



Kevin Stahl, Purchasing Manager
240 Villa Crest Drive
State College, PA 16801

TO: Robert J. O'Donnell, Superintendent

FROM: Megan Schaper, Food Service Director
 Kevin Stahl, Purchasing Manager

RE: Food Service Beverage Vending Services

DATE: August 1, 2016

Administration has solicited proposals seeking an exclusive vendor to provide Food Service Program beverage vending services.

Coca-Cola Refreshments and Pepsi-Cola responded to the request for proposal with products including bottled water, flavored water, vitamin water, fruit water, low calorie sports beverages, zero calorie sports beverages, low calorie iced tea, 100% fruit juices and soda.

Administration recommends that this initiative be awarded to Coca-Cola Refreshments as the low cost respondent able to provide the beverage product line breadth and depth necessary to successfully market a fiscally viable district beverage vending program. As expected, Coca-Cola Enterprises requires that the district enter into a Beverage Provider Agreement which is also enclosed. It should be noted that the enclosed 2-year agreement has been reviewed by administration, the district's solicitor and the district's insurance consultant with the terms being acceptable to all.

<u>Vendor</u>	<u>Total Annual Cost</u>
<u>All Items</u>	
Coca-Cola Refreshments	\$35,895.70
Pepsi-Cola	\$40,202.80
<u>Items Bid by Both</u>	
Coca-Cola Refreshments	\$35,895.70
Pepsi-Cola	\$39,571.80

BEVERAGE PROVIDER AGREEMENT

This agreement (the “**Agreement**”) is made by and between **Coca-Cola Refreshments, LLC**, a Delaware corporation (“**Beverage Provider**”), and the State College Area School District (specifically the State College Area School District High School North Building and High School South Building, Mount Nittany Middle School, and Park Forest Middle School) having its principal place of business at 131 West Nittany Avenue, State College, Pennsylvania 16801 (“**District**”).

WITNESSETH:

WHEREAS, Beverage Provider is dedicated to being responsive to local school needs and to improving the communities in which it does business, including by supporting youth development and education, and District has requested a variety of beverages for the use of students, faculty and staff;

WHEREAS, District is vested with the appropriate authority and wishes to grant to Beverage Provider the exclusive beverage availability rights with permitted exceptions described herein with respect to all schools in the **State College Area School District** (“**Schools**”) and with respect to all other facilities owned or operated by the District. As seen in exhibit A.

NOW, THEREFORE, in consideration of the promises herein contained, the parties hereto agree as follows:

1. Definitions.

(a) “Agreement Year” means each twelve-month period beginning with the first day of the Term.

(b) “Approved Cups” means disposable cups approved by Beverage Provider from time to time as its standard trademark cups and/or vessels and/or other (disposable and nondisposable) containers approved by Beverage Provider from time to time, all of which shall prominently bear the trademark(s) of Products (as herein defined) on all of the cup surface.

(c) “Beverages” means all non-alcoholic beverages (i.e. anything consumed by drinking), whether or not such beverages (i) contain nutritive, food, or dairy ingredients, OR (ii) are in a frozen form. This definition applies without regard to the beverage's labeling or marketing. Powders, syrups, grounds (such as for coffee), herbs (such as for tea), concentrates, K-Cups® pods and all other beverage bases from which Beverages can be made, and brands and products of water purification and beverage making systems (e.g. Brita®, Soda Stream®, Keurig®) are deemed to be included in this definition. For the avoidance of doubt, “flavor enhancers”, “liquid water enhancers”, and non-alcoholic beverages sold as “shots” or “supplements” are considered Beverages. “Beverage” or “Beverages” shall not include fresh-brewed unbranded coffee and fresh-brewed unbranded tea products, unflavored dairy products, water drawn from the public water supply or unbranded juice squeezed fresh at the Facility.

(d) “Campus” means the entire premises of each and every School and facility owned or operated by “Food Service Program Beverage Vending Services” either now or in the future, as defined in Exhibit A.

(e) “Competitive Products” means any and all Beverages other than Products (as defined herein).

(f) “Concessionaire” means any third party providing services under contract with District on Campus or to Team that directly or indirectly relates to the service of Beverages.

(g) “Products” shall mean Beverage products purchased directly from Beverage Provider or sold through vending machines owned and stocked exclusively by Beverage Provider.

2. Term. Beverage Provider shall have the rights provided herein for a term of Two (2) years, beginning as of August 1, 2016 (“Term”), unless mutually extended by written Agreement of the parties or unless sooner terminated as provided herein. Effective at the end of each full Agreement Year, either party shall have the right to terminate this Agreement, with or without cause, by giving the other party sixty (60) days advance written notice.

3. Grant of Beverage Availability and Beverage Merchandising Rights. District hereby grants to Beverage Provider the following exclusive Beverage availability with permitted exceptions and merchandising rights as defined in Exhibit A:

(a) Beverage Availability on Campus. Beverage Provider shall have the shared right to make Beverages available for sale and distribution on Campus. District agrees that Products shall be the shared Beverages sold, dispensed, served or sampled at all locations and at all functions on the Campus that are serviced by “Food Service Program Vending Services,” as defined in Exhibit A. In particular, District shall cause each School administration to do the following:

- (i) Offer a selection of Beverage Provider’s Products to comply with the following standard Beverage guidelines (the “Guidelines”) at the Schools indicated below:

First, the Standards:

Elementary:

- bottled water, including carbonated (no size limit)
- low-fat unflavored milk and non-fat milk (including flavored) and milk alternatives (8 oz or less)
- 100% juice, including diluted with water (with or without carbonation) and no added sweeteners (9 fl oz or less)
- No caffeine, except for trace amounts of naturally occurring.

Middle:

- same as elementary, except serving sizes for milk and 100% juice/diluted juice increase to 12 ounces
- No caffeine, except for trace amounts of naturally occurring.

High:

- plain bottled water, including carbonated (no size limited)
- low-fat unflavored milk and non-fat milk (including flavored) and milk alternatives (12 fl oz or less)
- 100% juice, including diluted with water (with or without carbonation) and no added sweeteners (12 fl oz or less)
- Diet beverages up to 20 fl oz (defined as those that are labeled to contain less than 5 calories per 8 fl oz, or less than or equal to 10 calories per 20 fl oz)
- Mid-calorie beverages that are 40 calories or less per 8 fl oz, capped at 60 calories in a 12 fl oz portion size
- Caffeine Permitted

Products offered at the Schools in compliance with the Guidelines shown above shall be available during the regular and extended school day and at all locations in the Schools, except where not permitted by federal or state regulations. The extended school day includes, but is not limited to, activities such as clubs, athletic practices, yearbook, band and choir practice, student government, drama, and childcare/latchkey programs. District represents and warrants that current federal and state regulations permit the sale of Beverages in Schools at least in accordance with the above Guidelines;

(ii) Obtain Beverage vending services from Beverage Provider, which shall have the exclusive right to provide Beverage vending on Campus, as defined in Exhibit A.

(iii) Offer juice Products, juice-containing Products and other Products in cafeteria lines of all Schools, including without limitation elementary Schools, if such Products meet state, and federal nutrition and procurement regulations and the above Guidelines.

(iv) Permit Beverage Provider to place a minimum of Eight (8) Beverage vending machines in mutually agreed upon locations as required to meet Beverage availability needs on Campus.

(v) Permit Beverage Provider to place vending machines facilities operated by the District, if serviced by "Food Service Program Beverage Vending Services."

(b) Beverage Merchandising Rights. Beverage Provider shall have the exclusive right with permitted exceptions to merchandise Beverages on Campus including the following specific rights:

(i) Trademarks for Products shall be prominently listed on the menu boards of all food refreshment outlets on Campus.

4. Permitted Exceptions. District shall have the right to make available for sale on the Campus (i) Competitive Products. District agrees that this provision shall not be read to allow advertising or promotional rights with respect to such Competitive Products except that trademarks for such Competitive Products may be displayed on menu boards and on dispensing equipment.

5. Pricing. During Agreement Years one and two, Beverage Provider agrees to offer District pricing set forth in Exhibit B.

6. Equipment and Service.

(a) During the Term, Beverage Provider will loan to District all Beverage dispensing equipment ("**Equipment**") which is reasonably required in Beverage Provider's discretion to dispense Products at the Campus. District represents and warrants that electric service on the Campus is proper and adequate for the installation of Equipment, and District agrees to indemnify and hold harmless Beverage Provider from any damages arising out of defective electrical services.

(b) District agrees (i) it will execute documents evidencing Beverage Provider's ownership of the Equipment, (ii) upon request of Beverage Provider, District will execute Beverage Provider's Equipment Placement Agreement ("BPEPA"), however, if any of the terms of the BPEPA are in conflict with the terms of this Agreement, this Agreement will control, (iii) the Equipment may not be removed from the Campus without Beverage Provider's written consent, (iv) District will not encumber the Equipment in any manner or permit any attachment thereto except as authorized by Beverage Provider for the Equipment,

and (v) District will be responsible to Beverage Provider for any loss or damage to the Equipment, reasonable wear and tear excepted.

(c) Beverage Provider will provide District with reasonable, free service to its Equipment. All equipment service will be provided during normal business hours. Beverage Provider shall not be obligated to provide service hereunder during periods in which it is prevented from doing so due to strikes, civil disturbances, unavailability of parts or other causes beyond the control of Beverage Provider. Beverage Provider shall not be liable for damages of any kind arising out of delays in rendering service.

7. Remedies for Loss of Rights.

(a) In addition to any other legal or equitable remedy, District will have the right to terminate this Agreement upon forty-five (45) days prior written notice to Beverage Provider at any time if:

(i) Beverage Provider fails to make any payment due under this Agreement, and if such default continues uncured for the forty-five day period referenced in this Section 8(a); or

(ii) Beverage Provider breaches any material term or condition of this Agreement, and if such breach continues uncured for the forty-five day period referenced in this Section 8(a).

(b) In addition to any other legal or equitable remedy, Beverage Provider will have the right to terminate this Agreement upon forty-five (45) days prior written notice to District at any time if:

(i) District breaches any material term or condition of this Agreement, and if such breach continues uncured for the forty-five day period referenced in this Section 8(b); or

(ii) District's right to convey the promotional and Beverage availability rights contained in this Agreement expire or are revoked; or

(iii) Any material component of the Campus is closed for a period of one hundred twenty (120) days or more.

8. Miscellaneous.

(a) Indemnification:

(i) Beverage Provider shall indemnify, defend and hold harmless, to include reasonable attorney's fees, the State College Area School District from and against any and all claims for bodily injury, death or damage to property, demands, damages, actions, causes of actions, suits, losses, judgments, obligations and any liabilities, costs and expenses which arise out of Beverage Provider's breach of this Agreement. These indemnity and defense obligations shall apply to any acts or omissions, negligent or willful misconduct of the Beverage Provider, its employees or agents, whether active or passive. - Beverage Provider shall not be obligated to indemnify or defend State College Area School District for claims found to be due to the ~~sole~~ negligence or willful misconduct of State College Area School District.

(ii) Beverage Provider's indemnification and defense obligations hereunder shall extend to claims raised after this agreement is terminated, provided the facts giving rise to the claim occurred during the Term, as well as while it is in force, and shall continue until it is finally adjudicated.

(b) Insurance.

(i) Upon execution of this Agreement and prior to the Beverage Provider commencing any work or services with regard to this project, Beverage Provider shall carry commercial general liability insurance and shall provide the State College Area School District with a Certificate of Insurance and Additional Insured Endorsement including the State College Area School District as Additional Insured thereunder. Additional Insured coverage shall apply as primary insurance with respect to any other insurance afforded to State College Area School District. The commercial general liability insurance shall not be less than \$1 million Each Occurrence, \$2 million General Aggregate, \$2 million Products/Completed Operations Aggregate, and \$1 million Personal and Advertising Injury limits. Such insurance shall cover liability arising from premises, operations, independent contractors, products-completed operations, personal and advertising injury, and liability assumed under an insured contract. The commercial general liability insurance policy shall be placed with an insurance company having an AM Rating of A-VII.

(ii) Beverage Provider shall endeavor to provide the State College Area School District at least 30 days' ~~prior~~ written notice of cancellation and termination of the Beverage Provider's coverage thereunder. Prior to the expiration, cancellation or termination of any such policy, Beverage Provider shall supply the State College Area School District with a new and replacement Certificate of Insurance and Additional Insured endorsement as proof of renewal of said original policy.

(iii) Coverage shall be no less than the following:

Umbrella Liability Insurance: The coverage shall not be less than \$2 million Each Occurrence, \$2 million Aggregate. Such insurance shall provide coverage over and above the stated General and Automobile liability limits.

(iv) Waiver of Subrogation

Beverage Provider shall obtain from each of its insurers a waiver of subrogation on Commercial General Liability in favor of the Lessor with respect to losses arising out of or in connection with the Agreement.

Beverage Provider

Name _____

Address _____

Signature _____

Print Name _____

State College Area School District Name

Address _____

Signature _____

Print Name _____

9. Notices. Any notices or other communication hereunder shall be in writing, shall be sent via registered or certified mail, and shall be deemed given when received.

If to Beverage Provider:

Coca-Cola Bottling Company
108 Barefoot Road
Ebensburg, Pennsylvania 15931
Attention: FSOP Manager

with a copy to:

Coca-Cola Refreshments USA, Inc.
One Coca-Cola Plaza
Atlanta, GA 30313
Attention: General Counsel

If to District:

State College Area School District
131 West Nittany Avenue
State College, Pennsylvania 16801
Attention: Ms. Mary Jenn Dorman, Board Secretary

TERMS AND CONDITIONS

Representations, Warranties and Covenants

(a) Representations, Warranties and Covenants of District. District represents, warrants and covenants to Beverage Provider as follows:

(i) District Authority. District has full power and authority to enter into this Agreement and to grant and convey to Beverage Provider the rights set forth herein.

(ii) District Binding Obligation. All necessary approvals for the execution, delivery and performance of this Agreement by District have been obtained, and this Agreement has been duly executed and delivered by District and constitutes the legal and binding obligation of District enforceable in accordance with its terms.

(iii) No Conflict With Other Agreements. District has not entered into, and during the Term of this Agreement, will not enter into (a) any other agreements (including agreements with any broadcaster or any other Beverage providers of the Campus, Schools) which would prevent it from fully complying with the provisions of this Agreement or (b) any agreement granting Beverage availability and merchandising rights that are inconsistent with the rights granted to Beverage Provider pursuant to this Agreement, including any agreements with third party food service operators, vending companies, and/or other entities which sell, distribute or advertise Beverages and/or food (including agreements with broadcasters or other Beverage Providers of the Campus and/or Schools). District further covenants that it will require compliance with the relevant provisions of this Agreement by third party food service operators, vending companies, and/or other entities which sell, distribute or advertise Beverages and/or food on the Campus, or which sponsor events on the Campus.

(b) Representations and Warranties and Covenants of Beverage Provider. Beverage Provider hereby represents, warrants and covenants as follows:

(i) Authority. Beverage Provider has full power and authority to enter into and perform this Agreement.

(ii) Binding Agreement. All necessary approvals for the execution, delivery and performance of this Agreement by Beverage Provider, have been obtained, and this Agreement has been duly executed and delivered by Beverage Provider, and constitutes the legal and binding obligation of Beverage Provider, enforceable in accordance with its terms.

(iii) No Conflict With Other Agreements. Beverage Provider has not entered into and during the Term of this Agreement, will not enter into, any other agreements which would prevent it from fully complying with the provisions of this Agreement.

(c) General. Each of the parties hereto agree that the representations, warranties and covenants contained herein shall survive the execution and delivery, and if appropriate the termination, of this Agreement.

Assignment. District may not assign this Agreement without the prior written consent of Beverage Provider. Beverage Provider may assign all or part of its rights and obligations under this Agreement to any licensed bottler of The Coca-Cola Company ("Company"), Company or any of Company's subsidiaries.

Claims. In no event will Beverage Provider accept any audits of, or claims of discrepancies or errors in, pricing, rebates, commissions, funding, discounts, or other consideration provided under this Agreement ("Claims") more than one (1) year from the date of invoice or the date of funding or consideration, as applicable. In order to present Claims within forty-five (45) days of the date of invoice, commission report, check or other applicable documentation, District shall provide Beverage Provider a detailed, written request specifying the particular price, commission, funding, product, amount in dispute and reason for dispute, along with a true copy of the original invoice, commission report, check or other applicable documentation. In order to present Claims later than forty-five (45) days from the date of invoice (but not more than one (1) year from the date of invoice), District shall provide to the Beverage Provider a request as specified above, and, in addition, submit true copies of any check remittances, and any other relevant documentation showing proof of Claim. Beverage Provider will review each Claim in good faith and provide responses to each properly-made Claim. Beverage Provider will work directly with the District to resolve any Claims or audit issues, but will not interact with third-party auditors or contractors. Any audits requested by District shall take place during normal business hours and shall be conducted at Beverage Provider's place of business.

Modifications. No modification or waiver of any of the terms and conditions of this Agreement shall be effective unless such modification or waiver is expressed in writing and executed by each of the parties hereto. This Agreement may be amended only in writing signed by each of the parties hereto.

Relationship of Parties. The parties are acting herein as independent contractors and independent employers. Nothing herein contained shall create or be construed as creating a partnership, joint venture or agency relationship between any of the parties and no party shall have the authority to bind the other in any respect.

Retention of Rights. District shall not obtain, by this Agreement, any right, title or interest in the trademarks of The Coca-Cola Company, nor shall this Agreement give District the right to use, refer to, or incorporate in marketing or other materials the name, logos, trademarks or copyrights of The Coca-Cola Company.

Governing Law. This Agreement and any dispute arising out of or relating to this Agreement shall be governed by and construed in accordance with the laws of the State of Pennsylvania. All claims shall be adjudicated in the court of Common Pleas of Centre County, Pennsylvania, in a non-jury format.

Applicable Law. Each of the parties hereto agrees that it will, in its performance of its obligations hereunder, fully comply with all applicable laws, regulations and ordinances of all relevant authorities and shall obtain all licenses, registrations or other approvals required in order to fully perform its obligations hereunder.

Jury Waiver. **EACH PARTY, TO THE EXTENT PERMITTED BY LAW, KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVES ITS RIGHT TO A TRIAL BY JURY IN ANY ACTION OR OTHER LEGAL PROCEEDING ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT AND THE TRANSACTIONS IT CONTEMPLATES. THIS WAIVER APPLIES TO ANY ACTION OR LEGAL PROCEEDING, WHETHER ARISING IN CONTRACT, TORT OR OTHERWISE.**

Captions. The captions used in this Agreement are for convenience only and shall not affect in any way the meaning or interpretation of the provisions set forth herein.

Entire Agreement. This Agreement shall constitute the complete and exclusive written expression of the intentions of the parties hereto and shall supersede all previous communications, representations, Agreements, promises or statements, either oral or written, by and between either party.

IN WITNESS WHEREOF, the undersigned have caused this Agreement to be duly executed as of the date last below written.

Beverage Provider:

District:

By: _____

By: _____

Printed Name: _____

Printed Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

EXHIBIT A

Food Service Program Beverage Areas

State College Area School District North Building

- 3 Vending Machines
- 2 Coolers
- 1 Cooler for ROAR Store

State College Area School District South Building

- 3 Vending Machines
- 2 Coolers
- 1 Cooler for ROAR Store

Park Forest Middle School

- 1 Vending Machine

Mount Nittany Middle School

- 1 Vending Machine

Permitted Exceptions

- V8 Fusion, Sniders Tea, Lemonade, and Milk
- Coca-Cola must be in primary position
- Permitted exceptions must not be in Coca-Cola identified equipment.

Product Deliveries

- Product deliveries shall be made during the hours of 7am and 2pm prevailing time on the week-days only when school is in session.
- Product deliveries shall be twice weekly at the high school and weekly at the middle school.

EXHIBIT B

Pricing Schedule*

20oz Coca Cola Carbonated Bottles	\$18.87
20oz Dasani/Dasani Flavors	\$10.03
20oz Dasani Sparkling	\$10.20
20oz Smart Water	\$23.68
20oz Vitamin Water/Vitamin Water Zero	\$25.10
20oz Powerade/Powerade Zero	\$17.87
18.5oz Gold Peak Tea	\$24.62
10oz Minute Maid Juice	\$14.04

**Unless otherwise indicated, all prices are per standard physical case (24 units per case) and exclusive of taxes, deposits, handling fees, and recycling fees.*