

ORDINANCE NO. 46 -00

By: Richard F. Weber

An Ordinance to authorize the Mayor and Auditor to execute an agreement with The American Bottling Company granting it the exclusive right to provide beverages to certain City facilities for a period of ten years and to declare an emergency.

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF BEXLEY, OHIO:

Section 1. That the Mayor and Auditor are hereby directed to execute an agreement by and between the City and The American Bottling Company in substantially the form attached to this Ordinance as Exhibit 1 and incorporated herein by this reference.

Section 2. That this Ordinance is an emergency measure necessary for the immediate preservation of the public peace, health and safety, said emergency being the need to implement the agreement prior to the opening of the Bexley City pool, and shall go into force and effect upon its passage and approval by the Mayor.

Passed: 5-23, 2000




President of Council

Attest: 

Clerk of Council

Approved: 5/23, 2000



David H. Madison, Mayor

BEVERAGE AGREEMENT

THIS BEVERAGE AGREEMENT (“Agreement”) is entered into as of the 23rd day of May, 2000, by and between THE AMERICAN BOTTLING COMPANY (hereinafter called the “Company”), and the CITY OF BEXLEY, OHIO (hereinafter called the “City”).

WITNESSETH:

WHEREAS, the Company and the City desire to enter into a contract whereby the Company will have the exclusive right to provide Beverages, as defined at paragraph 1 of this Agreement, to certain City facilities for a period of ten (10) years;

NOW, THEREFORE, and in consideration of the mutual covenants herein contained, the Company and the City hereby mutually agree as follows:

1. Full Service Vending. The Company will provide and properly maintain, at no cost to the City, full service vending machines at locations selected by the Mayor or his designee in any facility or at any location owned or maintained by the City. The initial locations are listed on Exhibit A to this Agreement. All of the machines provided by the Company under this Agreement will be state of the art vending machines capable of dispensing Beverages in 20 oz. plastic bottles and 12 oz. cans. The initial vending price per unit will be \$1.00 for soft drinks, Crystal Lite, bottled water and Gatorade and \$.75 for Snapple, and Yoo-Hoo. The Company may not increase the vending prices without first obtaining express written authorization from the City. The Company’s obligation to maintain all vending machines provided to the City pursuant to this Agreement shall include, but not be limited to, the following responsibilities:

- The Company shall provide to the City, at no cost, all vending machines and related equipment and an adequate supply of soft drinks, isotonics, teas, fruit drinks, and bottled water (hereinafter called “Beverages”).
- The Company shall take all necessary measures to insure that each of the vending machines provided pursuant to this Agreement functions properly and contains an adequate supply of Beverages.
- The Company shall be solely responsible for repairing and/or replacing any faulty or damaged vending machines and related equipment, at no cost to the City.
- The Company shall provide the City with access to an on-call technician capable of addressing any maintenance issues twenty-four hours a day, seven days a week.
- The Company shall provide Beverages which are safe for human consumption, appropriate for sale and meet all applicable legal standards.

2. Term and Exclusivity. Subject to the City’s right to designate locations under paragraph 1 and the provisions of the last two sentences of this paragraph, the Company shall be the exclusive provider of Beverages in all facilities owned or maintained by the City for a period of ten (10) years commencing on the date the parties entered into this Agreement. During the term of this Agreement, the City shall not engage in or authorize any competitive advertising at any facility subject to this Agreement. This prohibition shall not apply to events conducted or sponsored by the City or to private parties at any City facility when the sponsor provides beverages. In the case of City sponsored events, the City grants to the Company the

opportunity to provide Beverages on terms to be mutually agreed by the parties for each event. In the case of a City facility or location such as the Bexley Swimming Pool where the food and beverage service is provided by a third party contractor, the City shall require the contractor to purchase Beverages exclusively from the Company so long as the Company is able to provide Beverages on reasonable commercial terms.

3. Fees and Commissions. In exchange for the exclusive rights granted to it hereunder, the Company will pay the City (i) an initial fee of Ten Thousand Dollars (\$10,000.00) within 30 days of the installation of the first vending machine pursuant to paragraph 1 and (ii) an additional fee of Fifty Five thousand Dollars (\$55,000.00) in ten annual installments of Five Thousand Dollars (\$5,000.00) each on or before May 23 of each year beginning in 2001 and ending in 2010. The foregoing fees are unrelated to the amount of Beverages sold by the Company under this Agreement, and the City shall not be obligated to return any portion thereof in the event that the City or the Company terminates this Agreement pursuant to paragraph 11 hereof.

In addition to the fees described in the preceding paragraph, from and after the installation of the first vending machine pursuant to paragraph 1 the Company will also pay to the City a commission on all Beverages sold during the term of this Agreement (excluding the vending machine in the Police Department) at the following rates:

<u>BEVERAGE</u>	<u>COMMISSION RATE</u>
20 oz. container	\$7.20/cs 30%
12 oz. container	\$5.40/cs 30%

4. Collection and Reporting. At all times during this Agreement, the Company shall be exclusively responsible for collecting all monies from all vending machines in

any facility designated by the City. Further, the Company shall be responsible for accounting for such monies and providing the City with monthly reports itemizing the Beverages sold and revenues generated from all vending machines placed at any facility designated under this Agreement. The Company shall make this information available to the City in a mutually agreeable format, no less frequently than monthly. The Company shall issue commission checks to the City in accordance with this Agreement on a monthly basis. Further, all reports and commission checks shall be delivered to the City not later than 10 days after the conclusion of a monthly cycle.

5. Indemnification. The Company and its successors and assigns, shall indemnify and hold the City harmless from and against any and all liability and expense of any kind, including legal costs and attorneys' fees, arising from, or relating to the sale of Beverages hereunder and/or the installation, maintenance, repair, operation, relocation, removal or replacement of any vending machine or related equipment for any reason. The Company shall defend, at its own cost, every suit in which the City shall be made a party, brought and prosecuted for the recovery of any such damages.

6. Access to City Property. The Company is hereby permitted access to and occupancy of City property merely as an accommodation under this Agreement. No right, title or interest of the public is waived or abridged in any way by such grant of access. This Agreement shall be implemented so as to not interfere with or damage any utility facilities or to impede in any way the use of the easement/right-of-way area, streets, alleys, sidewalks, and curbs by the City and the public.

7. Rules of Construction. The parties have participated jointly in negotiating and drafting this Agreement. If a question concerning intent or interpretation arises, no

presumption or burden of proof shall arise favoring or disfavoring any party by virtue of authorship.

8. Waivers. No assent, express or implied, by any party to any breach or default under this Agreement shall constitute a waiver of or assent to any breach or default of any other provision of this Agreement or any breach or default of the same provision on any other occasion.

9. Modification. This Agreement constitutes the entire agreement of the parties concerning its subject matter and supersedes all other oral or written understandings, discussions, and agreements. It may be modified only in writing signed by both parties.

10. Binding Effect; No Third Party Beneficiaries. This Agreement shall be binding upon and inure to the benefit of the parties and their respective heirs, devisees, beneficiaries, grantees, donees, legal representatives, successors, and assigns. Nothing in this Agreement shall be construed to confer any rights or benefits to any third party beneficiaries.

11. Termination. The City or the Company may terminate this Agreement only for material breach by the other party.

12. Assignment. Neither party may assign its interest in this Agreement without the prior written consent of the other party.

13. Captions. Titles or captions contained in this Agreement are for convenience and are not intended to affect the substantive meaning of any provision.

14. Severability. If any provision of this Agreement is found to be invalid or unenforceable, such holding shall not affect any other provision of this Agreement.

15. Governing Law. This Agreement shall be construed in accordance with, and pursuant to, the laws of the State of Ohio.

CITY OF BEXLEY

THE AMERICAN BOTTLING COMPANY

By: [Signature]
Title: Mayor
Date: 5/18/00

By: _____
Title: _____
Date: _____

By: [Signature]
Title: Auditor
Date: _____

Approved as to form:

By: [Signature]
Title: City Attorney
Date: _____

Exhibit A

1 - Jeffrey Mansion, behind control desk

2 - Tennis Courts, Jeffrey Park

1 - Municipal Garage

1 - Lounge, City Hall

1 - Police Department