



# District School Board of Pasco County

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Heather Fiorentino, Superintendent

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July 28, 2009

## MEMORANDUM

TO: Honorable School Board Members

FROM: Kendra Goodman, CPPB, Purchasing Agent

RE: RFP#10-019-DR: Exclusive Beverage Contract  
Coca-Cola Enterprises, Inc. d/b/a Florida Coca Cola Bottling Company

On June 16, 2009 permission was granted to enter Direct Negotiations with Coca-Cola Enterprises, Inc. d/b/a/ Florida Coca Cola Bottling Company ("Coca Cola"). See attached approval. As such, a successful negotiated contract is now attached for Board approval. Signature will permit Food and Nutrition Services to begin an orderly transition from the Beverage Partnership Pepsi Bottling Group to Coca-Cola.

The term of the contract will be for a period of five (5) years, renewable annually based upon mutual agreement of the parties. The contract may be renewed for additional terms, for a total length of the contract not to exceed ten (10) years. Yearly renewals will be made under the same terms and conditions as the original contract, with the consent of both parties. First year of the contract is effective July 29, 2009 through June 30, 2010. The contract has been reviewed and approved by The School District's Attorney, Nancy McClain Alfonso, Esq.

Should you have any questions regarding this matter, or if I can be of further assistance, please feel free to contact Mr. Rick Kurtz, Director of Food and Nutrition Services, or me at your earliest convenience.

dr

Date/Time: July 22, 2009 ; 11 : 33 : 00

## BEVERAGE PROVIDER AGREEMENT

This agreement (the “**Agreement**”) is made by and between Coca-Cola Enterprises Inc., a Delaware corporation (“**Beverage Provider**”), and the District School Board of Pasco County having its principal place of business at 7227 Land O’ Lakes Boulevard, Land O’ Lakes, Florida 32638 (“**District**”).

### WITNESSETH:

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

WHEREAS the Beverage Provider has adopted the Alliance for a Healthier Generation School Beverage Guidelines which were announced on May 3, 2006 by former President Clinton and Governor Huckabee of Arkansas, co-chairs of the Alliance for a Healthier Generation. Working together with the District to implement these guidelines, this school wellness effort supports teaching kids to consume a balanced diet and be physically active;

WHEREAS, District is vested with the appropriate authority and wishes to grant to Beverage Provider the exclusive beverage availability rights described herein with respect to all schools in the Pasco County School District (“Schools”) and with respect to all other facilities owned or operated by the District.

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

1. Definitions.

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

(b) “Approved Cups” means disposable cups approved by Beverage Provider from time to time as its standard trademark cups and/or vessels and/or other (disposable and nondisposable) containers approved by Beverage Provider 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.

(c) “Beverage” or “Beverages” shall mean all nonalcoholic beverages of any kind, but shall not include fresh-brewed unbranded coffee and tea products, water drawn from the public water supply or unbranded juice squeezed fresh on the Campus.

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

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

(f) “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 all football, sports stadiums, and all other smaller 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 July 22, 2009 (“Term”), unless mutually extended by written agreement of the parties or 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, subject to Section 10(c) herein. The District’s performance and obligation to pay under this Agreement is contingent upon an annual appropriation by the Legislature.

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) Rebate. District will earn a rebate of One Dollar (\$1.00) for each standard physical case of Product sold through Beverage Provider’s full-service Beverage vending machines on the Campus during the Term (“Rebates”). Within thirty (30) days of the beginning of each Agreement Year, Beverage Provider will advance District up to fifty percent (50%) of the estimated total Rebate for such Agreement Year, as determined in good faith by Beverage Provider (the “Advanced Rebate”). No additional Rebates shall be paid until the Advanced Rebate is fully earned by District. Once the Advanced Rebate has been fully earned, District shall earn the Rebates at the rates set forth above. At the end of each Agreement Year, Beverage Provider will perform a reconciliation using Beverage Provider’s actual case sales records. Any Rebates earned in excess of the Advanced Rebate shall be paid in arrears, within thirty (30) days after end of each applicable Agreement Year in which the excess Rebates were earned. If such reconciliation reveals an overpayment, Beverage Provider shall withhold the amount of any such overpayment from the Advanced Rebate for any subsequent Agreement Year. In the event an overpayment exists at the end of the Term, District shall refund to Beverage Provider such overpayment within thirty (30) days after the completion of the reconciliation. Rebates shall not be earned for sales of Products unless they are through Beverage Provider’s full service vending machines.

(b) Ad Panel Fund. Beverage Provider agrees to provide District with a one time ad panel fund in the total amount of Twenty Thousand Dollars (\$20,000) for the entire Term (the “Ad Panel

Fund”). The Ad Panel Fund will be held and administered by Beverage Provider and used by Beverage Provider to purchase scoreboard ad panels, to replace all existing Competitive Beverage scoreboard ad panels at the Schools and/or Stadium. Any unused funds remaining in the Ad Panel Fund at the end of the first Agreement Year shall be paid to District. The Ad Panel Fund shall be deemed earned evenly over the entire five (5) year Term. **THE PROVISION OF THE SCOREBOARD AD PANELS 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.**

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

Product	Agreement Year one		Agreement Year two		Agreement Year three		Agreement Year four		Agreement Year five	
	Rate	Vend Price	Rate	Vend Price	Rate	Vend Price	Rate	Vend Price	Rate	Vend Price
12 oz Cans CSD, MMAR, Tea	35%	\$0.75	35%	\$0.75	35%	\$0.75	35%	\$1.00	35%	\$1.00
20 oz CSD, MMAR, Tea	35%	\$1.25	35%	\$1.25	35%	\$1.25	35%	\$1.50	35%	\$1.50
10 oz. Minute Maid 100% Juices	35%	\$1.00	35%	\$1.00	35%	\$1.00	35%	\$1.25	35%	\$1.25
12 oz Fuze	35%	\$1.00	35%	\$1.00	35%	\$1.00	35%	\$1.25	35%	\$1.25
12 oz PowerAde	35%	\$1.00	35%	\$1.00	35%	\$1.00	35%	\$1.25	35%	\$1.25
20 oz PowerAde	35%	\$1.25	35%	\$1.25	35%	\$1.25	35%	\$1.50	35%	\$1.50
300 ml Dasani Water	35%	\$0.75	35%	\$0.75	35%	\$0.75	35%	\$1.00	35%	\$1.00
20 oz Dasani Water	35%	\$1.25	35%	\$1.25	35%	\$1.25	35%	\$1.50	35%	\$1.50
12 oz Glaceau Vitaminwater	35%	\$1.00	35%	\$1.00	35%	\$1.00	35%	\$1.25	35%	\$1.25
20 oz Glaceau Vitaminwater	35%	\$1.25	35%	\$1.25	35%	\$1.25	35%	\$1.50	35%	\$1.50
16 oz Energy	35%	\$2.00	35%	\$2.00	35%	\$2.00	35%	\$2.25	35%	\$2.25

\* CSD refers to carbonated soft drinks. MMAR refers to Minute Maid Adult Refreshment.

Commissions are paid based upon cash collected, after deducting taxes, government mandated recycling fees, other government-mandated fees, 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. Commissions will be paid in arrears, on or about the 20th of each month with an accounting of all sales and monies.

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

(i) Each Agreement Year beginning in Agreement Year Two, Beverage Provider will pay District an aggregate of Five Thousand Dollars (\$5,000) to be used by the District to maintain and repair District’s scoreboards, in addition to the purchase and installation of new scoreboards (the “Scoreboard Fund”). Each installment of the Scoreboard Fund, beginning in Agreement Year Two, will be due on the anniversary date of each Agreement Year. District will provide Beverage Provider with an invoice for the Scoreboard Fund at least thirty (30) days prior to the due date of each payment required hereunder. The Scoreboard Fund shall be deemed earned evenly on a monthly basis over the Agreement Year in which it is paid. **THE PROVISION OF THE SCORE-**

**BOARDS 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.**

(ii) Each Agreement Year, Beverage Provider will pay District an aggregate of Five Hundred Dollars (\$500) to be used by the District to support District’s recycling efforts (the “Recycling Fund”). The first installment of the Recycling Fund will be paid within thirty (30) days of the date that this Agreement is fully executed and subsequent payments shall be due on the anniversary date. District will provide Beverage Provider with an invoice for the Recycling Fund at least thirty (30) days prior to the due date of each payment required hereunder. The Recycling Fund shall be deemed earned evenly on a monthly basis over the Agreement Year in which it is paid.

(iii) Each Agreement Year, Beverage Provider will provide District with complimentary 12 oz can CSD or 12 oz bottled water Products of District’s choosing (the “Complimentary Products”). The annual estimated retail value of such Complimentary Products is Forty Two Thousand Dollars (\$42,000), as determined in good faith by Beverage Provider. Such Complimentary Products will be provided to District upon reasonable advance request. If Account does not request all available Complimentary Products by the end of each Agreement Year, then any complimentary Products remaining at the end of each Agreement Year shall be retained by Beverage Provider. The Complimentary Products will be provided in accordance with the following approximate amounts:

- District will receive 100 standard physical cases of Complimentary Products per Agreement Year
- Each High School will receive 100 standard physical cases of Complimentary Products per Agreement Year
- Each Middle School will receive 75 standard physical cases of Complimentary Products per Agreement Year
- Each Elementary School will receive 50 standard physical cases of Complimentary Products per Agreement Year
- Each Education Center will receive 10 standard physical cases of Complimentary Products per Agreement Year

(iv) During the Term, Beverage Provider will provide District with complimentary PowerAde field kits, equipment, and powder of Beverage Provider’s choosing, subject to availability, with a total aggregate estimated retail value of One Hundred Thousand Dollars (\$100,000) for the entire Term as determined in good faith by Beverage Provider (“Complimentary PowerAde”). The estimated retail value of the Complimentary PowerAde for Agreement Year One is Forty Thousand Dollars (\$40,000), as determined in good faith by Beverage Provider. The estimated value of the Complimentary PowerAde for subsequent Agreement Years is Fifteen Thousand Dollars (\$15,000), as determined in good faith by Beverage Provider.

(v) Each Agreement Year, Beverage Provider will pay District an aggregate of Five Hundred Dollars (\$500) to be used by the District for purchasing gift cards for teacher awards (the “Teacher Award Fund”). The first installment of the Teacher Award Fund will be paid within thirty (30) days of the date that this Agreement is fully executed and subsequent payments shall be due on the anniversary date. District will provide Beverage

Provider with an invoice for the Teacher Award Fund at least thirty (30) days prior to the due date of each payment required hereunder. The Teacher Award Fund shall be deemed earned evenly on a monthly basis over the Agreement Year in which it is paid.

(vi) Each Agreement Year, Beverage Provider will provide District with Two (2) Family Theme Park Packs each of which consisting of four (4) one-day passes to a theme park of Beverage Provider's choosing, to be used by the District in connection with a drawing for the reading program at the Elementary Schools and a drawing for the attendance program at the Middle Schools.

(vii) Each Agreement Year, Beverage Provider will pay District aggregate of Three Thousand Dollars (\$3,000) to support a scholarship award made by District during each Agreement Year (the "Scholarship Fund"). The first installment will be paid within thirty (30) days of the date that this Agreement is fully executed and subsequent installments will be due on the anniversary of the Effective Date. The District will provide Beverage Provider with an invoice for the Scholarship Fund at least thirty (30) days prior to the due date of each payment required hereunder.

All of the consideration set forth in Sections 3(a-d) shall be collectively referred to herein as "Consideration." The Ad Panel Fund, Scoreboard Fund and Recycling Fund shall be collectively referred to herein as "Funding."

4. Grant of Beverage Availability and Beverage Merchandising Rights. District hereby grants to Beverage Provider the following exclusive Beverage availability and merchandising rights, subject to the Permitted Exception in Section 7 below:

(a) Beverage Availability on Campus. Beverage Provider shall have the exclusive right to make Beverages available for sale and distribution on Campus. District agrees that Products shall be the exclusive Beverages sold, dispensed, served or sampled at all locations and at all functions on the Campus. District and Beverage Provider acknowledge that District is a part of P.O.W.E.R. Buying Group whereby District may purchase Beverages from US Foodservice; however, District agrees that District and all other persons serving Beverages on Campus, including without limitation concessionaires, food service vendors, teams, and booster clubs, shall purchase all (100%) of their requirements for Products, Approved Cups and carbon dioxide directly from Beverage Provider. In particular, District shall cause each School administration to do the following:

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

**Elementary Schools**

- Bottled water
- Up to 8 ounce servings of milk and 100% juice<sup>1</sup>
  - Low fat and non fat regular and flavored milk (includes nutritionally equivalent milk alternatives (per USDA), such as soy milk) with up to 150 calories per 8-ounce serving
  - 100% juice with no added sweeteners and up to 120 calories per 8-ounce serving

**Middle Schools**

- Same as elementary Schools, except juice and milk may be sold in 10 ounce servings

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<sup>1</sup> For purposes of this Agreement, 100% juice is defined as 100% juice that contains at least 10% of the recommended daily value for three or more vitamins and minerals.

- Notwithstanding the foregoing, however, if middle School and high School students have common access to areas where Beverages are sold on a common Campus or in common buildings, then District has the option to adopt the high School standard below

### **High Schools**

- Bottled water
- No or low calorie Beverages with up to 10 calories per 8-ounce serving
- Up to 12 ounce servings of milk, 100% juice, light juice and sports drinks
  - Low fat and non fat regular and flavored milk with up to 150 calories per 8-ounce serving
  - 100% juice with no added sweeteners and up to 120 calories per 8-ounce serving
  - Light juices and sports drinks with no more than 66 calories per 8-ounce serving
- At least 50% of Beverages on Campus must be water and no or low calorie options

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

(ii) Obtain Beverage vending services from Beverage Provider, which shall have the exclusive right to provide Beverage vending on Campus;

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

(iv) Permit Beverage Provider to place Beverage vending machines in mutually agreed upon locations as required to meet Beverage availability needs on Campus. District agrees to a minimum student to Beverage vending machine ratio of 200:1 in High Schools and 375:1 in Middle Schools;

(v) Permit Beverage Provider to place vending machines in all athletic facilities operated by the District, including the Stadium;

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

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

(i) Trademarks for Products shall be prominently listed on the menu boards of all food refreshment outlets on Campus, such menu boards to be provided by Beverage Provider;

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

5. Signage for Products.

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

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

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

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

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

(d) District agrees to replace all Competitive Product ad panels on the Campus by the end of the first six (6) months of the Term.

7. Permitted Exceptions.

(a) District shall have the right to make available for sale on the Campus: (i) flavored and unflavored milk, as long as Beverage Provider does not distribute a similar product; and (ii) Competitive Products that meet the Alliance for a Healthier Generation Guidelines, as long as Beverage Provider does not distribute a similar Product and District obtains Beverage Provider's prior written agreement.

(b) The food service department shall have the right to operate District owned vending machines only in food service areas where reimbursable meals are consumed. Such vending machines will only contain flavored and unflavored milk and/or District approved Products.

(c) District agrees that the permitted exceptions listed in this Section 7 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 and Delivery. During Agreement Year One, Beverage Provider shall provide Products to District and/or its concessionaires at the prices set forth in **Exhibit A**. During the remainder of the Term,



Beverage Provider shall be entitled to increase prices for Products once per Agreement Year in accordance with **Exhibit B**. Notwithstanding the foregoing, the pricing listed in **Exhibit A** for .5 L Dasani Water for emergency and hurricane situations only is good only for the 2009 calendar year. Beverage Provider may change this pricing from time to time to reflect changes in its costs, including cost of goods, manufacture and delivery.

District and Beverage Provider agree that all Products (including cafeteria, athletics, boosters, concessions and Complimentary Products), with the exception of full service vending, will be delivered to Pasco School District Distribution Services in Land O'Lakes, FL. No delivery of Products will be made to individual Schools or facilities. District agrees that all Product orders must be full pallets (which may consist of mixed Products). District also agrees to a minimum delivery of two hundred (200) cases per delivery. District agrees that all Athletic Department and Booster orders will be conducted through the District Distribution Services. District also agrees that Products for sporting events/concessions will consist of 20 oz CSD, 20 oz Dasani, 20 oz Powerade and 20 oz Vitaminwater.

9. Equipment and Service.

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

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

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

10. Remedies for Loss of Rights.

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

(i) Beverage Provider fails to make any payment due under this Agreement, and if such default continues uncured for the forty-five day period referenced in Section 10(a); or

(ii) Beverage Provider breaches any material term or condition of this Agreement, and if such breach continues uncured for the forty-five day period referenced in Section 10(a).

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

(i) District breaches any material term or condition of this Agreement, and if such breach continues uncured for the forty-five day period referenced in Section 10(b); or

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

(c) Upon termination of this Agreement for any reason before the end of the five (5) year Term, except as set forth in Section 10(a), District will refund any: prepaid Funding pro rated to the date of termination or, if earlier, the date of any default hereunder by District; unearned Advanced Rebates; and a pro rata portion of the cost 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 60,000 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 in addition to any other remedies available to Beverage Provider, Beverage Provider may elect, at its option, to adjust the Consideration to be paid to District for the then remaining portion of the Term (and District will pay to Beverage Provider a pro rata refund of any prepaid amounts and a pro rata refund of the costs of refurbishing and installing the Equipment), or to extend the Term of this Agreement, to reflect the diminution of the value of rights granted hereunder to Beverage Provider. In the event Beverage Provider elects to exercise its right to such adjustment and refund, District may, at its option, within ten (10) days following receipt of notice of any adjustment, notify Beverage Provider of its disagreement with the amount of the adjustment. The parties will then attempt in good faith to resolve the disagreement over such adjustment. If the parties cannot, after good faith negotiations, resolve the matter, Beverage Provider may exercise the right of termination described in Section 10(b) above.

(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.

11. 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:

Florida Coca-Cola Bottling Company  
504 Lake Kathy Drive  
Brandon, FL 33510  
Attention: Business Unit Vice President and General Manager

with a copy to:

Coca-Cola Enterprises Inc.

2500 Windy Ridge Parkway  
Atlanta, Georgia 30339  
Attention: General Counsel

If to District:

Pasco County School District  
7227 Land O' Lakes Boulevard  
Land O' Lakes, FL 32638  
Attention: Superintendent

#### 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, except as noted below, 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. The District currently contracts with Bright House Networks for broadcasting services.

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

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

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

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

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

Assignment. This Agreement or any part hereof shall not be assigned or otherwise transferred by either party without the prior written consent of the other party. Notwithstanding the foregoing, Beverage Provider shall be entitled to assign its rights and obligations under this Agreement pursuant to the sale of substantially all of its assets.

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

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

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

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

Governing Law. This Agreement and any dispute arising out of or relating to this Agreement shall be governed by and construed in accordance with the laws of the State of Florida.

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.

Background Screening Requirements. Beverage Provider agrees that, in accordance with Section 1012.465, Florida Statutes, Beverage Provider will ensure that its employees, agents or subcontractors who, while performing any duties under this Agreement, will be granted access to the Campus at any time when students are present on the Campus undergo all background screening procedures required by Florida law. If any employee, agent or subcontractor of Beverage Provider fails to meet all of the screening requirements required by law, District shall have the right to deny such individual(s) access to the Campus. District is responsible for conducting the fingerprinting/background screening of Beverage Provider’s employees, agent or subcontractors at a location designated by District.

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

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

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

**Beverage Provider:**

**District:**

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

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

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

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

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

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

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

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

**EXHIBIT A**

**Agreement Year One Pricing**

<b>Units Per Case/Product</b>	<b>Price Per Case (Cafeteria, Athletics, Booster)</b>
24/300 ml Dasani Water	\$6.70
24/12 oz Dasani Water	\$6.70
24/20 oz Dasani Water	\$7.45
24/20 oz Dasani Water Flavors	\$7.95
12/18.5 oz Dasani Essence	\$11.00
24/12 oz CSD, Nestea, MMAR Lemonade, MMAR Light	\$7.20
24/20 oz CSD, Nestea, MMAR Lemonade, MMAR Light	\$18.00
8/2 L CSD, Nestea, MMAR Lemonade, MMAR Light	\$9.65
24/10 oz Minute Maid 100% Juices – Orange & Grape	\$11.95
24/10 oz Minute Maid 100% Juices – Apple & Mixed Berry	\$10.95
24/15.2 oz Minute Maid Juices	\$19.67
24/12 oz Fuze	\$11.75
30/12 oz Powerade including Zero	\$10.80
24/20 oz Powerade including Zero	\$12.95
24/12 oz Glaceau Vitaminwater	\$14.25
24/20 oz Glaceau Vitaminwater	\$18.50
12/12 oz V8 Vegetable Juice & V8 Fusion	\$10.35
24/16 oz Monster Energy	\$33.00
24/16 oz Full Throttle Energy	\$33.00

<b>Approved Cups/Lids (units/size)</b>	<b>Price Per Case (Cafeteria, Athletics, Booster)</b>
2000/9 oz Cups	\$71.26
1000/16 oz Cups	\$42.97
1000/24 oz Cups	\$51.35
480/32 oz Cups	\$35.63
2000/16, 24 oz lids	\$33.54
960/32 oz lids	\$25.15

\*Beverage Provider agrees to sell to District .5 L Dasani Water in cases of 24 per unit at a special price of \$5.00/case for emergency and hurricane situations only. This pricing is good only for the 2009 calendar year. This pricing will not be subject to the price increase limitation set forth in Exhibit B. Beverage Provider may change this pricing from time to time to reflect changes in its costs, including cost of goods, manufacture and delivery.

**EXHIBIT B**  
**Price Adjustments**

Beverage Provider shall have the right to increase its prices once per Agreement Year based on the change in the Consumer Price Index (CPI) published by the Bureau of Statistics, U.S. Department of Labor, using Series ID: #CUUR0000SAF114 Not Seasonally Adjusted, Area: U.S. city average, Item: Nonalcoholic beverages and beverage , Base Period: 1982-84=100, using the month of May.

Price adjustments will be calculated by using the simple percentage method of calculation. Calculations shall be according to the U.S. Department of Labor, Bureau of Labor Statistics, Consumer Price Indexes, titles *How to Use the Consumer Price Index for Escalation*, using the latest available version of the Producer Price Index data published for the month of May, final version.

If the Department of Labor should discontinue the above indexes, then an index will be selected that is mutually agreeable to both parties. If no agreement can be reached, then bid/contract will terminate at the end of its current term. The Series ID and/or title of CPI change, the Consumer Price Index – Item and Area shall remain constant.

To illustrate, suppose that the U.S. city average Consumer index was 158.336 the previous year when the base price was set. A year later when the first adjustment is made, the figure is 162.803. This represents an increase of 2.80 in the U.S. city average Consumer Price index as shown.

<b>Series ID #</b>	<b>CUUR0000SAF114</b>	<b>Not Seasonally Adjusted U.S. city average Nonalcoholic beverages and beverage materials</b>
CPI for current period (May, 2009)	162.803	
Less CPI for previous period (May, 2008)	158.336	
Equals index point change	4.467	
Divided by Previous Period CPI	158.336	
Equals	0.028	
Result multiplied by 100	0.028 @ 100	
Equals percent change	2.80%	

This means that the base price should be increased by 2.80. To proceed:

In later years, this procedure would be applied again by taking the current index value and subtracting from it the index value at the time the base price was adjusted, and then proceeding just as described above.

The maximum price escalation for a given year will be 5% per year. Exceptions can be considered with appropriate manufacturer's or wholesaler's documentation, subject to District School Board of Pasco County approval.