

EXCLUSIVE MARKETING AGREEMENT

This EXCLUSIVE PURCHASE, SALE, AND ADVERTISING AGREEMENT (“the Agreement”) is entered into this 1st day of July, 2017, by and between Swire Pacific Holdings Inc., a Delaware corporation, hereinafter referred to as "Vendor," and Pendleton School District 16R, hereinafter referred to as "District."

RECITALS

WHEREAS, District issued a request for proposal ("RFP") for the exclusive right to market beverages in District schools, and

WHEREAS, Vendor submitted a response to the RFP, and

WHEREAS, the parties now wish to sign a contract memorializing the agreement by which vendor will provide beverages to the District at its school facilities,

IN EXCHANGE FOR THE MUTUAL COVENANTS HEREOF, THE PARTIES AGREE AS FOLLOWS:

1. Exclusive rights.
 - A. Except as otherwise provided for herein Vendor shall have the exclusive right to market at the District's school facilities its beverage products through refrigerated vending machines located on each campus, and through sales at sporting events, special student events, fund raisers, etc., as is more fully described below.
 - B. District agrees that it will not during the term of this Agreement sell, offer for sale, or offer for complimentary consumption (or allow third persons to sell, offer for sale, or offer for complimentary consumption) at the District's school facilities any beverage product other than those of Vendor. This obligation shall apply at all times at the school facilities including, but not limited to, all special student events held at the school facilities whether sponsored by District or others. However if a third party desires to use school facilities and is expressly required by contract between it and some other party to market certain beverage products during its activities, and if the said contract would preclude the District from allowing the third party to use the facility unless the District were to allow the sale of the other beverage products then this proscription shall not apply to such sales.
 - C. The exclusive rights granted Vendor hereunder do not preclude the contractor for the District's cafeteria services from selling and dispensing beverages of its choice as part of its cafeteria service. Nor do the exclusive rights preclude visiting teams (whether athletic, scholastic, musical or otherwise) from bringing to District's facilities their own beverages for team consumption.

- D. Notwithstanding the other provisions of this Section 1 relating to exclusivity this Agreement shall be subject to any applicable contract concerning the sale of beverages at the Round-Up grounds where certain high school sporting events may take place.
- E. The exclusive rights granted to Vendor hereunder do not pertain to dairy products, to water from taps or drinking fountains, or to coffee products.
- F. Vendor shall have the exclusive right to market beverages at District's off-campus beverage sales where District is allowed to and elects to offer beverage sales.
- G. If Vendor is ever unwilling or unable to fully provide beverages as contemplated by this Agreement, vendor shall not interfere in any way with District's efforts to sell the products of other beverage providers as needed in a given instance.
- H. Subject to the restrictions of the Request for Proposals, District agrees that during the term of this Contract Vendor will have the exclusive right to display its logo, name, and/or advertising messages, and District shall forbid any other beverage product manufacturer or beverage distributor from displaying its corporate logo, name and/or advertising messages anywhere at the school facilities. This paragraph shall not apply to visiting athletic, or other, teams who may have such displays on their equipment, uniforms, or beverage containers or coolers which they may bring to District facilities. The obligations provided for in this paragraph shall apply at all special events held at the facility whether sponsored by the District or by others unless the event is exempted pursuant to Section 1(B) hereof.
- I. The exclusive rights granted to Vendor do not preclude student fundraisers such as bake sales, cookie sales, and the like, for purposes of students raising funds for student activities and endeavors.

2. Term of contract.

The term of this Contract shall commence effective July 1, 2017, and shall end June 30, 2022, absent material breach by either party which by law authorizes termination of the agreement.

3. Vending machines.

- A. The location and number of the vending machines and the type of beverages sold therein shall be subject to the control of the District. The types of beverages available for use in vending machines are carbonated and non-carbonated beverages, soft drinks, mineral waters, water, flavored waters, juices, sports drinks, iced teas, and similar products which District may from time to time determine. However, District will not itself move the vending machines and will not unreasonably request movement of location of the machines.

- B. There shall be no restrictions on the hours of operation of the vending machines. However this proscription does not preclude the District from, at its discretion, imposing rules upon students with regard to the times when and locations where beverage drinking may be limited or prohibited. Nor does this section prevent the District from restricting access to a vending machine when located in a facility, or portion thereof that is not in use or is otherwise closed to public access.
 - C. The vending machines shall at all times be used exclusively for resale to consumers by the District of the products purchased by it from Vendor as provided for in this Agreement.
 - D. The vending machines shall belong to and remain the property of Vendor throughout and after the expiration of the term hereof. The machines may not be removed except temporarily for service, or for replacement, absent breach of this Agreement which by law justifies an early termination of this Contract.
 - E. Vendor will supply and stock the vending machines with beverage products for sale to consumers on a regular basis. Vendor and District will jointly set the vending price of the beverage products. Vendor will collect all monies deposited in the vending machines and pay to District a commission on such monies (after deducting from the commission any applicable sales and use taxes and lost product) as set forth in section 9 below. Where appropriate, Coca-Cola will pay the sales and use taxes deducted from Customer's commission to the appropriate government authorities on Customer's behalf.
4. Service.
- A. During the term of this Contract, vendor shall provide all needed service.
 - B. With any given request for service by District, Vendor shall have the required personnel on location at the school facility within four business hours of the request.
 - C. Even without request, Vendor shall provide routine maintenance and cleaning of the vending machines so that breakdowns, or other out of service time, are minimized as much as reasonably possible. Except as otherwise provided for herein, all service, repair, and replacement of vending machines shall be at the sole expense of Vendor.
 - D. Service and repairs necessitated as a result of the negligence of a District employee or officer may be charged to District, and all such repairs shall be charged to District at Vendor's cost of providing such service without overhead, profit, or administrative charges. Vendor shall be subrogated to the extent of the cost of the repair of the vending machines to any right of recovery that District

may have in the event the vending machines are damaged by reason of the acts of a third party.

- E. The service and repair staff of Vendor must be courteous, and must perform their work so as to interfere with school operations as little as possible.

5. Special student events.

- A. District may re-sell beverage products (purchased from Vendor) at special student events and retain proceeds from the sales. Vendor will provide fountain and dispensing equipment for use during such event, as needed, in accordance with Section 6 below.
- B. Vendor may be able to offer opportunities for District student organizations to operate fundraising concessions at community events.

6. Fountain and dispensing equipment.

- A. Any equipment provided by Vendor for distribution of its products at the District's school facilities shall be used solely for that purpose and shall be used exclusively for the resale and/ or complimentary distribution to consumers by District of Vendor's products purchased from Vendor as provided for in this Agreement.
- B. The equipment referred to in this section and all other fountain equipment provided pursuant to this Agreement, shall belong to and remain the property of Vendor throughout and after the expiration of the term.
- C. During the term of this Agreement, Vendor shall provide routine maintenance service on the equipment at no cost to District, and such shall be provided within the standards set forth in Section 4 above.
- D. In the case of service or repairs necessitated as a result of negligence by an employee or officer of District, costs may be charged to the District as provided for in Section 4(D) above.

7. Soft drink and beverage purchases.

District shall purchase from Vendor for the purpose of resale and/or complimentary distribution to consumers at the District's school facilities, all of the fountain, bottled, and canned products, to serve products that District shall in good faith require during the term of this Agreement, on the terms and conditions hereof, and at the vend prices agreed to between the parties from time to time.

8. Taxes.

Each party shall be responsible to pay any proper taxes imposed upon it for any federal, state or local taxes resulting from the obligations set forth in this Agreement.

9. Further obligations of Vendor.

In consideration for the rights granted to Vendor hereunder:

- A. Vendor will provide District with upfront support in the amount of Five Thousand Dollars (\$5,000) to be used to support the District's educational and athletic programs in conjunction with Vendor's beverage products.
- B. Vendor will provide District with performance based funding on beverage products sold through the vending machines and at special events. Performance based funding will be paid to Customer annually following the conclusion of each school year.

Vending machine sales:

- \$1.00 per case of 12oz Sparkling Soft Drinks (canned)
- \$6.00 per case of 20oz Sparkling Soft Drinks (bottled)
- \$8.00 per case of 20oz Dasani
- \$1.00 per case of 20oz Smartwater
- \$5.00 per case of 20oz Powerade
- \$1.75 per case of 20oz Vitaminwater

Special event sales:

- \$3.75 per case of 12oz Sparkling Soft Drinks (canned)
- \$8.00 per case of 20oz Sparkling Soft Drinks (bottled)
- \$9.00 per case of 20oz Dasani
- \$2.50 per case of 20oz Powerade

- C. Vendor will pay to District the following commissions on the sale of beverage products through the vending machines (after deducting from the commission any applicable sales and use taxes and lost product):

- 35% Dasani
- 15% Smartwater
- 15% Powerade
- 30% 20oz Sparkling Soft Drinks (bottled)
- 15% 20oz Minute Maid
- 15% Vitaminwater
- 10% 12oz Sparkling Soft Drinks (canned)

- D. Vendor will donate Five Hundred Dollars (\$500) in each year of the Term as an annual scholarship to be awarded each year to a student of the District's choice.
 - E. Vendor will provide complimentary beverage products having a retail value of up to \$1,500 in each year of the Term, upon request by the District. Unrequested amounts do not roll over in the following year.
10. Remedies.
- A. Remedies as may be available at law or equity are reserved unto each party in the event of a default or breach of this Agreement.
 - B. To the extent that the consideration given by Vendor to District includes cash consideration, District agrees to promptly refund to Vendor an amount equivalent to the amount of the cash consideration provided by Vendor to customer pursuant to Section 9 hereof, prorated such that the amount to be returned reflects the prorated portion of the cash consideration applicable to the remaining portion of the original five year term, in the event District ceases doing business or Vendor ceases to have the exclusive rights provided for in this Agreement through no fault of Vendor.
11. Miscellaneous.
- A. This Agreement shall be interpreted in such a manner as to be consistent and valid under applicable law. If any provision of this Agreement shall be invalid, prohibited, or unenforceable under applicable law, such provision shall be ineffective to the extent of such invalidity or prohibition, without invalidating the remainder of this Agreement.
 - B. This Contract shall be interpreted and construed according to the laws of the State of Oregon exclusive of conflict of laws considerations. Any litigation arising out of this agreement, or obligations relating thereto, shall be filed and maintained in the Circuit Court of the State of Oregon for the County of Umatilla, both parties consenting to the jurisdiction of said court and waiving the right of litigation in federal court.
 - C. No waiver of any breach of this Agreement shall constitute a waiver of any future breach.
 - D. Nothing stated within this Agreement, the RFP, or the response to the RFP, shall be construed by any court as creating a partnership or joint venture between Vendor and District. The relationship between the parties is that of vendor and purchaser only.

- E. If any legal action or other proceeding arising out of the Contract is brought by a party to this Agreement, the prevailing party shall be entitled to recover from the other party to this agreement reasonable attorney's fees, costs, and expenses incurred in such proceeding and on any appeal therefrom.
- F. This Agreement may not be waived, amended or modified unless agreed to by the parties in writing.
- G. This Contract, and the rights and obligations hereof are not assignable by either party absent written consent signed by both parties hereto.
- H. THIS AGREEMENT, CONTAINS THE FINAL AND EXCLUSIVE AGREEMENT AND UNDERSTANDING OF THE PARTIES WITH RESPECT TO THE SUBJECT MATTER OF IT, AND SUPERSEDES ALL PRIOR AND CONTEMPORANEOUS AGREEMENTS, ORAL OR WRITTEN. EXCEPT AS SET FORTH IN THIS AGREEMENT, THERE ARE NO PROMISES, REPRESENTATIONS, AGREEMENTS OR UNDERSTANDINGS, ORAL OR WRITTEN, AMONG THE PARTIES RELATING TO THE SUBJECT MATTER OF THIS AGREEMENT.

12. Incorporation of RFP.

The RFP of the District and the Proposal of Vendor to the extent accepted by District, is incorporated herein and by this reference made a part of this Agreement, the parties agreeing that it sets forth in detail the respective rights and obligations of the parties. In the event of any inconsistency between the terms of the documents making up this Agreement, that provision which is most specific to the subject shall control, but if each are equally specific then the provision which is most advantageous to District shall control.

"Vendor"

By: _____

Its: _____

"District"

Pendleton School District 16R

By: _____