



February 7, 2023

Muckrock News
Dept MR 139235
263 Huntington Ave.
Boston, MA 02115

Ms. Henson,

CNM is in receipt of your public records request and the responsive records are included in this document.

Regards,

CNM Records Custodian

AMENDMENT

THIS AMENDMENT (the “*Amendment*”) effective as of November 6, 2020 (the “*Effective Date*”) is made between Bottling Group, LLC, a Delaware limited liability company, and its affiliates and/or respective subsidiaries collectively comprising of Contractor Beverages Company with an office located at 540 Gallatin Place, NW, Suite A, Albuquerque, NM 87121 (“*Contractor*”) and Central New Mexico Community College, with its principal place of business at 525 Buena Vista Drive, SE, Albuquerque, NM 87106 (“*CNM*”).

WHEREAS, Contractor and the CNM are parties to the Services Agreement commencing on June 20, 2016 (the “*Agreement*”); and

WHEREAS, the parties wish to amend the Agreement and resolve certain issues between them, subject to the terms and conditions set forth below.

NOW, THEREFORE, in consideration of these premises and the covenants herein contained, it is hereby agreed that the Agreement is amended as follows. As used in this Amendment, capitalized terms defined in the Agreement and not otherwise defined in this Amendment shall have the respective meanings assigned thereto in the Agreement.

1. General Support Funding. In Year 5 of the applicable period July 1, 2020 – June 30, 2021, the General Support Funding shall be deleted in its entirety and replaced with the following:

CNM and Contractor acknowledge and agree that the General Funding for Year 5 for the applicable period, originally scheduled to be paid at Twenty Two Thousand Five Hundred Ten US Dollars (\$22,510), shall be revised to Eleven Thousand Two Hundred Fifty Five US Dollars (\$11,255) payable to CNM within sixty (60) days after the signing of this Amendment by both parties. The General Support Funding is earned throughout the Year in which it is paid. In the event of early termination for any reason other than an uncured material breach by Contractor pursuant to Section 27 herein, the unearned General Support Funding will be repaid to Contractor pursuant to the terms of Section 27.1.1. herein.

In addition, to the above, Contractor may be eligible to earn special rebates for the total number of eligible Cases and Gallons (herein called “units”) purchased by CNM and its Food Service Provider throughout the applicable year (the “*Special Rebates*”). Contractor shall calculate the total number of units purchased and shall provide CNM with a Special Rebate rate of \$7.08 on all units purchased in excess of 1590 units (the “*Volume Threshold*”). The Special Rebates shall be payable to CNM within sixty (60) days after May 31, 2021, not to exceed \$11,255.

2. **Section 24, Force Majeure:** The Force Majeure language is hereby deleted in its entirety and replaced with the following:

No party will be responsible to the other for any failure, in whole or in part, to perform any of its respective obligations hereunder, to the extent and for the length of time that

performance is rendered impossible or commercially impracticable resulting directly or indirectly from any foreign or domestic embargo, product detention, seizure, act of God, pandemic, epidemic, insurrection, war and/or continuance of war, the passage or enactment of any law ordinance, regulation, ruling, or order interfering directly or indirectly with or rendering more burdensome the purchase, production, delivery or payment hereunder, including the lack of the usual means of transportation due to fire, flood, explosion, riot, strike or other acts of nature or man that are beyond the control of the parties unless such contingency is specifically excluded in another part of this Agreement (“**Force Majeure Event**”). Any party(s) so affected, will (i) use all reasonable efforts to minimize the effects thereof and (ii) promptly notify the other party(s) in writing of the Force Majeure and the effect of the Force Majeure on such party’s ability to perform its obligations hereunder. The affected party(s) will promptly resume performance after it is no longer subject to Force Majeure. In the event that the CNM’s performance is temporarily suspended pursuant to a Force Majeure Event, Contractor’s funding obligations will be suspended for the duration of CNM’s nonperformance. Once CNM resumes performance or in the event CNM is able to perform some, but not all of its obligations herein, any fixed, advanced, or guaranteed funding will be adjusted commensurate with the decline in volume associated with the suspended or partial performance

3. The support provided by Contractor herein is conditioned upon CNM’s compliance with Contractor’s payment terms and all performance requirements as set forth in the Original Agreement. Nothing herein shall be construed as any waiver from Contractor’s standard policies, practices or terms as outlined in the Original Agreement.

All other terms and conditions of the Original Agreement that are not amended by this Amendment shall remain in full force and effect.

IN WITNESS WHEREOF, Contractor and CNM have caused this Amendment to be executed by the authorized persons set forth below.

Bottling Group, LLC

By Adrian Chavez

Print name: Adrian Chavez

Title: Key Account Manager

12/15/2020
Date: _____

Central New Mexico Community College

By Eugene A. Padilla

Print name: Eugene A. Padilla

Title: Vice President of Student Services

12/16/2020
Date: _____

Central New Mexico Community College

SERVICES AGREEMENT

THIS SERVICES AGREEMENT (hereinafter referred to as the "Agreement") is made and entered into by and between Central New Mexico Community College hereinafter referred to as "CNM" and BOTTLING GROUP, LLC (PEPSI BEVERAGES COMPANY) hereinafter referred to as the "CONTRACTOR", and is effective as of the date set forth below upon which it is executed by CNM.

IT IS AGREED BETWEEN THE PARTIES:

1. DEFINITIONS

- 1.1. "Acceptance" means the approval, after quality assurance, of all deliverables by the representative of CNM who has been designated as having approval authority.
- 1.2. "Agreement" means the agreement between CNM and CONTRACTOR consisting of this Agreement and its Terms and Conditions, the Specifications, and any other documents (or parts thereof) specified in this Agreement or otherwise expressly incorporating these Terms and Conditions.
- 1.3. "Agreement Year" means each consecutive year after the Primary Term, beginning on July 1 and ending of June 30 of that Agreement Year.
- 1.4. "Beverage" or "Beverages" means all carbonated and non-carbonated, non-alcoholic drinks, including but not limited to, (i) colas and other flavored carbonated drinks; (ii) fruit juice, fruit juice containing and fruit flavored drinks; (iii) chilled coffee drinks; (iv) chilled tea products; (v) hypertonic, isotonic and hypotonic drinks (sports drinks, energy and fluid replacements); and (vi) bottled or canned water whether carbonated or still (spring, mineral or purified). Beverages shall not include milk, flavored milk, beer (alcoholic, low alcoholic, non-alcoholic), freshly brewed coffee, freshly brewed tea, hot chocolate and all freshly squeezed juices.
- 1.5. "Close of Business" means 5:00 p.m. Mountain Standard or Mountain Daylight Time, whichever is in effect on the date given.
- 1.6. "Contract" means an agreement in the form of a mutually agreed to and fully executed Contract and associated documents between CNM and a Contractor. "Contract" and "Agreement" may be used interchangeably. In the event of any inconsistent or incompatible provisions, the mutually agreed to and fully executed Contract shall take precedence. The Contract shall not be construed to create a contractual relationship of any kind between CNM and any contractor's subcontractor or any lower-tier subcontractor.
- 1.7. "Contract Manager" means the individual selected by CNM to monitor and manage all aspects of the Contract resulting from this RFP.
- 1.8. "Contractor" means a business contracting with CNM.

- 1.9. "Deliverable" means any verifiable outcome, result, service, or product that must be delivered, developed, performed or produced by the CONTRACTOR as defined by the Scope of Work.
- 1.10. "Determination" means the written documentation of a decision of CNM's Purchasing Department including findings of fact supporting a decision by CNM. A determination becomes a part of the procurement file to which it pertains.
- 1.11. "Facilities" means the entire premises of every school and facility owned, leased, occupied or operated by CNM, now or in the future, where beverage vending machines are located, including, but not limited to, all buildings, the grounds, and parking lots.
- 1.12. "Primary Term" means the period of time from the Effective Date through June 30, 2017, unless terminated sooner as provided herein.
- 1.13. "Products" means any and all Beverage products now or in the future bottled, sold or distributed by CONTRACTOR.
- 1.14. "Services" means the services, equipment and product to be provided by the CONTRACTOR pursuant to this Agreement.
- 1.15. "Specification(s)" means the specification(s) separately documented by CNM in writing that set out the performance required of the CONTRACTOR.
- 1.16. "Term" consists of the "Primary Term" (defined in 1.12 above) and any one-year renewals subsequent to the Primary Term. This Agreement shall automatically renew on July 1 for up to seven (7) additional one-year periods succeeding the Primary Term unless either Party, with thirty (30) days' written notice, provides a Notice of Termination to the other Party. In any event, this Agreement shall not exceed eight (8) total years in duration. These additional one-year terms shall begin on July 1 and end on June 30 for each year subsequent to the Primary Term.
- 1.17. "Terms and Conditions" means the terms and conditions set out in this document.

2. SCOPE OF WORK

- 2.1. The Scope of Work shall consist of CONTRACTOR placing, maintaining, and servicing cold beverage vending machines throughout the Central New Mexico Community College campuses. All machines will be located within the designated areas chosen by CNM.
- 2.2. CONTRACTOR agrees to not exceed the maximum retail prices as set forth in EXHIBIT A attached hereto. This maximum retail price may be revised as requested by CONTRACTOR and agreed to by CNM by written amendment to this Agreement.
- 2.3. CONTRACTOR shall be responsible for collecting, for its own account, all revenues and taxes from sales and for all related accounting for all business operations.
- 2.4. CONTRACTOR shall provide CNM a detail of sales information on a monthly basis and will also provide an annual summary of sales by July 15 of each year.

3. EQUIPMENT AND SERVICE

- 3.1. CONTRACTOR shall, based upon CONTRACTOR's survey of the Facilities' needs, provide and install all Equipment at the Facilities for the dispensing of Product during the Term at mutually agreed to locations by both parties. Title to all Equipment shall be with CONTRACTOR or its affiliates.
- 3.2. During the Term and at no cost to CNM, CONTRACTOR will service and stock, as necessary, (i) the Equipment and (ii) any additional Equipment determined by the parties to be installed at new locations on the Facilities.
- 3.3. The Equipment may not be removed from the Campus without CONTRACTOR's written consent, and CNM agrees not to encumber the Equipment in any manner or permit other equipment to be attached thereto except as authorized by CONTRACTOR. At the end of the Term, CONTRACTOR shall have the right to, and shall upon request of CNM, remove all Equipment from the Facilities at no expense to CNM.
- 3.4. CONTRACTOR shall be responsible for collecting, for its own account, all cash monies from the Vending Machines and for all related accounting for all cash monies collected therefrom. CNM agrees to provide reasonable assistance to CONTRACTOR in apprehending and prosecuting vandals. CONTRACTOR shall not be obligated to pay commissions as provided in this Agreement on documented revenue losses resulting from vandalism or theft of product with respect to any Vending Machines on the Facilities.
- 3.5. CONTRACTOR shall agree to install energy-mizers or a similar device on Equipment for additional energy efficiencies.
- 3.6. CONTRACTOR or its designated agents shall be responsible for maintaining, repairing and replacing the Equipment. Preventative maintenance of the Equipment shall take place at the Facilities no less than once every six (6) months. CONTRACTOR shall provide CNM with a telephone number to request emergency repairs and receive technical assistance related to the Equipment. CONTRACTOR shall respond to each CNM request and use reasonable efforts to remedy the related Equipment problem as soon as possible.
- 3.7. REFUNDS: CNM will designate a Point Person at each campus that will administer a refund bank. CONTRACTOR will provide a mutually agreed to dollar amount for the refund banks at each campus and CNM's Point Person will handle requests from customers who lose money when attempting to purchase produce from CONTRACTOR'S equipment. CONTRACTOR will provide signage on all equipment directing customers to the Point Person if they are in need of a refund.

4. UTILIZATION

- 4.1. CNM neither implies nor guarantees a specific level of usage under this Agreement. CNM reserves the right to increase Services due to unanticipated higher demand or decrease Services due to unanticipated lower demand or unsatisfactory performance by CONTRACTOR.

5. TERM

- 5.1. This Agreement shall not become effective until approved by CNM's Purchasing Department. This Agreement shall terminate on June 30, 2024 unless terminated pursuant to Article 10, Termination. This Agreement and any extensions shall not exceed eight years in duration.

6. GRANT OF BEVERAGE AVAILABILITY AND MERCHANDISING RIGHTS

- 6.1. During the Term, CNM hereby grants to CONTRACTOR the following Beverage availability and Beverage merchandising right as set forth and described below:

- 6.1.1. CONTRACTOR shall have the exclusive right to make Beverages available for sale through cold beverage vending machines located at CNM's Campuses; locations of machines shall be approved by both parties. CNM reserves the right to exclude locations where in conflict with CNM operations or other contracts. Exclusivity does not include:

- a. Any student, faculty, staff or visitor who brings beverages on campus for personal consumption.
- b. The sale of competitive products by third party caterers at private, non-CNM sponsored events.
- c. The sale of competitive products in inventory or on order which cannot be cancelled without penalty to CNM.
- d. Other non-beverage sponsors of CNM or CNM events.
- e. Existing agreements that CNM has with other vendors that may provide beverages, etc. including, but not limited to, the following: Follett or any successor for food services, Canteen or any successor who currently supplies hot drinks and snacks in vending machines for all CNM campuses, Food Trucks that operate on CNM property or services not covered under this Scope of Work.

- 6.1.2. CONTRACTOR shall have the non-exclusive right to make Beverages available to CNM and its food service providers and other third parties for sale in food service, retail and other locations at CNM's campuses.

- 6.1.3. CONTRACTOR shall have the exclusive right to install full service cold beverage vending machines "Vending Machines" at locations mutually agreed upon by both parties. CONTRACTOR shall have the further right to install additional Vending Machines in buildings and facilities acquired and/or constructed by CNM after the date of this Agreement, at CNM approved locations. CONTRACTOR shall install the Vending Machines at its sole expense. CONTRACTOR shall have the right to place full trademark panels on all sides of its Vending Machines. CONTRACTOR, or one of its affiliates, shall retain title to all Vending Machines.

7. GRANT OF ADVERTISING AND PROMOTIONAL RIGHTS

- 7.1. During the Term, CNM hereby grants to CONTRACTOR the right to advertise and promote Products in and with respect to CNM as set forth and described below:

- 7.1.1. Advertising: CONTRACTOR shall have the right to place promotional banners and other signage at the Facilities, upon prior written approval of CNM, not to be unreasonably withheld.
- 7.1.2. Promotional Rights: CNM hereby agrees that CONTRACTOR shall have the right to promote the fact that CONTRACTOR is an official sponsor of CNM and that the Products are available at the Facilities, upon prior written approval of CNM, not to be unreasonably withheld.

8. CONSIDERATION

- 8.1. In consideration for the beverage rights and the other related rights and benefits provided to CONTRACTOR by CNM as described herein, CONTRACTOR agrees to pay to CNM the funds as stated in EXHIBIT A, COMPENSATION SCHEDULE attached hereto. All of these funds, including Other Annual Support To Be Made To CNM, are fully flexible and shall be used at CNM's sole discretion and as CNM determines it to be in its best interest.

9. TAXES

- 9.1. CONTRACTOR will be responsible for the payment of all taxes that may be due as a result of any payment made pursuant to this Contract. CONTRACTOR further agrees to indemnify and hold CNM harmless from any and all liability that may arise should CNM be assessed any tax or penalty arising from the CONTRACTOR'S failure to pay any taxes due as a result of payment pursuant to this Contract.

10. TERMINATION

- 10.1 Termination. Either Party may terminate this Agreement in whole or in part for its own convenience in the absence of any default of the other Party upon written notice delivered to the other party at least sixty (60) days prior to the intended date of termination. Should CNM terminate this Agreement for its own convenience under this paragraph 10.1, it shall reimburse Contractor a pro-rated amount of any annual support paid for the year of the Termination.
- 10.2 For Cause. Either party may terminate this Agreement for cause based upon material breach of this Agreement by the other party, provided that the non-breaching party shall give the breaching party written notice specifying the breach and shall afford the breaching party a reasonable opportunity to correct the breach. If within thirty (30) days after receipt of a written notice the breaching party has not corrected the breach or, in the case of a breach which cannot be corrected in thirty (30) days, begun and proceeded in good faith to correct the breach, the non-breaching party may declare the breaching party in default and terminate the Agreement effective immediately. The non-breaching party shall retain any and all other remedies available to it under the law. Notwithstanding the foregoing, this Agreement may be terminated immediately upon written notice to the CONTRACTOR if the CONTRACTOR becomes unable to perform the services contracted for, as determined by CNM or if, during the term of this Agreement, the CONTRACTOR or any of its officers, employees or agents is indicted for fraud, embezzlement or other crimes due to misuse of public funds.

11. STATUS OF CONTRACTOR

11.1. CONTRACTOR and its agents and employees are independent contractors performing services for CNM and are not employees of CNM. CONTRACTOR and its agents and employees shall not accrue leave, retirement, insurance, bonding, use of CNM vehicles, or any other benefits afforded to employees of CNM as a result of this Agreement. CONTRACTOR acknowledges that all sums received hereunder are reportable by the CONTRACTOR for tax purposes, including without limitation, self-employment and business income tax. CONTRACTOR agrees not to purport to bind CNM unless the CONTRACTOR has express written authority to do so, and then only within the strict limits of that authority.

12. ASSIGNMENT

12.1. CONTRACTOR shall not assign or transfer any interest in this Agreement or assign any claims for money due or to become due under this Agreement without the prior written approval of CNM.

13. SUBCONTRACTING

13.1. CONTRACTOR shall not subcontract any portion of the services to be performed under this Agreement without the prior written approval of CNM.

14. CONFIDENTIALITY

14.1. Any confidential information provided to or developed by CONTRACTOR in the performance of this Agreement shall be kept confidential and shall not be made available to any individual or organization by the CONTRACTOR without the prior written approval of CNM.

15. CONFLICT OF INTEREST; GOVERNMENTAL CONDUCT ACT

15.1. CONTRACTOR warrants that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance or services required under the Agreement. The CONTRACTOR certifies that the requirements of the Governmental Conduct Act, Sections 10-16-1 through 10-16-18, NMSA 1978, regarding contracting with a public officer or CNM employee or former CNM employee have been followed.

16. AMENDMENT

16.1. This Agreement shall not be altered, changed or amended except by instrument in writing executed by the parties hereto and all other required signatories.

16.2. If CNM proposes an amendment to the Agreement to unilaterally reduce funding due to budget or other considerations, CONTRACTOR shall have the option to terminate the Agreement or to agree to the reduced funding, within thirty (30) days of receipt of the proposed amendment. No pricing change shall occur during the thirty (30) day decision period.

17. MERGER

17.1. This Agreement incorporates all the Agreements, covenants and understandings between the parties hereto concerning the subject matter hereof, and all such covenants, agreements and understandings have been merged into this written

Agreement. No prior agreement or understanding, oral or otherwise, of the parties or their agents shall be valid or enforceable unless embodied in this Agreement.

18. PENALTIES FOR VIOLATION OF LAW

18.1. The Procurement Code, Sections 13-1-196 through 13-1-199, NMSA 1978, imposes civil and criminal penalties for its violation. In addition, the New Mexico criminal statutes impose felony penalties for illegal bribes, gratuities and kickbacks.

19. APPLICABLE LAW

19.1. The laws of the State of New Mexico shall govern this Agreement, without giving effect to its choice of law provisions. Venue shall be proper only in a New Mexico court of competent jurisdiction in accordance with Section 38-3-1 (G) NMSA 1978. By execution of this Agreement, CONTRACTOR acknowledges and agrees to the jurisdiction of the courts of the State of New Mexico over any and all lawsuits arising under or out of any term of this Agreement.

20. RECORDS AND FINANCIAL AUDIT

20.1. CONTRACTOR shall maintain detailed time and expenditure records that indicate the date, time, nature and cost of services rendered during the Agreement's term and effect and retain them for a period of three (3) years from the date of final payment under this Agreement. The records shall be subject to inspection by CNM, CNM's External Auditors, and the Office of the State Auditor. CNM shall have the right to audit billings both before and after payment. Payment under this Agreement shall not foreclose the right of CNM to recover excessive or illegal payments.

21. INDEMNIFICATION

21.1. CONTRACTOR shall defend, indemnify and hold harmless CNM from all actions, proceeding, claims, demands, costs, damages, attorneys' fees and all other liabilities and expenses of any kind from any source which may arise out of the performance of this Agreement caused by the negligent act or failure to act of the CONTRACTOR, its officers, employees, servants, subcontractors or agents, or if caused by the actions of any client of the CONTRACTOR resulting in injury or damage to persons or property as a result of the CONTRACTOR or any officer, agent, employee, servant or subcontractor failing to perform services pursuant to this Agreement. In the event that any action, suit or proceeding related to the services performed by the CONTRACTOR or any officer, agent, employee, servant or subcontractor under this Agreement is brought against the CONTRACTOR, the CONTRACTOR shall, as soon as practicable but no later than two (2) calendar days after it receives notice thereof, notify the CNM Purchasing Department by certified mail.

22. INVALID TERM OR CONDITION

22.1. If any term or condition of this Agreement shall be held invalid or unenforceable, the remainder of this Agreement shall not be affected and shall be valid and enforceable.

23. ENFORCEMENT OF AGREEMENT

23.1. A party's failure to require strict performance of any provision of this Agreement shall not waive or diminish that party's right thereafter to demand strict compliance with that or any other provision. No waiver by a party of any of its rights under this

Agreement shall be effective unless expressed and in writing, and no effective waiver by a party of any of its rights shall be effective to waive any other rights.

24. FORCE MAJEURE

- 24.1. Neither party will be liable to the other for any failure or delay in performance under this Agreement due to circumstances beyond its reasonable control, including Acts of God, acts of war, accident, labor disruption, acts, omissions and defaults of third parties and official, governmental and judicial action not the fault of the party failing or delaying in performance.

25. NOTICES

- 25.1. Any notice required to be given to either party by this Agreement shall be in writing and shall be delivered in person, by courier service or by U.S. mail, either first class or certified, return receipt requested, postage prepaid, as follows:

To CNM: Central New Mexico Community College
525 Buena Vista, SE
Albuquerque, NM 87106-4096
Attn: Purchasing Department

To the CONTRACTOR: Bottling Group, LLC (Pepsi Beverages Company)
1 Pepsi Way
Somers, NY 10589

26. AUTHORITY

- 26.1. If Contractor is other than a natural person, the individual(s) signing this Agreement on behalf of CONTRACTOR represents and warrants that they have the power and authority to bind CONTRACTOR, and that no further action, resolution, or approval from CONTRACTOR is necessary to enter into a binding contract.

27. REMEDIES

27.1 If this Agreement is terminated by either party for convenience, without cause, or if Contractor terminates this Agreement as a result of default by CNM, then CNM will surrender to Contractor all Equipment provided by Contractor; and, in the case of default, shall forfeit all funding not paid as of the date of termination. In addition, without prejudice to any other right or remedy available to Contractor, Contractor shall have the right to immediately seek reimbursement from CNM for the following:

27.1.1 An amount reflecting reimbursement for all funding previously advanced by Contractor but not earned by CNM pursuant to the terms of this Agreement. With regard to the General Support Funding, the amount of such reimbursement shall be determined by multiplying General Support Funding by a fraction, the numerator of which is the number of months remaining in the Year in which the Agreement is terminated at the time such termination occurs and the denominator of which is twelve (12).

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date of signature by CNM.

CENTRAL NEW MEXICO COMMUNITY COLLEGE:

By: Keith Adams
Signature

Printed Name: J. Keith Adams

Title: Sensor Buyer

Date: 6/20/16

BOTTLING GROUP, LLC (PEPSI BEVERAGES COMPANY):

By: Adrian Chavez
Signature

Printed Name: Adrian Chavez

Title: Key Account Manager

Date: 6-20-2016

**EXHIBIT A
COMPENSATION SCHEDULE**

COMMISSIONS:

Contractor agrees to pay to CNM a commission, as a percentage of the actual cash (“cash in bag” or “CIB”) and credit card sales, if any, collected by Contractor from vending machine sales through Equipment placed at the Facilities, less any applicable sales tax (“Commissions”). Commissions shall be remitted by Contractor to CNM within 30 days of the end of each 4-week accounting period established by Contractor. Contractor shall make all pertinent revenue and sales records respecting the vending machines available to CNM. CNM agrees that it is responsible for reviewing such records and that any claim or dispute relating to the Commissions must be brought by CNM in writing within one (1) year of the date such Commissions payment is due.

Commission paid per case of product sold by CONTRACTOR, including credit card sales, from the vending machines placed at all CNM locations, the Commission paid shall be at the rates per case set forth below:

	PRODUCT	QTY PER CASE	*COMMISSION PAID PER CASE (\$)	**MAXIMUM RETAIL PRICE EACH (\$)	DESCRIPTION
a	20 oz. Carbonated Beverages	24	\$13.36	\$1.50	Pepsi, Dt. Pepsi, Mt. Dew & all carbonated soft drinks, teas & fruit drinks
b	20 oz. Bottled Water	24	\$13.36	\$1.50	Aquafina
c	20 oz. Flavored Water/Gatorade	24	\$15.59	\$1.75	Gatorade, Aquafina Splash, Schweppes Seltzer
d	24 oz. Tea Drinks	12	\$5.57	\$1.25	Lipton Brisk
e	Cold Coffee Drinks	12	\$12.25	\$2.75	Starbucks - Frappuccinos, Iced Coffee & Double Shot Espresso
f	Juices	12	\$7.80	\$1.75	Ocean Spray & Sobe Elixir
g	Energy Drinks	24	\$24.50	\$2.75	Rockstar and Amp
h	Other (please designate)	12	\$7.80	\$1.75	Sobe Lifewater
i	18.5 oz. Brewed Tea	12	\$12.25	\$2.75	Lipton Pure Leaf
j	14 oz. Functional Beverage	12	\$17.80	\$4.00	Muscle Milk Protein Drink

*Commission paid per case factors current NM Sales Tax deduction which CONTRACTOR is required to pay by NM law.

**Maximum retail sales price may be revised as requested by CONTRACTOR and agreed to in writing by CNM.

If CONTRACTOR proposes any new products to CNM during the Term, CONTRACTOR and CNM shall mutually agree to the Commission Rate and Minimum Vend Price for those new products.

COMMISSION PAYMENT:

Commissions shall be remitted by CONTRACTOR to CNM within thirty (30) days of the end of each month. CONTRACTOR shall make all revenue and sales records in regard to vending machine sales available to CNM on a monthly basis and as otherwise requested by CNM.

OTHER ANNUAL SUPPORT TO BE MADE TO CNM:

		ANNUAL \$ VALUE	DESCRIPTION
a	Product Donations to CNM	\$500.00	Annual Gift in kind to support CNM functions
b	*General Support Funding	\$20,000.00	Annual Sponsorship to be used as discretionary funding with an escalation each year of 3%
			Yr. 1 \$20,000
			Yr. 2 \$20,600
			Yr. 3 \$21,218
			Yr. 4 \$21,855
			Yr. 5 \$22,510
			Yr. 6 \$23,185
			Yr. 7 \$23,881
			Yr. 8 \$24,597
			Total 8 Year Value \$177,846.00

*General Support Funding (item b above) shall be payable to CNM within sixty (60) days following the commencement of each Year throughout the Term of this Agreement.

NON-DISCLOSURE AGREEMENT

This is a Non-Disclosure Agreement (Agreement) between Central New Mexico Community College (CNM) and **Bottling Group, LLC (Pepsi Beverages Company)** (Contractor) concerning the confidentiality and non-disclosure of information relating to CNM, its students and employees. References in this Agreement to CNM mean CNM together with its students and employees.

WITNESSETH:

WHEREAS, Contractor has contracted with CNM to provide Cold Beverage Vending Services, as described in Request for Proposal # P-385 and related documents (Contract), the terms and conditions of which Contract are incorporated herein by reference; and

WHEREAS, Contractor acknowledges and recognizes that in performing the Contract it may have access to data and information contained within or about CNM's resources and systems; and

WHEREAS, Contractor acknowledges and recognizes that in performing the Contract it may have access to sensitive and/or proprietary and/or nonpublic data and information which is or may be subject to state and/or federal laws and regulations, including but not limited to privacy laws and regulations, which must be kept confidential pursuant to those laws and/or regulations; and

WHEREAS, Contractor recognizes that CNM has a compelling need to maintain confidentiality and prohibit disclosure of data and information contained within CNM's resources and systems, and further recognizes that its Contract with CNM places Contractor in a position of special trust and confidence with respect to data and information concerning CNM and its operations; and

WHEREAS, Contractor recognizes and acknowledges that a breach of this Agreement would cause substantial, grave and irreparable harm to CNM and its interests; and

WHEREAS, Contractor agrees to the terms and conditions set forth below.

NOW, THEREFORE, for the reasons stated above, Contractor, as a precondition to its Contract with CNM and in partial consideration thereof, agrees and covenants with CNM as follows:

1. Contractor agrees to perform services under the Contract pursuant to any and all privacy and confidentiality requirements contained in state and federal laws and regulations applicable to CNM, as well as those state and federal laws and regulations applicable to Contractor.
2. Contractor agrees that it will keep in strictest confidence all CNM data and information to which it may have access in performing its duties under the Contract, in computerized form or otherwise, and that neither it nor anyone operating on its behalf will disclose or use, in any manner, CNM data and information, except to the extent necessary to carry out the Scope of Work in the Contract. No other use of the data and information by Contractor is permissible.
3. Contractor agrees to indemnify and hold harmless CNM from any and all liability, injury and damages resulting or arising from any intentional or unintentional disclosure of data and/or information stored on or contained within CNM resources and systems by Contractor, its agents and representatives.
4. Contractor agrees and acknowledges that at all times during the Contract it is operating and shall operate as an independent contractor and not as an agent or employee of CNM.
5. Contractor agrees that information contained within CNM resources and systems shall be accessed, if at all, only as may be necessary to carry out the Contract. Contractor agrees to reasonably limit access to information contained within CNM resources and systems to those among its employees, officers or directors for whom disclosure is necessary to further the purpose of the Contract.
6. Contractor agrees that, upon the termination or conclusion of the Contract, it will deliver promptly to CNM all data, information, documentary and other materials relating to CNM, and any and all copies of electronic records thereof, within its custody or control or within the custody or control of its agents or representatives, that it or anyone operating on its behalf created, produced or obtained in the course of Contractor's Contract with CNM.

7. Contractor agrees that if any person or entity requests, subpoenas, or otherwise attempts to obtain any data, information or material relating to CNM within Contractor's custody or control, or within the custody or control of anyone operating on its behalf, it will notify CNM immediately and will cooperate fully in any legal action by CNM seeking protection against disclosure of such data, information or material.
8. If Contractor knows or has reason to believe that there has been an improper use or any disclosure of CNM's data or information, Contractor shall orally notify CNM as soon as practicable and shall send written notice within five (5) business days of discovery. Such notification shall set forth in detail the known or suspected use or disclosure.
9. Contractor acknowledges and agrees that if it breaches this Agreement, CNM, in addition to terminating the Contract and taking other action available to it, may obtain preliminary and permanent court injunctions to stop the breach, and may also sue to recover from Contractor an amount equal to the damages caused by the breach and the revenues Contractor or anyone operating on its behalf derived from the breach, together with all costs and expenses, including attorneys' fees, incurred by CNM in taking such actions.
10. Contractor agrees that the terms of this Agreement will survive the expiration or termination of the Contract.
11. This Agreement and obligations hereunder shall be binding on the representatives, assigns, and successors of the Contractor and shall inure to the benefit of the assigns and successors of CNM.
12. If any of the provisions of this Agreement are not enforceable, in whole or in part, the remaining provisions set forth in this Agreement shall nonetheless remain in full force and effect.
13. This Agreement constitutes the entire understanding of the Parties about the subject matter hereof and may not be amended or modified except in writing signed by each of the Parties to the Agreement.

IN WITNESS WHEREOF, each of the undersigned has caused this Agreement to be executed by their duly authorized representatives.

CENTRAL NEW MEXICO COMMUNITY COLLEGE

Signature: J. Keith Adams

Print Name: J. Keith Adams

Title: Senior Buyer

Date: 6/20/16

BOTTLING GROUP, LLC (PEPSI BEVERAGES COMPANY)

Signature: Adrian Chavez

Print Name: Adrian Chavez

Title: Key Account Manager

Date: 6-20-2016

Contractor Employees who will have access:

Signature: _____

Print Name: _____

Title: _____

Date: _____

Signature: _____

Print Name: _____

Title: _____

Date: _____

Signature: _____

Print Name: _____

Title: _____

Date: _____

ADD ADDITIONAL INFORMATION AS NECESSARY