

Harrington Pepsi-Cola Company

**Beverage Distribution Rights**

Contract #K18-006

Montana State University – Auxiliary Services  
May 31, 2018

## TABLE OF CONTENTS

1. Effective Date, Duration and Renewal
2. Cost Adjustments
3. Services and/or Supplies
4. Warranties
5. Consideration/Payment
6. Reserved
7. Exclusive / Non-Exclusive Contract
8. Reserved
9. Access and Retention of Records
10. Assignment, Transfer and Subcontracting
11. Hold Harmless/Indemnification
12. Reserved
13. Required Insurance
14. Compliance with Workers' Compensation Act
15. Compliance with Laws
16. Disability Accommodations
17. Reserved
18. Registration with the Secretary of State
19. Reserved
20. Reserved
21. Reserved
22. Expanded Data Security Terms
23. Contract Termination
24. Event of Breach - Remedies
25. Force Majeure
26. Waiver of Breach
27. Conformance with Contract
28. Liaison and Service of Notices
29. Meetings
30. Transition Assistance
31. Choice of Law and Venue
32. Tax Exemption
33. Authority
34. Severability Clause
35. Scope, Entire Agreement, and Amendment
36. Waiver
37. Execution

**THIS CONTRACT** is entered into by and between the Montana State University, Auxiliary Services, (University), whose address and phone number are PO Box 172080, Hedges Complex #31, Bozeman, MT 59717-2080 and 406-994-1831 and Harrington Pepsi-Cola Company, (Contractor), whose address and phone number are 32550 East Frontage Street, Bozeman, MT 59715 and 406-586-1591.

**1. EFFECTIVE DATE, DURATION, AND RENEWAL**

**1.1 Contract Term.** The contract's initial term is five (5) years beginning on July 1, 2018 and ending on June 30, 2023, unless terminated earlier as provided in this contract.

In no event is this contract binding on the University unless all required University's authorized representatives have signed it. The legal counsel signature approving legal content of the contract and the procurement officer signature approving the form of the contract do not constitute an authorized signature.

**1.2 Contract Renewal.** The University may renew this contract under its then-existing terms and conditions (subject to potential cost adjustments described below in section 2) in one-year intervals, or any interval that is advantageous to the University. This contract, including any renewals, may not exceed a total of seven years.

**2. COST ADJUSTMENTS**

**2.1 Cost Increase by Mutual Agreement.** After the contract's initial term and if the University agrees to a renewal, the parties may agree upon a cost increase. The University is not obligated to agree upon a renewal or a cost increase. Increases in cost after the original contract term five (5) years shall be no greater than an amount equal to any percentage increase in the Contractor's (documented) cost of goods for manufacturing such products during the immediately prior year. In no case, however, shall the increase be greater than a one-time 3% increase for final two renewal years combined.

**3. SERVICES AND/OR SUPPLIES**

Contractor shall provide the University as exclusive pour rights beverage service, exclusive snack vending, non-exclusive beverage vending, financial support, and other benefits to the University.

**4. WARRANTIES**

**4.1 Warranty of Products.** Contractor warrants that the products supplied conform to the specifications requested, are fit and sufficient for the purpose manufactured, are of good material and workmanship, and are free from defect for a period of 30 days from the date of shipment. The length of warranty may vary by product. Contractor further warrants that the products are new and unused and of the latest model or manufacture, unless the University specifies otherwise. Contractor acknowledges that exceptions will be rejected.

**4.2 Warranty of Services.** Contractor warrants that the services provided conform to the contract requirements, including all descriptions, specifications and attachments made a part of this contract. The University's acceptance of services provided by Contractor shall not relieve Contractor from its obligations under this warranty. In addition to its other remedies under this contract, at law, or in equity, the University may, at Contractor's expense, require prompt correction of any services failing to meet Contractor's warranty herein. Services corrected by Contractor shall be subject to all the provisions of this contract in the manner and to the same extent as services originally furnished.

**5. CONSIDERATION/PAYMENT**

**5.1 Payment Schedule.** In consideration of the services to be provided, the Contractor shall pay University 40% of gross sales (based on reports provided by Contractor) on all Contractor Beverages and Bottler Beverages sold through Contractor's full-service vending machines on University campus. Contractor shall pay University 25% of gross sales (based on reports provided by Contractor) on all snack items sold

through Contractors full-service vending machines on University campus. Commissions on vending shall be paid to the University monthly.

University shall pay Contractor according to price list in Attachment A – Comprehensive Price List for all beverages purchased for non-vending operations. Contractor shall invoice University monthly for non-vending beverage purchases. These prices are extended to University Contracted third party concessioner, such as the current contracted alcohol provider for events on the University’s campus. Contractor shall invoice University’s third-party concessioners directly for third party purchases.

<b>Contractor’s Contribution to the University</b>	
<b>Description</b>	<b>Amount</b>
One Time Signing Bonus	\$100,000 to enhance campus life and facilities to be paid within 30 days of Contract execution
Sponsorship and Corporate Benefit Fees	\$250,000/annually for the sponsorship and marketing rights to be paid on a quarterly basis at the end of each quarter
Guaranteed Vending Commissions	\$55,000/Annually If sales of Bottler Beverages and Snacks at the University do not combine to meet the guaranteed level of commissions in a single Agreement Year, Harrington Pepsi-Cola will pay the University the difference within 60 days of the end of the respective Agreement Year.
Contractor Student Marketing Funds	up to \$10,000 annually for mutually-agreed on-Campus and in-market marketing programs. The funds will be held in a fund managed by Harrington Pepsi-Cola for use toward marketing programs designed to promote and increase Beverage sales on Campus. All funds made available under this sub-section must be spent within the Agreement Year for which they are budgeted. Unused funds shall be forfeited.
Sustainability Efforts	\$5,000 annually to support mutually agreed upon sustainability efforts on University’s campus to be determined at the first quarterly meeting each year
Product Donations	\$25,000 in Company beverages annually. Donations must be requested through Mike Kosevich, Auxiliary Services.
Sports Sideline Equipment	\$10,000/annually for items with GATORADE logo for sideline use as submitted by Athletics to Pepsi
Signage	See Attachment B – Signage Inventory

**5.2 Payment Terms.** All payment terms will be computed from the date of acceptance of supplies or services OR receipt of a properly executed invoice, whichever is later. Unless otherwise noted in the solicitation document, the University has 30 days to pay invoices, as allowed by 17-8-242, MCA. Contractor shall provide banking information at the time of contract execution in order to facilitate the University’s electronic funds transfer payments.

**5.3 Reference to Contract.** The contract number MUST appear on all invoices, packing lists, packages, and correspondence pertaining to the contract. If the number is not provided, the University is not obligated to pay the invoice.

**6. RESERVED**

**7. EXCLUSIVE CONTRACT**

The intent of the beverage pour rights portion of this contract is to provide University departments with an expedited means of procuring supplies and/or services. This contract is considered to be an "Exclusive" use contract and departments must obtain the specified product/service from the contract holder(s), unless the contract allows otherwise. However, MSU Procurement Services does not guarantee any minimum usage totals and it is the individual departments' responsibility to comply with the terms of the contract.

**NON-EXCLUSIVE CONTRACT**

The intent of the vending portion of this contract is to provide MSU departments with an expedited means of procuring supplies and/or services. This contract is for the convenience of MSU departments and is considered by MSU Procurement Services to be a "Non-exclusive" use contract. Therefore, agencies may obtain this product/service from sources other than the contract holder(s) as long as they comply with Title 18, MCA, and their delegation agreement. MSU Procurement Services does not guarantee any usage.

This contract shall provide 75% of vending opportunities to Contractor. A beverage vendor will be selected for the remaining 25% of vending through a formal solicitation process. See Attachment C – Vending Locations for vending locations.

**8. RESERVED**

**9. ACCESS AND RETENTION OF RECORDS**

**9.1 Access to Records.** Contractor shall provide the University, State, Legislative Auditor, or their authorized agents access to any records necessary to determine contract compliance. The University may terminate this contract under section 23, without incurring liability, for the Contractor's refusal to allow access as required by this section. (18-1-118, MCA.)

**9.2 Retention Period.** Contractor shall create and retain all records supporting the services described in this contract for a period of three years after either the completion date of this contract or termination of the contract.

**10. ASSIGNMENT, TRANSFER, AND SUBCONTRACTING**

Contractor may not assign, transfer, or subcontract any portion of this contract without the University's prior written consent. (18-4-141, MCA.) Contractor is responsible to the University for the acts and omissions of all subcontractors or agents and of persons directly or indirectly employed by such subcontractors, and for the acts and omissions of persons employed directly by Contractor. No contractual relationships exist between any subcontractor and the University under this contract.

**11. HOLD HARMLESS/INDEMNIFICATION**

Contractor agrees to protect, defend, and save the University, its officials, agents, and employees, while acting within the scope of their duties as such, harmless from and against all claims, demands, causes of action of any kind or character, including the cost of defense thereof, arising in favor of Contractor's employees or third parties on account of bodily or personal injuries, death, or damage to property arising out of services performed or omissions of services or in any way resulting from the acts or omissions of Contractor and/or its agents, employees, representatives, assigns, subcontractors, except the sole negligence of the University, under this agreement.

12. **RESERVED**

13. **REQUIRED INSURANCE**

**13.1 General Requirements.** Contractor shall maintain for the duration of this contract, at its cost and expense, insurance against claims for injuries to persons or damages to property, including contractual liability, which may arise from or in connection with the performance of the work by Contractor, agents, employees, representatives, assigns, or subcontractors. This insurance shall cover such claims as may be caused by any negligent act or omission.

**13.2 Primary Insurance.** Contractor's insurance coverage shall be primary insurance with respect to the University, its officers, officials, employees, and volunteers and shall apply separately to each project or location. Any insurance or self-insurance maintained by the University, its officers, officials, employees, or volunteers shall be excess of Contractor's insurance and shall not contribute with it.

**13.3 Specific Requirements for Commercial General Liability.** Contractor shall purchase and maintain occurrence coverage with combined single limits for bodily injury, personal injury, and property damage of **\$ 1 Million** per occurrence and **\$ 2 Million** aggregate per year to cover such claims as may be caused by any act, omission, or negligence of Contractor or its officers, agents, representatives, assigns, or subcontractors.

The University, its officers, officials, employees, and volunteers are to be covered and listed as additional insureds via **the certificate of insurance under 'description of operations' and by endorsement to the policy** for liability arising out of activities performed by or on behalf of Contractor, including the insured's general supervision of Contractor, products, and completed operations, and the premises owned, leased, occupied, or used. Reference should be made to same on the COI, but the actual separate endorsement must be provided.

**13.4 Specific Requirements for Automobile Liability.** Contractor shall purchase and maintain coverage with split limits of \$500,000 per person (personal injury), \$1,000,000 per accident occurrence (personal injury), and \$100,000 per accident occurrence (property damage), OR combined single limits of \$1,000,000 per occurrence to cover such claims as may be caused by any act, omission, or negligence of Contractor or its officers, agents, representatives, assigns, or subcontractors.

The University, its officers, officials, employees, and volunteers are to be covered and listed as additional insureds via **the certificate of insurance under 'description of operations' and by endorsement to the policy** for automobiles leased, owned, or borrowed by Contractor. Reference should be made to same on the COI, but the actual separate endorsement must be provided.

**13.5 Reserved.**

**13.6 Deductibles and Self-Insured Retentions.** Any deductible or self-insured retention must be declared to and approved by the University. At the request of the University either: (1) the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the University, its officers, officials, employees, or volunteers; or (2) at the expense of Contractor, Contractor shall procure a bond guaranteeing payment of losses and related investigations, claims administration, and defense expenses.

**13.7 Certificate of Insurance/Endorsements.** A certificate of insurance from an insurer with a Best's rating of no less than A- indicating compliance with the required coverages, has been received by MSU Procurement Services, P.O. Box 172600, Bozeman, MT 59717-2600. Contractor must notify the University immediately of any material change in insurance coverage, such as changes in limits, coverages, change in status of policy, etc. The University reserves the right to require complete copies of insurance policies at all times.

**14. COMPLIANCE WITH WORKERS' COMPENSATION ACT**

Contractor shall comply with the provisions of the Montana Workers' Compensation Act while performing work for the State of Montana in accordance with 39-71-401, 39-71-405, and 39-71-417, MCA. Proof of compliance must be in the form of workers' compensation insurance, an independent contractor's exemption, or documentation of corporate officer status. Neither Contractor nor its employees are University employees. This insurance/exemption must be valid for the entire contract term and any renewal. Upon expiration, a renewal document must be sent to MSU Procurement Services, P.O. Box 172600, Bozeman, MT 59717-2600.

**15. COMPLIANCE WITH LAWS**

Contractor shall, in performance of work under this contract, fully comply with all applicable federal, state, or local laws, rules, and regulations, including but not limited to, the Montana Human Rights Act, the Civil Rights Act of 1964, the Age Discrimination Act of 1975, the Americans with Disabilities Act of 1990, and Section 504 of the Rehabilitation Act of 1973. Any subletting or subcontracting by Contractor subjects subcontractors to the same provision. In accordance with 49-3-207, MCA, Contractor agrees that the hiring of persons to perform this contract will be made on the basis of merit and qualifications and there will be no discrimination based upon race, color, religion, creed, political ideas, sex, age, marital status, physical or mental disability, or national origin by the persons performing this contract.

**16. DISABILITY ACCOMMODATIONS**

The University does not discriminate on the basis of disability in admission to, access to, or operations of its programs, services, or activities. Individuals who need aids, alternative document formats, or services for effective communications or other disability related accommodations in the programs and services offered are invited to make their needs and preferences known to this office. Interested parties should provide as much advance notice as possible.

**17. RESERVED**

Contractor acknowledges that no state funds may be expended for the purchase of information technology equipment and software for use by employees, program participants, or members of the public unless it provides blind or visually impaired individuals with access, including interactive use of the equipment and services, that is equivalent to that provided to individuals who are not blind or visually impaired. (18-5-603, MCA.) Contact the State Procurement Bureau at (406) 444-2575 for more information concerning nonvisual access standards.

**18. REGISTRATION WITH THE SECRETARY OF STATE**

Any business intending to transact business in Montana must register with the Secretary of State. Businesses that are incorporated in another state or country, but which are conducting activity in Montana, must determine whether they are transacting business in Montana in accordance with 35-1-1026 and 35-8-1001, MCA. Such businesses may want to obtain the guidance of their attorney or accountant to determine whether their activity is considered transacting business.

If businesses determine that they are transacting business in Montana, they must register with the Secretary of State and obtain a certificate of authority to demonstrate that they are in good standing in Montana. To obtain registration materials, call the Office of the Secretary of State at (406) 444-3665, or visit their website at <http://sos.mt.gov>.

19. **RESERVED**

20. **RESERVED**

21. **RESERVED**

22. **EXPANDED DATA SECURITY TERMS**

See Attachment D – Expanded Data Security Terms

23. **CONTRACT TERMINATION**

**23.1 Termination for Cause with Notice to Cure Requirement.** The University may terminate this contract in whole or in part for Contractor's failure to materially perform any of the services, duties, terms, or conditions contained in this contract after giving Contractor written notice of the stated failure. The written notice must demand performance of the stated failure within a specified period of time of not less than 30 days. If the demanded performance is not completed within the specified period, the termination is effective at the end of the specified period.

**23.2 Termination for Cause with Notice to Cure Requirement.** Contractor may terminate this contract for the University's failure to perform any of its duties under this contract after giving the University written notice of the failure. The written notice must demand performance of the stated failure within a specified period of time of not less than 30 days. If the demanded performance is not completed within the specified period, the termination is effective at the end of the specified period.

**23.3 Reduction of Funding.** The University must by law terminate this contract if funds are not appropriated or otherwise made available to support the University's continuation of performance of this contract in a subsequent fiscal period. (18-4-313(4), MCA.) If state or federal government funds are not appropriated or otherwise made available through the state budgeting process to support continued performance of this contract (whether at an initial contract payment level or any contract increases to that initial level) in subsequent fiscal periods, the University shall terminate this contract as required by law. The University shall provide Contractor the date the University's termination shall take effect. The University shall not be liable to Contractor for any payment that would have been payable had the contract not been terminated under this provision. As stated above, the University shall be liable to Contractor only for the payment, or prorated portion of that payment, owed to Contractor up to the date the University's termination takes effect. This is Contractor's sole remedy. The University shall not be liable to Contractor for any other payments or damages arising from termination under this section, including but not limited to general, special, or consequential damages such as lost profits or revenues.

24. **EVENT OF BREACH – REMEDIES**

**24.1 Event of Breach by Contractor.** Any one or more of the following Contractor acts or omissions constitute an event of material breach under this contract:

- products or services furnished fail to conform to any requirement;
- failure to submit any report required by this contract;
- failure to perform any of the other terms and conditions of this contract, including but not limited to beginning work under this contract without prior University approval and breaching Section 29.1 obligations; or
- voluntary or involuntary bankruptcy or receivership.

**24.2 Event of Breach by University.** The University's failure to perform any material terms or conditions of this contract constitutes an event of breach.



### **24.3 Actions in Event of Breach.**

Upon the Contractor's material breach, the University may:

- terminate this contract under section 23; or
- treat this contract as materially breached and pursue any of its remedies under this contract, at law, or in equity.

Upon the University's material breach, the Contractor may:

- terminate this contract after giving the University written notice of the stated failure. The written notice must demand performance of the stated failure within a specified period of time of not less than 30. If the demanded performance is not completed within the specified period, the termination is effective at the end of the specified period; or
- treat this contract as materially breached and, except as the remedy is limited in this contract, pursue any of its remedies under this contract, at law, or in equity.

### **25. FORCE MAJEURE**

Neither party is responsible for failure to fulfill its obligations due to causes beyond its reasonable control, including without limitation, acts or omissions of government or military authority, acts of God, materials shortages, transportation delays, fires, floods, labor disturbances, riots, wars, terrorist acts, or any other causes, directly or indirectly beyond the reasonable control of the nonperforming party, so long as such party uses its best efforts to remedy such failure or delays. A party affected by a force majeure condition shall provide written notice to the other party within a reasonable time of the onset of the condition. In no event, however, shall the notice be provided later than five working days after the onset. If the notice is not provided within the five day period, then a party may not claim a force majeure event. A force majeure condition suspends a party's obligations under this contract, unless the parties mutually agree that the obligation is excused because of the condition.

### **26. WAIVER OF BREACH**

Either party's failure to enforce any contract provisions after any event of breach is not a waiver of its right to enforce the provisions and exercise appropriate remedies if the breach occurs again. Neither party may assert the defense of waiver in these situations.

### **27. CONFORMANCE WITH CONTRACT**

No alteration of the terms, conditions, delivery, price, quality, quantities, or specifications of the contract shall be granted without MSU Procurement Services prior written consent. Product or services provided that do not conform to the contract terms, conditions, and specifications may be rejected and returned at Contractor's expense.

### **28. LIAISONS AND SERVICE OF NOTICES**

**28.1 Contract Liaisons.** All project management and coordination on the University's behalf must be through a single point of contact designated as the University's liaison. Contractor shall designate a liaison that will provide the single point of contact for management and coordination of Contractor's work. All work performed under this contract must be coordinated between the University's liaison and Contractor's liaison.

## MSU Contact List

Function	Name	Title	Phone #	eMail
Contract Manager	Duane Morris	Senior Director, Auxiliary Services	(406) 994-1831	<a href="mailto:dmorris@montana.edu">dmorris@montana.edu</a>
Culinary Services	Rich Huffman	Director, Culinary Services Division	(406) 994-2661	<a href="mailto:richard.huffman@montana.edu">richard.huffman@montana.edu</a>
In-Kind	Mike Kosevich	Associate Director, Culinary Services Division	(406) 994-6999	<a href="mailto:mkosevich@montana.edu">mkosevich@montana.edu</a>
Concessions / Food Truck	Ron Perrin	General Manager, Concessions	(406) 994-7741	<a href="mailto:rperrin@montana.edu">rperrin@montana.edu</a>
Accounts Receivable	Katena Pershing	Finance & Accounts Receivable, Auxiliary Services	(406) 994-7547	<a href="mailto:pershing@montana.edu">pershing@montana.edu</a>
Accounts Payable	Mary Lou Wilson	Accounts /Payable, CatCard & Procurement, Auxiliary Services	(406) 994-6469	<a href="mailto:mlwilson@montana.edu">mlwilson@montana.edu</a>
Athletics	Thijs Goossens	Associate Athletic Director, Bobcat Athletics	(406) 994-3742	<a href="mailto:thijs.goossens@msubobcats.com">thijs.goossens@msubobcats.com</a>

## Pepsi Contact List

Function	Name	Title	Phone #	eMail
Pepsi Normal Ordering Product Requests Culinary Services In-Kind Concessions / Food Truck	Office		(406) 586-1591	<a href="mailto:bozemanpepsi@montanavendor.com">bozemanpepsi@montanavendor.com</a>
	Travis Munter	Sales Rep	(406) 579-5848	
	Brian Cade	MSU Liaison	(406) 579-5849	<a href="mailto:bcade@montanavendor.com">bcade@montanavendor.com</a>
	Kirby Salsbury	Sales Manager	(406) 579-5848	<a href="mailto:ksalsbury@montanavendor.com">ksalsbury@montanavendor.com</a>
Pepsi Product Donations/ Personnel Issues	Chris Reed	General Manager	O: (406) 586-1591 ext. 7700 C: (406)533-8345	<a href="mailto:creed@montanavendor.com">creed@montanavendor.com</a>
Pepsi Accounts Receivable Questions	Nancy Kennedy	Office Manager	(406) 586-1591	<a href="mailto:nkennedy@montanavendor.com">nkennedy@montanavendor.com</a>
Pepsi Service/Repair and Equipment	Office		(406) 586-1591	
	Royce Walker		(406) 579-5852	<a href="mailto:rwalker@montanavendor.com">rwalker@montanavendor.com</a>
	Cody Newman		(406) 579-0230	<a href="mailto:cnewman@montanavendor.com">cnewman@montanavendor.com</a>
Golden West Beverage and Snack Vending	Office		(406) 586-1591	
	Bruce Tew	General Manager	(406) 439-9180	<a href="mailto:btew@montanavendor.com">btew@montanavendor.com</a>
	Shawn Jerome	Assistant Manager	(406) 439-9175	<a href="mailto:sjerome@montanavendor.com">sjerome@montanavendor.com</a>
Golden West Reporting and Equipment	Ken Carlson		(406) 439-5161	<a href="mailto:kcarlson@montanavendor.com">kcarlson@montanavendor.com</a>

**28.2 Notifications.** The University's liaison and Contractor's liaison may be changed by written notice to the other party. Written notices, requests, or complaints must first be directed to the liaison. Notice may be provided by personal service, mail, or facsimile. If notice is provided by personal service or facsimile, the notice is effective upon receipt; if notice is provided by mail, the notice is effective within three business days of mailing. A signed and dated acknowledgement of the notice is required of both parties.

## 29. MEETINGS

**29.1 Technical or Contractual Problems.** Contractor shall meet with the University's personnel, or designated representatives, to resolve technical or contractual problems occurring during the contract term or to discuss the progress made by Contractor and the University in the performance of their respective obligations, at no additional cost to the University. The University may request the meetings as problems arise and will be coordinated by the University. The University shall provide Contractor a minimum of three full working days' notice of meeting date, time, and location. Face-to-face meetings are desired; however, at Contractor's option and expense, a conference call meeting may be substituted. Contractor's consistent failure to participate in problem resolution meetings, Contractor missing or rescheduling two consecutive meetings, or Contractor's failure to make a good faith effort to resolve problems may result in termination of the contract.

**29.2 Progress Meetings.** During the term of this contract, the University's Project Manager shall plan and schedule progress meetings with Contractor to discuss Contractor's and the University's progress in the performance of their respective obligations. These progress meetings will include the University Project Manager, the Contractor Project Manager, and any other additional personnel involved in the performance of

this contract as required. At each meeting, Contractor shall provide the University with a written status report that identifies any problem or circumstance encountered by Contractor, or of which Contractor gained knowledge during the period since the last such status report, which may prevent Contractor from completing any of its obligations or may generate charges in excess of those previously agreed to by the parties. This may include the failure or inadequacy of the University to perform its obligation under this contract. Contractor shall identify the amount of excess charges, if any, and the cause of any identified problem or circumstance and the steps taken to remedy the same.

**29.3 Failure to Notify.** If Contractor fails to specify in writing any problem or circumstance that materially affects the costs of its delivery of services or products, including a material breach by the University, about which Contractor knew or reasonably should have known with respect to the period during the term covered by Contractor's status report, Contractor shall not be entitled to rely upon such problem or circumstance as a purported justification for an increase in the price for the agreed upon scope.

**29.4 University's Failure or Delay.** For a problem or circumstance identified in Contractor's status report in which Contractor claims was the result of the University's failure or delay in discharging any University obligation, the University shall review same and determine if such problem or circumstance was in fact the result of such failure or delay. If the University agrees as to the cause of such problem or circumstance, then the parties shall extend any deadlines or due dates affected thereby, and provide for any additional charges by Contractor. This is Contractor's sole remedy. If the University does not agree as to the cause of such problem or circumstance, the parties shall each attempt to resolve the problem or circumstance in a manner satisfactory to both parties.

**29.5 Quarterly Meetings.** Regular quarterly meetings with Contractor and University will be held at University. Meetings will be tentatively scheduled for the second Wednesday following the end of each quarter, but may be moved to a nearby mutually agreeable date.

Standard quarterly meeting agenda items will include sustainability, marketing initiatives, year to date and volume reports, and any other mutually agreed upon items.

## **30. TRANSITION ASSISTANCE**

If this contract is not renewed at the end of this term, if the contract is otherwise terminated before project completion, or if particular work on a project is terminated for any reason, Contractor shall provide transition assistance for a reasonable, mutually agreed period of time after the expiration or termination of this contract or particular work under this contract. The purpose of this assistance is to allow for the expired or terminated portion of the services to continue without interruption or adverse effect, and to facilitate the orderly transfer of such services to the University or its designees. The parties agree that such transition assistance is governed by the terms and conditions of this contract, except for those terms or conditions that do not reasonably apply to such transition assistance. The University shall pay Contractor for any resources utilized in performing such transition assistance at the most contract current rates. If the University terminates a project or this contract for cause, then the University may offset the cost of paying Contractor for the additional resources Contractor utilized in providing transition assistance with any damages the University may have sustained as a result of Contractor's breach.

## **31. CHOICE OF LAW AND VENUE**

This Contract is governed by the laws of Montana. The parties agree that, in the event of litigation concerning this Contract, venue shall be in the Eighteenth Judicial District of the State of Montana, in and for the County of Gallatin. State of Montana and each party shall pay its own costs and attorney fees. (See section 18-1-401, MCA.)

## **32. TAX EXEMPTION**

Montana State University is exempt from Federal Excise Taxes (#81-6010045).

**33. AUTHORITY**

This contract is issued under authority of Title 18, Montana Code Annotated, and the Administrative Rules of Montana, Title 2, chapter 5.

**34. SEVERABILITY CLAUSE**

A declaration by any court or any other binding legal source that any provision of the contract is illegal and void shall not affect the legality and enforceability of any other provision of the contract, unless the provisions are mutually and materially dependent.

**35. SCOPE, ENTIRE AGREEMENT, AND AMENDMENT**

**35.1 Contract.** This contract consists of **19** numbered pages, any Attachments as required, Solicitation # RFP 18-06 as amended, and Contractor's response, as amended. In the case of dispute or ambiguity arising between or among the documents, the order of precedence of document interpretation is the same.

**35.2 Entire Agreement.** These documents are the entire agreement of the parties. They supersede all prior agreements, representations, and understandings. Any amendment or modification must be in a written agreement signed by the parties.

**36. WAIVER**

The University's waiver of any Contractor obligation or responsibility in a specific situation is not a waiver in a future similar situation or is not a waiver of any other Contractor obligation or responsibility.

**37. EXECUTION**

The parties through their authorized agents have executed this contract on the dates set out below.

**MONTANA STATE UNIVERSITY**  
**Auxiliary Services**  
**PO Box 172080, Hedges Complex #31**  
**Bozeman, MT 59717-2080**

**HARRINGTON COMPANY**  
**DBA Harrington Bottling Company**  
**1740 Holmes Avenue**  
**Butte, MT 59701**

\_\_\_\_\_  
Duane Morris, Director of Event Services      Date

\_\_\_\_\_  
Date

\_\_\_\_\_  
Terry Leist      Date  
Vice President of Admin and Finance

Approved as to Legal:

\_\_\_\_\_  
MSU Legal Counsel      Date  
(Required for purchases over \$25,000)

Approved as to Form:

\_\_\_\_\_  
Brian D. O'Connor      Date  
Director of Procurement Services  
(Required for purchases over \$25,000)

## Attachment A: Comprehensive Price List

Beverage Category	Brand Name	Estimated Annual Quantity	Pack Size	Flavors Available	Ratio	Pack Size (Unit to use when ordering)	Price Per Case	Price Per Gallon*	Extended Price (Estimated Annual Quantity times Price Per Case)
<b>Post Mix</b>									
Fountain Syrup Postmix Soda (ie-Diet Dr. Pepper)		35	2.5gal/case	all	5 to 1	2.5	\$20.00	\$8.00	\$700.00
Fountain Syrup Postmix Soda (ie-Squirt, Cherry Pepsi)		2,260	3gal/case	all	5 to 1	3	\$24.00	\$8.00	\$54,240.00
Fountain Syrup Postmix Soda (ie-Dr.Pep, MtnDew, Pepsi, Coke)		978	5gal/case	all	5 to 1	5	\$40.00	\$8.00	\$39,120.00
Fountain Syrup Postmix 100% Juice (ie-Apple, Orange)	Citrus Springs	157	1.5gal/case	all	varied	1.5	\$45.00	\$30.00	\$7,065.00
Fountain Syrup Postmix Juice (ieTropicana Lemonade)		1,088	3gal/case	all	5 to 1	3	\$34.50	\$11.50	\$37,536.00
Fountain Syrup Postmix Tea (ie-Lipton, Brisk)		472	3gal/case	all	5 to 1	3	\$34.50	\$11.50	\$16,284.00
Fountain Syrup Postmix Isotonics (ie-Gatorade, Powerade)		522	3gal/case	all	5 to 1	3	\$34.50	\$11.50	\$18,009.00

\* Not to exceed \$8.00 per gallon

Beverage Category	Brand Name	Estimated Annual Quantity	Pack Size	Flavors Available	Pack Size	Case Size	Price Per Case	Extended Price (Estimated Annual Quantity times Price Per Case)
<b>12oz Can</b>								
Canned Soda (ie Coke, Pepsi)		1,278	24ct/case	all			\$14.00	\$17,892.00
Canned Diet Soda (ie Diet Coke, Diet Pepsi)		227	24ct/case	all			\$14.00	\$3,178.00
<b>16oz Can</b>								
Canned Soda (ie Coke, Pepsi)		108	12ct/case				\$12.00	\$1,296.00
Canned Energy Drink		1,044	12ct/case				\$21.00	\$21,924.00
<b>20oz Bottle</b>								
Bottled Soda (ie Coke, Pepsi)		407	24ct/case				\$32.40	\$13,186.80
Bottled Diet Soda		133	24ct/case				\$32.40	\$4,309.20
Bottled Isotonics		1,032	24ct/case				\$24.00	\$24,768.00
Bottled Flavored Water		103	24ct/case				\$14.40	\$1,483.20
<b>15.2oz Bottled Juice</b>								
Bottled Juice 100% Juice (ie- Apple, Orange)		1,323	12ct/case				\$16.00	\$21,168.00
<b>13.7oz Bottled Coffee</b>								
Bottled Coffee		484	12ct/case				\$23.40	\$11,325.60
<b>18.5oz Bottled Tea</b>								
Bottled Tea		1,209	12ct/case				\$16.20	\$19,585.80
<b>1 Liter Bottled Drink</b>								
Bottled Soda (ie Pepsi, Coke, Dr. Pepper)		591	15ct/case				\$22.50	\$13,297.50
<b>20oz Bottled Water</b>								
Bottled Water MSU Promotion		3,615	24ct/case				\$14.40	\$52,056.00
Bottled Water (ie Dasani, Aquafina)		522	24ct/case				\$18.00	\$9,396.00

## **Attachment B - Signage Inventory**

Flat screens will be mounted on the outside of all of the concessions stands. Menu boards must be new digital flat screen televisions. Each must be hard wired, SMART TV capable, linked with HDMI connections and USB thumb drive back up. TV must also be capable of closed circuit programing. Cold weather compatible and securely mounted on appropriate bracket per each space.

### **Stadium:**

Cat Shack East has 4 menu screens and 1 live feed screen all of which are on the outside

Cat Shack West has 4 menu screens and 1 live feed screen all of which are on the outside

South West 4 menu screens and 1 live feed screen all of which are on the outside

North West 4 menu screens and 1 live feed screen all of which are on the outside

North East has 2 menu screens and 1 live feed screen all of which are on the outside

South East has 2 menu screens and 1 live feed screen all of which are on the outside

East has 4 menu screens and 1 live feed screen all of which are on the outside

The Espresso 1 screen, South BBQ 1 screen, and Pizza West 2 screens are all accounted for but not yet determined for installation.

### **BRICK:**

North has 1 live feed screen on the outside

South has 1 live feed screen on the outside

Grill has 1 live feed screen on the outside

For a total of 28 menu screens and 10 live feed game screens.

## Attachment C - Vending Machine Locations

BUILDING	LOCATION	Primary Location - # of Machines (Beverage Only)	Primary Location - # of Machines (Snack Only)	Secondary Location - # of Machines (Beverage Only)
Animal Bio Science	room 101	1		
AJM Johnson	rm 231	1		
Cheever	North door	1	1	
Cheever	East door	1	1	
Cobleigh	1st floor stair well	1		
Cobleigh	3rd stair well	1	1	
Barnard	Main Entry	1	1	
Barnard	Main Entry	1		1
Facility Services	Trailer	1	1	
Facility Services	Trailer	1		1
Brick Fieldhouse	West Entry	2	1	
Gaines Hall	3rd floor	1	1	
Gallatin Hall	Vending area	1	1	
Gallatin College	Main Entry	1	1	
Hannon Hall	Main Entry	1	1	
Hannon Hall	Main Entry	1		1
Hapner	Break area	1	1	
Haynes	rm 135	1	1	
Hedges North	Laundry	1	1	
Hedges North	Laundry	1		
Hedges South	Main Hallway		1	
Hedges South	Main Hallway	2		1
Herrick	rm 114	1		
Huffman (Police)	back hall	1		
Huffman (Police)	back hall		1	
Howard Hall	rm 116	1	1	
Hoseaus Fitness cntr	Main Entry	2	1	1
Hoseaus Fitness cntr	Main Entry	2		1
Jabs	Vending area	1		
Johnstone	Main level NE	2		1
Johnstone	Main level NE		1	
Langford	Main Entry	1	1	
Leon Johnson	rm 221	1	1	
Linfield hall	Middle East entry	2		
Plant Growth	East Entry	1	1	
Plant Bio Science	Vending area	1	1	
Reid Hall	First floor hall	2	1	1
Reid Hall	2nd floor north	1		
Reid Hall	rm 303	1		
Roskie Hall	Vending area	2	1	1
Sherrick	2nd floor	1		
Strand Union Building	2nd floor	3	1	2



BUILDING	LOCATION	Primary Location - # of Machines (Beverage Only)	Primary Location - # of Machines (Snack Only)	Secondary Location - # of Machines (Beverage Only)
Strand Union Building	Rec. Center	3	1	2
Tennis Center	Office	1		
Traphagen	rm 101	1	1	
Visual Comm	Main Lobby	2	1	1
Wilson Hall West	Elevator	3	1	1
Wilson Hall EAST	East Entry	1		
Yellowstone	Vending area	2	1	1
Yellowstone	Laundry	1	1	
<b>TOTAL UNITS</b>		<b>63</b>	<b>31</b>	<b>16</b>

## ATTACHMENT D: EXPANDED DATA SECURITY TERMS

**Confidential Data Protection, Privacy, and Ownership:** Service Provider must abide by the limitations on information disclosure set forth in The Family Educational Rights and Privacy Act (FERPA), (34 CFR § 99.33 (a) (2)) **and with the terms set forth below. 34 CFR 99.33 (a) (2) states that the officers, employees and agents of a party that receive education record information from the Institution may use the information, but only for the purposes for which the disclosure was made. Service Provider must also abide by** other applicable laws, rules, and standards, including but not limited to, The Health Insurance Portability and Accountability Act (HIPPA), the Gramm-Leach-Bliley Act (GLB), and Payment Card Industry Data Security Standards (PCI-DSS).

### **Definitions:**

*Service Provider* refers to the contractor named in this agreement.

*Institution & MSU* refer to Montana State University.

*Covered data and information (CDI)* includes paper and electronic student education record information supplied by Institution, as well as any data provided by Institution's students to the Service Provider.

*Personally Identifiable Information (PII)* includes records, social security numbers, or any other information that can be used to identify, contact, or locate a single person.

*Cardholder Data* includes credit card account numbers, security codes, expiration dates, names, addresses, social security numbers, and any other personally identifiable information associated with the cardholder that is stored, processed, or transmitted.

**Acknowledgment of Access to CDI and/or PII:** Service Provider acknowledges that the Agreement allows the Service Provider access to CDI, PII and/or Cardholder Data.

**Prohibition on Unauthorized use or disclosure of CDI, PII and/or Cardholder Data:** If solution requires access to CDI, PII, and/or Cardholder Data, Service Provider shall not use or disclose such data received from or on behalf of the Institution (or its students) except as permitted or required by the Agreement, as required by law, or as otherwise authorized in writing by Institution. Service Provider agrees not to use CDI/PII/Cardholder Data for any purpose other than the purpose for which the disclosure was made. These measures will be extended by contract to all subcontractors used by Service Provider.

**Maintenance of the security of electronic information:** If solution requires that Service Provider is given access to and will be storing CDI/PII/Cardholder Data, Offeror must hold CDI/PII/Cardholder Data in strict confidence and must use appropriate security measures to preserve the confidentiality, integrity, and availability of all such data. All sessions transmitting CDI/PII/Cardholder Data must be protected with minimum encryption levels that meet current industry best practices. Acceptable protocols include transferring files over Secure Socket Layer (SSL) and Secure File Transfer Protocol (SFTP) with public and private encryption keys. Unsecured protocols such as File Transfer Protocol (FTP) cannot be used. Service Provider must disclose which data elements (student ID #, name, contact information, etc.) are being stored in the solution. Service Provider must employ secure data backup scheme and restore procedures and security controls in the server and database environment used to store CDI/PII/Cardholder Data. Servers holding such data must be appropriately secured and maintained (physical security, updates, backups, uptime requirements, monitoring, etc.). CDI/PII/Cardholder Data must be encrypted at rest, if possible, and segregated from data belonging to other institutions or customers. Service Provider must maintain third-party data center audit compliance to a standard such as SOC 2 or SSAE 16. The university is required to adhere to the Payment Card Industry Data Security Standard (PCI DSS) promulgated by the PCI Security Standards Council. PCI DSS requires the university to maintain a written agreement that includes an acknowledgement that the Service Provider is responsible for the security of cardholder data that the Service Provider possesses; and requires the university to maintain a program to monitor the Service Provider's PCI DSS compliance status at least annually. The Service Provider agrees that it is responsible for the security of all cardholder data that it obtains or possesses, including but not limited to the functions relating to storing, processing, and transmitting the cardholder data. The Service Provider attests that, as of the effective date of this contract, it has complied with all applicable requirements to be considered PCI DSS compliant, and has performed the necessary steps to validate its compliance with the PCI DSS. The Service Provider agrees to supply the current status of Service Provider's PCI DSS compliance, and evidence of its most recent validation of compliance upon execution of this contract to the university. Service Provider must supply to the university an attestation of compliance, and sufficient evidence of its most recent appropriate compliance validation assessment for the university to ascertain the assessment scope and outcome, at least annually to [pci@montana.edu](mailto:pci@montana.edu).

**Return or Destruction of CDI/PII:** Upon termination, cancellation, expiration or other conclusion of the Agreement, Service Provider must return, purge, or destroy all Institutional data, CDI/PII/Cardholder Data, or otherwise. If Service Provider destroys the information, Service Provider shall provide Institution with a Certificate confirming the date of the destruction of the data within fourteen (14) days.

**Remedies:** If the Institution reasonably determines in good faith that Service Provider has materially breached any of its obligations under this contract, the Institution, in its sole discretion, shall have the right to require Service Provider to submit to a plan of credit monitoring and identity theft reporting; provide Service Provider with a fifteen (15) day period to cure the breach; or terminate the Agreement immediately if cure is not possible. Before exercising any of these options, the Institution shall provide written notice to Service Provider describing the violation and the action it intends to take. If the breach involves educational records and if the Family Policy Compliance Office of the U.S. Department of Education determines that the Service Provider improperly disclosed personally identifiable information obtained from the Institution's education records, the Institution may not allow the Service Provider access to education records for at least five years.

**Reporting of Unauthorized Disclosures or Misuse of Covered Data and Information:** Service Provider shall, within one day of discovery, report to the Institution any use or disclosure of CDI/PII/Cardholder Data not authorized by this agreement or in writing by Institution. Service Provider's report shall identify: (i) the nature of the unauthorized use or disclosure, (ii) the CDI/PII/Cardholder Data used or disclosed, (iii) who made the unauthorized use or received the unauthorized disclosure, (iv) what Service Provider has done or shall do to mitigate any deleterious effect of the unauthorized use or disclosure, and (v) what corrective action Service Provider has taken or shall take to prevent future similar unauthorized use or disclosure. Service Provider shall provide such other information, including a written report, as reasonably requested by Institution.

**Contractor's Responsibilities:** If solution is hosted by MSU, the Contractor may design, test, and operate all software on equipment owned by MSU, using reasonable care to safeguard all software and equipment owned by MSU. All software programs, and other program specific technology, including system designs, written or changed by the contractor, are owned by MSU, but the Contractor owns all programming techniques. Distribution by the Contractor of programs developed under this contract or any derivative thereof is prohibited unless agreed to in writing by MSU.

**Indemnity:** In addition to the indemnification provisions of the original agreement, Service Provider shall also defend and hold Institution harmless from all claims, liabilities, damages, or judgments involving a third party, including Institution's costs and attorney fees, which arise as a result of Service Provider's failure to meet any of its obligations under this Attachment A: Expanded Data Security Terms.