DATE: February 28, 2023

TO: Mayor and Council Members

FROM: Parks, Recreation and Community Services Department

SUBJECT: Agreement with PepsiCo for Installation of Basketball Court Improvements at Vincent Park

RECOMMENDATION:
It is recommended that the Mayor and Council Members approve an agreement between the City of Inglewood and PepsiCo, Inc. for the installation of basketball court improvements at Vincent Park.

BACKGROUND:
PepsiCo, Inc. (PepsiCo) is an American multinational food, snack, and beverage corporation. In accordance with its mission, PepsiCo supports a wide array of key cornerstone programs promoting and incorporating sustainability, wellness, and community empowerment benefiting children and families.

PepsiCo seeks to install park furniture, renovate the basketball court surface, and install shading at two Vincent Park basketball courts. The improvements will provide an improved play environment and experience for families visiting the park through use of environmentally friendly products.

DISCUSSION:
PepsiCo proposes to install two (2), two-tier bleachers with 24” deep seating sections and dividers, two (2) backboards, and two (2) four-post shade sail canopies. Additionally, the organization will install custom designed artwork on the two basketball court surfaces available at Vincent Park.

Funding in an amount up to $148,000 is required to complete the necessary improvements. No funding is required from the City. PepsiCo has committed to providing a gift to cover the full cost of $148,000. The respective financial contributions are as follows:

<table>
<thead>
<tr>
<th>Project Location</th>
<th>City</th>
<th>PepsiCo</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Edward Vincent Park</td>
<td>$0</td>
<td>$148,000</td>
<td>$148,000</td>
</tr>
</tbody>
</table>
In exchange for the gift, the City agrees to the following:

1. Allow PepsiCo to perform the necessary construction work through the use of their own contractors;

2. Maintain the improvements in a safe and attractive manner consistent with similar amenities maintained by other municipalities and private businesses;

3. Recognize PepsiCo for its contributions through the placement of names, logos, trademarks, and appropriate signage at the site, which shall be kept in place for so long as the park furniture and sail canopy are installed. The content, design, size, and placement of all signage will be determined by mutual agreement of all parties and consistent with the City’s sign laws and sponsorship policies; and

4. Allow usage of the basketball courts by the donor for sports and/or special events upon reasonable notice and approval by the City at no cost for the facility. The City will not charge donor a fee for use of the basketball courts for the events, but may charge personnel expenses for staff supervision, security, maintenance, and/or traffic control during the event(s).

In accordance with the gift and terms of the attached agreement, PepsiCo will do the following:

1. Contract with contractors and make payments directly to vendor;

2. Require contractors to agree in writing to follow all applicable local, State, and federal regulations and requirements, as related to the basketball courts improvements;

3. Require contractors performing work on the basketball courts to possess appropriate insurance coverage(s) in compliance with the terms and conditions of the Right of Entry Permit issued by City, authorizing performance of the improvements; and

4. Require contractors to adhere to the terms and conditions of this agreement and require that the improvements be performed in accordance with the plans and specifications mutually approved by the City and PepsiCo.
FINANCIAL/FUNDING ISSUES AND SOURCES:
No funding is required for the installation. However, approval of the project may require the City to incur future costs of maintaining the new amenities. It is anticipated that costs will be negligible, initially, as daily general maintenance (removal of trash and debris and cleaning) will be absorbed as a regular course of duty. However, the City will incur costs in the future for long-term maintenance of the court surface. Funds for maintenance will be available in the Department’s approved Fiscal Budget under Account Code No. 001.070.7021.44870.00 (PRLS-Parks Administration-Contract Services).

DESCRIPTION OF ANY ATTACHMENTS:
Attachment No. 1 - Agreement

PREPARED BY:
Sabrina Barnes, Parks, Recreation and Community Services Director

COUNCIL PRESENTER:
Sabrina Barnes, Parks, Recreation and Community Services Director
ATTACHMENT NO. 1
THIS AGREEMENT ("hereinafter, AGREEMENT") is entered into this _____ day of
_____, 2023 (hereinafter, "EFFECTIVE DATE"), by and between the City of Inglewood, a
municipal corporation (hereinafter, "CITY") acting by and through its Parks, Recreation and
Community Services Department (hereinafter, "PRCSD") and PepsiCo, Inc., (hereinafter,
"PEPSICO") for the installation of park furniture (benches), resurfacing of basketball courts,
and shade canopy (hereinafter, "PROJECT") at EDWARD VINCENT Park. CITY and PEPSICO may
individually be referred to as "PARTY" and collectively as "PARTIES."

WHEREAS, CITY, through PRCSD owns, operates, and maintains real property
commonly known as Edward Vincent Park (hereinafter, "PROJECT LOCATION"), located at 700
Warren Lance, Inglewood, CA 90302; and

WHEREAS, PEPSICO is a multinational food, snack, and beverage corporation. In
accordance with its mission, PEPSICO supports a wide array of key cornerstone programs
promoting and incorporating sustainability and community empowerment benefiting children
and families; and

WHEREAS, PRCSD seeks to improve its park facilities and promote active sports play
among youth in Inglewood; and

WHEREAS, the PARTIES desire to have the PROJECT at the PROJECT LOCATION, and

WHEREAS, PEPSICO is responsible for all funding associated with the construction of
the PROJECT and the selection of the contractor responsible for PROJECT construction; and

WHEREAS, CITY has agreed to contribute funding in the amount of Zero Dollars ($0.00)
as further described below as partial support for the construction of PROJECT at the PROJECT
LOCATION.

NOW, THEREFORE in consideration of the foregoing and the terms and conditions
contained herein, and the performance thereof, the PARTIES to this AGREEMENT hereto
mutually agree as follows:

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1. Agreement Contacts and Notice

   CITY: City of Inglewood
   
   One W. Manchester Boulevard,
   
   Inglewood, CA 90301
   
   Attention: Aisha Thompson, City Clerk
   
   Parks, Recreation and Community Services Department
   
   One W. Manchester Boulevard, Suite 500
   
   Inglewood, CA 90301
   
   Attention: Sabrina Barnes, Director
   
   PepsiCo, Inc.: 6300 Arizona Circle
   
   Los Angeles, California 90045
   
   Attention: Jalen Courts, Associate Marketing Manager

2. The Project.

   PEPSICO shall providing all funding for the PROJECT, which PROJECT shall look substantially similar to Exhibit A (A1-A8) in form and structure and is incorporated herein by this reference as if set forth in full, at the PROJECT LOCATION, including, without limitation, the coordination of work with any contractors, subcontractors, workers and volunteers.

3. Financial Contributions. The PARTIES agree that their respective financial contributions described herein shall be allocated as indicated below:

<table>
<thead>
<tr>
<th>Project Location</th>
<th>CITY</th>
<th>PEPSICO</th>
</tr>
</thead>
<tbody>
<tr>
<td>Edward Vincent Park</td>
<td>$0</td>
<td>$148K</td>
</tr>
<tr>
<td>700 Warren Lane</td>
<td>$0</td>
<td>$148K</td>
</tr>
<tr>
<td>Inglewood, CA 90302</td>
<td>$0</td>
<td>$148K</td>
</tr>
</tbody>
</table>

   The PARTIES acknowledge and agree that, PEPSICO shall be responsible for all Project cost overruns required by or due to a change in the scope of the Project.

4. CITY's Covenants: CITY hereby covenants that, in order to induce PEPSICO to enter into this AGREEMENT:
a. CITY will maintain the PROJECT in a safe and attractive manner consistent with
like amenities maintained by other municipalities and private businesses;
b. CITY, which owns the PROJECT LOCATION, will ensure that the PROJECT
LOCATION is free of any liens, encumbrances, or third-party claims that would
be inconsistent with the intent that the PROJECT be used for recreation and
play activities;
c. CITY shall obtain, or shall assist PEPSICO, and its vendors, in obtaining, all
necessary permits, authorizations and consents, as well as right of entry to
access the park site to perform the necessary work;
d. CITY shall recognize PEPSICO for its contributions through the placement of
PEPSICO’S names, logos, trademarks, and appropriate signage (hereinafter,
"PEPSICO’S SIGNAGE"). PEPSICO’s SIGNAGE shall be kept in place for so long as
the PROJECT exists. The content, design, size, and placement of all PEPSICO’S
SIGNAGE at the PROJECT shall be determined by mutual agreement of the
PARTIES, and shall be consistent with the CITY’s sign laws and PRLSD
Sponsorship Recognition Policy;
e. CITY shall ensure that the PROJECT shall be used exclusively for recreation and
play activities for so long as the PROJECT remains open to the public;
f. CITY shall, at all times, provide PEPSICO with access to the PROJECT without
charge; and
g. CITY is authorized to enter into this AGREEMENT.

5. **PEPSICO’s Covenants**: PEPSICO hereby covenants that, in order to induce CITY to enter
into this AGREEMENT and to accept PEPSICO’s assistance with the PROJECT:
a. In accordance with this AGREEMENT, PEPSICO shall contract with and work
only with California state licensed contractors and/or subcontractors, and
shall make any required payments directly to such contractors and
subcontractors, for costs and expenses related to the PROJECT, at no
additional expense or cost to CITY;
b. In any contracts entered into hereunder by PEPESICO and/or any contractors or subcontractors PEPESICO shall require such contractors or subcontractors, to agree in writing to be in compliance with all applicable local, state, and federal laws, regulations and requirements as related to the Project;

c. Under no circumstance shall any contractor, subcontractor or supplier look to the CITY for payment or financial support for the construction or development of the PROJECT;

d. In any contracts entered into hereunder by PEPESICO and/or any contractors or subcontractors, PEPESICO shall require such contractors or subcontractors, to agree in writing to be in compliance with all applicable local, state, and federal regulations and requirements as related to the PROJECT;

e. In any contracts entered into hereunder by PEPESICO with any contractors or subcontractors, PEPESICO shall include the Insurance provisions of Paragraph 10 of this AGREEMENT;

f. In any contracts entered into hereunder by PEPESICO with any contractors or subcontractors, PEPESICO shall include the Indemnity and Hold Harmless provisions of Paragraph 9 of this Agreement;

g. In any contracts entered into hereunder by PEPESICO with any contractors or subcontractors, PEPESICO shall require that the work performed on the PROJECT be performed in accordance with plans and specifications mutually approved by the PARTIES, and pursuant to the terms and conditions of this AGREEMENT; and,

h. PEPESICO is authorized to enter into this AGREEMENT.

6. **Status:** CITY affirms that it is a tax-exempt municipal corporation, and PEPESICO affirms that it is a limited liability company registered with the state of California.

7. **Books and Records:** Throughout the term of the AGREEMENT, the PARTIES agree to maintain sufficient operating and financial books, records, and related documentation regarding the construction of the PROJECT, and any related activities
of the PARTIES, and further agree to allow the other Party’s reasonable access to such books, records, and other documentation as they relate to the PROJECT and the implementation of this AGREEMENT.

8. Publicity and Recognition:
   a. The PARTIES shall acknowledge one another as co-contributors in written material(s), news releases, and related marketing or publicity materials, including, but not limited to an initial press release and/or dedication of the PROJECT;
   b. The PARTIES agree to assist and cooperate in a mutually acceptable grand opening and/or dedication event at the PROJECT, if desired;
   c. The PARTIES shall have the right to publicize, show photographs of, use the name of, and otherwise promote their respective contributions to the PROJECT;
   d. PEPSICO shall have the right (but not the obligation) to place and remove PEPSICO’S SIGNAGE on or around the basketball courts provided that PEPSICO’S signage is consistent with CITY’s sign laws and PRLSD policies, procedures, and guidelines, subject to the prior approval of the CITY;
   e. PEPSICO shall have the right, at PEPSICO’s events at the PROJECT to operate a booth or similar area for promotional purposes upon the signing the same waiver of liability and indemnity agreement that others operating a booth or similar area for promotional purposes. The size and location of the booth or similar area shall be subject to CITY’s prior approval, not to be unreasonable withheld; and
   f. The PARTIES agree to cooperate and coordinate with respect to the nature, text, and timing of any press release or public announcement(s) concerning the existence of the PROJECT, and/or this AGREEMENT; the use or promotion of the PROJECT LOCATION; and/or the construction of the PROJECT, except as may be legally required by applicable laws, regulations, or judicial order.
   i. The PARTIES agree to notify each other in writing of any press release, public announcement, marketing or promotion of the PROJECT. Further,
any press release, public announcement, marketing materials, or brochures prepared by any of the PARTIES, shall appropriately acknowledge the contributions of all of the PARTIES;

ii. To the extent stipulated in any grant agreement, partnership agreement, donation agreement, or other agreement with respect to the PROJECT, the PARTIES shall duly notify any grantors, partners or other party, and each other, prior to any public or media event publicizing the accomplishments funded by any grant agreement or other funding source, and shall provide the opportunity for attendance and participation by grantor, donor, partner, or other representative representatives;

iii. The PARTIES shall coordinate the scheduling and organization of any public or media event to provide the opportunity for attendance and participation by officials and/or representatives of CITY or PEPSICO; including elected officials and public officials. Similarly, any document written report, or brochure prepared by either CITY or PEPSICO, in whole or in part, shall contain any acknowledgements required under any related grant agreement, partnership agreement, donation agreement or other agreement or funding source; and

iv. PEPSICO agrees that any public release or distribution of information related to the PROJECT or this AGREEMENT, and/or any related project, programs or services, shall include the following statement at the beginning or introduction of such release:

"In collaboration with the City of Inglewood, Parks, Recreation and Community Services Department."

9. Indemnification/Hold Harmless:

a. Except for the active negligence or willful misconduct of CITY, or any of CITY's officers, directors, employees, accountants, attorneys, agents,
affiliates, subsidiaries, successors, insurers and assigns, PEPSICO agrees to indemnify, defend, and hold harmless CITY, their officers, directors, employees, accountants, attorneys, agents, affiliates, subsidiaries, successors, insurers and assigns from and against any and all third party claims, demands, losses, damages, liabilities, costs and expenses (including reasonable legal/attorneys' fees and expenses arising out of or related to any legal proceeding and any legal appeal) related to the PROJECT or this AGREEMENT, and liabilities of any kind or nature whatsoever, whether in contract, tort, or otherwise, resulting from any claim (including, without limitation, personal injury, property damage) actually or allegedly arising out of or in connection with any acts, errors, omissions or willful misconduct, including the maintenance, location, or condition of the PROJECT, or any person's or entity's use of the PROJECT, whether authorized or unauthorized, proper or improper. This requirement shall survive the termination of this AGREEMENT.

10. Insurance Requirements:

a. PEPSICO shall obtain and keep in effect for the period of time the PROJECT is in operation or open to the public, at PEPSICO's expense, Commercial General Liability Insurance (including bodily injury, property damage, products/completed operations, personal injury, participants' bodily injury liability and contractual liability coverages) in the amount of, at a minimum, $2,000,000.00. Coverage shall be written by insurance companies that are satisfactory to City and that are licensed to do business in the state or country in which the PROJECT is located.

b. In addition to Paragraph 10, "a," above, PEPSICO shall require the following language to be placed in all contracts with its contractors and/or subcontractors: "The policies shall be endorsed to name CITY, and its respective directors, officers, employees, agents, and affiliates as additional insureds. The contractor's/subcontractor's
insurance shall be primary, the City’s insurance shall not
contribute to any judgment, and shall be written on an occurrence basis.”

11. Use of Marks: Notwithstanding any provision herein, no PARTY shall use any other
PARTY’s trademarks, tradenames, and/or logos (hereinafter, “MARK”) without the prior
written approval from such PARTY. Each MARK shall remain the sole and exclusive
intellectual property of the pertinent PARTY.

12. Term: The “TERM” of this AGREEMENT shall commence upon full execution of this
AGREEMENT, and shall expire five (5) years from the Effective Date.

13. Relationship of the PARTIES: The PARTIES agree that no PARTY shall have any right,
power, or authority to assume, create, or incur any expense, liability, or obligation,
expressed or implied, on behalf of any other PARTY, except as expressly provided
herein. The PARTIES are independent entities and this AGREEMENT is not intended to
be nor shall it be construed as a joint venture, association, partnership, or other form
of a business organization or agency relationship.

14. Post-Construction
   a. Upon completion of construction, CITY and/or PRLSD shall conduct a
      post-development inspection to ensure that the construction of the PROJECT
      is in compliance with the terms and conditions of this AGREEMENT.
   b. Following the CITY and/or PRLSD’s acceptance of the completed PROJECT,
      and subsequent to opening the PROJECT LOCATION to the public, PEPICO
      shall have no involvement or responsibility, whether financial or otherwise,
      with the use, operation, maintenance, landscaping, repair, insurance,
      programming or modifications of the PROJECT.
   c. Upon CITY and/or PRLSD’s acceptance of the completed PROJECT, CITY and
      PRLSD agree that PEPICO shall have no further liability with respect to the
      PROJECT.

15. Entire Agreement: This AGREEMENT supersedes any prior or contemporaneous
oral or written understandings or communications between the PARTIES and
constitutes the entire AGREEMENT of the PARTIES with respect to its subject matter. This AGREEMENT may not be amended or modified, except in a writing signed by the PARTIES.

16. Governing Law: This AGREEMENT shall be interpreted, construed and governed according to the laws of the State of California. In the event of litigation between the parties, venue in state trial courts shall lie exclusively in the County of Los Angeles, Superior Court, Southwest District, located at 825 Maple Avenue, Torrance, California 90503-5058. In the event of litigation in the United States District Court, venue shall lie exclusively in the Central District of California, in Los Angeles.

17. Captions: All captions and headings in this AGREEMENT are for the purposes of reference and convenience only. They will not limit or expand the provisions of this AGREEMENT.

18. Counterparts: This AGREEMENT may be executed in counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument. This AGREEMENT shall not be effective as to any PARTY unless and until it has been executed by or on behalf of every PARTY.

19. Amendments: No change, amendment, or modification to this AGREEMENT shall be effective unless in writing and signed by the Parties hereto.

20. Severability: In the event that any condition or covenant herein is held to be invalid or void by any court of competent jurisdiction, the same shall be deemed severable from the remainder of the AGREEMENT and shall in no way affect any other covenant or condition herein contained as long as the invalid provision does not render the AGREEMENT meaningless with regard to a material term in which event the entire AGREEMENT shall be void. If such condition, covenant, or other provision shall be deemed invalid due to its scope or breadth, such provision shall be deemed valid to the extent the scope or breadth is permitted by law.

21. Waiver: Waiver by any party to this AGREEMENT of any term, condition, or covenant
of this AGREEMENT shall not constitute a waiver of any other term, condition, or

covenant. Waiver by any party of any breach of the provisions of this AGREEMENT shall

not constitute a waiver of any other provision, or a waiver of any subsequent breach or

violation of any provision of this AGREEMENT. Acceptance by the City of any work or

services by Contractor shall not constitute a waiver of any of the provisions of this

AGREEMENT.

22. Miscellaneous:

a. The PARTIES waive any benefits from the principle of *contra proferentum* and

interpreting ambiguities against drafters. No party shall be deemed to be the

drafter of this AGREEMENT, or of any particular provision or provisions, and

no part of this AGREEMENT shall be construed against any party on the basis

that the particular party is the drafter of any part of this AGREEMENT.

b. This AGREEMENT may be executed in counterparts, and when each PARTY

hereto has signed and delivered at least one such counterpart, each

counterpart shall be deemed an original and, when taken together with the

other signed counterparts, shall constitute one AGREEMENT, which shall be

binding upon and effective as to all PARTIES hereto.

c. Article titles, paragraph titles or captions contained herein are inserted as a

matter of convenience and for reference, and in no way define, limit, extend, or
describe the scope of this AGREEMENT or any provision hereof.
IN WITNESS WHEREOF, the Parties hereto have executed this AGREEMENT as of the

date and year first above written.

CITY OF INGLEWOOD

______________________________
James T. Butts, Jr.,
Mayor

______________________________
Jeffrey O'Reilly,
Senior Marketing Director

ATTEST:

______________________________
Aisha L. Thompson,
City Clerk

APPROVED AS TO FORM:

______________________________
Kenneth R. Campos,
City Attorney
EXHIBIT A
2-Tier Bleacher Concept

Two Tier, Basic: Simplified Bleacher design with two 24” deep seating sections. Deeper, uninterrupted style could be more appealing for homeless population to utilize the space.

REVISION: Solid Panels between ByBlock columns, extend to ground level - 3 panels per span

DIVERSION
18 ByBlock / column
396 lbs / column
@ 5 columns = 1 Ton
Four Post Shade Option