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DALLAS PUBLIC SCHOOLS

THE AGREEMENT

FOR

REVENUE GENERATING CONCESSION FOR BEVERAGE AND SPORTS DRINK VENDING MACHINE PRODUCTS

WITH

NORTH TEXAS COCA- COLA BOTTLING COMPANY

The Agreement Follows:



DALLAS INDEPENDENT SCHOOL DISTRICT

Purchasing Department Office Of Contract Services

3700 San Jacinto, Box 89 Dallas, Texas 75204

TO:

Legal Services

DATE: February 8, 2001

RE:

Agreement for

Revenue Generating Beverage Concession

FROM:

John Tucker

Coordinator, Contract Services

Purchasing Department

cc:

file

file:

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Attached are two copies of the Agreement for Revenue Generating Beverage Concession.

This was authorized by Board Document Number 42635 at the December 14, 2000 meeting.

This version incorporates review comments by Coca-Cola Bottling Company of North Texas, and supercedes the two copies submitted earlier this week.

If there are any questions, please call me.

[End of Memo]

Department: 972 925-4100 Direct: 972 925-4110 Facsimile: 972 925-4136

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AGREEMENT

STATE OF TEXAS	}	
	}	KNOW ALL BY THESE PRESENTS
COUNTY OF DALLAS	}	

This Agreement is made and entered into between DALLAS INDEPENDENT SCHOOL DISTRICT (hereinafter called the "District") having its principal place of business at 3700 Ross Avenue, Dallas, Texas 75204 and NORTH TEXAS COCA-COLA BOTTLING COMPANY (hereinafter called "Concessionaire") having a principal business at 6011 Lemmon Avenue, Dallas, Texas 75221.

WITNESETH:

WHEREAS, Concessionaire is in the business of manufacturing, selling, and distributing Beverage and Sports Drink vending machine products and wishes to sell and distribute certain of such products on an exclusive basis at the District's Facility(s) as set forth in the District's Request For Proposal #2156-00 and Request For Proposal #2157-00, as more particularly described in this Agreement and the Exhibits attached hereto and incorporated herein, and to otherwise benefit from certain exclusive marketing privileges, and;

WHEREAS, the Concessionaire wishes to obtain and the District is vested with the authority to grant certain of such Beverages and Sports Drink vending machine products rights, as more particularly described in Concessionaire's Response to Request For Proposal # 2157-00 and Request For Proposal # 2157-00, to become the Exclusive Beverage products of their types marketed, sold, dispensed and otherwise made available to the District students and employees while at such District facilities and athletic Facility(s) owned and operated by the District, and to participate in certain advertising and promotional activities featuring the District, and its students and employees;

WHEREAS, this Agreement is primarily an advertising and availability Agreement, entered into for the purpose of creating an association between beverages marketed by Concessionaire, on the one hand, and the District on the other, and Exclusive Beverage availability rights are necessary to ensure that the association between such Beverages and the District, including but not limited to its schools, the Teams, the Facility(s) and events at the Facility(s) is not undermined or diluted:

WHEREAS, the District, in consideration of the benefits available in entering this Agreement, waives and creates an exception to its local policies and procedures regarding endorsements and display of advertising, specifically GBK (Local); and vending machines requirements and restrictions, specifically COC (Local and Regulation), and related policies and procedures as of the date of the Agreement; that may be or in the future may become in conflict with the Agreement.

NOW, THEREFORE, in consideration of the mutual and dependent covenants hereinafter set forth; the parties hereby agree as follows:

1 Definitions

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1.1 "District Marks" means the Designations (as hereinafter defined), and the Facility(s) name, the schools' names, the Teams' (as hereinafter defined) names, colors and uniforms, and emblems and all trade names, trademarks, service marks, designs, logos, mascots, characters, identifications, symbols and other proprietary designs that are in existence on the Effective Date of this Agreement or which will be created during the Term of this Agreement and which are owned, licensed or otherwise controlled by the District.

- 1.2 "Agreement Year" means each twelve-month period beginning with the first day of the Term.
- 1.3 "Approved Cups" means disposable cups (16 ounce, 24 ounce, and 32 ounce, minimum sizes) approved by Concessionaire from time to time as its standard trademark cups and/or vessels and/or other (disposable and non-disposable) containers approved by Concessionaire from time to time, all of which shall prominently bear the trademark(s) of Coca-Cola® and/or other Products (as herein defined) on all of the cup surface. Concessionaire's current standard trademark cup will be submitted on request of District.

1.4 "Beverage" or "Beverages" means:

- 1.4.1 All hot and cold, carbonated and non-carbonated, nonalcoholic, natural or artificially flavored drinks for independent consumption, including, but not limited to, nonalcoholic drinks with nutritive or nonnutritive sweeteners, soft drinks, frozen carbonated and noncarbonated beverages, and; flavored and/or sweetened mineral water, natural or artificially flavored fruit juices, fruit juice-containing drinks and fruit-flavored drinks (sweetened and/or unsweetened), tea products, hypertonic, isotonic, and hypotonic drinks (sports drinks, energy and fluid replacement) ("Sports Drinks"), and;
- 1.4.2 All drink or beverage bases, whether in the form of syrups, powders, crystals, concentrates or otherwise, from which such drinks and beverages could be prepared.
- 1.4.3 "Beverage" or "Beverages" shall not include coffee products, milk, water drawn from the public water supply or fresh squeezed juice, and brewed tea for campus meetings, and PTA events, served in District Facility(s).
- 1.5 "Designations" means the following: "Official Soft Drink and/or Juice and/or Sports Drink of District', 'Official Sponsor of District' and 'Official and/or Presenting Sponsor of District Football Facility(s)."
- 1.6 "Equipment" means any additional vending machines jointly determined by Concessionaire and District to be required in order to replace defective or worn out soft drink dispensing equipment or to equip new locations on the Facility(s).
- 1.7 "Facility(s)" means the entire premises of District Football Facility(s) and all other smaller Facility(s) within the Facility(s), including but not limited to the grounds, parking lots, all buildings which are part of the Facility(s), all concession stands, branded and unbranded food service outlets, press rooms, sky boxes, Facility(s) suites, vending and players' benches, sidelines, and locker rooms. The "Facility(s)" is included within the meaning of the defined term "facility(s)." See Scope of Agreement for District Food Service exclusions.
- 1.8 "Team" or "Team(s)" means all UIL teams associated with District.

2 Scope of Agreement

- District in consideration of this Agreement hereby grants to Concessionaire an exclusive entitlement to sell, distribute, market, and otherwise advertise the Beverage and Sports Drink vending machine products set forth in Concessionaire's Response to Request For Proposal #2156-00 and Request For Proposal #2157-00 (hereafter "Response") in its Facility(s) identified in those Request For Proposals, ("RFP's").
- 2.2 District Food Service Department areas, operations, and serving lines are specifically excluded from this Agreement and from the definition of Facility(s).
- 2.3 Concessionaire must conduct its operations in compliance with Federal Food and Child Nutrition recommendations, guidelines, and requirements throughout the term of the Agreement.

2.4 Concessionaire hereby agrees to provide compensation, commissions, and incentives as set forth in its Response to RFP #2156-00 and RFP #2157-00 and its Best and Final Offers dated June 22, 2000, as further negotiated by the Chief Financial Officer and the General Superintendent as more fully set forth in this Agreement.

3 Conflict of Interest

- 3.1 Concessionaire understands and certifies that it does not know of any facts relating to the award of this Agreement which would constitute a violation of Texas Local Government Code Section 171.004.
- In accordance with Board Policy CHE (Local) and any successor policy, Concessionaire also hereby certifies that no current Board member or employee of the District, and no one who has been a Board member within the last five (5) years or an employee of the District within the last two (2) years, has participated in bidding, selling or promoting this Agreement. Furthermore, Concessionaire certifies that no such current or former Board member or employee will derive any pecuniary interest, compensation or services, directly or indirectly, from this Agreement. Concessionaire understands that notwithstanding any provision of law to the contrary any violation of this provision of the Agreement shall make the Agreement voidable by the District.

4 Term

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- 4.1 The term of this Agreement (the "Term") shall be for a period of five (5) years commencing on January 1, 2001, and terminating on December 31, 2006, unless sooner terminated as herein provided. Each twelve-month period during the Term commencing on January 1 of each subsequent year is hereinafter referred to as a "Year." Concessionaire agrees that should District exercise its unilateral option to extend the Agreement for optional renewals, the provisions contained in Exhibit B shall apply thereto.
- 4.2 If any subsequent Board of Trustees votes to cancel this Agreement for other than nonperformance reasons, the District shall pay to the Coca-Cola Bottling Company of North Texas a pro rata portion of the One Million Nine Hundred Five Thousand (\$1,905,000) dollars, plus any additional scoreboard funding as well as scoreboard maintenance paid for the first year of the Term, which sum represents Concessionaire's first year of payment to the District.
- 4.3 The Board of Trustees retains the continuing right to terminate this Agreement at the expiration of each budget year during the term of the Agreement. The Agreement is also conditioned on the best efforts of the Board of Trustees to obtain and appropriate funds for the payment of the Agreement. Any payments by the District to the Concessionaire required by any portion of this Agreement are subject to this condition per Texas Statute.

5 Grant of Exclusive Beverage Promotional, Availability and Beverage Merchandising Rights

- 5.1 In consideration of the exclusive entitlement to sell distribute, sell, pour, and market Beverage and Sports Drink vending machine products granted to Concessionaire by the District in this Agreement and the District's associated covenants herein contained, the Concessionaire shall pay the District an initial cash sponsorship fee, scoreboard funding, and first year maintenance fee totaling one million nine hundred five thousand (\$1,905,000) dollars calculated as stated below:
 - 5.1.1 One million four hundred thousand (\$1,400,000) dollars cash, plus five hundred five thousand (\$500,000) dollars for scoreboard funding, and five thousand (\$5,000) dollars first year scoreboard maintenance, payable in full within twenty-one (21) calendar days after the execution of this Agreement.

- 5.2 On the January 1 of each successive year of this Agreement, Concessionaire shall pay the District an annual sponsorship and scoreboard maintenance cash fee within twenty-one (21) calendar days of the anniversary date as follows:
 - 5.2.1 On the commencement of Year Two \$845,000 (Eight hundred forty five thousand dollars)
 5.2.2 On the commencement of Year Three \$693,000 (Six hundred ninety-three thousand dollars)
 5.2.3 On the commencement of Year Four \$593,000 (Five hundred ninety-three thousand dollars)
 5.2.4 On the commencement of Year Five \$593,000 (Five hundred ninety-three thousand dollars)
 - 5.2.5 In addition, for each new school or Facility added (determined by net increase in total number of schools after first subtracting any schools closed) during the Term, Concessionaire shall increase its next annual payment and each succeeding annual payment by an amount calculated on the basis of the existing annual payment divided by the number of existing schools in the District at the time the new school or Facility is added. The calculation shall be weighted by elementary and secondary school as mutually agreed to by the parties.
 - 5.2.6 Concessionaire shall also provide District with all other incentives set forth in its Responses to the District's Request for Proposal (RFP) #2156 and Request for Proposal (RFP) #2157 as modified by its Best and Final Offers dated June 22, 2000 and incentives negotiated by Concessionaire with the District's Chief Financial Officer and Superintendent.

6 Beverage And Soft Drink Vending Fees

- In addition to the payments and incentives provided for hereinabove, Concessionaire shall pay to District, on all full service products sold in consideration of the Beverage and Sports Drink vending machine product entitlements herein granted, a monthly fee equal to a percentage of Gross Receipts generated from the Beverage and Sports Drink vending machine products sold at the percentage of commission listed in the Exhibits. Concessionaire may only change its Beverage and Sports Drink vending machine products commissions, wholesale prices, and/or retail pricing with prior written approval from the District which, will not be unreasonably withheld, upon a showing by Concessionaire of necessity due to factors beyond its control.
- 6.2 Concessionaire shall provide the District with monthly reports of Gross Receipts disclosing vending revenues collected by location, certified by an authorized employee of the Concessionaire. Further, upon request by the District, Concessionaire shall make its records available for inspection, and/or audit and keep same for four (4) years following expiration or earlier termination of this Agreement for purposes of auditing same.

7 Place of Payments

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7.1 Any payments due to be made hereunder shall be made at the office of:

Chief Financial Officer Dallas Independent School District 3700 Ross Avenue, Box 4 Dallas, TX 75204-5491

8 Liquidated Damages for Late Payments

8.1 Beverage and Sports Drink vending machine product commission fees shall be calculated on each month's sales and shall be due and payable on the fifteenth (15th) day on the month following the month in which the vending sales were made. In the event the payment is not received by the 20th day of the month in which it is due, a charge shall be assessed in accordance with the following formula;

$$\frac{A \times B \times C}{D} = E$$

- 8.1.1 A = Annual rate of interest, which rate shall be eight (8) percentage points above the discount rate charged member banks of the Federal Reserve Bank of Dallas, Texas, in effect on the first business day of each January, April, July, and October.
- 8.1.2 B = Amount of fees due to the District.
- 8.1.3 C = Number of days the payment of fees are late.
- 8.1.4 D = Number of days in the school calendar year.
- 8.1.5 E = Liquidated damages for late payment.
- 8.2 The amount due as liquidated damages for late payment is payable upon presentation of an invoice. The date payments are received by the District shall be determined by the U.S. Postal Service cancellation date on the envelope transmitting the payment. Concessionaire acknowledges that the formula to determine any late fee is fair and reasonable, as it would be a practical impossibility to otherwise determine liquidated damages. Further, Concessionaire agrees to pay reasonable attorney fees and costs incurred by the District in the event of breach of the terms of this Agreement by Concessionaire for failure to pay any fees due under this Agreement, including any late fees assessed, and failure to vacate the Premises within five (5) days after thirty (30) days advance written notice of termination delivered by the District in accordance with this Agreement.

9 Other School District Agreements

- 9.1 In consideration of this Agreement, Concessionaire shall during its Term provide the District with copies of proposals to and agreements with school districts and institutions of higher learning in the State of Texas that include exclusive rights to sell any or all of its products. Copies of proposals shall be delivered to the District to the individual and address set forth in Notices within thirty (30) days of each proposal's submission to the school district or institution of higher learning. Copies of agreements shall be delivered to the District to the individual and address set forth in Notices within thirty (30) days of final execution of each agreement by the parties.
- 9.2 Pursuant to the letter from the Concessionaire attached as Exhibit D, the Concessionaire guarantees that for the Term of this Agreement that the District will be the highest revenue (as measured in cash sponsorship, scholarships, vending fees, and other revenue) per student enrollment comparing volume generated per student enrollment of public school Districts in Dallas County.

10 Exclusive Beverage and Sports Drink Entitlements

10.1 Beverage and Sports Drink Sales

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10.1.1 The Concessionaire shall sell or cause to be sold all products, packages, containers, cups, beverages for all vending, pouring and direct consumption at District facilities to the District students, employees and guests, the Beverage and Sports Drink vending machine products described in Concessionaire's

Response to RFP #2156-00 and RFP#2157-00 as "Exclusive Beverages". Concessionaire may add other vending machine Beverage and Sports Drink vending machine products during the Term as may be agreed to in writing by the District. Concessionaire may install, and shall be required to maintain in good and safe working order, all vending machines and all other necessary equipment for its Exclusive Beverages in such public access areas of the District Facilities, at such locations as are approved by the District and the site principal or administrator.

10.2. Product Quality

10.2.1 All products stocked or provided by Concessionaire will be good quality and fresh and, if expiration dated within the permissible date, Concessionaire will fully reimburse any consumer for any product by Concessionaire found to be out of date or contaminated with foreign substance.

11 Exclusive Beverage Availability At Facility(s)

- 11.1 Concessionaire shall have the exclusive right to make Beverages available for sale and distribution at District owned and District operated Facility(s). District agrees that Products shall be the exclusive Beverages sold, dispensed, served, or sampled at all locations and at all functions on the Facility(s).
 - 11.1.1 District agrees that District and all other persons serving Beverages on Facility(s), including without limitation concessionaires, teams, and support organizations, shall use all Products, Approved Cups and carbon dioxide directly from Concessionaire, subject to the Permitted Exceptions.
 - 11.1.2 In particular, District shall cause each and every school administration to do the following:
 - 11.1.2.1 Make carbonated and non-carbonated Products, including without limitation, Coca-Cola® and other soft drink Products, available to junior/ middle and high school students during all hours and at all locations in the schools, except where not permitted by District, federal or state regulations; provided, however, that Products will not be required to be made available at times or places (such as classrooms) reasonably deemed inappropriate, disruptive or contrary to sound educational practice by the District or by building administrators. Concessionaire acknowledges and agrees that present District policy does not permit soft drink sales to elementary students;
 - 11.1.2.2 Obtain Beverage vending services from Concessionaire, which shall have the exclusive right to provide Beverage vending on District owned and operated Facility(s);
 - 11.1.2.3 Permit Concessionaire to place Equipment as required to meet Beverage availability needs on Facility(s), including cold carton merchandisers for juice Products. Equipment may only be placed in areas currently designated, or designated in the future, by building administrators as Equipment areas;
 - 11.1.2.4 Should Teams use isotonic Products, they shall be Coca-Cola® Products with Approved Cups;
 - 11.1.2.5 Permit Concessionaire to place Equipment in all athletic Facility(s) operated by the District, including the Facility(s), and;
 - 11.1.2.6 Leave Equipment operational and supplied with power and water as installed and maintained by the Concessionaire during the time the building is occupied and in use by staff and students; provided, however, during the summer term or at other times when the buildings are normally closed per the academic calendar adopted by the District, the Concessionaire shall empty and deactivate the Equipment so that no utilities are used by the Equipment, with the exception of certain machines that may be designated by the Facility(s) administrator for use by custodial or repair personnel.

12 Exclusive Beverage Merchandising Rights

- 12.1 Concessionaire shall have the exclusive right to merchandise Beverages on Facility(s) including the following specific rights:
 - 12.1.1 Point-of-Sale Advertising: Materials promoting Products at the point of sale on Facility(s) shall be clearly visible to the purchasing public and shall be displayed in a manner and location acceptable to Concessionaire and District. District shall be given the right to preview all materials and to reject any materials deemed by the District be inappropriate, disruptive or contrary to sound educational practice. Also, Concessionaire shall have the right to place Equipment and other dispensing equipment with full trademark panels on all sides;
 - 12.1.2 Concession/Menu Board Advertising: Trademarks for Products may be prominently listed on the menu boards of all food and refreshment outlets on Facility(s).
 - 12.1.3 Approved Cup. District shall ensure that all Post-Mix Beverages served or premix beverages served, sold or dispensed at concessions and for "Team use" (including Beverages sold, sampled, served or made available in locker rooms, sidelines and players' benches) shall be served in Approved Cups (Post Mix Beverages are those of straight syrup which are mixed on location with city water.)
 - 12.1.4 On-Facility(s) Promotions: Concessionaire shall have the right to undertake on-Facility(s) Product promotions, designed to increase the sale of Products on Facility(s). Such right shall include the right to offer Beverages in promotional vessels bearing trademarks for Products and one or more District Marks. The District reserves the right to limit the location, size, frequency and nature of any such promotion.

13 Grant of Exclusive Beverage Advertising and Promotional Rights

- 13.1 Subject to the Permitted Exceptions set forth in herein, District hereby grants to Concessionaire the exclusive right to advertise and promote Beverages in and with respect to the Facility(s) and schools.
- 13.2 The District, in consideration of the benefits available in entering this Agreement, waives and creates an exception to its local policies and procedures regarding endorsements and display of advertising, specifically GBK (Local); and vending machines requirements and restrictions, specifically COC (Local and Regulation), and related policies and procedures as of the date of the Agreement; that may be or in the future may become in conflict with the Agreement.

14 Signage for Products

14.1 Signboards: Concessionaire shall have sole right to Beverage advertising space on scoreboard(s) for the District with District knowledge and approval of advertising space.

14.2 Facility(s):

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- 14.2.1 Concessionaire shall be entitled to premiere and dominant signage locations as selected by Concessionaire and District in the schools and inside the Facility(s), including but not limited to the advertising panels located on the scoreboards. Such signage shall meet Concessionaire's reasonable specifications as to design, construction, and general appearance.
- 14.2.2 The location, size and appearance of any sign is subject to District approval, which shall not to be unreasonably withheld.

14.2.3 In no event shall District grant advertising rights in the Facility(s) to Competitive Products during the Term of this Agreement.

14.3 No Obstruction of Signage:

- 14.3.1 Without the express written consent of Concessionaire, Concessionaire's signage on the Facility(s) 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, except that District shall not be responsible for vandalism, unauthorized destructive acts, Acts of God, weather, destruction or civil disobedience resulting in damage to Concessionaire's signage.
- 14.3.2 Without the express written consent of Concessionaire in its sole discretion, District shall not, under any circumstances reasonably under its control, permit Concessionaire's signage on the Facility(s) to be electronically altered, deleted or covered by any person or entity, including any broadcaster, during any photographing of the Facility(s) or during the broadcast of any event held at the Facility(s) (including, without limitation, Team games).
- 14.4 Obligation to Maintain Signage: District shall maintain all scoreboards, signs and other advertising for Products in good order and repair.
- 14.5 Illuminated Signage: All lighted signs and panel advertising or promoting Products (including lighted concession advertising) shall be fully illuminated at all events on the Facility(s) for which any signs are illuminated. Exception may be made to reasonably accommodate District energy conservation programs.
- 14.6 Access to Signage: Concessionaire 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 Concessionaire's cost and discretion, subject to District approval of content, which shall not be unreasonably withheld.

14.7 Right to Replace Signage:

- 14.7.1 District shall permit Concessionaire right to advertising space and to replace all competitive soft drink logos or signage on scoreboard (s) for Facility(s) of the District.
- 14.7.2 The District shall have the right to reject advertising reasonably deemed inappropriate.
- 14.7.3 Should signage be replaced on competitive soft drinks, Concessionaire shall replace at Concessionaire expense.

15 Exclusive Marketing and Promotion

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- 15.1 Placement of Advertising and Ambush Marketing:
 - 15.1.1 The size, number, and location of any signs other than those on vending machines or scoreboards advertising or promoting Concessionaire's Exclusive Products that are to be placed on District premises shall be subject to the prior review and written approval of the District.
 - 15.1.2 In consideration of the cash payments made by Concessionaire, the District agrees not to allow any signs in District Facility(s) by Concessionaire's competitors unless those signs are at a non-sponsored event and only for the duration of the event.

16 Exceptions

- 16.1 Notwithstanding the foregoing, this Agreement shall not be construed as granting the Concessionaire the right, exclusive or otherwise, to:
 - 16.1.1 Sell coffee products at District Facility(s).
 - 16.1.2 Sell Beverage and Sports Drink vending machine products at an owned or operated District Facility having in effect a prior agreement with a competing manufacturer, distributor or provider to sell competing beverage and sports drink vending machine products; provided, however, the District agrees that as said prior agreements expire, Concessionaire shall have the exclusive right to replace its competitor's equipment and products with its Equipment and Exclusive Products. Furthermore, should Concessionaire desire to buy-out prior competitor agreements, the District agrees to facilitate, on behalf of Concessionaire, such early termination rights that it may have under the terms of prior agreements.
 - 16.1.3 Sell, pour or vend competing vending machine Beverage or Sports Drink products at any event taking place at District facilities if the Concessionaire had been first given a right of first refusal to sponsor and fund that event or activity at the same level as the beverage Competitor had first offered, and Concessionaire had elected not to sponsor said activity or event. The exception in this subparagraph shall be applicable only for the dates and times specified for the event.
 - 16.1.4 District Food Service Facilities and serving line areas are exempt from this Agreement.
 - 16.1.5 District Facility(s) that are operated jointly under multi-year interlocal agreements are exempt from this Agreement when used for non-District purposes. Concessionaire may enjoy the same rights and privileges due the District while the District uses the interlocal agreement Facility(s), but accepts all associated costs and responsibilities to abide by the interlocal agreement.
- 16.2 The rights and privileges of naming Facility(s) is retained by the District, including but not limited to existing and future structures either built, leased or rented by the District.

17 Event Sponsorship

- 17.1 Concessionaire shall have the exclusive entitlement to first call on the sponsorship of an unlimited number of District-wide, Area-wide, and Facility(s) events involving academics, the arts or athletics.
- 17.2 For already scheduled District-wide events, this entitlement shall commence on the first school year following the execution of this Agreement.
- 17.3 The District shall provide Concessionaire with a calendar of all District-wide events at least sixty (60) days prior to the commencement of the school year and Concessionaire shall within thirty (30) days of receipt of the calendar notify the District of acceptance or rejection of sponsorship.
- 17.4 Notwithstanding existing annual District-wide events already in place and sponsored by a business or businesses offering Beverage and Sports Drink vending machine products that compete with Concessionaire's Exclusive Products, Concessionaire agrees to as a minimum provide at least the same level of support invested in the event by the sponsoring competitor in the prior year.
- 17.5 For all non-scheduled area-wide or Facility(s) events, the District agrees to provide Concessionaire with at least sixty (60) days notice of opportunity to sponsor and Concessionaire shall within thirty (30) days of receipt of such notice notify District of acceptance or rejection of sponsorship.

- 17.6 If Concessionaire does not respond in accordance with the provisions of this section or rejects sponsorship, then the District may obtain exclusive event sponsorship including sole distributing, selling, pouring, marketing, and signage entitlements from any other source including a business or businesses offering beverage and sports drink products that compete with Concessionaire's Exclusive Products.
- 17.7 Concessionaire expressly waives for the specified event times and dates the applicability of this Agreement to any District events for which Concessionaire has rejected sponsorship or failed to respond in accordance with this section.
- 17.8 Sponsorship of Events at Facility(s):
 - 17.8.1 Concessionaire shall have the right at its option to be the presenting sponsor and the exclusive Beverage sponsor of any and all events at the Facility(s) at no additional cost.
 - 17.8.2 Such sponsorship shall include the right to have its name and trademarks associated with the events in all advertising by the event sponsor, the right to place advertising in any television, radio, cable or payper-view broadcasts from the Facility(s) and the right to promote Concessionaire's sponsorship of the events in Concessionaire's advertising, including in cooperative advertising with Concessionaire's customers.
 - 17.8.3 Should another event outside District occur on District property Concessionaire would be the event Beverage source.

18 Competitive Products

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- 18.1 Subject to the Permitted Exceptions and elsewhere, during the entire Term and any renewal or extension thereof;
 - 18.1.1 No Competitive Products may be sold, sampled, dispensed or served anywhere on the Facility(s).
 - 18.1.2 No permanent or temporary advertising, signage or trademark visibility for Competitive Products will be displayed or permitted anywhere on the Facility(s), including locker rooms, sidelines and players' benches.
 - 18.1.3 No agreement or relationship will be entered into or maintained by District pursuant to which competitive Products are associated in any manner with the Facility(s), schools, Facility(s), Teams and/or events at the Facility(s) 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 Facility(s), schools, Facility(s), Teams and/or events at the Facility(s).
- 18.2 District recognizes that Concessionaire has paid valuable consideration to ensure an exclusive association relationship with the Facility(s), schools, Facility(s), teams and/or events at the Facility(s) with respect to Beverages and that any dilution or diminution of such exclusivity seriously impairs Concessionaire's valuable rights.
- 18.3 Accordingly, in the event another person or entity attempts, without Concessionaire's consent, to associate its Beverages with the Facility(s), schools, Teams, and/or events at the Facility(s) or to suggest that Competitive Products are endorsed by or associated with the Facility(s), schools, Teams and/or events at the Facility(s) by referring directly or indirectly to the Facility(s), schools, Teams and/or events at the Facility(s), District will promptly oppose such actions and take any and all steps necessary but excluding litigation (including, but not limited to: written complaints to the violating party and local media outlets; and private and public cease and desist announcements) to cooperate with Concessionaire and to protect the exclusive associational rights granted to Concessionaire by District in this Agreement.

19 Permitted Exceptions

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- 19.1 The following items shall be considered "Permitted Exceptions":
- 19.2 Permitted Competitive Beverage Availability:
 - 19.2.1 District retains the right to make available for sale on the Facility(s);
 - 19.2.1.1 Fresh-squeezed juice, and;
 - 19.2.1.2 Fresh-brewed tea, as long as Concessionaire does not distribute a similar Product.
 - 19.2.2 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 or on dispensing equipment.
- 19.3 Donated Pre-Mixed Beverages and Track Meet Funding for Functions on Facility(s):
 - 19.3.1 District's right to allow donated, pre-mixed beverages on Facility(s) for campus functions including classroom, club, and parent-teacher meetings, parties and one-time special events to be supplied and served by third parties that are not engaged in competition with Concessionaire.
 - 19.3.2 District will offer Concessionaire first right of refusal for the opportunity to sponsor track meets and other District events. Should Concessionaire reject this sponsorship request District may seek other Beverage and/or Sports Drink sponsorships for a one-time event function only.
- 19.4 In the event District needs other non-competitive beverages which cannot be supplied by Concessionaire due to packaging and/or statutory mandates, the District shall have the right to purchase these beverages (other than competitive products) from other sources.

20 Beverage and Sports Drink Vending Machine Equipment

- 20.1 The time of, access to, and placement and servicing of Concessionaire's Equipment on District premises shall be made in accordance with RFP #2156-00 and RFP#2157-00.
- 20.2 Concessionaire shall provide at Concessionaire's expense all necessary labor and associated costs to install, service, and remove Equipment including necessary water and electrical hookups. Concessionaire shall also secure all Equipment and, provided there is no other feasible alternative, bolt machines together upon the District's request.
- 20.3 Only the Concessionaire's Exclusive Products shall be placed in the Equipment as the property of the Concessionaire.
- 20.4 The Concessionaire shall perform, at Concessionaire's cost, all repair services on the Equipment.
- 20.5 The District hereby grants to the Concessionaire reasonable access to District's Facility(s) to perform maintenance activities. Such maintenance shall be at such times and on such terms as the Concessionaire and District may mutually agree.
- 20.6 The Concessionaire shall retain sole possession of all Equipment keys and shall maintain twenty-four (24) hour emergency access to all of the Equipment upon District request.

20.7 Equipment and Service:

- 20.7.1 During the Term, Concessionaire will provide on a full-service basis to District, at no cost, to;
 - 20.7.1.1 That Beverage and Sports Drink dispensing Equipment which is currently installed at the Facility(s), and;
 - 20.7.1.2 Any additional Equipment jointly determined by Concessionaire and District to be required in order to replace defective or worn out Beverage and Sports Drink dispensing Equipment or to equip new locations on the Facility(s).
- 20.7.2 District agrees that it will execute documents evidencing Concessionaire's ownership of the Equipment, upon request. The Equipment may not be removed from the Facility(s) without the owner's written consent, and District agrees not to encumber the Equipment in any manner or permit the Equipment to be attached thereto except as authorized by the owner.
- 20.7.3 In the event that District executes any form(s) with respect to any of the Equipment, to the extent that any terms and conditions set forth in the form(s) are in conflict with the terms and conditions set forth in this Agreement, this Agreement shall control.
- 20.8 In addition, Concessionaire will provide District with routine free servicing of the Equipment. Service will be provided during normal business hours, and Concessionaire will 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 Concessionaire, and shall not be liable for damages of any nature arising out of delays in rendering service.

21 Student Access to Vending Equipment

21.1 Concessionaire vending machine Equipment that is in close proximity to lunch areas, as determined in the sole discretion of the school principal, shall not be accessible to students during lunch periods.

22 Notices

- 22.1 Any notice or other communication hereunder shall be in writing, shall be sent via registered or certified mail, and shall be deemed given when deposited, postage prepaid, in the United States mail, addressed as set forth below, or to such other address as either of the parties shall advise the other in writing:
 - 22.1.1 If to Concessionaire:

North Texas Coca-Cola Bottling Company d/b/a Coca-Cola Bottling Company of North Texas 6011 Lemmon Avenue Dallas, Texas 75209

Attention: Division Manager for Education Channel

With a copy to:

Coca-Cola Enterprises Inc. P.O. Drawer 1778 Atlanta, Georgia 30313

Attention: General Counsel

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22.1.2 If to District:

Dallas Independent School District 3700 Ross Avenue, Box 89 Dallas, Texas 75204-5491

Attention: Executive Director, Purchasing

With a copy to:

Dallas Independent School District 3700 Ross Avenue, Box 2 Dallas, Texas 75204-5491

Attention: General Superintendent

23 Coca-Cola® Trademarks

- 23.1 The District acknowledges and agrees that Concessionaire has an interest in maintaining and protecting the image and reputation of Coca-Cola's trademarks (hereinafter referred to as the "Coca-Cola Trademarks"), and that in order to accomplish this purpose, Concessionaire must in all cases assure itself that the Coca-Cola Trademarks are at all times used in a manner consistent with the standards and guidelines heretofore established by the Concessionaire.
- 23.2 The District agrees that Concessionaire must, therefore, have the right to examine and to approve or disapprove in advance of use, the contents, appearance and presentation of any and all advertising, promotional or other similar materials proposed by the District to be used in connection with any advertising or promotion utilizing the Coca-Cola Trademarks.
- 23.3 In addition the District recognizes that Concessionaire must have the right to upgrade and keep its logos current throughout the Term.
- 23.4 The District therefore agrees that;
 - 23.4.1 The District will not produce, publish or in any manner use or distribute any such advertising, promotional or other materials prepared by or on behalf of the District that have not been submitted to and approved in writing in advance by the Concessionaire;
 - 23.4.2 The District agrees to submit to Concessionaire for its examination and approval or disapproval, in advance of use, samples of such materials together with the script, text, coloring, storyboards and a copy of any photograph proposed to be used.
- 23.5 Concessionaire agrees it will promptly examine and either approves or disapproves such submissions, and will promptly notify the District of its approval or disapproval.
- 23.6 Concessionaire agrees that it will not unreasonably disapprove of any such submission and, if any is disapproved, that the District shall be advised of the specific reasons for disapproval in each case.
- 23.7 The District agrees that nothing contained in this Agreement shall give to the District any right, title or interest in the Coca-Cola Trademarks, and that the Coca-Cola Trademarks are, and are to be, the sole property of Concessionaire and that any and all use by the District of the Coca-Cola Trademarks, and the goodwill arising therefrom, shall inure to the benefit of Concessionaire.

24 District Logo and Other Protected Materials

- 24.1 Concessionaire acknowledges and agrees that the District has an interest in maintaining and protecting otherwise image and reputation of the District's official logo or emblem and any other trademarks, copyrighted or otherwise protected materials of the District (hereinafter referred to as the "District's Protected Materials"), and that in order to accomplish this purpose, the District must in all cases assure itself that the District's Protected Materials are at all times used in a manner consistent with the District's policies, administrative regulations, and this Agreement.
- 24.2 Concessionaire agrees that the District must, therefore, have the right to examine and to approve or disapprove such use in writing in advance of use, the contents, appearance and presentation of any and all advertising, promotional or other similar materials proposed by Concessionaire to be used in connection with any advertising or promotion utilizing District's Protected Materials.
- 24.3 Concessionaire therefore agrees that it;
 - 24.3.1 Will not produce, publish or in any manner use or distribute any such advertising, promotional or other materials prepared by or on behalf of Concessionaire that have not been submitted to and approved in writing in advance by the District;
 - 24.3.2 Will submit to the District for its examination and approval or disapproval, in advance of use, samples of such materials together with the script, text, coloring, storyboards and a copy of any photograph proposed to be used.
 - 24.3.3 The District agrees that the District will promptly hereunder to Concessionaire examine and either approve or disapprove each submission and promptly notify Concessionaire of its approval or disapproval.
- 24.4 The District on behalf of it minor schoolchildren reserves the absolute right in its sole discretion to reject the content of any submission and Concessionaire expressly warrants that in consideration of this Agreement Concessionaire will not contest any determination of District made pursuant to this section.
- 24.5 Concessionaire agrees that nothing contained in this Agreement shall give to Concessionaire any right, title or interest in the District's Protected Materials and that the District's Protected Materials are, and are to be, the sole property of the District and that any and all use by Concessionaire of the District's Protected Materials, and the goodwill arising therefrom, shall inure to the benefit of the District.

25 Minority/ Woman-Owned Business Enterprise Participation

- 25.1 The Concessionaire understands and agrees to the following assurances:
 - 25.1.1 It is the policy of the District that Minority/ Woman-Owned Business Enterprises (M/WBEs) shall have the maximum practicable opportunity to participate in the awarding of District contracts.
 - 25.1.2 The Concessionaire agrees to use good faith efforts to promote this policy through its performance of this Agreement.
 - 25.1.3 Additionally, the Concessionaire agrees to use good faith efforts to provide the maximum opportunity for the consideration and use of M/WBEs in the contracting, subcontracting, and purchasing activities associated with this Agreement and to abide by all of the other provisions of the District's M/WBE Program and, to quarterly or as otherwise agreed by the Concessionaire and District, report on said participation to the Executive Director of the M/WBE program.

25.1.4 Concessionaire further agrees that no person shall be excluded from participation in, denied the benefits of or be otherwise discriminated against in connection with the award and performance of this Agreement or of any contract or subcontract associated therewith because of race, color, national origin, sex, age, handicap or political belief or affiliation.

26 Contractual Relationship

- 26.1 The Board of Trustees ("Board") as the governing body of District and Concessionaire hereby agree that the Board is charged under state law with the duty to provide adequate public schools and the authority to supervise all matters pertaining to the public schools, and that the Board will retain all such authority under this Agreement.
- 26.2 The Board as the governing body of District and Concessionaire further agree that Concessionaire is accountable to and subject to the supervision of the Board and its designated administrative officers under this Agreement.
- 26.3 In addition, the Board and Concessionaire agree that Concessionaire shall be subject to all policies, rules and regulations of the Board and District, the Texas Education Agency, and the Texas State Board of Education.
- 26.4 The Board on behalf of the District and the Concessionaire represent to the other that each has the full right and authority to enter into and perform its obligations under this Agreement and that all necessary actions have been taken to authorize its execution by those individuals who are signatories to this Agreement.

27 Compliance with Law

27.1 Concessionaire covenants, warrants and represents to District that this Agreement and the performance of all obligations hereunder is not in contravention or violation of any state or federal law; including but not limited to federal anti-trust statutes (15 U.S.C. Chapter 1, et seq.) and/or the Texas Free Enterprise and Anti-Trust Act of 1983 (Tex. Bus. & Com. Code Ann. Chapter 15, et.seq.) Concessionaire shall indemnify and hold harmless the District from all suits claims and/or demands that allege the Agreement violates any such laws.

28 Governing Law

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28.1 This Agreement shall be interpreted in accordance with and shall be governed by the laws of the State of Texas and any federal laws applicable to District. Concessionaire specifically agrees to also be bound by these laws and any court orders imposed upon District in like manner as District insofar as those court orders apply to District students and services provided by Concessionaire pursuant to this Agreement. Concessionaire shall perform its duties and obligations subject to District audit and oversight and the other terms and conditions of this Agreement. Concessionaire shall have the power and authority, consistent with the limitations herein, to take such actions as may be necessary or desirable to properly and efficiently provide the services provided for herein.

29 Audit and Inspection of Records

29.1 The Concessionaire agrees to maintain and make available to the District for four (4) years following expiration or earlier termination of the Agreement, accurate books and accounting records relative to its activities under this Agreement. The Concessionaire will permit the District to audit, examine and make excerpts and transcripts from such books and records, and to make audits of all invoices, materials, payrolls, records or personnel and other data related to all other matters covered by this Agreement.

30 Venue

30.1 This Agreement shall be enforceable in Dallas County, Texas, and if legal action is necessary by either party with respect to the enforcement of any and all of its terms and conditions, exclusive venue for any legal action shall lie in Dallas County, Texas.

31 Termination by District

31.1 This Agreement may be terminated by the District if Concessionaire shall be in breach or default under any one or more of its material covenants or Agreements contained in this Agreement and such breach or default shall not be cured within thirty (30) days written notice thereof by the District to Concessionaire. In addition, the District in its discretion may terminate this Agreement upon thirty (30) days written notice for consistently late payment of Beverage and Sports Drink Exclusive product vending fees.

32 Termination by Concessionaire

- 32.1 This Agreement may be terminated by Concessionaire if the District shall be in breach or default under any one or more of its material covenants or Agreements contained in this Agreement and such breach or default shall not be cured within thirty (30) days after written notice thereof by Concessionaire to the District.
- 32.2 District also agrees that Concessionaire shall have the right, but not the obligation, to terminate this Agreement without further liability to either party if;
 - 32.2.1 The schools or Facility(s) are permanently closed;
 - 32.2.2 The Teams fail to play all of their scheduled home games on the Facility(s) for a period of more than thirty (30) days;
 - 32.2.3 The schools' enrollment declines below 147,000, or;
 - 32.2.4 Government regulation prohibits the availability of Beverages as outlined in Section 3; whether or not due to the temporary unavailability of the Facility(s) or any other cause which may be beyond the reasonable control of District. In the event of such termination, District may pay to Concessionaire a pro rata refund of any prepaid Sponsorship Fees for such funds paid by Concessionaire.
- 32.3 Not withstanding any other provision herein, and in addition to all other rights of termination the District may have; the District reserves the right to close or cease using any school or Facility and to terminate a corresponding portion of this Agreement at its convenience and at no further cost or obligation to the District. District will provide reasonable notice to Concessionaire of such closing.

33 Loss of Beverage Availability or Advertising Rights - Termination

- 33.1 If any significant number of the Products are discontinued on the Facility(s) or not made available as required herein by District or Concessionaires;
- 33.2 Any significant number of the rights granted to Concessionaire herein are restricted or limited during the Term;
- 33.3 Any significant number of the provisions concerning Competitive Products are not complied with; if such event is caused by any action or event within reasonable control of the District then Concessionaire may elect, at its option, as its sole remedy, to:

- 33.3.1 Terminate this Agreement and District shall pay to Concessionaire a pro rata refund of any prepaid Sponsorship Fees, or;
- 33.3.2 Adjust the fee structure for the then remaining portion of the Term and District shall pay to Concessionaire a pro rata refund to reflect the diminution of the value of the rights granted.

34 Representations, Warranties and Covenants Of District

- 34.1 Representations, Warranties and Covenants of District. District represents, warrants and covenants to Concessionaire as follows:
 - District Authority: District has full power and authority to enter into this Agreement and to grant and convey to Concessionaire the rights set forth herein. Upon any expiration or revocation of District's authority to convey, in whole or in part, the above advertising, promotional, Beverage availability and merchandising rights, then, in addition to the termination rights set forth, in whole or in part, Concessionaire shall have the right, but not the obligation, to cease payment to District and instead make payment to any party that thereafter assumes responsibility for any beverage advertising, promotional and/or availability rights on the Facility(s) and/or promotional and advertising rights with respect to the District, schools and the Teams.
 - 34.1.2 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.
 - 34.1.3 No Conflict with Other Agreements: During the Term of this Agreement District, will not enter into;
 - 34.1.3.1 Any other Agreements (including Agreements with any broadcaster or any other sponsors of the Facility(s), schools, Facility(s) and/or the Teams) that would prevent it from fully complying with the provisions of this Agreement, or;
 - 34.1.3.2 Any Agreement granting Beverage availability and merchandising or promotional and/or advertising rights that are inconsistent with the rights granted to Concessionaire pursuant to this Agreement, including any Agreements with concessionaires or third party food service operators, vending companies, and/or other entities which sell or distribute Beverages and/or food (including Agreements with broadcasters or other sponsors of the Facility(s), school, and/or the Teams).
 - 34.1.4 District further covenants that it will require compliance with the relevant provisions of this Agreement by third party food service operators, vending companies, concessionaires, and/or other entities which sell or distribute Beverages and/or food on the Facility(s), or which sponsor events on the Facility(s), to the extent that it may legally do so without breaching any existing Agreements with, or lawfully enforceable rights of any such parties.

35 Representations and Warranties and Covenants of Concessionaire

35.1 Concessionaire represents, warrants and covenants as follows:

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- 35.1.1 Authority: Concessionaire has full power and authority to enter into and perform this Agreement.
- 35.1.2 Binding Agreement: All necessary approvals for the execution, delivery and performance for this Agreement by Concessionaire have been obtained, and this Agreement has been duly executed and

- delivered by Concessionaire and constitutes the legal and binding obligation of Concessionaire enforceable in accordance with its terms.
- 35.1.3 No Conflict with Other Agreements: Concessionaire has not entered into, and during the Term of this Agreement, will not enter into, any other Agreements which would prevent either from fully complying with the provisions of this Agreement.

36 Waiver

36.1 Either party's failure at any time to enforce any default or right reserved to it, or to require performance of any of this Agreement's terms, covenants, or provisions by the other party at the time designated, shall not be a waiver of any such default or right to which the party is entitled, nor shall it in any way affect the right of the party to enforce such provisions thereafter.

37 Assignment and Subcontracting

37.1 The Concessionaire is prohibited from assigning or subcontracting this Agreement or any services provided pursuant to this Agreement unless such assignment or subcontract is agreed to in writing by District and executed in the same manner as this Agreement. No party on the basis of this Agreement shall in any way contract on behalf of or in the name of the other party of this Agreement, and violation of this requirement shall confer no rights on any party and shall be void.

38 Modifications

38.1 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.

39 Section Headings

39.1 The section headings used in this Agreement are for convenience and reference only and are not intended to define the scope, meaning or interpretation of the provisions of this Agreement.

40 Indemnification

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To the fullest extent permitted by applicable law, the Concessionaire and its agents, partners, employees, and consultants (collectively "Indemnitors") shall and do agree to indemnify, protect, defend with counsel approved by District, and hold harmless the District and its affiliated enterprises, representatives of the District, and their respective officers, directors, members of the board, partners, employees and agents (collectively "Indemnitees") from and against all claims, damages, losses, liens, causes of action, suits, judgments and expenses, including attorney fees, of any nature, kind, or description (collectively "Liabilities") of any person or entity whomsoever arising out of, caused by, or resulting from the performance of services, or provision of goods, by contractor pursuant to this contract, or any part thereof, which are caused in whole or in part by any negligent act or omission of the Concessionaire or, anyone directly or indirectly employed by it or anyone for whose acts it may be liable even if it is caused in part by the negligence or omission of any Indemnitee, so long as it is not caused by the sole negligence or willful misconduct of any Indemnitee.

In the event more than one of the Indemnitors are connected with an accident or occurrence covered by this indemnification, then each of such Indemnitors shall be jointly and severally responsible to the Indemnitees for indemnification and the ultimate responsibility among such Indemnitors for the loss and expense of any

such indemnification shall be settled by separate proceedings and without jeopardy to any Indemnitee. The provisions of this article shall not be construed to eliminate or reduce any other indemnification or right which District or any of the Indemnitees has by law.

Concessionaire shall indemnify and hold harmless the District, its Board of Trustees, officers and employees from all suits, actions, losses, damages, claims, or liability of any character, type, or description, including but not limited to, all expenses of litigation, court costs, penalties, and whatsoever and of any kind or nature arising directly or indirectly on the part of Concessionaire, its agents, servants, employees, contractors, and suppliers, out of the operations under this Agreement.

41 Insurance

- 41.1 Concessionaire shall place and maintain throughout the Term of this Agreement, at its expense, the following insurance and shall add the Dallas Independent School District, its Board of Trustees, officers, employees, and volunteer workers as named additional insureds on all relevant policies. Concessionaire agrees that such policies are primary insurance to any other insurance available to the additional insureds, with respect to any claims arising out of this Agreement:
 - 41.1.1 Comprehensive General Liability Insurance with bodily injury and property damage including, premises operations, independent contractors, products completed operations and blanket contractual coverage with limits not less than \$5,000,000 per person, \$5,000,000 per occurrence, and \$10,000,000 combined annual aggregate;
 - 41.1.2 Comprehensive General Automobile Insurance with limits not less than \$1,000,000 each occurrence Combined Single Limit for Bodily Injury and Property Damage, including coverage's for owned, non-owned and hired automobiles, as applicable; and
 - 41.1.3 Worker's Compensation Insurance with Employer's Liability Coverage with limits of not less than \$1,000,000 each accident.
- 41.2 Concessionaire's compliance with the provisions of this section shall in no way relieve or decrease Concessionaire's indemnification obligations under this Agreement or any of Concessionaire's other obligations hereunder or at law. Notwithstanding anything to the contrary in this Agreement, the District may immediately terminate this Agreement upon the lapse of any required insurance coverage.

42 Liability Policies

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- 42.1 The form of all insurance policies required by this Agreement is subject to the approval by the District's Risk Manager. Prior to the commencement date of this Agreement, Concessionaire shall deliver to District certificates confirming the required insurance.
- 42.2 Concessionaire shall provide complete copies of the policies at District's request. The Concessionaire shall notify the District in writing at least forty-five (45) days in advance of any cancellation, non-renewal or reduction of any of its insurance policies required under this Agreement.
- 42.3 Concessionaire also understands and agrees that notwithstanding any other provision of this Agreement the District may immediately terminate this Agreement upon the termination or alteration of the insurance coverage required of Concessionaire by this Agreement.

43 Force Majeure

43.1 No party to this Agreement shall be in breach of this Agreement or any provision thereof due to non-performance caused by reason of any fire, casualty, lockout, strike, labor conditions, unavoidable accident, riot, war, or act of God and the obligations and terms of this Agreement shall be suspended and also extended automatically for an additional period of time equal to the period of time the force majeure event is occurring. All parties agree to use their best efforts to mitigate the effects of any force majeure condition and to resume performance of their obligations under this Agreement as soon as possible.

44 Merger of Prior Existing District Agreements with Concessionaire

44.1 All of the District's prior existing school accounts with Concessionaire shall merge with and be under this Agreement. Concessionaire shall establish a single monthly statement for the District reflecting sales at each location described as part of the Premises. Any prior or existing Agreements between Concessionaire and any school, department or Facility(s) of the District is hereby canceled terminated and all Agreements or transactions with District and its lawful representative shall be governed by this Agreement.

45 Survival

45.1 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. If any provision or term of this Agreement is judicially determined to be invalid, void or unenforceable for any reason, the remainder of this Agreement shall remain valid and enforceable and shall in no way be affected, impaired, or invalidated if the same may be given effect without the void or invalid provision.

46 Resolution of Issues

- 46.1 This Agreement can be canceled or refused by the District for nonperformance by the Concessionaire. Concessionaire and District will resolve disputes regarding non-performance as follows:
 - 46.1.1 District and Concessionaire will jointly discuss any unresolved issues.
 - 46.1.1.1 District will be responsible for submitting in writing to Concessionaire stating the unresolved issue that is over three- (3) day duration.
 - 46.1.1.2 Unresolved issues that are not corrected may be grounds for termination of this Agreement.
 - 46.1.2 In the event of cancellation for non-performance by Concessionaire, District shall be entitled to retain all payments and/or donations made by Concessionaire before the cancellation occurs.

47 Conflict of Provisions

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- 47.1 To the extent there is any conflict in the provisions of the Agreement the following order of precedence shall govern:
 - 47.1.1 This Agreement;
 - 47.1.2 District's RFP#2156-00 and RFP#2157-00;

- 47.1.3 Concessionaire Response to District RFP#2156-00 and RFP#2157-00;
- 47.1.4 Concessionaire Best and Final Offer dated June 22, 2000.
- 47.2 No change or waiver of any provision hereof shall be valid unless made in writing and executed in the same manner as this Agreement.

48 Criminal Background Check for Concessionaire and Agents

- 48.1 The Concessionaire agrees to comply with all applicable state laws and Board policies regarding criminal background checks. Before entering into this Agreement with the District, Concessionaire must give notice to District if Concessionaire, or any employee or subcontractor of Concessionaire has been convicted of a felony.
- 48.2 District may terminate this Agreement if the District determines that Concessionaire failed to give such notice or misrepresented the conduct resulting in the conviction. Concessionaire may also be subject to debarment. Concessionaire shall assume all expenses associated with the background checks, where necessary, and shall immediately remove any employee or agent who was convicted of a felony, as defined by Texas law, from District property or other location where students are regularly present.
- 48.3 The District shall be the final decider of what constitutes a "location where students are regularly present." Concessionaire's violation of this section shall constitute a reason for Termination by District.

49 Entire Agreement

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- 49.1 The following attached instruments are hereby incorporated and made part of the Agreement by this reference:
 - 49.1.1 District RFP#2156-00 and RFP#2157-00;
 - 49.1.2 Concessionaire Response to District RFP#2156-00 and RFP#2157-00;
 - 49.1.3 Concessionaire Best and Final Offer dated June 22, 2000.
- 49.2 These instruments together with this Agreement contain the entire Agreement between the parties and no warranties, expressed or implied, representations, promises, or statements have been made or waived by either party unless endorsed herein in writing.

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

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

NORTH TEXAS COCA-COLA BOTTLING COMPANY, Print Name: Title: DALLAS INDEPENDENT SCHOOL DISTRICT By:_____ Print Name: Title: Board President Date: ATTEST: _____ Print Name: Title: Board Secretary Date: _____

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APPROVED AS TO FORM

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Exhibit A Products Schedule

Ninety percent (90%) of vending placements in secondary schools will be 20 ounce vending carbonated soft drinks non-returnable bottles for student access. The vending fee shall not be payable on any sales from vending machines not filled or serviced by Concessionaire. All District Facility(s) will sell 100% 20-ounce bottle drinks of carbonated drinks and non-carbonated drinks for said stadium concession business.

• Vending Fees and Product Packages are as follows:

Package	Vend Price	Commissions
12 oz. CSD	. \$0.60	55%
12 oz. Bottle Water	\$0.60	16.7 %
12 oz. Tea	\$0.60	55 %
20 oz. CSD	\$1.00	55 %
20 oz. Isotonic	\$1.00	16.7 %
20 oz. Bottle Water	\$1.00	16.7%
20 oz. Fruitopia	\$1.00	16.7%
20 oz. Tea	\$1.00	55 %

- Concessionaire may request adjustment the vend prices on the anniversary date of each year of this Agreement if
 necessary to reflect changes in its costs, including cost of goods. The Concessionaire and District may agree to price
 adjustments on a more frequent basis. Vend prices, packages shall be in effect for the 2000 2001 school year
 beginning month of February 2001.
- The vending fees due District shall be paid to District each month following the previous month's Beverage sales together with an accounting of all sales and moneys in a form satisfactory to the District.

Cups, Cup Lids, Direct Delivery, and Syrup Pricing: Pricing are subject to review annually during on the anniversary date of the Agreement Any agreed modifications to pricing contained in this Exhibit A - Products Schedule shall be incorporated into this Agreement as a bilateral amendment to the Agreement.

Cup Pricing (Styrofoam)

<u>Cups</u>	Per Unit Pricing	
12 oz	2,400 cups	\$44.00
16 oz	1,200 cups	\$32.00
20 oz	1,200 cups	\$39.15
24 oz	1,200 cups	\$41.25
32 oz	600 cups	\$33.05
44 oz	600 cups	\$36.80

Cup Lids

<u>Lids</u>	Per Unit 1	Pricing
12 oz.	1,200 lids	\$15.75
16 oz.	1,200 lids	\$15.75
20 oz.	1,200 lids	\$15.75
24 oz.	1,200 lids	\$15.75
32 oz.	600 lids	\$7.83
44 oz.	600 lids	\$13.35

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Direct Delivery

<u>Package</u>	Per Case Price
12 oz. CSD	\$8.15
12 oz. CSD 12 oz. Tea	\$8.15
12oz. 100% Juice	\$14.35
20 oz. Bottle water	\$13.35
20 oz. Isotonic	\$14.35
20 oz. CSD	\$13.35
20 oz. Fruitopia	\$14.35
20 oz. Tea	\$14.35

Syrup Pricing

<u>Flavors</u>	2.5 Gallon	5 Gallon	
Same as CSD	\$22.08	\$44.15	

CO 2 Pricing

<u>Size</u>	<u>Price</u>
20 lb.	\$10.00
50 lb.	\$20.00

Exhibit B - Option Years 6-10

The District has the unilateral right to extend the Agreement after the initial Term for one year options. Each option shall be from January first to December 31as listed below, and shall be extended by the District each year.

I. Sponsorship and Signboard Maintenance Fees for Option Years 6-10

Payments to District in Year Six	\$1,405,000	(One million four hundred five thousand dollars)
Payments to District in Year Seven	\$845,000	(Eight hundred forty-five thousand dollars)
Payments to District in Year Eight	\$693,000	(Six hundred ninety-three thousand dollars)
Payments to District in Year Nine	\$593,000	(Five hundred ninety-three thousand dollars)
Payments to District in Year Ten	\$593,000	(Five hundred ninety-three thousand dollars)

II. Annual Advance of Vending Fees to Secondary Schools

J

Individual secondary school funding to be funded at \$15,000 per high school and \$2,500 to each middle/junior high school to be funded annually in the first day of each September of this Agreement to secondary schools that are in compliance of this Agreement in the selling of Concessionaire's products through vending operations. This funding will be repaid as a deduction through monthly vending fees from individual Facility(s) having elected to receive this payment for that year.

Exhibit C - Methods and Timing Of Payments

I Vending Fee Payments:

- All vending fee checks shall be made payable to the campus and delivered to the CFO on a monthly basis.
- For Townview, there are six different high schools and an overall campus.

60% of vending fees are to go to the Townview Campus.
40% are to be divided among the 6 high schools based on PEIMS enrollment, which will be furnished on a yearly basis.

Non-campus departments shall have their funds deposited into the General Revenue Fund.

II Annual Advance of Vending Fees to Secondary Schools

Individual secondary school funding to be funded at \$15,000 per high school and \$2,500 to each middle/junior high school to be funded annually in the first day of each September of this Agreement to secondary schools that are in compliance of this Agreement in the selling of Concessionaire's products through vending operations. This funding will be repaid as a deduction through monthly vending fees from individual Facility(s) having elected to receive this payment for that year.

III Modification

From time to time as mutually convenient times and places to the Concessionaire and District, the timing and schedule of payments will be verified to be the most advantageous to the local schools.

Exhibit D

Exhibit D, Letter from Bob Archibald, Division Channel Manager for Educational / Recreation with Concessionaire to Dr. Mike Moses, General Superintendent, Dallas Independent School District.

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Coca:Cola Bottling Company of North Texas

COCA-COLA ENTERPRISES company

P.O Box 2008 Deltas, TX 75221 214-357 1781

Dr. Mike Moses
Superintendent
Dallas Independent School District
3700 Ross
Dallas ,Texas

Dear Dr. Moses,

This letter will confirm Coca-Cola's partnership with the Dallas Independent School District. Coca-Cola has submitted to your district funding which is two and one half times higher than any public school district and higher commissions than any other public school district in Dallas County.

Coca-Cola will guarantee for the term of this agreement that DISD will be the highest partnership per student enrollment comparing volume generated per student enrollment of public school districts in Dallas County.

Should there be any other questions, please do not hesitate to call me at the phone numbers below.

Bob Archibald Achille

Division channel manager for Education/Recreation Channels 214-902-2801 office 214-808-9439 mobile

End of Exhibit D

End of Agreement