

BEVERAGE PROVIDER AGREEMENT

This agreement (the “**Agreement**”) is made by and between Coca-Cola Enterprises Inc. d/b/a Coca-Cola Bottling Company of New York, a Delaware corporation (“**Beverage Provider**”), and the Middletown Township School District, having its principal place of business at 63 Tindall Road, Middletown, NJ 07737 (“**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 Middletown Township School District (“**Schools**”) and with respect to all other facilities owned or operated by the District.

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

1. Definitions.

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

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

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

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

(e) “Concessionaire” means any third party providing services under contract with District on Campus or to Team that directly or indirectly relates to the service of Beverages.

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

(g) “Stadium” shall mean all athletic facilities owned or operated by District 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 as of November 1, 2009 (“Term”), unless mutually extended by written Agreement of the parties or unless sooner terminated as provided herein. Effective at the end of each full Agreement Year, either party shall have the right to terminate this Agreement, without cause, by giving the other party sixty (60) days advance written notice.

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) Scholarship Funding. Each Agreement Year, Beverage Provider agrees to pay District Ten Thousand Dollars (\$10,000), for an aggregate of Fifty Thousand Dollars (\$50,000) to support District’s scholarships (the “**Scholarship Funding**”). The Scholarship Funding will be paid within thirty (30) days after the completion of each Agreement Year.

(b) Rebates. Beverage Provider will pay District a rebate of One Dollar and Fifty Cents (\$1.50) for each standard physical case of Product, as listed on Exhibit A, purchased and paid for by District for sale on the Campus during the Term (“Rebates”). The Rebates shall be paid quarterly, in arrears, within thirty (30) days of the end of each applicable three-month period in which the Rebate was earned, and will be based on Beverage Provider’s case sales records. Rebates shall not be earned for sales of Products through Beverage Provider’s full service vending machines.

(c) Commissions. Beverage Provider shall pay the District commissions on full-service Beverage vending sales based on the following rates and initial vend prices. Commissions will be paid on full-service vending machines located in the student vending areas only:

Faculty locations:

<u>Product</u>	<u>Vend Price</u>	<u>Commissions</u>
20 oz. carbonated	\$1.00	0%
20 oz. Dasani	\$1.00	0%

Student locations (if placed):

<u>Product</u>	<u>Vend Price</u>	<u>Commissions</u>
20 oz. Dasani	\$1.25	15%
12 oz. glaceau Vitaminwater	\$1.50	20%
12 oz. Powerade	\$1.25	15%

Commissions are paid based upon cash collected, after deducting taxes, recycling fees, other government-mandated fees, communication charges and credit and debit card fees, if any.

Commissions shall not be payable on any sales from vending machines not filled or serviced by Beverage Provider. Vend prices and packages shall be in effect for Agreement Year 1. Beverage Provider may adjust the vend prices and/or commission rates on an annual basis as necessary to reflect changes in its costs, including cost of goods. Commissions will be paid quarterly, in arrears, after end of each three-month period with an accounting of all sales and monies.

4. Grant of Beverage Availability and Beverage Merchandising Rights. District hereby grants to Beverage Provider the following exclusive Beverage availability and merchandising rights:

(a) Beverage Availability on Campus. Beverage Provider shall have the exclusive right to make Beverages available for sale and distribution on 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 agrees that District and all other persons serving Beverages on Campus, including without limitation Concessionaires, Teams, and booster clubs, shall purchase all (100%) of their requirements for Products, Approved Cups and carbon dioxide 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% juice¹
 - 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
- 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

¹ 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.

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 a minimum of twenty (20) Beverage vending machines in mutually agreed upon locations as required to meet Beverage availability needs on Campus;

(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 plastic bottles (currently twenty-ounce) 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. Trademarks for Products shall be prominently listed on the menu boards of all food refreshment outlets on Campus.

5. Signage for Products.

Beverage Provider shall be entitled to signage locations as selected by Beverage Provider at the Schools and athletic facilities, 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. 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.

7. Pricing. During Agreement Year one, Beverage Provider shall provide Beverages to District at the prices set forth in **Exhibit A**. Thereafter, such prices are subject to price increases of no more than four percent (4%) over the previous Agreement Year's prices, except in the event of an increase in a component of Beverage Provider's cost of goods, manufacture or delivery, in which case Beverage Provider may increase prices to cover such increased costs. Annual price increases shall occur automatically on October 1.

8. Concessionaires. If, during the Term, District elects to contract with a Concessionaire, District will cause Concessionaire to purchase from Beverage Provider all requirements for Products, Approved Cups, lids and carbon dioxide, as applicable. Such purchases will be made at prices and on terms set forth in Beverage Provider's existing agreement with such Concessionaire, if any. If no agreement exists between Concessionaire and Beverage Provider, such purchases will be made at prices and on terms set forth in this Agreement. District acknowledges that there will be no duplication of allowances, funding or benefits (including pricing) to District or a Concessionaire if such Concessionaire has an existing agreement with Beverage Provider. If such Concessionaire requires Beverage Provider to pay Concessionaire funding or to provide Products pursuant to prices under the separate agreement with Concessionaire, then District agrees that Beverage Provider may deduct such duplicate funding and lost margin on such lower cost Products paid or sold to Concessionaire from any payment made by Beverage Provider to District.

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 electric 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, (iv) District will not encumber the Equipment in any manner or permit any attachment thereto except as authorized by Beverage Provider for the Equipment, and (v) District will be responsible to Beverage Provider for any loss or damage to the Equipment, reasonable wear and tear excepted.

(c) Beverage Provider will provide District with reasonable, free service to its Equipment. All equipment service will be provided during normal 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; or

(iii) Any material component of the Campus is closed for a period of one hundred twenty (120) days or more.

(c) Upon termination of this Agreement for any reason, except as set forth in Section 10(a), District will refund 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 five thousand student/staff 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 any event is 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 Scholarship Funding, Rebates and Commissions 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 Scholarship Funding, Rebates or Commissions 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:

Coca-Cola Bottling Company of New York
704 Route 35 N.
Neptune, NJ 07753
Attention: Harold McCabe On Premise Sales Manager

with a copy to:

Coca-Cola Enterprises Inc.
2500 Windy Ridge Parkway
Atlanta, Georgia 30339
Attention: General Counsel

If to District:

Middletown Board of Education
63 Tindall Road
Middletown, NJ 07737
Attention: Bill Doering

TERMS AND CONDITIONS

Representations, Warranties and Covenants

(a) Representations, Warranties and Covenants of District. District represents, warrants and covenants to Beverage Provider as follows:

(i) District Authority. District has full power and authority to enter into this Agreement and to grant and convey to Beverage Provider the rights set forth herein.

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

(iii) No Conflict With Other Agreements. District has not entered into, and during the Term of this Agreement, will not enter into (a) any other agreements (including agreements with any broadcaster or any other Beverage providers of the Campus, Schools, Stadium and/or the Teams) which would prevent it from fully complying with the provisions of this Agreement or (b) any agreement granting Beverage availability and merchandising rights that are inconsistent with the rights granted to Beverage Provider pursuant to this Agreement, including any agreements with Concessionaires or third party food service operators, vending companies, boosters, parents and student groups, and/or other entities which sell, distribute or advertise Beverages and/or food (including agreements with broadcasters or other Beverage Providers of the Campus, Schools, Stadium and/or the Teams). District further covenants that it will require compliance with the relevant provisions of this Agreement by third party food service operators, vending companies, Concessionaires, boosters, parent and student groups, and/or other entities which sell, distribute or advertise Beverages and/or food on the Campus, or which sponsor events on the Campus.

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

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

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

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

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

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 New Jersey.

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.

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
Pricing

<u>Product</u>	<u>Price per case</u>
20 oz PET - carbonated	\$18.20
20 oz Wide PET - glaceau VitaminWater	\$24.96
20 oz PET - Dasani	\$12.75
20 oz Wide PET - Powerade	\$18.20