

**Contract Committee Review Request**  
**MUST BE COMPLETED IN FULL**

Date: 5/13/2022

Contract/Agreement Vendor:

Name of Vendor & Contact Person

Vendor Email Address

Describe Contract (Technology, program, consultant-prof Development, etc.)

Please use Summary below to fully explain the contract purchase, any titles, and details for the Board of Education to review.

Reason/Audience to benefit

    

BOE Date      Amount of agreement

Person Submitting Contract/Agreement for Review:

**PLEASE SEND THROUGH APPROPRIATE APPROVAL ROUTING BEFORE SENDING TO BOARD CLERK**

Principal &/or Director or Administrator:

Does this Contract/Agreement utilize technology? YES/NO  
 If yes, Technology Admin:

Leadership Team Member:

Funding Source:      

Fund/Project      OCAS Coding

**Consent**

**Action**

Accept and approve the RENEWAL Agreement between Broken Arrow Public Schools and Coca-Cola Southwest Beverages, LLC, as the District's vending provider. The beverage provider agrees to the commission rates listed in the agreement, in addition to sponsorship funding in the amount of \$70,000.00 per year. This is the fifth year of a five year agreement and subject to annual board approval. N. Eneff

**Summary** This area must be complete with full explanation of contract

*The Contract/Agreement should be received at least 2 weeks prior to a Board Meeting to ensure placement on the Agenda. The Contract Committee meets most Tuesdays at 8:00a.m. All Contracts/Agreements, regardless the amount, must be first approved by the Contract Committee and then presented to the Board of Education for approval and signature. The item will be placed on Electronic School Board for the board agenda by Janet Brown. By following this process, the liability of entering into an agreement is placed with the district rather than an individual.*

## BEVERAGE PROVIDER AGREEMENT

This agreement (the “**Agreement**”) is made by and between Coca Cola Southwest Beverages LLC, a Delaware limited liability company (“**Beverage Provider**”), and the Independent School District No. 3 of Tulsa County, Oklahoma, a/k/a Broken Arrow Public Schools, having its principal place of business at 701 South Main St. Broken Arrow, Ok 74012 (“**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 described herein with respect to all schools in the Broken Arrow School District (“**Schools**”) and with respect to all other facilities owned or operated by the District.

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 non-disposable) 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 on the Campus.

(d) “**Campus**” means the entire premises of each and every School and facility owned or operated by District either now or in the future, including without limitation, all elementary, middle, high, post-secondary and alternative schools, athletic facilities, offices, maintenance facilities, and including for each such location, the grounds, parking lots, all buildings which are a part of the location, all cafeterias, faculty and staff lounges, dining facilities, branded and unbranded food service outlets, concession stands, press rooms, sky boxes, stadium suites, vending locations, and players’ benches, sidelines and locker rooms. The defined terms “**Schools**” and “**Stadium**” are included within the collective term “**Campus**.”

(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.

(h) "Stadium" shall mean the Broken Arrow Football Stadium, which is located at 1901 E Albany St, Broken Arrow, OK 74012 and all other stadiums within the Campus including, but not limited to, the grounds, parking lots, all buildings which are part of the Stadium, all concession stands, dining facilities, branded and unbranded food service outlets, press rooms, sky boxes, stadium suites, vending and players' benches, sidelines and locker rooms.

(i) "Team" or "Team(s)" means all interscholastic athletic teams associated with District.

2. Term. Beverage Provider shall have the rights provided herein for a term of five (5) years, beginning as of August 1, 2018 ("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. Consideration.

In order to advance the educational mission of the District, to benefit the District, its students and educators, to support school wellness efforts, and in exchange for the rights granted to Beverage Provider hereunder, Beverage Provider agrees to provide the following funding, programs and other support described below. The parties intend that the use of funding will be focused on some or all of the following:

- Academic enrichment and scholarships
- Improvement of technology at the Schools
- Additional or improved educational materials
- School and Campus improvements
- Student extra-curricular activities
- Educator and Student reward and recognition programs
- Physical fitness and nutrition education programs
- Teaching kids to consume a balanced diet and be physically active

(a) Sponsorship Funding. Beverage Provider agrees to pay District an aggregate of Three Hundred fifty Thousand Dollars (\$350,000) for the entire Term (the "Sponsorship Funding"). The Sponsorship Funding will be paid, in arrears, in equal quarterly installments of Seventeen Thousand Five Hundred Dollars (\$17,500). For the first Agreement Year, the first installment will be paid within sixty (60) days of the date that this Agreement is fully executed for the first quarter covering August 1<sup>st</sup> through October 31<sup>st</sup> and subsequent payments shall be due at the end of each quarter thereafter. For subsequent Agreement Years, quarterly payments shall be due August 1<sup>st</sup> for the quarter ending July 31, November 1<sup>st</sup> for the quarter ending October 31, February 1<sup>st</sup> for the quarter ending January 31, and May 1<sup>st</sup> for the quarter ending April 30. The Sponsorship Funding shall be deemed earned evenly on a monthly basis over the Agreement Year in which they are paid. If the Agreement is terminated early the final payment shall be adjusted to deduct any unearned Sponsorship Funding.

(b) Once District meets the Volume Goal, as defined below, Beverage Provider will pay District a rebate of (i) fifty cents (\$.50) for each standard physical case of all Products purchased and paid for by District for sale on the Campus; and (ii) fifty cents (\$.50) for each standard physical case of Product

sold through Beverage Provider's full-service Beverage vending machines on the Campus during the Term ("Rebates"). District shall not be eligible for the Rebates set forth in this subsection until District has purchased and paid for 14,380 standard physical cases of Products ("Volume Goal"). Once the Volume Goal is met by District, Beverage Provider agrees to pay District the Rebates as set forth above for each standard physical case of Products. The Rebates shall be paid annually, in arrears, within thirty (30) days of the end of each applicable Agreement Year in which the Rebate was earned. The Rebates will be based on Beverage Provider's case sales records.

(c) Commissions. Beverage Provider shall pay the District commissions on full-service Beverage vending sales based on the following rates and initial vend prices:

VEND PRICES AND COMMISSIONS

<u>Product</u>	<u>Vend Price</u>	<u>Commission Rate</u>
12 oz. Carbonated Sparkling Cans	\$1.00	15%
20 oz. Carbonated Sparkling bottles	\$1.75	30%
20 oz. Dasani Water	\$1.50	30%
18.5 oz. Gold Peak Tea	\$2.00	15%
10.1 oz. Tum E Yummies	\$1.25	15%
20 oz. Smartwater	\$2.00	15%
20 oz. Vitamin Water	\$2.00	15%
20 oz. PowerAde	\$1.75	15%
10 oz. Minute Maid 100% Juice	\$1.50	15%

Commissions are paid based upon cash collected, after deducting legally imposed taxes, deposits, recycling fees, other handling fees, communication charges and credit and debit card fees, if any.

Commissions shall not be payable on any sales from vending machines not filled or serviced by Beverage Provider. Vend prices and packages shall be in effect through Agreement Year 2. Vend Prices for each Product shall increase by twenty-five cents (\$.25) at the beginning of Agreement Year 3 and Agreement Year 7. In addition, Beverage Provider may adjust the vend prices on an annual basis as necessary to reflect changes in its costs, including cost of goods. Commissions will be paid in arrears, on or about the 20th of each month with an accounting of all sales and monies.

(d) Powerade Equipment. In each Agreement Year, Beverage Provider shall provide District with PowerAde equipment to be utilized by the athletic department, with an estimated retail value of up to Four Thousand Dollars (\$4000) as determined in good faith by the Beverage Provider. The specific mix of PowerAde equipment provided shall be as determined by the Beverage Provider.

(e) Complimentary Product. Each Agreement Year during the Term, Beverage Provider shall provide District, upon District's request, with up to 700 standard physical cases of complimentary Products of Beverage Provider's choosing. In the event District does not request all complimentary Product by the end of each Agreement Year, any remaining complimentary Product shall be retained by Beverage Provider with no further obligation to District.

4. Grant of Beverage Availability and Beverage Merchandising Rights. District hereby grants to Beverage Provider the following exclusive Beverage availability and merchandising rights:

(a) Beverage Availability on Campus. Beverage Provider shall have the exclusive right to make Beverages available for sale and distribution on Campus. District agrees that Products shall be the exclusive Beverages sold, dispensed, served or sampled at all locations and at all functions on the Campus. District agrees that District and all other persons serving Beverages on Campus, including without

limitation, Concessionaires, Teams, and booster clubs, shall purchase all (100%) of their requirements for Products, Approved Cups and carbon dioxide from Beverage Provider. 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 it will comply with current federal and state regulations regarding 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;

- (iii) Offer a selection of juice Products, juice-containing Products and other Products of District's choosing in cafeteria lines of all 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 forty (40) 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 in all athletic facilities operated by the District, including the Stadium;

(vi) Cause Products to be hawked in stands in Approved Cups and plastic bottles at all sporting events and during all events when any items of any make or description are hawked on the Campus.

(b) Beverage Merchandising Rights. Beverage Provider shall have the exclusive right 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, excluding cafeterias;

(ii) District shall ensure that all post-mix Beverages served or pre-mix Beverages served, sold or dispensed at concessions and for Team use (including Beverages sold, served or made available in locker rooms, sidelines and players' benches) shall be served in Approved Cups.

5. Signage for Products.

Beverage Provider shall be entitled to signage locations as mutually agreed between District and Beverage Provider at the Schools and athletic facilities. Such signage shall meet Beverage Provider's reasonable specifications as to design, construction, and general appearance. The location, size, appearance and promotional message of any sign are subject to District approval, not to be unreasonably withheld. Without the express written consent of Beverage Provider, Beverage Provider's signage on the Campus shall not be altered, obscured in any way or draped at any time or for any reason by any person or entity, including any broadcaster. All lighted signs and panels promoting Products (including lighted concession advertising) shall be fully illuminated at all events on the Campus for which any signs are illuminated. Beverage Provider shall have the right of access to its permanent signage at all reasonable times for the purpose of replacement or removal of the same or to modify, change or alter the promotional messages appearing thereon at Beverage Provider's cost and discretion, subject to District approval of content, not to be unreasonably withheld.

6. Competitive Products. Subject to the Permitted Exceptions set forth in Section 7, during the entire Term and any renewal or extension thereof:

(a) No Competitive Products may be sold, dispensed or served anywhere on the Campus.

(b) No permanent or temporary advertising, signage or trademark visibility for Competitive Products will be displayed or permitted anywhere on the Campus, including locker rooms, sidelines and player's benches.

(c) No agreement or relationship will be entered into or maintained by District pursuant to which Competitive Products are associated in any manner with the Campus, Schools, Stadium, Teams and/or events at the Stadium in any advertising, promotional activity or other endeavor which creates or tends to create the impression of a relationship or connection between Competitive Products and Campus, Schools, Stadium, Teams and/or events at the Stadium.

7. Permitted Exceptions.

(a) District shall have the right make milk available for sale for student consumption solely in the cafeterias on Campus. District agrees that this Section 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.

(b) For the avoidance of doubt, nothing in this Agreement limits the ability of any District employee, student, or other individual to possess or to have Competitive Products for his/her personal consumption or to share a limited amount of Competitive Product (i.e. less than ten (10) cases) at no cost at a single small group event on Campus, provided that there are no accompanying promotional efforts of any sort for the shared Competitive Products.

8. Pricing. During Agreement Year one, Beverage Provider agrees to offer District trade letter pricing as set forth in Exhibit A. Such prices shall remain in effect until June 30, 2019. Thereafter, such prices will be subject to an annual increase of no more than four percent (4%) over the previous Agreement Year's price, except in the event of an increase of a component of Beverage Provider's cost of goods, manufacture or delivery or increases in taxes, deposits and other government related fees, in which case Beverage Provider may increase prices to cover such increased costs. Annual price increases shall occur automatically on July 1<sup>st</sup>.

9. Concessionaires. If, during the Term, District elects to contract with a Concessionaire, District will cause Concessionaire to purchase from Beverage Provider all requirements for Products, Approved Cups, lids and carbon dioxide, as applicable. Such purchases will be made at prices and on terms set forth in Beverage Provider's existing agreement with such Concessionaire, if any. If no agreement exists between Concessionaire and Beverage Provider, such purchases will be made at prices and on terms set forth in this Agreement. District acknowledges that there will be no duplication of allowances, funding or benefits (including pricing) to District or a Concessionaire if such Concessionaire has an existing agreement with Beverage Provider. If such Concessionaire requires Beverage Provider to pay Concessionaire funding or to provide Products pursuant to prices under the separate agreement with Concessionaire, then District agrees that Beverage Provider may deduct such duplicate funding and lost margin on such lower cost Products paid or sold to Concessionaire from any payment made by Beverage Provider to District.

10. 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 the extent permitted by law, 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 or Oklahoma law, 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.

11. Liquidated Damages and Attorney's Fees. In the event of termination during the Term by Beverage Provider pursuant to Section 12(b), or by the District, other than a termination by the District in accordance with the provisions of Section 12(a), District agrees to pay liquidated damages in an amount equal to pro rata costs of installing the Equipment. The parties further agree that, in the event of termination of the Agreement prior to the end of the Term pursuant to the provisions of Section 12, non-prevailing party will pay any court costs of court, attorneys' fees or related expenses incurred by the prevailing party in any action to enforce the terms of this Agreement.

12. 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 12(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 12(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 12(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) consecutive days or more.

(c) If any material component of the Campus is closed during the school year for more than thirty (30) consecutive days, but less than one hundred twenty (120) consecutive days, Beverage Provider may extend the Term for a corresponding period, whether or not such closure is due to a cause beyond the reasonable control of District.

(d) If (i) any of the rights granted to Beverage Provider herein are materially restricted or limited during the Term or (ii) if there is a closing of any material component of the Campus, or (iii) a Team fails to play all of its scheduled home games on the Campus for a period of more than thirty (30) consecutive days during its scheduled season, (iv) the Schools' enrollment declines below 90% or the standard school year is shortened; or (v) government or other regulation limits or prohibits the availability of Beverages as outlined in Section 4; (whether or not any event is due to a cause beyond the reasonable control of District including a strike or other work stoppage), then in addition to any other remedies available to Beverage Provider, Beverage Provider may elect, at its option to adjust the Sponsorship Funding to be paid to District for the then remaining portion of the Term (and any quarterly Sponsorship Funding payment then due in accordance with Section 3(a) shall be adjusted to deduct any unearned Sponsorship Funding or to extend the Term of this Agreement, to reflect the diminution of the value of rights granted hereunder to Beverage Provider. In the event Beverage Provider elects to exercise its right to such adjustment and refund, District



may, at its option, within ten (10) days following receipt of notice of any adjustment, notify Beverage Provider of its disagreement with the amount of the adjustment. The parties will then attempt in good faith to resolve the disagreement over such adjustment. If the parties cannot, after good faith negotiations, resolve the matter, Beverage Provider may terminate the Agreement upon sixty (60) days prior written notice to the District.

(e) Beverage Provider shall have the right to withhold and not pay further Sponsorship Funding or any other amounts which may become payable to District pursuant to this Agreement if: (i) District has failed to perform its obligations hereunder, (ii) Beverage Provider's rights hereunder have been lost, limited or restricted, or (iii) there exists a bona fide monetary dispute between the parties.

13. Risk of Loss. The District shall not be liable for damage to or destruction of the Equipment, vending machines or the contents of the vending machines including, but not limited to, vandalism, except to the extent such damage or destruction is caused by the acts or negligence of District or its employees. Beverage Provider will carry property damage insurance sufficient to cover losses to its property located on District premises. Beverage Provider may, in its sole discretion, elect to remove replace or relocate to another location any vending machines which have been subjected to acts of vandalism.

14. Insurance. Beverage Provider shall maintain a) Commercial General Liability in an amount no less than \$1,000,000 each occurrence, \$2,000,000 general aggregate and \$2,000,000 products/completed operations aggregate; b) Commercial Automobile Liability in an amount no less than \$2,000,000 combined single limit; and c) Workers' Compensation with statutory limits and Employers Liability in an amount no less than \$1,000,000 each accident, \$1,000,000 each employee for disease, and \$1,000,000 policy limit for disease. The Commercial General Liability and Commercial Automobile Liability policies shall include the District as an additional insured.

15. Indemnity. In addition to liability insurance, and not in lieu thereof, Beverage Provider does hereby agree to indemnify and hold District harmless from any and all claims, demands and causes of action to the extent arising from Beverage Provider's operation of the vending Equipment upon District's campus with the understanding that the obligations set forth above shall not apply to the extent caused by the acts, omissions, or negligence of the District or its employees.

16. Employee Criminal Convictions. Beverage Provider will not permit any employee to work on District premises during normal District hours if the employee has been convicted of any offense for which the employee is required to register under the Sex Offender's Registration Act or the Mary Rippe Violent Crime Offenders Registration Act or of any felony offense unless 10 years have elapsed since the date of the criminal conviction or the employee has received a presidential or gubernatorial pardon for the criminal offense. Beverage Provider agrees to execute and deliver, upon request of the District, statements of compliance declaring that no employee working on District premises is in violation of the provisions of this section. Beverage Provider's conviction of a violation of OKLA. STAT. tit. 57, § 589 will constitute grounds for immediate termination of this Agreement pursuant to the provisions of Section 11(a).

17. Removal of Machines Upon Termination. Upon termination of this Agreement for any reason, Beverage Provider is granted a right of access to District premises in order to remove its Equipment. Such removal shall take place within sixty (60) days after termination and Beverage Provider will repair and restore any damage to District property resulting from the installation, maintenance or removal of its Equipment caused by Beverage Provider.

18. 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 Southwest Beverages LLC  
11333 E Pine St.  
Suite 141  
Tulsa, OK 74116  
Attention: Area Sales Manager-FSOP

with a copy to:

Coca-Cola Southwest Beverages LLC  
14185 Dallas Parkway  
Suite 1300  
Dallas, Texas 75254  
Attention: General Counsel

If to District:

Broken Arrow Public Schools  
701 South Main St.  
Broken Arrow, Ok 74012  
Attention: Natalie Eneff

## 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, Stadium and/or the Teams) 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 Concessionaires or third party food service operators, vending companies, boosters, parents and student groups, and/or other entities which sell, distribute or advertise Beverages and/or food (including agreements with broadcasters or other Beverage Providers of the Campus, Schools, Stadium and/or the Teams). District further covenants that it will require compliance with the relevant provisions of this Agreement by third party food service operators, vending companies, Concessionaires, boosters, parent and student groups, 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 Oklahoma.

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: Terry Ford

By: \_\_\_\_\_

Printed Name: Terry Ford

Printed Name: \_\_\_\_\_

Title: VP Field Operations

Title: \_\_\_\_\_

Date: 12-5-2018

Date: \_\_\_\_\_

**EXHIBIT A**

**Pricing Schedule\***  
**INITIAL PRICE SCHEDULE\***

<u>Package</u>	<u>Price per case</u>
12 ounce Carbonated Sparkling Cans	\$ 12.50
12 ounce Carbonated Sparkling Bottles	\$ 16.00
20 ounce Carbonated Sparkling Bottles	\$ 26.00
20 ounce Dasani Water	\$ 16.00
20 ounce PowerAde	\$ 24.00
10 ounce Minute Maid 100% Juice	\$ 23.00
18.5 ounce Gold Peak Tea	\$ 14.50
20 ounce cans Vitamin Water	\$ 30.00
16.9 ounce Dasani (child Nutrition Only)	\$ 10.00
12 ounce Dasani (Child Nutrition & Office Only)	\$ 9.00
20 ounce Smartwater	\$ 26.00
700ml Smartwater	\$ 26.00
12 ounce PowerAde bottles	\$ 16.00

\*All prices are per standard physical case and exclusive of taxes, deposits, handling fees and recycling fees.