

AGREEMENT
VENDING SERVICE AND EQUIPMENT
(Revised June 5, 2023)

The Killeen Independent School District, on behalf of the following campus or department:

_____ (Referred to herein as "CAMPUS/DEPARTMENT" or "KISD"), agrees to permit _____ Bottler or Vendor, herein referred to as "BOTTLER/VENDOR", to place vending equipment described herein as "Equipment" on their respective CAMPUS/DEPARTMENT premises. BOTTLER/VENDOR shall stock the equipment, collect all proceeds from the sale of product, and remit to respective CAMPUS/DEPARTMENT identified in signature block, the commission set forth herein. This Agreement is nonexclusive. CAMPUS/DEPARTMENT reserves the right to enter into an Agreement with other vendors at any time during the term of this Contract.

1. Deliverer, Installation, Repair, and Maintenance:

- a. BOTTLER/VENDOR shall deliver, install, repair, and maintain (parts and labor) equipment at no charge to CAMPUS/DEPARTMENT.
- b. CAMPUS/DEPARTMENT shall provide necessary service connections and shall be responsible for any physical alterations to the premises deemed necessary by CAMPUS/DEPARTMENT.
- c. BOTTLER/VENDOR shall maintain and repair or replace the equipment. CAMPUS/DEPARTMENT will allow the BOTTLER/VENDOR to enter its premises for the purpose of inspection or performance of maintenance, repair, replacement, and/or return of equipment during normal operating hours of CAMPUS/DEPARTMENT facility.
- d. BOTTLER/VENDOR must complete the following forms below. **These forms must be completed prior to the start of any work each school year.**

- i. **Non-Collusion Affidavit/Suspension Debarment;**
- ii. **HB 1295 Certificate of Interested Parties;**
- iii. **Felony Conviction Notification- FCN**
- iv. **Conflict of Interest Questionnaire-CIQ**

All BOTTLER/VENDOR will report to the front office of the CAMPUS/DEPARTMENT before entering any KISD facility. It will be to the CAMPUS/DEPARTMENT'S discretion to have the BOTTLER/VENDOR escorted to each piece of equipment by a KISD official while at their property. Failure to adhere to this requirement may result in termination of this agreement either at that respective CAMPUS/DEPARTMENT or all KISD facilities.

- e. BOTTLER/VENDOR's personnel will at all times be dressed in clean, neat uniforms, and will observe all regulations in effect at the premises. BOTTLER/VENDOR shall not retain at the premises any employee not acceptable to CAMPUS/DEPARTMENT. CAMPUS/DEPARTMENT agrees to furnish BOTTLER/VENDOR's personnel with any necessary identification passes required for entrance to or exit from the described premises at all reasonable times. CAMPUS/DEPARTMENT shall not impose any regulations on the BOTTLER/VENDOR's employees not imposed on CAMPUS/DEPARTMENT's employees. BOTTLER/VENDOR agrees that its employees

and agents shall comply with and observe all applicable rules, instructions, regulations, and codes of conduct specified by CAMPUS/DEPARTMENT. CAMPUS/DEPARTMENT reserves the right to refuse to admit any employee or agent of BOTTLER/VENDOR whose conduct or actions endanger the safety of CAMPUS/DEPARTMENT's employees or the security of the premises. BOTTLER/VENDOR shall be responsible for all of its employees or agents' behavior and actions while conducting work on behalf of the BOTTLER/VENDOR.

- f. Title to equipment shall remain with BOTTLER/VENDOR.
- g. CAMPUS/DEPARTMENT agrees to exercise reasonable care to ensure (a) no logo, advertisement, or other indication of BOTTLER/VENDOR's ownership of the equipment shall be obstructed, defaced or removed and no other logo or advertisement shall be attached to the equipment, and (b) the equipment shall not be routinely obstructed, moved, or removed without the prior consent of BOTTLER/VENDOR.
- h. BOTTLER/VENDOR shall provide vending products that are fresh, wholesome, sanitary, and of varied selection. BOTTLER/VENDOR shall refund promptly to any customer money paid for which no product was received or for which an inferior, spoiled, or outdated product was received. The reimbursement program must be approved by the CAMPUS/DEPARTMENT. BOTTLER/VENDOR shall operate and maintain all equipment in a clean, sanitary condition in accordance with recognized standards for such equipment and in accordance with all laws, ordinances, regulations, and rules of Federal, State, and local authorities. BOTTLER/VENDOR shall transport all vending products in dedicated food service vehicles maintained in a clean, sanitary, and at the proper food storage temperature. CAMPUS/DEPARTMENT will keep the areas in which the equipment is located and all service areas in a clean and sanitary condition.
- i. CAMPUS/DEPARTMENT shall use the equipment in the manner for which it was designed and intended.
- j. BOTTLER/VENDOR shall be solely responsible for the payment of wages, salaries, benefits, and other amounts due to its employees and agents. BOTTLER/VENDOR is not an employee of District, and is not entitled to fringe benefits, pension, workers compensation, retirement or unemployment compensation. No member of the KISD Board of Trustees has a direct or indirect financial interest in the transaction that is the subject of this Agreement.

2. Commission:

- a. The BOTTLER/VENDOR shall pay to CAMPUS/DEPARTMENT commissions on sales through the equipment in accordance with rate identified herein or on an attachment if various products with varying rates are involved.
- b. The commission rate will be: (check one)
 - [] _____% of gross sales based on a vend price of _____. This rate is effective for _____ months (not to exceed 12 months).
 - [] _____% of gross sales of case lots based on a vend price of _____ and a case price of _____ (basis for %). This rate is effective for _____ months (not to exceed 12 months).

Other:

- (1) If BOTTLER/VENDOR offers commission based on % of profit, “profit” must be defined (e.g., gross, net, before taxes, after taxes, etc.) and a means to determine/verify the profit such as quarterly financial statements must be made available upon request.
- (2) The commission rate and vend price may be changed by mutual agreement at the end of this agreement period, prior to the start of a new agreement. A new contract shall be drafted and agreed to for the new commission rate, whether the contract has ended or new rates are agreed to at any time during the agreed to term.
- (3) Commissions due shall be paid to CAMPUS/DEPARTMENT as follows unless the agreement is terminated prior to the ending date: (check one)

On or before the 5th day of the month following the month in which the sales are made (i.e., commission on sales in February are due NLT April 5th).

Three times per year. Payment dates will be NLT Sep. 20, Jan. 20, and May 20. Payments will be for sales achieved during the four months previous to the payment dates (i.e., sales in May, June, July, and August will have commissions paid NLT Sep. 20).

Quarterly. Payments will be made NLT Sep. 20, Dec. 20, Mar. 20, and June 20. Payments will be for sales achieved during the calendar quarter previous to the payment dates (i.e., sales in June, July, August will have commissions paid NLT Sep. 20)

Other:

3. Disclaimer of Warranties:

- a. CAMPUS/DEPARTMENT acknowledges that BOTTLER/VENDOR may not be the manufacturer or supplier or dealer of the equipment.
- b. The BOTTLER/VENDOR warrants that it will maintain the equipment in accordance with paragraphs 2.c. and 5.d. The BOTTLER/VENDOR makes no representations or warranties of any kind and expressly disclaims any implied warranties as to the design or construction of the equipment.

4. Liability and Indemnity:

- a. CAMPUS/DEPARTMENT shall not willfully or intentionally damage, destroy, or remove the equipment.
- b. BOTTLER/VENDOR agrees to and shall indemnify and hold harmless KISD, and their officers, agents, and employees, from and against any and all claims, losses, damages, causes of action, suits, and liability of every kind, including all expenses of litigation, court costs, and attorney's fees, for injury to or death of any person, or for damage to any property arising out of or in connection with the equipment and/or products furnished under this agreement regardless of whether or not the claim resulted in whole or in part from the negligence of CAMPUS/DEPARTMENT.
- c. CAMPUS/DEPARTMENT shall not be required to provide insurance to cover loss, damage, or destruction to the equipment.
- d. BOTTLER/VENDOR shall repair or replace damaged/loss equipment within two (2) weeks of notification of damage/loss at no cost to KISD.

5. Legal Compliance:

BOTTLER/VENDOR must comply with all federal, state, and local statutes including, but not limited to, the following:

- a. Contract Work Hours and Safety Standard Act, Section 103 and 107 (40 U.S.C.327-330)
- b. Equal Employment Opportunity Act
- c. Energy Policy and Conservation Act (P.L. 94-163)
- d. Affirmative Action Laws.
- e. BOTTLER/VENDOR will operate their business in full compliance with all federal, state, and city regulations relating to vending and the handling of food.
- f. All required Federal, State or local licenses shall be obtained by BOTTLER/VENDOR, who agrees to reimburse CAMPUS/DEPARTMENT for any penalties or necessary expense due to BOTTLER/VENDOR's failure to obtain any of the required licenses.
- g. Israel/Terrorist Organization/Anti-Boycott/Discrimination

Pursuant to Texas Government Code Chapter 2271, the BOTTLER/VENDOR represents and warrants to the CAMPUS/DEPARTMENT that the BOTTLER/VENDOR does not boycott Israel and will not boycott Israel during the term of this Agreement.

BOTTLER/VENDOR verifies and affirms that it is not a foreign terrorist organization as identified on the list prepared and maintained by the Texas Comptroller of Public Accounts. If BOTTLER/VENDOR has misrepresented its inclusion on the Comptroller's list such omission or misrepresentation will void this Agreement.

The BOTTLER/VENDOR represents and warrants to the CAMPUS/DEPARTMENT that the BOTTLER/VENDOR does not boycott energy companies as contemplated by Chapter 809 of the Government Code and will not boycott energy companies during the term of this Agreement.

The BOTTLER/VENDOR represents and warrants to the CAMPUS/DEPARTMENT that the Contractor does not discriminate against firearm and ammunition companies and

trade associations as contemplated by Chapter 2274 of the Government Code and will not so discriminate during the term of this Agreement.

h. Fingerprinting/Criminal Background Checks

BOTTLER/VENDOR understands that criminal background checks of its employees may be required by law, including, without limitation, provisions of the Texas Education Code, before the commencement of any work under this Agreement, when the work will take place at a school or will result in direct contact with one (1) or more students. Killeen ISD reserves the right to require all such legally required background checks or to conduct such checks itself, and BOTTLER/VENDOR agrees to fully cooperate to ensure all fingerprints and other information are provided by its employees and to pay all fees associated with any such background checks. BOTTLER/VENDOR further understands that the findings of one (1) or more criminal background checks could result in Killeen ISD terminating or electing not to renew this Agreement in compliance with Section 15 of this Agreement. Killeen ISD shall comply with all applicable laws regarding criminal background checks and reports of criminal convictions, including, without limitation, all such requirements under the Texas Education Code.

6. Insurance:

BOTTLER/VENDOR shall, at its own expense, provide and maintain insurance in a company rated no less than "A" by A.M. Best and Company, and in a company licensed to sell insurance as an "admitted carrier" in the State of Texas. Said insurance shall be evidenced by a Certificate of Insurance, delivered to the KISD Risk Management office (254) 336-0068, or its designated representative, indicating the limits of coverage, and naming the Killeen Independent School District as an additional named insured on all policies. Coverage and limits of liability shall be as follows.

Workers' Compensation	Statutory Employers' Liability –
B.I. by accident	\$500,000/accident
B.I. by disease	\$500,000/person
B.I. by disease	\$500,000/aggregate
General Liability	\$600,000/aggregate \$600,000/products/comp. op. \$300,000/personal injury/advertising \$300,000/per occurrence \$100,000/fire damage \$ 10,000/medical expense
Automobile Liability	
Bodily Injury	\$100,000/per person \$300,000/per accident
Property Damage	\$100,000/per accident

Or
Combined Single Limit \$500,000/per accident
Hired & Non-Owned Auto same limit as owned autos

BOTTLER/VENDOR must furnish a certificate of insurance acceptable to KISD Risk Management office before starting work. The certificate shall contain a provision that coverage afforded under the policies will not be canceled. BOTTLER/VENDOR shall notify CAMPUS/DEPARTMENT in writing, at least thirty (30) days prior to any cancellation of insurance. Insurance must remain in effect for the duration of this contract.

7. Term and Return of Equipment:

- a. This agreement shall become effective upon execution by both parties.
- b. For the initial agreement, BOTTLER/VENDOR will have equipment installed and operational within two (2) weeks of the date of agreement.
- c. Upon expiration/termination of agreement, BOTTLER/VENDOR shall remove equipment from CAMPUS/DEPARTMENT's premises within two (2) weeks.
- d. If BOTTLER/VENDOR fails to remove its property and effects upon termination of this agreement, within a reasonable time, KISD shall have the right to consider said property abandoned and to remove or otherwise dispose and store all of said property and effects at the expense of BOTTLER/VENDOR.

8. Termination/Expiration:

- a. Vending agreements are intended to be effective during the school year, i.e., start on August 1 and end on July 31. Agreements may expire prior to their expiration dates if terminated in accordance with terms/clauses listed elsewhere in this agreement.
- b. Either party may terminate this agreement for convenience, with or without cause, upon thirty (30) days written notice to the other party.
- c. This agreement may be terminated immediately upon written notice after a material breach of the agreement by the other party, provided that the defaulting party is first notified in writing of the breach and is provided with a fifteen (15) day period to cure.
- d. BOTTLER/VENDOR shall remove the equipment from the CAMPUS/DEPARTMENT premises within two (2) weeks of the expiration or termination of this agreement, whichever occurs first.

9. Equipment:

Equipment for this agreement is specifically identified as follows:

- a. _____ New _____ Used
- b. Type of equipment:

c. Make/Model/SN:

d. Type Product (Coke, Dr. Pepper, Ice Cream Sandwiches, etc.):

10. Assignment, Integration, and Amendment:

Neither CAMPUS/DEPARTMENT nor BOTTLER/VENDOR shall, without prior written consent to the other party, assign any rights or delegate any duties under this agreement. The terms and conditions herein constitute the entire agreement between the parties. Any waivers/modifications shall not be enforceable unless in writing and signed by both parties.

11. Records Access:

If BOTTLER/VENDOR offers commission rate based on profit, BOTTLER/VENDOR agrees to immediately (within 30 days) provide to CAMPUS/DEPARTMENT or its duly authorized representatives access to any books, documents, papers, and records of the BOTTLER/VENDOR which may be pertinent to this agreement for the purpose of making audit examination, excerpts, and transcriptions to determine profit.

12. Mediation:

If a dispute arises out of or relates to this Agreement, or its alleged breach, and if that dispute has not been settled through direct discussions within a reasonable period, except in the event that mediation would pose a hardship on either of the Parties or cause a Party to lose substantial rights under this Agreement or under Applicable Law, the Parties agree to mediate the dispute prior to resorting to litigation. The Parties will agree on a mediator and shall share in the expenses of mediation. Mediation shall not be subject to the American Arbitration Association rules or any similar rules or procedures except as may be agreed to by the Parties at the time of mediation. The CAMPUS/DEPARTMENT expressly rejects any binding dispute resolution except for suit through a court of competent jurisdiction. At all times during the course of any dispute resolution process, the BOTTLER/VENDOR shall continue diligently and without delay to perform the services and obligations of the Agreement.

13. Governing Law:

- a. This Agreement shall be construed and governed in accordance with the laws of the State of Texas without regard to its choice of law provisions. Both parties agree that the venue for any litigation arising from this contract shall lie in Bell County, Texas.
- b. In case any provision of this Agreement should, for any reason, be held invalid or

unenforceable in any respect, the invalidity or unenforceability will not affect any other provision of this Agreement, and this Agreement will be construed as if the invalid or unenforceable provision had not been included.

- c. This Agreement, including attachments, all of which are incorporated by reference, constitutes the entire understanding and agreement of the parties, whether written or oral, with respect to the subject matter and supersedes all prior and contemporaneous agreements or understandings between the parties. Unless an agreement is made, in writing, that alters this page, for any query brought forward questioning the order of precedence relating to any written agreements between the parties, this contract will supersede all others including any attachments.
- d. If the performance of any term or provision of this agreement by BOTTLER/VENDOR or CAMPUS/DEPARTMENT is prevented, hindered or delayed by reason of an act of God, war, strike or insurrection beyond the control of the parties ("Force Majeure"), the party affected shall be excused from such performance on a reasonable and equitable basis to the extent that any such cause prevents or delays its performance. The party claiming to be affected by any such event shall give detailed written notice to the other parties within a reasonable time after the happening thereof of the nature and extent of any Force Majeure conditions.

IN WITNESS WHEREOF, Killeen Independent School District and BOTTLER/VENDOR have executed this contract, effective on the earliest date of execution.

DATE: _____

DATE: _____

BOTTLER/VENDOR: _____

CAMPUS/DEPARTMENT: _____

ADDRESS: _____

ADDRESS: _____

BY: _____
(Printed Name)

BY: _____
(Printed Name)

Title: _____

Title: _____

Signature: _____

Signature: _____