

PERRIS UNION HIGH SCHOOL DISTRICT
AGREEMENT FOR EXCLUSIVE VENDING SERVICES

THIS AGREEMENT, made and entered into this 11th day of December 2014, by and between the Perris Union High School District of Riverside County, California hereinafter referred to as "District," and Vending One, hereinafter referred to as "CONTRACTOR".

WITNESSETH:

WHEREAS, it is the desire of the Governing Board of the District to contract with the CONTRACTOR to install, manage, and operate vending machines at all District locations.

WHEREAS, in consideration of the mutual promises of the parties hereto, the District hereby retains the CONTRACTOR upon the terms and conditions set forth, and the CONTRACTOR hereby accepts said retention and agrees to render the services upon said terms and conditions.

1. **TERM:** The duration of this agreement, subject to earlier termination as set forth herein Section 14, shall be for an initial term commencing on December 11th, 2014 and ending June 30th, 2017, with two additional one-year renewal terms, exercisable at the sole discretion of the District.

2. **INCORPORATED DOCUMENTS:** The following documents are attached to and incorporated into this agreement;
I. Proposal – Vending One
II. Perris Union High School District Notice of Request for Proposals for the Exclusive Agreement for Beverages & Food Vending Rights & Services

3. **EXCLUSIVE GRANT:** District grants to CONTRACTOR the exclusive right and privilege to install, operate, and maintain beverage and snack vending machines on District premises including teacher lounges and administrative site, and it is agreed that all sales of snacks and beverages, exclusive of sales by Perris Elementary Nutrition Services, shall be by means of those vending machines installed and operated by the CONTRACTOR. The District shall not permit the sale of such items with the operation of vending machines by any other person, firm, or corporation including the District. All machine locations, items, and pricing, including changes, must be approved by the Director of Nutrition Services.

4. **SCOPE OF SERVICES:** As directed by the District, the CONTRACTOR agrees to the following:

- 4.1 **GENERAL SCOPE:** CONTRACTOR shall install and manage beverage & food vending machines at the following District locations if approved by the Director of Nutrition Services. All machine locations, items, and pricing, including changes, must be approved by the Director of Nutrition Services.
 - 4.1.1 The Academy Community Day School
 - 4.1.2 Student Service Center
 - 4.1.3 California Military Institute
 - 4.1.4 Heritage High School
 - 4.1.5 Paloma Valley High School
 - 4.1.6 Perris High School
 - 4.1.7 Perris Lake High School
 - 4.1.8 Pinacate Middle School
 - 4.1.9 District Administrative Center

- 4.2 **PRICES & PRODUCTS (Student Accessibility):** CONTRACTOR will offer a variety of Healthy Snacks & Beverages in compliance with USDA guidelines and District policies with pricing as follows. All machine locations, items, and pricing, including changes, must be approved by the Director of Nutrition Services.
 - 4.2.1 Gatorade and Powerade, 12oz to 20oz bottles, All flavors: \$1.25-\$1.75
 - 4.2.2 Juices, 12oz can and 20oz bottles, (Apple, Orange, Apple Cranberry, and Grape): \$1.25-\$1.75
 - 4.2.3 Bottled Water, 20oz bottles: \$1.00
 - 4.2.4 Chips, All sizes, All flavors: \$1.00-\$1.25
 - 4.2.5 School Cookies, All flavors: \$1.00-\$1.25
 - 4.2.6 Small Shelf (Granola Bars, Peanuts, etc.), All sizes, All flavors: \$1.00-\$1.25
 - 4.2.7 Power Bars, Z Bars, Specialty Bars, All sizes, All flavors: \$1.00-\$2.00
 - 4.2.8 Snacks (Fruit Snacks, Trail Mix, Pepperidge Farms Goldfish, etc.), All sizes, All flavors: \$1.00-\$1.25

- 4.3 **PRICES & PRODUCTS (Staff/Teacher Lounges - Exempt from USDA guidelines):** In locations not accessible to students the CONTRACTOR will provide traditional snacks and beverages in addition to the healthy snacks & beverages available to the students. Healthy snacks & beverages will be at the same cost as the student accessible pricing with traditional snacks and beverages contained to a reasonable amount at or below suggested retail. All machine locations, items, and pricing, including changes, must be approved by the Director of Nutrition Services.

- 4.4 **COMPETITIVE FOOD SALES –** Pursuant to California Education Code 35182.5(a)(2) the sale of food and beverages in competition with meal programs for students and in order to protect the fiscal and nutritional integrity of the school food service program, all machine locations, items, and pricing, including changes, must be approved by the Director of Nutrition Services.

- 4.5 **COMMISSION CALCULATION –**The CONTRACTOR will pay 32% commission on ALL beverages and foods sold in the CONTRACTOR'S vending machines in the District. Commission checks are to be sent directly to the address below:
 - Perris Union High School District
 - Purchasing Department, Attention: Nick Newkirk
 - 155 East 4th Street

- 4.6 UTILITIES: The District will furnish at its own expense all electricity and water lines used for the operation of the vending machines.
 - 4.6.1 CONTRACTOR'S equipment must be suitable to operate with the existing physical plant layout, utility, and outlet locations, etc.
 - 4.6.2 CONTRACTOR'S equipment should be energy efficient and have timers on machines on sites where students have accessibility.
 - 4.6.3 The District will not be responsible for making any improvements or modifications to the existing areas in order to accommodate the CONTRACTOR'S equipment.
 - 4.6.4 In offering utility hookups and space, the District is not assuming liability for CONTRACTOR'S equipment and/or contents.
- 4.7 DAMAGE & THEFT: CONTRACTOR is responsible for all repairs and/or replacements if the vending machine and/or protective cage is vandalized, damaged, or stolen. CONTRACTOR is responsible for the replacement of any damaged or stolen beverages and/or food.
- 4.8 VENDING EQUIPMENT: All costs to furnish, deliver, install, inventory, stock, secure, maintain, and repair all vending equipment placed in the District shall be borne solely and exclusively by the CONTRACTOR.
- 4.9 DELIVERIES: CONTRACTOR is responsible for ensuring that all delivery drivers adhere to the following protocols:
 - 4.9.1 CONTRACTOR'S employees/delivery drivers must check-in with the front desk at each site prior to entering the site for deliveries.
 - 4.9.2 CONTRACTOR'S employees/delivery drivers are not permitted to drive onto school campuses. All deliveries must be brought in by hand with carts or dollies.
 - 4.9.3 CONTRACTOR'S employees/delivery drivers shall service all machines to ensure that all students and staff have operating machines that are fully stocked. All vending machines must be stocked and examined at least weekly, but more often if requested or deemed necessary by the District or site.
 - 4.9.4 CONTRACTOR'S employees/delivery drivers shall visually inspect all machines, take and record meter readings, remove stale or expired products, re-stock all slots with fresh products, and wipe and clean the machine every time a delivery is made.
 - 4.9.5 CONTRACTOR'S employees/delivery drivers must provide service within 48 hours for non-scheduled deliveries if requested by the District or site.
 - 4.9.6 Delivery hours are between 7:00 a.m. & 4:00 p.m. Monday through Friday, excluding holidays.

5. **MAINTENANCE AND SERVICE:** CONTRACTOR shall furnish all labor, materials, and equipment necessary in the operation of the agreement at their own expense.

- 5.1 CONTRACTOR will service all machines regularly to insure all students and staff have fully stocked machines throughout the day.
- 5.2 CONTRACTOR will visually inspect all machines, clean surrounding area of debris, take and record meter readings, remove stale or expired products, re-stock all slots with fresh products, and wipe and clean machine window.
- 5.3 In the event of machine malfunction and/or repair call, the CONTRACTOR will be on-site within 24 hours. The machine will be repaired or replaced within 48 hours of notification.
- 5.4 Refund money, approximately \$25, will be provided on a weekly basis to each school site, available at the Cashier's office.
- 5.5 CONTRACTOR will service all machines regularly to insure all students and staff have fully stocked machines throughout the day.
- 5.6 CONTRACTOR will visually inspect all machines, clean surrounding area of debris, take and record meter readings, remove stale or expired products, re-stock all slots with fresh products, and wipe and clean machine window.
- 5.7 In the event of machine malfunction and/or repair call, the CONTRACTOR will be on-site within 24 hours. The machine will be repaired or replaced within 48 hours of notification.
- 5.8 Refund money, approximately \$25.00, will be provided on a weekly basis to each school site, available at the Cashier's office.

6. **DISTRICT DESIGNEE:** CONTRACTOR shall provide its Services and Products to the Director of Nutrition Services, who is the District's designee in this matter ("District's Designee"). All Services and Products shall be subject to the approval of District's Designee.

7. **SUBCONTRACTORS:** CONTRACTOR shall hire any subcontractors needed to provide the Services and/or the Products, which subcontractors shall be subject to approval by the District. Any subcontractor(s) shall be at no additional expense to the District, and shall be paid from the CONTRACTOR's own resources and billings.

8. **INDEPENDENT CONTRACTOR:** It is expressly understood and agreed to by both parties hereto that the CONTRACTOR, and any of its employees or subcontractors while engaged in carrying out and complying with any of the terms and conditions of this Agreement, is an independent contractor and is not an officer, agent or employee of the District. CONTRACTOR shall determine the means, method and details of providing the Services and/or the Products. Subject to this Agreement, CONTRACTOR retains the right to provide similar or different Services or Products for others during the term of this Agreement. CONTRACTOR shall pay all wages, salaries, benefits and other amounts due its employees and sub-CONTRACTORS, and shall be responsible for all reports and obligations respecting its employees and sub-CONTRACTORS.

9. **ASSIGNMENT:** CONTRACTOR shall not assign this Agreement or any interests therein without the prior written approval of the District. Any such attempt to assign or sublet this Agreement without District approval shall be invalid.

10. **EXECUTION OF CONTRACT:** CONTRACTOR shall not commence providing Services and/or the Products under this Agreement until it has provided evidence satisfactory to the District that it has secured all insurance required under this section and Exhibit "A". In addition, CONTRACTOR shall not allow any subcontractor to commence work on any subcontract until it has provided evidence satisfactory to the District that the subcontractor has secured all insurance required under this section and Exhibit "A".

11. **INDEMNIFICATION:** CONTRACTOR shall defend, indemnify and hold the District, its officials, officers, employees, volunteers and agents free and harmless from any and all claims, demands, causes of action, costs, expenses, liability, loss, damage or injury, in law or equity, to property or persons, including wrongful death, in any manner arising out of or incident to any alleged acts, omissions or willful misconduct of CONTRACTOR, its officials, officers, employees, agents, CONTRACTORS and contractors arising out of or in connection with the performance of the Services and/or the Products or this Agreement, including without limitation the payment of all consequential damages and attorneys fees and other related costs and expenses. CONTRACTOR shall defend, at CONTRACTOR's own cost, expense and risk, any and all such aforesaid suits, actions or other legal proceedings of every kind that may be brought or instituted against District, its directors, officials, officers, employees, agents or volunteers. CONTRACTOR shall pay and satisfy any judgment, award or decree that may be rendered against District or its directors, officials, officers, employees, agents or volunteers, in any such suit, action or other legal proceeding. CONTRACTOR shall reimburse District and its directors, officials, officers, employees, agents and/or volunteers, for any and all legal expenses and costs incurred by each of them in connection therewith or in enforcing the indemnity herein provided. CONTRACTOR's obligation to indemnify shall not be restricted to insurance proceeds, if any, received by the District, its directors, officials officers, employees, agents or volunteers.

12. **COMPENSATION** CONTRACTOR shall maintain an accurate, verifiable accounting and tracking system acceptable to the District to substantiate commission payments.

12.1 Gross Revenues: CONTRACTOR shall pay thirty-two percent (32%) commission on all beverages and food sold in the District. Commission will be paid monthly on all completed transactions, based on Gross Revenues.

12.1.1 Gross Revenues: Defined as the total revenue earned from all sales of vending products, without any allowance or deduction for operational costs, taxes, equipment charges, or other fees, expenses, or payments to suppliers.

12.1.2 Commission: Commission payments on Gross Revenues for the calendar month shall be paid monthly by the 10th of each month for the prior month's sales. Any balance remaining unpaid upon termination of this agreement shall be paid within twenty-five (25) calendar days after termination date.

13. **CONDUCT:** CONTRACTOR shall provide all Services and Products under this Agreement in a skillful and competent manner. CONTRACTOR represents and warrants that all employees and subcontractors have sufficient skill and experience to perform the Services and/or the Products assigned to them.

14. **TERMINATION**

14.1 **Termination for Cause:** The District may terminate the Contract at any time with written notice if CONTRACTOR:

14.1.1 Fails to supply enough properly skilled or qualified workers or proper equipment to satisfactory complete services as requested.

14.1.2 Fails to supply beverages and/or food frequently enough to meet the District's needs for students and staff.

14.1.2 Disregards laws, ordinances, regulations, or District policies having jurisdiction over the agreement.

14.1.3 Fails to make monthly commission payments to the District or is continuously late with commission payments.

14.1.4 Fails to make payments to suppliers or subcontractors for materials and/or labor in accordance with respective agreements between the contractor and subcontractor.

14.1.5 Employees commit a serious breach of facility security rules or frequent breaches of facility security rules.

14.1.6 Otherwise commits a substantial breach of any provision of the agreement.

14.2 **By Mutual Agreement:** Upon receipt and acceptance of not less than 90 calendar days written notice, the contract may be terminated on an agreed upon date, prior to the end of the contract period, without penalty to either party.

14.2.1 Upon any such termination, the CONTRACTOR agrees to waive any claims for damages, including loss of anticipated profits. CONTRACT shall pay District full commission amount due as a result of all vending transactions properly completed using the equipment placed on District property to the date of termination and not previously paid to the District.

14.2.2 Upon such termination, the obligations of the contract shall continue as to options of the work already performed and as to bona fide obligations CONTRACTOR assumed prior to the date of termination.

15. **AUTHORITY:** In accordance with California Education Code Section 17604, this Agreement is not valid or an enforceable obligation against the District until approved or ratified by motion of the Governing Board duly passed and adopted.

16. **ENTIRE AGREEMENT:** It is understood and agreed that this Agreement sets forth the entire understanding of the parties regarding the subject matter thereof, and no modification or amendment to this Agreement shall be binding unless said modification or amendment is in writing and duly executed with the same formality as this Agreement itself. This Agreement shall be binding on the successors and assigns of the parties.

17. **NOTICES:** Any notice required to be given by the terms of this agreement shall be deemed to have been given when the same is personally served, faxed, or three days after sending when sent by certified, express, or overnight, postage prepaid, and addressed to the respective parties as follows:

DISTRICT:

Nick Newkirk, Purchasing Agent
Perris Union High School District
155 E 4th Street
Perris, CA 92570
Phone: (951) 943-6369 ext 80231
Fax: (951) 657-5638

CONTRACTOR:

Barry Rosenberg
Vending One
PO Box 4303
West Hills, CA 91308
Phone: (818) 989-4466
Email: barry@vendingone.com

18. **PERMITS & LICENSES:** CONTRACTOR shall, during the term of this Agreement, obtain and maintain all licenses, certificates, permits and approvals of whatever nature that are legally required to provide the Services and/or Products.

19. **GOVERNING LAW:** This Agreement shall be governed by the laws of the State of California.

20. **COMPLIANCE:** CONTRACTOR shall keep itself fully informed of and in compliance with all local, state and federal laws, rules and regulations in any manner affecting the provision of the Services and/or the Products, including all Cal/OSHA requirements, and shall give all notices required by law. CONTRACTOR shall be liable for all violations of such laws and regulations in connection with providing the Services and/or the Products. If the CONTRACTOR performs any work knowing it to be contrary to such laws, rules and regulations and without giving written notice to the District, CONTRACTOR shall be solely responsible for all costs arising therefrom. CONTRACTOR shall defend, indemnify and hold District, its officials, directors, officers, employees and agents free and harmless, pursuant to the indemnification provisions of this Agreement, from any claim or liability arising out of any failure or alleged failure to comply with such laws, rules or regulations.

21. **RECORDS:** CONTRACTOR shall maintain complete and accurate records with respect to all sales and commissions paid under this Agreement. A separate accounting record will be kept for each location and shall separately designate the revenue, quantity and products sold. All such records shall be clearly identifiable. A summary report for each one (1) month period, from commencement of the term of the contract shall be submitted to the District Designee on a monthly basis by the 10th of each month for the prior month's sales.

CONTRACTOR shall allow a representative of District during normal business hours to examine, audit, and make transcripts or copies of such records and any other documents created pursuant to this Agreement. CONTRACTOR shall allow inspection of all work, data, documents, proceedings, and activities related to the Agreement for a period of three (3) years from the date of final payment under this Agreement.

22. **FINGERPRINTING:** This contract is subject to the provisions of Education Code Section 45125.1. CONTRACTORS' employees are required to submit fingerprints to the Department of Justice where an employee may come into contact with students at any site. The Department of Justice will ascertain whether the employee has a pending criminal proceeding for a violent or serious felony or has been convicted of a violent or serious felony as they are defined in Penal Code Sections 667.5c and 1192.7c respectively. CONTRACTOR shall not permit an employee to come in contact with students until the Department of Justice has ascertained that the employee has not been convicted of a felony as defined in Education Code Section 45122.1. CONTRACTOR shall certify in writing to the District that none of its employees who may come in contact with students have been convicted of a felony as defined in Education Code Section 45122.2. District may request the removal of an employee from a site at any time. Failure to comply with this provision may result in termination of the Contract.

23. **NONDISCRIMINATION:** It is the policy of the District that in connection with all work performed under contracts, there be no discrimination against any prospective or active employee engaged in the work because of race, color, ancestry, national origin, religious creed, sex, age, or marital status. Each Contractor agrees to comply with applicable Federal and California laws including, but not limited to, The California Fair Employment Practice Act, beginning with Government Code Section 12900, Labor Code Section 1735, and Title 5, Division 1, Chapter 1, Subchapter 4 of the California Code of Regulations. In addition, each Contractor agrees to require like compliance by any subcontractors employed on the work by him.

24. **WORKERS' COMPENSATION:** In accordance with the provisions of Section 3700 of the Labor Code, Contractor shall secure the payment of compensation to his employees.

25. **WAIVER:** No waiver of any default shall constitute a waiver of any other default or breach, whether of the same or other covenant or condition. No waiver, benefit, privilege, or service voluntarily given or performed by a party shall give the other party any contractual rights by custom, estoppel, or otherwise.

CONTRACTOR has all requisite power and authority to conduct its business and to execute, deliver, and perform the Agreement. Each party warrants that the individuals who have signed this Agreement have the legal power, right, and authority to make this Agreement and bind each respective party.

IN WITNESS THEREOF, the parties hereto have executed this Agreement on the date written above:

type or print CONTRACTOR's name

Perris Union High School District

CONTRACTOR's Signature

By: _____

address

Title: _____ Date: _____

city state zip

Board Approval Date: _____

phone fax

EXHIBIT "A"

Insurance Requirements

A. Minimum Requirements. CONTRACTOR shall, at its expense, procure and maintain for the duration of this Agreement insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the Agreement by the CONTRACTOR, its agents, representatives, employees or subcontractors. CONTRACTOR shall also require all of its subcontractors to procure and maintain the same insurance for the duration of the Agreement. Such insurance shall meet at least the following minimum levels of coverage:

B. Minimum Scope of Insurance. Coverage shall be at least as broad as the latest version of the following: (A) *General Liability*: Insurance Services Office Commercial General Liability coverage (occurrence form CG 0001); (B) *Automobile Liability*: Insurance Services Office Business Auto Coverage form number CA 0001, code 1 (any auto); and (C) *Workers' Compensation and Employers' Liability*: Workers' Compensation insurance as required by the State of California and Employer's Liability Insurance.

C. Minimum Limits of Insurance. CONTRACTOR shall maintain limits no less than: (A) *General Liability*: \$1,000,000 per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability Insurance or other form with general aggregate limit is used, either the general aggregate limit shall apply separately to this Agreement/location or the general aggregate limit shall be twice the required occurrence limit; (B) *Automobile Liability*: \$1,000,000 per accident for bodily injury and property damage; and (C) *Workers' Compensation and Employer's Liability*: Workers' compensation limits as required by the Labor Code of the State of California. Employers Liability limits of \$1,000,000 per accident for bodily injury or disease.

D. Professional Liability.[INCLUDE IF APPLICABLE] CONTRACTOR shall procure and maintain, and require its sub-CONTRACTORS to procure and maintain errors and omissions liability insurance appropriate to their profession. Such insurance shall be in an amount not less than \$1,000,000 per claim, and shall be endorsed to include contractual liability.

E. Insurance Endorsements. The insurance policies shall contain the following provisions, or CONTRACTOR shall provide endorsements on forms supplied or approved by the District to add the following provisions to the insurance policies:

(1) General Liability. The general liability policy shall be endorsed to state that: (A) the District, its directors, officials, officers, employees, agents and volunteers shall be covered as additional insured with respect to the Services and/or the Products or operations performed by or on behalf of the CONTRACTOR, including materials, parts or equipment furnished in connection with such work; and (B) the insurance coverage shall be primary insurance as respects the District, its directors, officials, officers, employees, agents and volunteers, or if excess, shall stand in an unbroken chain of coverage excess of the CONTRACTOR's scheduled underlying coverage. Any insurance or self-insurance maintained by the District, its directors, officials, officers, employees, agents and volunteers shall be excess of the CONTRACTOR's insurance and shall not be called upon to contribute with it.

(2) Automobile Liability. The automobile liability policy shall be endorsed to state that: (A) the District, its directors, officials, officers, employees, agents and volunteers shall be covered as additional insureds with respect to the ownership, operation, maintenance, use, loading or unloading of any auto owned, leased, hired or borrowed by the CONTRACTOR or for which the CONTRACTOR is responsible; and (B) the insurance coverage shall be primary insurance as respects the District, its directors, officials, officers, employees, agents and volunteers, or if excess, shall stand in an unbroken chain of coverage excess of the CONTRACTOR's scheduled underlying coverage. Any insurance or self-insurance maintained by the District, its directors, officials, officers, employees, agents and volunteers shall be excess of the CONTRACTOR's insurance and shall not be called upon to contribute with it.

(3) Workers' Compensation and Employers Liability Coverage. The insurer shall agree to waive all rights of subrogation against the District, its directors, officials, officers, employees, agents and volunteers for losses paid under the terms of the insurance policy which arise from work performed by the CONTRACTOR.

(4) All Coverages. Each insurance policy required by this Agreement shall be endorsed to state that: (A) coverage shall not be suspended, voided, reduced or canceled except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to the District; and (B) any failure to comply with reporting or other provisions of the policies, including breaches of warranties, shall not affect coverage provided to the District, its directors, officials, officers, employees, agents and volunteers.

F. Other Requirements. All insurance required by this Section shall contain standard separation of insureds provisions. In addition, such insurance shall not contain any special limitations on the scope of protection afforded to the District, its directors, officials, officers, employees, agents and volunteers. Any deductibles or self-insured retentions must be declared to and approved by the District. CONTRACTOR shall guarantee that, at the option of the District, either: (A) the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the District, its directors, officials, officers, employees, agents and volunteers; or (B) the CONTRACTOR shall procure a bond guaranteeing payment of losses and related investigation costs, claims and administrative and defense expenses. Insurance is to be placed with insurers with a current A.M. Best's rating no less than A:VIII, licensed to do business in California, and satisfactory to the District. CONTRACTOR shall furnish District with original certificates of insurance and endorsements effecting coverage required by this Agreement on forms satisfactory to the District. The certificates and endorsements for each insurance policy shall be signed by a person authorized by that insurer to bind coverage on its behalf, and shall be on forms provided by the District if requested. All certificates and endorsements must be received and approved by the District before work commences. The District reserves the right to require complete, certified copies of all required insurance policies, at any time.