

AN ORDINANCE 2008-11-20-1048

AUTHORIZING THE EXECUTION OF A FIVE-YEAR EXTENSION AGREEMENT AND FIRST AMENDMENT TO THE ALAMODOME ADVERTISING LICENSE AGREEMENT WITH BOTTLING GROUP, LLC D/B/A THE PEPSI BOTTLING GROUP FOR NON-ALCOHOLIC BEVERAGE PRODUCT RIGHTS AT THE ALAMODOME, FOR A TOTAL ANNUAL VALUE OF UP TO \$2,215,362.00.

* * * * *

WHEREAS, Ordinance No. 98468, passed and approved November 13, 2003, authorized the execution of a five-year license agreement with the Pepsi Bottling Group ("Pepsi"), with a five-year extension option, for an initial term expiring November 22, 2008, and granted advertising and non-alcoholic beverage product rights at the Alamodome in exchange for an annual sponsorship payment to the City of \$100,000.00 and marketing support valued at approximately \$1,281,100.00 annually; and

WHEREAS, in contemplation of the end of the initial term of the current Agreement, City staff met with Pepsi officials in June/July 2008 to establish the terms of the available extension and Pepsi indicated they were going to have to replace approximately \$310,200.00 in beverage equipment during the course of the extension period, which resulted in Pepsi proposing to reduce the annual sponsorship payment to the City from \$100,000.00 to \$40,000.00 and to reduce the annual marketing support in support of Alamodome events; and

WHEREAS, in order to determine whether Pepsi's offer for the extension period was the best offer available in the market, City staff conducted an Request For Proposals ("RFP") process and two proposals were received from Pepsi and the San Antonio Coca-Cola Bottling Group ("Coke"); and

WHEREAS, City staff evaluated both proposals in terms of equipment, service, additional consideration, installation timeline, compensation to City and pricing and determined that Coke's proposal was less advantageous to the City on all evaluation criteria, causing City staff to cancel the RFP and proceed with exercising the available extension option provided in the current Agreement with Pepsi; **NOW THEREFORE:**

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SAN ANTONIO:

SECTION 1. The terms and conditions of the Extension Agreement and First Amendment to the Alamodome Advertising License Agreement with Pepsi for non-

alcoholic beverage product rights at the Alamodome, for a total annual value of up to \$2,215,362.00, are authorized and approved.

SECTION 2. The City Manager or her designee is authorized to execute the Extension Agreement and First Amendment to the Alamodome Advertising License Agreement with Pepsi. A copy of this Agreement, previously executed by Pepsi, is attached to this Ordinance as Exhibit I.

SECTION 3. Funds generated by this Ordinance will be deposited into Fund 29016000 HOT / ALAMODOME FUND as per the table below:

Amount	General Ledger	GL Text	Internal Order	IO Text
\$200,000.00	4407800	C&R Advertising	2450000000	ALAMODOME MARKETING & PROMOTIONS
\$17,810.00	4401880	Commission from Contracts - Vending	2450000003	ALAMODOME
Total Amount: \$217,810.00				

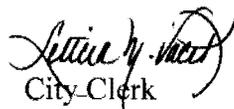
SECTION 4. The financial allocations in this Ordinance are subject to approval by the Director of Finance, City of San Antonio. The Director may, subject to concurrence by the City Manager or the City Manager's designee, correct allocations to specific Cost Centers, WBS Elements, Internal Orders, General Ledger Accounts, and Fund Numbers as necessary to carry out the purpose of this Ordinance.

SECTION 5. This Ordinance shall be effective immediately upon the passage of eight (8) affirmative votes. If it is not passed by (8) affirmative votes, this Ordinance shall be effective on and after the tenth day after passage.

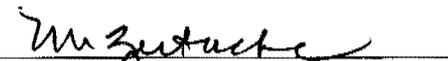
PASSED AND APPROVED this 20th day of November, 2008


M A Y O R

ATTEST:


City Clerk

APPROVED AS TO FORM:


for City Attorney



Request for
**COUNCIL
ACTION**



Agenda Voting Results - 36

Name:	9, 10, 11, 12, 14, 15, 16, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30A, 30B, 30C, 30D, 30E, 30F, 30G, 30H, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47 (Revised by Councilman Rowe at 12/11/08 meeting)
Date:	11/20/2008
Time:	05:35:26 PM
Vote Type:	Motion to Approve
Description:	An Ordinance authorizing the execution of a five-year Extension Agreement and First Amendment to the Alamodome Advertising License Agreement with Bottling Group, LLC d/b/a The Pepsi Bottling Group for non-alcoholic beverage product rights at the Alamodome, for a total annual value of up to \$2,215,362.00. [Penny Postoak Ferguson, Assistant City Manager; Jim Mery, Interim Director, Convention, Sports and Entertainment Facilities]
Result:	Passed

Voter	Group	Not Present	Yea	Nay	Abstain	Motion	Second
Phil Hardberger	Mayor		x				
Mary Alice P. Cisneros	District 1		x				
Sheila D. McNeil	District 2		x				
Jennifer V. Ramos	District 3	x					
Philip A. Cortez	District 4	x					
Lourdes Galvan	District 5		x				x
Delicia Herrera	District 6		x			x	
Justin Rodriguez	District 7	x					
Diane G. Cibrian	District 8		x				
Louis E. Rowe	District 9		x				
John G. Clamp	District 10		x				

Exhibit
I

**EXTENSION AGREEMENT AND FIRST AMENDMENT TO
ALAMODOME ADVERTISING LICENSE AGREEMENT**

FOR VALUE RECEIVED, the receipt and sufficiency of which is hereby acknowledged, this Extension Agreement and First Amendment to the Alamodome Advertising License Agreement ("Extension and First Amendment") is entered into by the CITY OF SAN ANTONIO, a Texas Municipal corporation ("City"), acting by and through its City Manager pursuant to and duly authorized by Ordinance No. _____, passed and approved on November 20, 2008, and Bottling Group, LLC d/b/a The Pepsi Bottling Group ("Licensee") acting by and through its duly authorized designated officer.

A. City and Licensee entered into the Alamodome Advertising License Agreement ("Agreement") pursuant to City of San Antonio Ordinance No. 98468, dated November 13, 2003.

B. Section 3.2 of the Agreement provides for one five (5)-year renewal term, subject to City Council approval.

C. City and Licensee desire to exercise the renewal term and extend the Agreement through November 22, 2013.

D. Additionally, City and Licensee agree to amend specific provisions of the Agreement as set out in this Extension and First Amendment.

1. Section 1.3 is amended by deleting the word "Alamodome" and replacing it with "Convention, Sports and Entertainment Facilities."
2. Section 2.4 is amended by adding the following sentence and corresponding table to the end of the Section:

Licensee warrants and agrees and shall provide evidence of compliance to City, that during the term of this Extension and First Amendment it will replace the following beverage dispensing equipment:

Equipment Type	Current Units	Replacement Units	Cost/Unit	2009	2010	2011	2012	2013	Total Cost
Fountain	120	90	\$2,400	25	30	10	15	10	\$216,000
2-Door Coolers	73	37	1,300	15	10	2	8	2	48,100
Counter-Top Coolers	50	45	500	20	12	5	4	4	22,500
1-Door Coolers	18	7	800	3	4	0	0	0	5,600
Ice Tanker	20	20	900	5	5	5	5	0	18,000
TOTAL	281	199	n/a	68	61	22	32	16	\$310,200

Section 2.4 is further amended by replacing the words ". . .Pepsi, Mountain Dew, Code Red, Sierra Mist, Mug Root Beer, Orange Slice, Lipton Tea, Gatorade, Frappuccino, Dole Juices, Fruitworks, Aquafina. . ." in the third and fourth lines of the first paragraph of the Section with the words ". . .the carbonated and non-carbonated beverages listed on Attachment D. . ."

3. Subsection 2.4(d) is amended by adding the phrase "or at a private event at the client's request" at the end.

4. Subsection 2.4(e) is added as follows:

Licensee agrees that other non-alcoholic beverages may be sold on a temporary basis at the outside areas of the Alamodome during an event in which that non-alcoholic beverage producer is a sponsor or has an existing beverage agreement with the event licensee.

5. Section 2.5 is amended by deleting each use of the word "month" and replacing them with "quarter."

Section 2.5 is further amended by deleting the words "applicable sales taxes" from the last line of the Section.

6. Section 4.1 is amended by changing the annual fee to the City to \$40,000.

7. It is the intent of the Parties that the language in Article 10 be in bold typeface.

8. Section 12.1 is amended by replacing the number "\$100,000" in the third to last line of the Section with the number "\$40,000."

9. Section 15.7 is amended by deleting the names and addresses listed and replacing them with the following:

If to City:

Director
Convention, Sports and Entertainment Facilities
200 E. Market Street
San Antonio, Texas 78205
(210) 207-8500

If to Licensee:

Food Service Manager
The Pepsi Bottling Group
6100 NE Loop 410
San Antonio, Texas 78218
(210) 662-3411

10. Attachments A, B, C and D are deleted in their entirety and replaced with Attachments A, B, C and D that are attached to this Extension and First Amendment and incorporated herein.

Except as otherwise expressly modified hereby, all terms and provisions of the Agreement are ratified and confirmed and shall remain in full force and effect, enforceable in accordance with their terms.

EXECUTED AND SIGNED this _____ day of _____, 2008.

CITY OF SAN ANTONIO

LICENSEE

Sheryl Sculley
City Manager



Mike McGraw
Director of Food Service – Texas Market Unit

ATTEST:

APPROVED AS TO FORM:

City Clerk

City Attorney

Attachment A

ADVERTISING

Type: Four (4) arena video wall panels
Dimensions: 5' x 27'1½"
Location: North – upper and lower; south – upper and lower

Type: Four (4) arena centerhung scoreboard panels
Dimensions: 3'0" x 15'2½"
Location: North – upper; south – upper; east – upper; west – upper
Description: Backlit matte-finish Lexan; vinyl image adhered to inside face; visual opening 2'10½" x 15'1"

Type: Two (2) outdoor marquee panels
Dimensions: 3'6" x 16'
Location: North – right; south – right
Description: Backlit matte-finish Lexan; vinyl image adhered to inside face

Miscellaneous

The *CITY* will provide *LICENSEE* during the Term with tickets to each event held at the Alamodome which is sponsored by the *CITY*. The *CITY* will provide *LICENSEE* during the Term with a reasonable number of tickets to each event held at the Alamodome, which is not sponsored by the *CITY*, but to which event the *CITY* receives complimentary tickets.

Attachment B

MARKETING SUPPORT

1. *LICENSEE* shall provide two (2) retail marketing promotions in convenience store and gas station (C&G) and/or grocery store accounts annually in support of various events at the Alamodome. These programs to include retail presence in accounts in San Antonio, Austin and Rio Grande Valley markets. Promotions must include a discount offer or promotion for an Alamodome event. *CITY* shall be responsible for redeeming discount offer. In-store promotions to also include "point-of-purchase (point-of-sale)" signage. Minimum ten (10)-week lead time required prior to event start date, and promotion details must be mutually agreed to between *LICENSEE* and *CITY*. Estimated value (cost) is approximately \$3,500 per promotion, for a total annual value (cost) of approximately \$7,000 and for a total value (cost) of approximately \$35,000 over the extension term. Actual value is based on event promotion offered and promotion redemption rate and can be calculated after each promotion.
2. *LICENSEE* shall provide three (3) can panel advertisements annually in support of various events at the Alamodome. Two (2) can panels to be placed on core flavors (i.e. Pepsi, Diet Pepsi) and one (1) can panel to be placed on Sierra Mist brand, or alternative flavors/brands mutually agreed between *LICENSEE* and *CITY*. Promotions must include a discount offer or promotion for an Alamodome event. *CITY* shall be responsible for redeeming discount offer or promotion. Minimum ten (10)-week lead time required prior to start date of featured event. Can panels to be distributed in San Antonio, Austin and Rio Grande Valley markets. *LICENSEE* agrees that it shall provide one (1) additional can panel advertisement to offset one (1) can panel advertisement that was not utilized in the 2004 agreement year, for a total of sixteen (16) during the course of the extension term. Estimated value is approximately \$705,600 per can panel, for a total annual value of \$2,116,800 and for a total value of approximately \$11,289,600 over the extension term (which includes the aforementioned three (3) can panels per year plus one additional can panel *CITY* and *LICENSEE* have agreed to carry over from a prior year under the Agreement.)
3. *LICENSEE* shall provide a minimum of four (4) weeks and up to six (6) weeks of a single brand of general market or Latino market radio tagging annually in support of various events at the Alamodome in San Antonio, Austin and Rio Grande Valley markets. Estimated value is approximately \$6,500 per week, for a total annual value of approximately \$26,000 to \$39,000 and for a total value of approximately \$130,000 to \$195,000 over the extension term, depending on the actual number of weeks provided.
4. *LICENSEE* shall provide two (2) on-site remote radio broadcasts annually in general or Latino market in support of various events at the Alamodome in San Antonio, Austin and Rio Grande Valley markets. Minimum eight (8) week lead time required prior to event start date to coordinate with radio stations. Estimated value is approximately \$3,500 per remote, for a total annual value of approximately \$7,000 and for a total value of approximately \$35,000 over the extension term.
5. *LICENSEE* shall provide additional consideration and marketing support annually, including from *LICENSEE*'S other properties in which *LICENSEE* has pouring, marketing and/or promotional support agreements or relationships. *LICENSEE* and *CITY* to agree annually on specific additional consideration and marketing opportunities. Such additional consideration shall be used in marketing and promotional efforts in support of various events at the Alamodome. Estimated value is approximately \$2,000 annually, for a total value of approximately \$10,000 over the extension term, depending on the details of the additional consideration/marketing support.

Total Estimated Annual Marketing Support Value – up to \$2,171,800

Marketing Support which is not executed during any Agreement Year may be carried over to a subsequent Agreement Year, provided that (i) unutilized Marketing Support in any Agreement Year may only be carried over to the next Agreement Year; and (ii) any incremental Marketing Support carry-over will be applied by *LICENSEE* to marketing programs that are available in accordance with *LICENSEE*'s marketing calendar for such Agreement Year. In no event may Marketing Support be redeemed for cash.

Attachment C

ADVERTISING LOCATIONS

One (1) Upper Video Wall Panel	North Wall
One (1) Lower Video Wall Panel	North Wall
One (1) Upper Video Wall Panel	South Wall
One (1) Lower Video Wall Panel	South Wall
One (1) Centerhung Scoreboard Upper Panel	North Face
One (1) Centerhung Scoreboard Upper Panel	South Face
One (1) Centerhung Scoreboard Upper Panel	East Face
One (1) Centerhung Scoreboard Upper Panel	West Face
One (1) Outdoor Marquee Panel (Right)	North Face
One (1) Outdoor Marquee Panel (Right)	South Face

Attachment D
PRODUCT PRICING

The Licensee has designated the information in this attachment to be confidential and proprietary.



CITY OF SAN ANTONIO
Request for Council Action

Agenda Item # 36
Council Meeting Date: 11/20/2008
RFCA Tracking No: R-4134

DEPARTMENT: Convention Sports and Entertainment Facilities

DEPARTMENT HEAD: Jim Mery

COUNCIL DISTRICT(S) IMPACTED:
City Wide, Council District 2

SUBJECT:
Extension/Amendment of Alamodome License Agreement with The Pepsi Bottling Group

SUMMARY:
An ordinance authorizing the City Manager or her designee to execute an Extension Agreement and First Amendment to the Alamodome Advertising License Agreement with Bottling Group, LLC d/b/a The Pepsi Bottling Group ("Pepsi") for the term November 23, 2008, through November 22, 2013, for non-alcoholic beverage product rights at the Alamodome for a total annual value of up to \$2,215,362.00, or a total of up to \$11,387,010.00 over the course of the five-year extension term.

BACKGROUND INFORMATION:
Ord. No. 98468, dated November 13, 2003, authorized the execution of a five-year license agreement with Pepsi, with a five-year extension option, for an initial term November 23, 2003, through November 22, 2008, and granted advertising and non-alcoholic beverage product rights at the Alamodome in exchange for an annual sponsorship payment to the City of \$100,000.00 and marketing support valued at approximately \$1,281,100.00 annually. In addition, the City provided Pepsi with 22 advertising locations inside the seating area and in the pedestrian concourse areas as well as on the facility's outdoor marquee.

Pepsi was selected after a Request for Proposals (RFP) process in June 2003 in which both Pepsi and San Antonio Coca-Cola Bottling Group ("Coke") submitted proposals.

In contemplation of the end of the initial term of the current Pepsi agreement in November 2008, City staff met with Pepsi officials in June/July 2008 to establish the terms of the available extension if executed. Pepsi indicated they were going to have to replace approximately \$310,200.00 in beverage equipment during the course of the extension period. As a result of this Pepsi proposed to reduce the payment to the City for the extension period from \$100,000.00 to \$40,000.00 annually. Also, Pepsi proposed to reduce the annual marketing support in support of Alamodome events.

In order to determine whether Pepsi's offer for the extension period was the best offer available in the market, City staff conducted an RFP process between August and October 2008. As a result of the RFP two proposals were received in response from Pepsi and Coke.

In Pepsi's response to the latest RFP, they maintained the basic offer they had provided to the City earlier in June/July 2008 with the exception that they also offered to include four weeks of radio tagging annually.

City staff evaluated both proposals in terms of equipment, service, additional consideration, installation timeline, compensation to City, and pricing. Upon review of both proposals by City staff and determining that Coke's proposal was no more advantageous to the City on all evaluation criteria, City staff cancelled the RFP and proceeded with negotiations for exercising the available extension option provided in the current Pepsi agreement.

In consideration of the lower annual payment offer from Pepsi, City staff countered Pepsi's terms with the following terms, which Pepsi has accepted:

1. Annual guaranteed payment to City of \$40,000.00.
2. Investment in replacement beverage service equipment by Pepsi in the approximate value of \$310,200.00 over the course of the extension term.
3. Marketing support of Alamodome events as follows:
 - a. 2 retail marketing promotions annually valued at approximately \$7,000.00
 - b. 3 can panel advertisements annually valued at approximately \$2,116,800.00
 - c. 4 – 6 weeks of radio tagging annually valued at approximately \$26,000.00 – \$39,000.00
 - d. 2 on-site remote radio broadcasts annually valued at approximately \$7,000.00
 - e. Additional consideration and marketing support annually valued at approximately \$2,000.00
4. Pepsi to retain 10 of 22 advertising locations provided under the agreement inside the seating area of the Alamodome as well as on the facility's outdoor marquee.

ISSUE:

The initial five-year term of the current Alamodome Advertising License Agreement with Bottling Group, LLC d/b/a The Pepsi Bottling Group is slated to expire on November 22, 2008. There is an available five-year extension option available, which would extend the expiration of the current agreement through November 22, 2013. This action requests authorization for the City Manager or her designee to execute the available extension option, as well as an amendment to the agreement to allow for revised terms and conditions.

ALTERNATIVES:

As stated previously, this action requests approval to execute an available extension option under the current agreement with Pepsi. Since there is an extension option available, City staff was not required to issue an RFP at this time to gauge the market in terms of this contract; however, once Pepsi tendered an offer to the City staff that was initially lower than during the original term, City staff immediately exercised due diligence and issued an RFP to ensure that the City was receiving the most advantageous offer available from any party. The results of the RFP reinforced that Pepsi was offering the City the best possible terms and conditions, therefore reissuing another RFP under the same or amended terms and conditions likely will not garner any proposals more favorable than currently offered by Pepsi.

Under the proposal offered by Coke, the City would be losing a significant amount of both revenue as well as marketing value received from Pepsi. Also, Coke's plan to provide bottle and can service almost exclusively would have a significant impact on the City's food and beverage concessions revenue and increase the cost to the City's food and beverage concessionaire. Further, Coke will not guarantee one hour service during events or twenty-four hour service outside of events.

FISCAL IMPACT:

Execution of this five-year extension and amendment is expected to generate \$40,000.00 annually, or \$200,000.00 over the course of the extension, in advertising revenue for the City. Additionally, this agreement is expected to yield approximately \$3,562.00 in vending commission revenue annually, or approximately \$17,810.00 over the extension period, based on average annual commissions received over the past three years. Total annual revenue expected is approximately \$43,562.00, or \$217,810.00 over the course of the five-year extension term.

Revenue from this agreement is credited to the Community and Visitor Facilities Fund.

There is no General Fund impact.

RECOMMENDATION:

Staff recommends authorizing the City Manager or her designee to execute the Extension Agreement and First Amendment to the Alamodome Advertising License Agreement with Pepsi for the term November 23, 2008, through November 22, 2013.

Extension of the current Pepsi agreement, even under the revised terms and conditions in which the City will receive less of an annual payment, is the best option in terms of the entire package submitted by Pepsi, including extensive marketing support, equipment reinvestment, advantageous product pricing, and equipment and product service.

This item has been coordinated with the Purchasing and General Services Department, Office of Management and Budget, and the City Attorney's Office.

The Discretionary Contracts Disclosure form, required by the Ethics Ordinance, is attached.

ATTACHMENT(S):

File Description	File Name
Pepsi Extension & First Amendment to Alamodome Advertising License Agreement	Extension & First Amendment - Final - Signed - RFCA Version.pdf
Pepsi Discretionary Contracts Disclosure Form	Discretionary Contracts Disclosure Form - Signed.pdf
Voting Results	
Original Vote Slip	Original Vote Slip.pdf
Ordinance/Supplemental Documents	200811201048.pdf

DEPARTMENT HEAD AUTHORIZATIONS:

Jim Mery Director (Interim) Convention Sports and Entertainment Facilities

APPROVED FOR COUNCIL CONSIDERATION:

Penny Postoak Ferguson Assistant City Manager