing facilities within Denver, including stimulating economic development and the creation and retention of jobs within the City;

**WHEREAS**, incentives are often necessary in order to expand private enterprises to further this public purpose;

**WHEREAS**, the Company is willing to expand its manufacturing operations by building and operating a new facility within the City partly due to the availability of certain incentives provided by the City, as further described in this Agreement;

**WHEREAS**, this Agreement, and the expansion of the Company’s manufacturing operations by construction of a new manufacturing facility within the City will advance the valid and valuable public purpose set forth above by generating tax revenues and by the creation and maintenance of job opportunities for City residents, as a result of the incentives described herein; and

**WHEREAS**, for these reasons, in consideration of the mutual covenants herein contained, and other good and valuable consideration, the sufficiency of which is hereby acknowledged, the Parties agree as follows:

### **TERMS AND CONDITIONS**

1. **CONDITIONS**. This Agreement and the City’s obligations hereunder are conditioned upon the following:

A. The Company shall establish and operate a new manufacturing facility located at a 149-acre parcel generally located north of High Point Boulevard, east of Argonne Street, south of the RTD A-Line commuter rail track, and west of the future right-of-way of Himalaya Street within the City and County of Denver, and such facility shall be not less than 900,000 square feet and be predominantly focused on beverage production (the “New Facility”).

B. The Company and its subsidiaries and affiliates, CB Manufacturing Company, Inc.; Grayhawk Leasing, LLC; New Bern Transport Corporation; PepsiCo Sales, Inc.; and PepsiCo Beverage Sales, LLC (collectively, the “Subsidiaries”), shall use reasonable efforts to make entry-level and other positions at the Facility available to residents of the City and County of Denver by posting positions on publicly accessible recruiting sites during the term of this Agreement.

2. **INCENTIVE PAYMENTS/MECHANISM**. Subject to the terms hereof, the City agrees to make incentive payments to the Company payable as follows:

A. **Job Creation and Retention Incentive Grant** (\$500,000.00). The City shall pay the Company up to \$250,000.00 upon employment of no less than 350 employees as further described in this Paragraph (A). For purposes of the preceding sentence, the number of employees shall be determined by the number of employees employed at the New Facility together with the number of employees employed at its existing facility located at 3801 Brighton Blvd, Denver, CO (the “Existing Facility”), as evidenced by corresponding Occupational Privilege Tax (“OPT”) records filed after commencement of operations at the New Facility.

The City shall pay the Company up to an additional \$250,000.00 for the employment of no less than 400 employees as further described in this Paragraph (A). For purposes of the preceding sentence, the number of employees shall be determined by the number of employees employed at the New Facility two years after commencement of operations at the New Facility, as evidenced by corresponding OPT records filed after such two year anniversary.

The incentives above will be in the form of reimbursement to the Company for documented costs, up to \$500,000, directly incurred by the Company and its Subsidiaries for training new and retained employees employed at the New Facility and attributable to operations of the new Facility. Examples of direct, allocable training/up-skilling expenses may include, but are not limited to: internal trainer’s wages; third-party vendor costs for internal training services; training materials; employee wages paid while in training; and real property and capital equipment used primarily for structured job training program purposes or to make a training site accessible. Such payments shall be made pursuant to Paragraph 2.E. below.

B. **Location Expenses Grant** (\$500,000.00). The City shall reimburse the Company for documented costs directly incurred by the Company and its Subsidiaries and allocable to the establishment of the New Facility upon the completion of such New Facility and

commencement of operations. The City's incentive payments allocable to documented direct location/relocation expenses shall not exceed Five Hundred Thousand Dollars (\$500,000.00) over the term of this Agreement. Examples of direct, allocable location/relocation expenses may include, but are not limited to: service, legal and/or building permit fees; acquisition, delivery and installation of furniture, fixtures and equipment (FFE); architecture, design, and construction fees for the Facility; and delivery, construction, and/or other costs related to establishment of the Facility. Such location/relocation expenses shall not include those costs associated with the location or relocation of employees, employees' families, employees' households or home furnishings. Such payments shall be made pursuant to Paragraph 2.D. below.

C. Petition. To receive an incentive payment hereunder, the Company shall petition jointly the City's Executive Director of Denver Economic Development & Opportunity (the "Executive Director") and the City Treasurer.

1. The petition for the Job Creation and Retention Incentives payment shall contain (i) the Company's certification and supporting OPT documentation evidencing the number of employees located at the New Facility and Existing Facility as of the most recent month of the year for which the Company is petitioning for payment as described in paragraph 2.A above, based upon the Company's and its Subsidiaries' filed OPT documentation for the corresponding period, (ii) the Company's and its Subsidiaries' satisfaction of the requirements contained in Paragraph 1 above. The Company shall petition for its Job Creation and Retention Incentive payments for the applicable period within six months of employing the required number of employees for each of the two Job Creation and Retention Incentives.

2. The petition for Location Expenses payment shall contain the Company's certification and supporting documentation evidencing eligible expenses, as described in Paragraph 2.B above, and the Company's satisfaction of the requirements contained in Paragraph 1 above. The Company may petition for such payment upon satisfaction of the requirements contained in Paragraph 1.A above and the requirements of Paragraph 2.B above, but in no event later than one year after Company's satisfaction of the requirements of Paragraph 1.A above.

3. The Company shall supply, or cause its Subsidiaries to supply, whatever additional information the City requests in order to substantiate the Company's petition for incentive payments. The City may withhold incentive payments for which it has been petitioned

by the Company if it reasonably determines that the petition is not substantiated by the supporting documentation submitted by the Company. Such determination shall be provided to the Company in writing and shall be appealable to the Executive Director or his or her designee.

4. Upon receipt of documentation satisfying the requirements in Paragraphs 2.C.1 and 2.C.2 of this Agreement, the City shall verify the Company's petition and issue proper incentive payment within the City's Prompt Payment Rules and Regulations as outlined in Denver Revised Municipal Code ("D.R.M.C.") Sections 20-107 et seq.

3. **PRIOR APPROPRIATION.** The obligation of the City for payment(s) hereunder is limited to funds annually appropriated for this and similar agreements by the City Council and paid into a special revenue fund restricted to making incentive payments to private, taxpaying entities selected for such payments by the City. This Agreement shall not be construed to constitute a multiple year fiscal obligation of the City under Section 20, Article X of the Colorado Constitution. Further, the City's maximum obligation hereunder for the entire term of this Agreement shall not exceed One Million Dollars (\$1,000,000.00).

4. **EXAMINATION OF RECORDS AND AUDITS.**

A. Any authorized agent of the City, including the City Auditor or his or her representative, has the right to access, and the right to examine, copy and retain copies, at the City's election in paper or electronic form, any pertinent books, documents, papers and records related to the Company's performance and its Subsidiaries' performance pursuant to this Agreement, provision of any goods or services to the City, and any other transactions related to this Agreement. The Company shall cooperate, and shall cause its Subsidiaries to cooperate, with City representatives and City representatives shall be granted access to the foregoing documents and information during reasonable business hours and until the latter of three (3) years after the final payment under this Agreement or expiration of the applicable statute of limitations. When conducting an audit of this Agreement, the City Auditor shall be subject to government auditing standards issued by the United States Government Accountability Office by the Comptroller General of the United States, including with respect to disclosure of information acquired during the course of an audit. No examination of records and audits pursuant to this paragraph shall require the Company to make disclosures in violation of state or federal privacy laws. The Company shall at all times comply with D.R.M.C. 20-276.

B. The Company agrees that the City's Denver Economic Development &

Opportunity (“DEDO”) and Department of Finance (or successor agencies) shall have access to and the right to examine the Company’s and its Subsidiaries’ City and County of Denver tax records (the “Tax Records”) filed for the period beginning five (5) years prior to the execution of this Agreement and ending five (5) years after the termination of this Agreement. Tax Records shall include sales/use tax, property (real and business personal property), occupational privilege tax, and other City tax information necessary to provide data to be used by the City to develop aggregated reports of performance outcomes and assess the effectiveness of the City’s Business Incentive Program (or its successor program). No identifying data and analysis shall be publicly available.

5. **TERM.** The term of this Agreement shall be from 01/01/2022 through 12/31/2028; provided, however, that this Agreement shall automatically terminate when the City’s payment(s) hereunder equal the amounts set forth in Paragraphs 2.A and 2.B above.

6. **ASSIGNMENT AND SUBCONTRACTING.** The City is not obligated or liable under this Agreement to any party other than the Company. The Company shall not assign or subcontract with respect to any of its rights, benefits, obligations or duties under this Agreement except upon prior written consent and approval of the City.

7. **WHEN RIGHTS AND REMEDIES NOT WAIVED.** In no event shall any action by the City or the Company hereunder constitute or be construed to be a waiver by the City or the Company of any breach of covenant or default which may then exist, and the non-breaching party’s action or inaction when any such breach or default shall exist shall not impair or prejudice any right or remedy available with respect to such breach or default; and no assent, expressed or implied, to any breach of any one or more covenants, provisions or conditions of this Agreement shall be deemed or taken to be a waiver of any other breach.

8. **NO DISCRIMINATION IN EMPLOYMENT.** In connection with the performance of work under the Agreement, the Company may not refuse to hire, discharge, promote, demote, or discriminate in matters of compensation against any person otherwise qualified, solely because of race, color, religion, national origin, ethnicity, citizenship, immigration status, gender, age, sexual orientation, gender identity, gender expression, marital status, source of income, military status, protective hairstyle, or disability. The Company shall insert the foregoing provision in all subcontracts.

9. **AGREEMENT AS COMPLETE INTEGRATION; AMENDMENTS.** This

Agreement is intended as the complete integration of all understandings between the Parties. No prior, contemporaneous or subsequent addition, deletion, or other amendment hereto shall have any force or effect, unless embodied herein in writing, and executed in the same manner as this Agreement.

10. **CONFLICT OF INTEREST**. The Parties agree that no employee of the City shall have any personal or beneficial interest whatsoever in the services or property described herein and the Company further agrees not to hire or contract for services any employee or officer of the City which would be in violation of the Denver Revised Municipal Code Chapter 2, Article IV, Code of Ethics, or Denver City Charter provisions 1.2.9 or 1.2.12.

11. **CONSTRUCTION**. This Agreement shall be construed and enforced in accordance with the laws of the State of Colorado, and the Charter and Revised Municipal Code of the City and County of Denver, and the ordinances, regulations and Executive Orders enacted and/or promulgated pursuant thereto. The Charter and Revised Municipal Code of the City and County of Denver, as the same may be amended from time to time, are hereby expressly incorporated into this Agreement as if fully set out herein by this reference. Venue for any legal action relating to this Agreement shall lie in the District Court in and for the City and County of Denver, Colorado.

12. **LEGAL AUTHORITY**.

A. The Company represents and warrants that it possesses the legal authority, pursuant to any proper, appropriate and official motion, resolution or action passed or taken, to enter into this Agreement.

B. The person or persons signing and executing this Agreement on behalf of the Company do hereby represent and warrant that he/she or they have been fully authorized by the Company to execute this Agreement on behalf of the Company and to validly and legally bind the Company to all the terms, performances and provisions herein set forth.

C. The City shall have the right, at its option, to temporarily suspend or permanently terminate this Agreement, if there is a dispute that the legal authority of either the Company or the person signing this Agreement on the Company's behalf is not sufficient to enter into this Agreement. The City shall not be obligated to Company for any performance of the provisions of this Agreement in the event that the City has suspended or terminated this Agreement as provided in this Section.

13. **NO THIRD PARTY BENEFICIARY.** Enforcement of the terms of this Agreement and all rights of action relating to enforcement are strictly reserved to the parties. Nothing contained in this Agreement gives or allows any claim or right of action to any third person or entity. Any person or entity other than the City or the Company receiving services or benefits pursuant to this Agreement is an incidental beneficiary only.

14. **ELECTRONIC SIGNATURES AND ELECTRONIC RECORDS.** The Company consents to the use of electronic signatures by the City. This Agreement, and any other documents requiring a signature hereunder, may be signed electronically by the City in the manner specified by the City. The Parties agree not to deny the legal effect or enforceability of this Agreement solely because it is in electronic form or because an electronic record was used in its formation. The Parties agree not to object to the admissibility of this Agreement in the form of an electronic record, or a paper copy of an electronic document, or a paper copy of a document bearing an electronic signature, on the ground that it is an electronic record or electronic signature or that it is not in its original form or is not an original.

15. **COMPLIANCE WITH ALL LAWS.** The Company shall perform or cause to be performed all services in full compliance with all applicable laws, rules, regulations and codes of the United States, the State of Colorado; and with the Charter, ordinances, rules, regulations and Executive Orders of the City and County of Denver.

16. **NOTICES:** All notices required by the terms of this Agreement must be hand delivered, sent by overnight courier service, mailed by certified mail, return receipt requested, or mailed via United States mail, postage prepaid, if to the Company at the address first above written, with a copy to PepsiCo Beverages North America, 700 Anderson Hill Road, Purchase, NY 10577 Attention: General Counsel, and an electronic copy to EconomicDevelopment@pepsico.com, and if to the City at:

Executive Director of Denver Economic Development & Opportunity or Designee  
101 W. Colfax Ave., Suite 850  
Denver, CO 80202

With a copy of any such notice to:

Denver City Attorney's Office  
1437 Bannock St., Room 353  
Denver, Colorado 80202

Notices hand delivered or sent by overnight courier are effective upon delivery. Notices sent

by certified mail are effective upon receipt. Notices sent by mail are effective upon deposit with the U.S. Postal Service. The Parties may designate substitute addresses where or persons to whom notices are to be mailed or delivered. However, these substitutions will not become effective until actual receipt of written notification.

**[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK;  
SIGNATURE PAGES FOLLOW.]**



**Contract Control Number:** OEDEV-202160849-00  
**Contractor Name:** BOTTLING GROUP, LLC

IN WITNESS WHEREOF, the parties have set their hands and affixed their seals at Denver, Colorado as of:

**SEAL**

**CITY AND COUNTY OF DENVER:**

**ATTEST:**

By:

\_\_\_\_\_

\_\_\_\_\_

**APPROVED AS TO FORM:**

**REGISTERED AND COUNTERSIGNED:**

Attorney for the City and County of Denver

By:

By:

\_\_\_\_\_

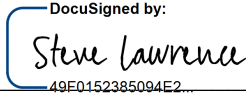
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By:

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**Contract Control Number:**  
**Contractor Name:**

OEDEV-202160849-00  
BOTTLING GROUP, LLC

By:  \_\_\_\_\_  
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Name: Steve Lawrence  
(please print)

Title: Vice President, Engineering  
(please print)

ATTEST: [if required]

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

Name: \_\_\_\_\_  
(please print)

Title: \_\_\_\_\_  
(please print)