

BEVERAGE PROVIDER AGREEMENT

This agreement (the “**Agreement**”) is made by and between Coca-Cola Refreshments USA, Inc.; a Delaware Corporation (“**Beverage Provider**”) and the West Orange-Cove CISD having its principal place of business at 902 W. Park Avenue Orange, TX 77631 (“**District**”). Individually, the Beverage Provider and the District are referred to herein as “Party” and collectively, as “Parties.”

WITNESSETH:

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

WHEREAS, the Beverage Provider desires to work with the District to implement School wellness initiatives to support teaching children and youths to consume a balanced diet and be physically active; and

WHEREAS, the District is vested with the appropriate authority and wishes to grant to Beverage Provider the beverage availability rights as described herein with respect to all schools in the West Orange-Cove 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) “Beverage” or “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 are deemed to be included in this definition. For the avoidance of doubt, “flavor enhancers,” “liquid water enhancers,” brands and products of water purification and Beverage making systems (e.g. Brita®, Soda Stream®), 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 Campus.

(c) “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.”

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

(e) “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.

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

(g) “Stadium” shall mean the Dan R. Hooks Stadium, which is located at 1619 Newton Street, West Orange, TX 77630, 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.

(h) “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 August 1st , 2015 (“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. In the event of such early termination, except as otherwise set forth herein, the provisions of Section 11 below regarding liquidated damages shall apply.

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 **Seven Thousand Five Hundred Dollars** (\$7,500) for the entire Term (the “Sponsorship Funding”). The Sponsorship Funding will be in equal annual installments of **One Thousand Five Hundred Dollars** (\$1,500). The first installment will be paid within sixty (60) days of the date that this Agreement is fully executed and subsequent payments shall be due on the anniversary date. The Sponsorship Funding shall be deemed earned evenly on a monthly basis over the Agreement Year in which it is paid.

(b) Scoreboard Funding. Beverage Provider agrees to pay to District a total of **Five Thousand Dollars** (\$5,000) (“Scoreboard Funding”) for the purchase of scoreboard enhancements to be made at the Schools and/or the Stadium (s), at District’s expense (“Scoreboard”). Such amount shall be payable within thirty (30) business days after the installation and acceptance of the Scoreboard by District and Beverage Provider. The Scoreboard Funding shall be deemed earned evenly over the entire Term. **THE PROVISION OF THE SCOREBOARD IS ON AN “AS IS” BASIS. BEVERAGE PROVIDER HEREBY DISCLAIMS ANY AND ALL EXPRESS AND IMPLIED WARRANTIES, INCLUDING**

WITHOUT LIMITATION THOSE OF MERCHANTABILITY AND FITNESS FOR INTENDED USE, AND BEVERAGE PROVIDER SHALL NOT BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL OR INDIRECT DAMAGES. During the Term and upon the expiration or termination of this Agreement, District shall retain ownership of the Scoreboard.

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

	Agreement Year one	Agreement Year two	Agreement Year three	Agreement Year four	Agreement Year five
<u>Vend Price Year 1</u>	Vend Rate/ Commission	Vend Rate/ Commission	Vend Rate/ Commission	Vend Rate/ Commission	Vend Rate/ Commission
\$1.00 20oz Dasani	\$1.00/ 20%	\$1.00/ 20%	\$1.25/ 20%	\$1.25/ 20%	\$1.25/ 20%
\$1.25 20oz Sparkling	\$1.25/ 20%	\$1.25/ 20%	\$1.50/ 20%	\$1.50/ 20%	\$1.50/ 20%
\$1.25 20oz POWERADE	\$1.25/ 20%	\$1.25/ 20%	\$1.50/ 20%	\$1.50/ 20%	\$1.50/ 20%
\$1.00 12oz Cans	\$1.00/ 15%	\$1.00/ 15%	\$1.25/ 15%	\$1.25/ 15%	\$1.25/ 15%
\$1.00 10oz MMJTG	\$1.00/20%	\$1.00/ 20%	\$1.25/ 20%	\$1.25/ 20%	\$1.25/ 20%

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 for the current Agreement Year. Beverage Provider may adjust the vend prices on an annual basis as necessary to reflect changes in its costs, including cost of goods provided that such adjustments are agreed to in advance by the District. If the District does not agree to the amount of increase in the vend price for Beverages in any year following the third Agreement Year and the Beverage Provider does not agree to a mutually agreeable vend price between the Parties, the District may terminate this Agreement and District shall (i) return any Equipment, (ii) pay to Beverage Provider a pro rata portion of the costs of refurbishing and installing the Equipment, and (iii) pay to Bottler the unearned portion of pre-paid Sponsorship Funding, Scoreboard Funding and Liquidated Damages.

Commissions will be paid on or about the 20th of each month with an accounting of all sales and monies provided to the District.

(d) Other Consideration: Beverage Provider shall provide the following to the District:

(i) Complimentary Products. Each Agreement Year, Beverage Provider shall provide District, upon District’s request, with complimentary bottle/can Products of Beverage Provider’s choosing (“Complimentary Products”), with an estimated annual wholesale value of Three Hundred and Seventy-Five Dollars (\$375.00), as determined in good faith by Beverage Provider. In the event District does not request all Complimentary Products by the end of each Agreement Year, any remaining Complimentary Products shall be retained by Beverage Provider with no further obligation.

(ii) PowerAde Kit. During Agreement Year One and Three, Beverage Provider will provide District, upon District’s request, with a complimentary PowerAde kit (the “PowerAde Kit”). The estimated retail value of the PowerAde Kit, as determined in good faith by Beverage Provider, is **Five Hundred Dollars** (\$500.00). Such complimentary PowerAde Kits will be provided to District upon reasonable advance request. If District does not request the Powerade Kit by the end of each

Agreement Year, it shall be retained by Beverage Provider with no further obligation.

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 each 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. 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 Schools:

- 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 fl oz or less
- 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 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;

(i) Offer juice Products, juice-containing Products and other Products in cafeteria lines of all Schools, if such Products meet state, and federal nutrition and procurement regulations and the above Guidelines;

(ii) Permit Beverage Provider to place a minimum of three (3) vending machines in mutually agreed upon locations on Campus as required to meet Beverage availability needs on 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.

5. Signage for Products.

Beverage Provider shall be entitled to signage in locations at the Schools and athletic facilities that are mutually agreeable to the Parties, including but not limited to advertising panels located on the Scoreboard. Such signage shall meet Beverage Provider's reasonable specifications as to design, construction, and general appearance but are subject to approval and right of rejection by the District, which approval shall not 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. Beverage Provider shall have the right of access to its permanent signage during normal School business hours 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 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) The District will not place and will restrict any department, employee, or other person over which the District has control from placing any 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 players benches. This limitation does not require the District to monitor or prohibit any logos or trademark visibility on clothing or postings by students or any third parties who use the District's Campus.

(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. District shall have the right to make available for sale on the Campus (i) frozen slushies, snow cone syrup and fresh squeezed lemonade, as long as Beverage Provider does not distribute a similar Product. 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.

8. Pricing. During Agreement Year one, Beverage Provider agrees to offer District pricing as set forth in **Exhibit A**. Such prices shall remain in effect through 7/31/2016. Thereafter, such prices will increase annually 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 August 1st of each Year. Beverage Provider will provide written notice within forty-five (45) days of when any annual price increase above four percent (4%) shall take effect. In the event District elects to terminate the Agreement due to an annual increase of greater than four percent (4%), prior to the expiration of the Term, District shall (i) return any Equipment, (ii) pay to Beverage Provider a pro rata portion of the costs of refurbishing and installing the Equipment, and (iii) pay to Bottler the unearned portion of pre-paid Sponsorship Funding, Scoreboard Funding and Liquidated Damages.

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 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 equipment ("Equipment") which is reasonably required in Beverage Provider's discretion to serve Products at the Campus. The Parties will confer on the type and adequacy of the electrical service needed for the Equipment.

(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 caused solely by the District, 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 school 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. If delay is due to District circumstances, Beverage Provider shall not be liable for damages of any kind arising out of delays in rendering service.

11. Liquidated Damages. In the event of termination during the Term for any reason not the fault of Beverage Provider, the Parties agree Beverage Provider's damages would be difficult and impractical to determine. The Parties further agree that the liquidated damages set forth in **Exhibit B** are reasonable and do not constitute a penalty. In the event of termination during the Term for any reason not the fault of

Beverage Provider, District agrees to pay (i) the liquidated damages on **Exhibit B** and not to claim that any of the amounts in **Exhibit B** constitute a penalty, and (ii) a pro rata refund of the costs of refurbishing and installing the Equipment. The Parties further agree that, in the event of termination of the Agreement prior to the end of the Term, the District will pay half of any costs of court, attorneys' fees or related expenses incurred by Beverage Provider 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 (45) 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 (45) day period referenced in this Section 12(a); or
- (iii) Beverage Provider fails to make Beverages available or restock Beverages within a reasonable time after a request by the District.

(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 (45) 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) days or more.

(c) Upon termination of this Agreement for any reason, except as set forth in Section 12(a), District shall pay to Beverage Provider the liquidated damages set forth in **Exhibit B** and a pro rata refund of the costs of refurbishing and installing the Equipment.

(d) If any material component of the Campus is closed 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.

(e) 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 900 students 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 due to a cause beyond the reasonable control of District including a strike or other work stoppage), then 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, 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, 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 this Agreement and neither Party shall have any further rights or obligations under this Agreement, except that District shall promptly (i) return any Equipment, (ii) pay to Beverage Provider a pro rata portion of the costs of refurbishing and installing the Equipment, and (iii) pay to Bottler the unearned portion of pre-paid Sponsorship Funding, Scoreboard Funding and Liquidated Damages.

(f) 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 dispute between the Parties.

13. 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:

Beaumont Coca-Cola Bottling Company
11450 Eastex Frwy
Beaumont, TX 77640
Attention: On Premise District Sales Manager

With a copy to:

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

If to District:

West Orange-Cove CISD
902 West Park Avenue
Orange, TX 77631
Attention: Superintendent

With a copy to:

West Orange-Cove CISD
902 West Park Avenue
Orange, TX 77631
Attention: Executive Director of Finance Operations

With a copy to:

Thompson & Horton LLP
3200 Southwest Freeway, Suite 2000
Houston, Texas
Attention: Maureen Singleton

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 of this Agreement.

Assignment. Neither Party may assign this Agreement or that Party's rights and responsibilities under this Agreement without the prior written consent of other Party. Notwithstanding the foregoing, Beverage Provider may assign all or part of its rights and obligations under this Agreement to any licensed Coca-Cola Bottler, The Coca-Cola Company, or any of The Coca-Cola 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 the District'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. Beverage Provider shall not obtain, by this Agreement, any right, title or interest in the trademarks of the District, nor shall this Agreement give the Beverage Provider the right to use, refer to, or incorporate in marketing or other materials the name, logos, trademarks or copyrights of the District.

Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Texas.

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.

Duplicate Counterparts; Electronic Signatures and Transmissions. This Agreement may be executed in any number of counterparts and it shall be sufficient that the signature of each party appear on one or more such counterparts. All counterparts shall collectively constitute a single agreement. A facsimile or other electronic signature to this Agreement shall be sufficient to prove the execution hereby by any person. The Parties agree to electronic transmission of original copies of this Agreement and any documents and communication in connection with the Agreement in accordance with the Texas Electronic Transactions Act.

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

Initial Pricing Schedule*

<u>Package</u>	<u>Price per Case</u>
300ml - DASANI	\$9.75
12oz Can - Sparkling	\$11.28
20oz PET- DASANI	\$17.04
10.1oz PET - Tum-E Yummies	\$7.44 (12ct pricing)
20oz PET - Sparkling	\$21.25
20oz PET - POWERADE	\$15.05

*Unless otherwise designated, all prices are per standard physical case and exclusive of taxes, deposits, handling fees and recycling fees.

EXHIBIT B

Liquidated Damages

In the event of termination during any Agreement Year of the Term, District shall pay the following liquidated damages to Beverage Provider:

Month in which termination occurs during any Agreement Year	Amount due Beverage Provider
first month of any Agreement Year	\$1500
second month	\$1375
third month	\$1250
fourth month	\$1125
fifth month	\$1000
sixth month	\$875
seventh month	\$750
eighth month	\$625
ninth month	\$500
tenth month	\$375
eleventh month	\$250
twelfth month	\$125

These liquidated damages figures assume that the Agreement Year payment has been made for the Agreement Year in question. If no payment has been made, no liquidated damages shall be payable to Beverage Provider.

<u>Agreement Year in which termination occurs</u>	<u>Amount due Beverage Provider</u>
1	\$ 5000
2	\$ 4000
3	\$ 3000
4	\$ 2000
5	\$ 1000