

Council Meeting of
May 15, 2007

Honorable Mayor and Members
of the City Council
City Hall
Torrance, California

Members of the Council:

**SUBJECT: Community Services and City Attorney – Authorize the termination of the Strategic Alliance and Long Term Partnership Agreement with Pacific Snapple Distributors, Inc., 7up-Royal Crown Bottling Company, Inc.; and authorize the termination of the agreement with Michael Hogue.
Expenditure: N/A**

RECOMMENDATION

The Community Services Director and City Attorney recommend that City Council:

1. Authorize staff to submit a letter terminating the Strategic Alliance and Long Term Partnership Agreement between Pacific Snapple Distributors, Inc., 7up-Royal Crown Bottling Company, Inc. and the City of Torrance (C2004-019).
2. Authorize the Letter of Termination to include the removal of all vending machines as specified under the agreement by August 31, 2007.
3. Require Pacific Snapple Distributors, Inc., 7up-Royal Crown Bottling Company, Inc. to pay a pro-rated amount to City of Torrance for 2007 in the amount of \$43,725.
4. Authorize the City Attorney to take any necessary actions to collect appropriate payments and to ensure the removal of the vending machines.
5. Authorize the termination of the agreement between Michael Hogue of Educational Sponsorship Partners (C2003-154).

FUNDING

Not applicable.

BACKGROUND

On July 22, 2003, the City of Torrance hired Michael Hogue of Educational Sponsorship Partners to negotiate an exclusive City of Torrance vending

agreement (C2003-154). On February 10, 2004, the City entered into a Strategic Alliance and Long Term Partnership Agreement with Pacific Snapple Distributors, Inc., 7up-Royal Crown Bottling Company, Inc (Beverage Vendor). The agreement was designed to provide \$140,000 in annual revenue to the City. In return, the Beverage Vendor was to receive exclusive territory for drink sales and 75-85 locations at which their vending machines could be placed. The agreement had a 7 year term beginning in 2004 and concluding February 2011.

The contract terms specified that the Beverage Vendor could re-evaluate the agreement after the third year of operations starting in February 2007. After receiving an invoice from the City of Torrance for payment in January 2007, the Beverage Vendor submitted a letter on March 29, 2007, notifying the City that they will be exercising their right to re-evaluate the terms of the agreement (Attachment A).

On April 20, 2007, the City asked for a proposal outlining the recommended changes. The Beverage Vendor was also reminded that they would be in default of the agreement according to Section 19 if the annual payment had not been remitted by May 1, 2007 (Attachment B).

Subsequently, on May 4, 2007, the Beverage Vendor submitted a proposal to reduce the annual payment to the City of Torrance from \$140,000 per year to \$45,000 per year for the remainder of the agreement (Attachment C).

ANALYSIS

Community Services Department staff and the City Attorney's office have made attempts to meet with the Beverage Vendor to resolve the delinquency of payment. At this time however, the Beverage Vendor is in default of the agreement. Under Section 19.a (i), the Beverage Vendor is in default by not making their annual payment within the specified period, and have not cured this condition within the 90-day limit. If approved by City Council, a Letter of Termination will be sent to the Beverage Vendor giving 10 days prior written notice to terminate the agreement (Attachment D).

In addition to termination, the letter will specify that all vending machines, signs, and equipment must be removed within 90 days following termination for ease of administration through August 31, 2007. Staff feel that 90 days gives the vendor ample time to recover their equipment, as well as meet the terms of the agreement.

It is also recommended that the Beverage Vendor pay their 2007 agreement amount on a pro-rated basis of \$383.56 per day (\$140,000 divided by 365 days) from February 1, 2007 to May 25, 2007 (114 days, \$43,725 owed to the City). This item also recommends that Council authorize the City Attorney to take any

necessary actions to collect payments owed to the City and to ensure the machines and equipment are removed in a timely manner.

If approved by City Council, a letter of termination will also be sent to the City's Consultant, Michael Hogue, giving ten days prior written notice to terminate the Agreement (Attachment E). As specified in Section 2, Term, Mr. Hogue's agreement continues in full force and effect concurrently with the Beverage Vendor agreement and terminates simultaneously with the termination of the agreement with the Beverage Vendor contract.

Respectfully submitted,



GENE BARNETT
Community Services Director

CONCUR:



John Fellows
City Attorney



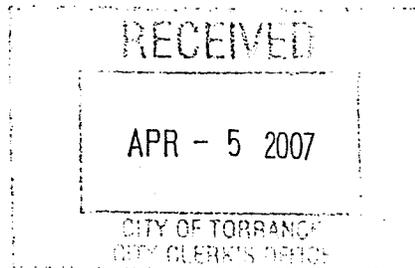
LeRoy J. Jackson
City Manager

- Attachments: A) Beverage Vendor Notice to Re-Evaluate dated March 29, 2007.
B) City's Request for Information and Payment dated April 20, 2007.
C) Beverage Vendor Proposal of May 4, 2007.
D) Beverage Vendor Letter of Termination dated May 15, 2007.
E) Michael Hogue's Letter of Termination dated May 15, 2007.



ATTACHMENT A

7up/RC Bottling Company, Inc.
 3220 E. 26th Street
 Vernon, CA 90023
 March 29, 2007



City Clerk
 City of Torrance
 3031 Torrance Boulevard
 Torrance, CA 90509-2970

Educational Sponsorship Partners
 21430 Grant Avenue
 Tustin, CA 90503
 ATTN: Michael Hogue

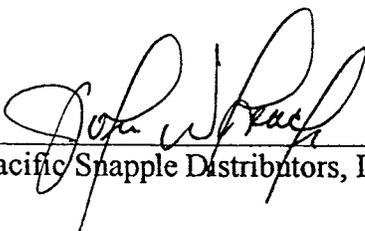
Dear City Clerk,

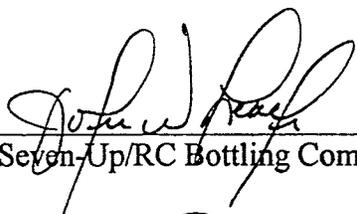
This letter is in reference to the Strategic Alliance and Long Term Partnership Agreement between Pacific Snapple Distributors, Inc., 7up-Royal Crown Bottling Company of Southern California, now known as Seven-Up/RC Bottling Company, Inc. and the City of Torrance (the "Agreement").

Pursuant to Section 2 of the Agreement, Pacific Snapple Distributors, Inc. and Seven-Up/RC Bottling Company, Inc. hereby exercise the right to reevaluate the terms of the Agreement. It is the intention of the Companies to reach a mutually agreeable arrangement for the remaining term of the Agreement.

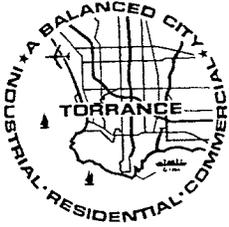
Please feel free to call Mike Hart at (323) 267 - 6256 so we can plan to meet and go over next steps.

Sincerely,


 Pacific Snapple Distributors, Inc.


 Seven-Up/RC Bottling Company, Inc.

COPY



CITY OF
TORRANCE

COMMUNITY SERVICES DEPARTMENT

Gene Barnett
Community Services Director

April 20, 2007

Michael Hart
7up/RC Bottling Company, Inc.
3220 E 26th St
Vernon, CA 90023

Dear Mr. Hart:

Thank you for your letter dated March 29, 2007 requesting to meet with representatives of the City to discuss the Strategic Alliance and Long Term Partnership Agreement between the City of Torrance and Seven Up/RC Bottling Company. In your discussion with Mr. John Jones, Recreation Services Manager, you indicated that the soonest you could meet was May 3, 2007. Due to scheduling conflicts, members of the City's contract review team are unable to meet on May 3rd. Therefore, another date, either before May 2nd or after May 4th, will need to be selected.

In your letter, you state that you will be exercising the right to reevaluate the terms of the Agreement pursuant to Section 2. To make our meeting more meaningful, please provide the City with a proposal outlining the changes you will be recommending. Submit the proposal and any pertinent background information to the Torrance City Clerk's Office at least 48 hours before the meeting so that the information may be adequately reviewed.

Pursuant to Section 3 of the Agreement, the annual fee of \$140,000 was due on February 1, 2007. Your company will be in default if the annual payment has not been made by May 1, 2007 according to Section 19 of the Agreement. Please remit your payment to:

City Clerk
City of Torrance
3031 Torrance Blvd.
Torrance, CA 90503

Mr. Jones will contact you to confirm a meeting date and the location. Please contact him at (310) 618-2945 if you have any questions or comments.

Sincerely,

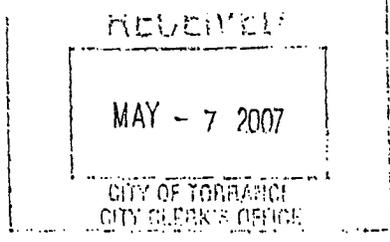

Gene Barnett
Community Services Director

cc: Educational Sponsorship Partners
21430 Grant Ave.
Torrance, CA 90503
Attn: Michael Hogue
AO:GB:tlk:adminsvcs/beverage/2007bevmeet 4.2007



ATTACHMENT C

5/4/2007



7up/RC Bottling Company, Inc.
3220 E. 26th Street
Vernon, CA 90023
March 29, 2007

City Clerk
City of Torrance
3031 Torrance Boulevard
Torrance, CA 90509-2970

Educational Sponsorship Partners
21430 Grant Avenue
Torrance, CA 90503
ATTN: Michael Hogue

Dear City Clerk,

This letter is in reference the Strategic Alliance and Long Term Partnership Agreement between Pacific Snapple Distributors, Inc., 7up-Royal Crown Bottling Company of Southern California, now known as Seven-Up/RC Bottling Company, Inc. and the City of Torrance (the "Agreement").

Under Section 2. Term of the Agreement, Seven-Up/RC Bottling Company, Inc. exercised the right to reevaluate the terms and attempt to reach mutually agreeable terms for the remainder of the Term.

Seven-Up/RC Bottling Company, Inc. proposes to pay an annual fee of \$45,000 for the remainder of the Agreement.

Please contact Mike Hart at (323)267-6256 to arrange a meeting and review proposal.

Sincerely,

Pacific Snapple Distributors, Inc.

Seven-Up/RC Bottling Company, Inc.

COMMUNITY SERVICES DEPARTMENT

Gene Barnett
Community Services Director

May 16, 2007

Michael Hart
7Up/RC Bottling Company, Inc.
3220 E. 26th St.
Vernon, CA 90023

Dear Mr. Hart:

Notice is hereby given that Pacific Snapple Distributors, Inc., 7up-Royal Crown Bottling Company, Inc. is in default under the terms of the Strategic Alliance and Long Term Partnership Agreement (C2004-019).

Payment of \$140,000 was due the City of Torrance on February 1, 2007. Even though you indicated in writing that the terms of the agreement were to be reviewed and renegotiated, it is past 90 days and no payment has been received. Pursuant to Section 19 of the agreement, the City elects to terminate the agreement 10 days after the date of this letter.

Furthermore, on or before August 31, 2007, all machines, signs, and other equipment installed under the execution of this agreement must be removed from City premises. In addition, a prorated payment in the amount of \$43,725 is due the City for 2007 under this agreement and must be remitted immediately to:

City Clerk
City of Torrance
3031 Torrance Blvd.
Torrance, CA 90503

Sincerely,

Gene Barnett
Community Services Director

cc: Michael Hogue
Educational Sponsorship Partners
21430 Grant Ave.
Torrance, CA 90503

AO:GB:tlk:adminsvcsdiv:beverage\2007\mhart 5-15.07

COMMUNITY SERVICES DEPARTMENT

Gene Barnett
Community Services Director

May 16, 2007

Michael Hogue
Educational Sponsorship Partners
21430 Grant Ave.
Torrance, CA 90503

Dear Mr. Hogue:

Notice is hereby given that Pacific Snapple Distributors, Inc., 7up-Royal Crown Bottling Company, Inc. is in default under the terms of the Strategic Alliance and Long Term Partnership Agreement (C2004-019).

Payment of \$140,000 was due the City of Torrance on February 1, 2007. Even though Pacific Snapple Distributors, Inc., 7up-Royal Crown Bottling Company, Inc. indicated in writing that the terms of the agreement were to be reviewed and renegotiated, it is past 90 days and no payment has been received. Pursuant to Section 19 of the agreement, the City elects to terminate the Snapple agreement 10 days following notice to Snapple of the City's election to terminate.

Since the Consultant contract with Michael Hogue, Educational Sponsorship Partners (C2003-154), is dependent on the continuance of the Vending Contract with Pacific Snapple Distributors, Inc., 7up-Royal Crown Bottling Company, Inc., your agreement with the City will terminate simultaneously with the termination of the agreement between the City of Torrance and Pacific Snapple/7up (pursuant to section 2 Agreement C2003-154).

Thank you for your assistance with this agreement over the past several years. We look forward to working with again under different circumstances.

Sincerely,

Gene Barnett
Community Services Director

cc: Michael Hart
7Up/RC Bottling Company, Inc.
3220 E. 26th St.
Vernon, CA 90023

