

**METROPOLITAN EDUCATION DISTRICT  
INDEPENDENT CONTRACTOR AGREEMENT FOR SPECIAL SERVICES**

**CONTRACTOR:** C & S Vending Inc.

**TAX I.D. NUMBER:** xx-xxx5611

This Independent Contractor Agreement for Special Services is made as of the 10th day of March in the year 2022, between the Metropolitan Education District (District) and C&S Enterprises (Contractor).

**WHEREAS**, the District is authorized by Section 53060 of the California Government Code to contract with and employ any persons for the furnishing of special services and advice in financial, economic, accounting, engineering, legal or administrative matters, if such persons are specially trained and experienced and competent to perform the special required;

**WHEREAS**, the District needs such special services and advice; and

**WHEREAS**, the contractor is specially trained and experienced and competent to perform the special services required by the District, and such services are needed on a limited basis;

**NOW, THEREFORE**, the Parties agree as follows:

**Services:** The Contractor shall furnish to the District the following services **[or]** the Contractor shall provide the services as described below under "Scope of Services," attached hereto and incorporated herein by this reference ("Services" or "Work"):

**Scope of Services:**

Contractor shall provide vending machine services as directed by the District representative. Silicon Valley Adult Education (SVAE) Campus-wide services will include, but are not limited to the following:

1. Cold/hot beverage vending machine
2. Snack vending machine

**Proposed Vending Machine Locations:**

Vending Machine Type	Quantity	Location
Beverage Machine-Indoor	1	SVAE Campus / Student Lounge- 760 Hillsdale Avenue, San Jose, CA 95136
Snack Machine- Indoor	1	SVAE Campus / Student Lounge- 760 Hillsdale Avenue, San Jose, CA 95136
Total	2	

- Contractor shall provide all labor and supplies to ensure that the vendor area and all equipment will be clean, sanitary, and free of debris and spills. The District will be responsible for custodial services in those areas adjacent to the vendor's area.
- Contractor shall supply vending machines as Contractor and the District agreed upon. Any addition or deletion of machines must be mutually agreed upon in writing

by both parties. Contractor will be responsible for all repairs, upkeep, cleaning, and maintenance of vending equipment. The Contractor must ensure that each vending machine is not out of service for more than 24 hours from the time of notification, for purposes of this section shall be defined as when an email or facsimile is sent, a telephone call is made, or a voicemail message is left. Contractor must replace manufacturing machines within 2 weeks of the District's request.

- Contractor shall keep the vending machines fully stocked, with at least half, of all advertised products in a timely manner to maximize sales. The District requires a response to a service call for repair and/or re-stocking within 24 hours of the call.
- The District shall furnish, at no cost for the Contractor, the electric power as necessary for the operation of the vending machines. The District shall take reasonable measures, consistent with the District mission to avoid power loss and to restore power if, and when a power outage occurs. The parties, however, expressly understand and agree that the provision of electricity is generally beyond the District's control and that it shall not be responsible for damage to any products in the vending machines or to the vending machines as a result of the loss of electrical power. Contractor shall equip all outdoor vending machines with power saving devices to reduce the amount of electrical energy. Excess power consumption will be reviewed, upon request of the District, during the course of the contract and such machines must be replaced at the District's request and without any additional expense or charge to the District.
- Contractor's personnel shall be dressed in either: (1) service uniforms showing Contractor's full name; or (2) wear clearly visible name tags or shirts. All of Contractor's personnel shall observe all District regulations at all times, including signing at each location upon arrival. Contractor shall be responsible for furnishing its service personnel with the proper company uniforms, shirts, or name tags.
- Contractor shall mark all machines with the Contractor's contact information, including, at a minimum, a telephone number where a live person will be available 24 hours a day, seven days per week, in case of any malfunctions or problems.
- Contractor shall utilize the energy management program to reduce the amount of electrical energy the vending machines use creating cost savings for the District.

**Refund Policy:** Refunds will be given upon request within reason.

- Contractor shall provide a money bank of \$20.00 to issue refunds. A designated District employee will be responsible for handling refunds and be the main point of contact with C&S Enterprises every week.

**Commission and Pricing:** Contractor shall professionally collect monies at such frequencies that are consistent with proper security and accounting procedures. Contractor shall pay the commission at a rate of 15% of gross sale, payable to the District on the 15<sup>th</sup> of each month.

A written request is required when deciding whether to allow a price change. The District will compare the written request amongst the Consumer Price Index, U.S City average, and all other items as published by the U.S Bureau of Labor statistics. Without the District's written approval, price changes may not be implemented.

**Term:** Contractor shall commence providing services under this agreement on March 10, 2022, and will diligently perform as required and complete performance by March 10, 2025.

**Submittal of Documents:** The Contractor shall not commence the Work under this Contract until the Contractor has submitted and the District has approved the certificate(s) and affidavit(s), and the endorsement(s) of insurance required as indicated below:

_____	Signed Agreement
_____	Workers' Compensation Certificate
_____	Insurance Certificates and Endorsements
_____	W-9 Form

**Expenses:** District shall not be liable to Contractor for any costs or expenses paid or incurred by Contractor in performing services for District.

**Materials:** Contractor shall furnish, at his/her own expense, all labor materials, equipment, supplies, and other items necessary to complete the services to be provided according to this Agreement.

**Independent Contractor:** Contractor, in the performance of this Agreement, shall be and act as an independent contractor. Contractor understands and agrees that he/she and all of his/her employees, agents, and representatives shall not be considered officers, employees, agents, partner, or joint venture of the District, and are not entitled to benefits of any kind or nature normally provided employees of the District and/or to which District's employees are normally entitled, including, but not limited to, State Unemployment Compensation or Worker's Compensation. Contractor shall assume full responsibility for payment of all federal, state, and local taxes or contributions, including unemployment insurance, social security, and income taxes concerning Contractor's employees.

**Standard of Care:** Contractor's services will be performed, findings obtained, reports and recommendations prepared by generally and currently accepted principles and practices of his/her profession for services to California school districts.

**Audit:** Contractor shall establish and maintain books, records, and systems of account, following generally accepted accounting principles, reflecting all business operations of Contractor transacted under this Agreement. Contractor shall retain these books, records, and systems of account during the term of this Agreement and for three (3) years thereafter. Contractor shall permit the District, its agent, other representatives, or an independent auditor to audit, examine, and make excerpts, copies, and transcripts from all books and records and to make audit(s) of all billing statements, invoices, records, and other data related to the Services covered by this Agreement. Audit(s) may be performed at any time, provided that the District shall give reasonable prior notice to Contractor and shall conduct an audit(s) during Contractor's normal business hours unless Contractor otherwise consents.

**Termination:**

- a. **Without Cause by District:** District may, at any time, with or without reason, terminate this Agreement and compensate Contractor only for services satisfactorily rendered to the date of termination of the Agreement. Written notice by District shall be sufficient to stop the further performance of services by Contractor. Notice shall be deemed given

when received by the Contractor or no later than three days after the day of mailing, whichever is sooner.

- b. **Without Cause by Contractor:** Contractor may, upon thirty (30) days notice, with or without reason, terminate this Agreement. Upon this termination, District shall only be obligated to compensate Contractor for services satisfactorily rendered by the date of termination. Written notice by Contractor shall be sufficient to stop the further performance of services to District. Contractor acknowledges that this thirty (30) day notice period is acceptable so that the District can attempt to procure the Services from another source.
- c. **With Cause by District:** District may terminate this Agreement upon giving of written notice of intention to terminate for cause. Cause shall include:
- Violation of this Agreement by the Contractor;
  - Any act by Contractor exposing the District to liability, including, but not limited to personal injury or property damage; or
  - Contractor is adjudged as bankrupt, Contractor makes a general assignment for the benefit of creditors, or a receiver is appointed on account of Contractor's insolvency.

Written notice by the District shall contain the reasons for such intention to terminate and unless within three (3) calendar days after that notice the condition or violation shall cease, or satisfactory arrangements for the correction thereof be made, this Agreement shall upon the expiration of the three (3) calendar days cease and terminate. In the event of this termination, the District may secure the required services from another Contractor. If the expense, fees, and/or costs to the District exceed the cost of providing the service according to this Agreement, the Contractor shall immediately pay the excess expense, fees, and/or costs to the District upon the receipt of the District's notice of these expense fees, and/or costs. The foregoing provisions are in addition to and not a limitation of any other rights or remedies available to District.

**Insurance:** The Contractor shall procure and maintain at all times it performs any portion of the Services the following insurance with minimum limits equal to the amount indicated below.

- **Commercial General Liability and Automobile Liability Insurance:** Commercial General Liability Insurance and any Automobile Liability Insurance that shall protect the Contractor, the District, and the State from all claims of bodily injury, property damage, personal injury, death, advertising injury, and medical payments arising by performing any portion of the Services. Contractor's insurance must include the District, its Board, and its respective employees, board members, officers, employees, and agents as additional insureds. Contractor's insurance must be primary to and noncontributory with any otherwise maintained by or afforded to the District, its Board, and its respective employees, board members, officers, employees, and agents, but only to the extent of liabilities falling within Contractor's indemnity obligations in this Agreement (refer to the chart on the next page).
- **Workers' Compensation and Employers' Liability Insurance:** Workers' Compensation Insurance and Employers' Liability Insurance are mandatory for all of its employees performing any portion of the Services. By provisions of Section 3700 of the California Labor Code, the Contractor shall be required to secure workers' compensation coverage for its employees. If any class of employee or employees engaged in performing any portion of the Services under this Agreement are not protected under the

Workers' Compensation Statute, adequate insurance coverage for the protection of any employee(s) not otherwise protected must be obtained before any of those employee(s) commence performing any portion of the Services (refer to the chart below).

- **Professional Liability (Errors and Omissions):** Professional Liability (Errors and Omissions) Insurance as appropriate to the Contractor's professions (refer to the chart below).

<u>Type of Coverage:</u>	<u>Minimum Requirement</u>
<b>Commercial General Liability Insurance,</b> Including Bodily Injury, Personal Injury, Property Damage, Advertising Injury, and Medical Payments	
Each Occurrence	\$1,000,000
General Aggregate	\$1,000,000
<u>Type of Coverage:</u>	<u>Minimum Requirement</u>
<b>Automobile Liability Insurance – Any Auto</b>	
Each Occurrence	\$1,000,000
General Aggregate	\$1,000,000
<b>Professional Liability</b>	\$1,000,000
<b>Workers Compensation</b>	Statutory Limits
<b>Employer's Liability</b>	\$1,000,000

**Proof of Carriage of Insurance:** The Contractor shall not commence performing any portion of the Services until all required insurance has been obtained and certificates indicating the required coverage have been delivered in duplicate to the District and approved by the District. Certificates and insurance policies shall include the following:

- A clause stating; “This policy shall not be canceled or reduced in required limits of liability or amounts of insurance until notice has been mailed to the District, stating the date of cancellation or reduction. Date of cancellation or reduction shall not be less than thirty (30) days after the date of mailing notice.”
- Language stating, in particular, those insured, extent of insurance, location, and operation to which insurance applies expiration date, to which cancellation and reduction notice will be sent, and length of the notice period. (If a contractor is contracting for multiple sites, have the certificate of insurance made out to the Metropolitan Education District for the fiscal year).
- All policies shall be written on an occurrence form.

**Acceptability of Insurers:** Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A; VII, unless otherwise acceptable to the District. Such acceptance by the District must be in writing.

**Taxpayer Identification Number:** As a prerequisite to performing any services under this Agreement for the District, the Contractor shall provide the Contractor's taxpayer identification number.

**Inconsistent Obligations:** Contractor warrants that Contractor is free to enter into this Agreement and that the performance of this Agreement by Contractor will not conflict with or constitute a breach under any other agreement to which Contractor is bound. Contractor may not enter into any obligation inconsistent with Contractor's obligations under this Agreement or any Scope of Services.

**No Training:** The District enters into this Agreement based on the Contractor's demonstrated ability to perform the types of services that the District believes, and that Contractor has represented, are needed to accomplish and provide the services under this Agreement to the District. Consequently, the District shall not provide Contractor with any training concerning the services being provided under this Agreement. The District shall communicate the standards and specifications relating to the services being provided under this Agreement to the Contractor.

**Indemnification:** The Contractor shall indemnify, defend, and hold harmless the District, its Board, collectively and individually, and the District's employees, officers, directors, board members, and agents (collectively "the District") from and against any liabilities, debts, liens, losses, damages, claims, judgments or obligations, actions, or causes of action, and any connected expenses, including, but not limited to, reasonable attorneys' fees, whatsoever resulting from or arising out of the performance by the Contractor or the Contractor's employees or agents under this Agreement. Contractor will not admit liability or enter into any settlement that adversely affects the District's rights or interests without the District's prior written consent.

**Assignment:** The obligations of the Contractor under this Agreement shall not be assigned by the Contractor.

**Compliance with Laws:** Contractor shall observe and comply with all rules and regulations of the Governing Board of the District and all federal, state, and local laws, ordinances, and regulations. Contractor shall give all notices required by any law, ordinance, rule, and regulation bearing on the conduct of the Work as indicated or specified. If Contractor observes that any of the Work required by this Contract is at variance with any such laws, ordinance, rules or regulations, Contractor shall notify the District, in writing, and, at the sole option of the District, any necessary changes to the scope of the Work shall be made and this Contract shall be appropriately amended in writing, or this Contract shall be terminated effective upon Contractor's receipt of a written termination notice for the District. If Contractor performs any work that violates any laws, ordinances, rules, or regulations, without first notifying the District of the violation, Contractor shall bear all costs arising therefrom.

**Permits/Licenses:** Contractor and all Contractor's employees or agents shall secure and maintain in force such permits and licenses as are required by law in connection with the furnishing of services under this Agreement.

**Employment with Public Agency:** Contractor, if an employee of another public agency, agrees that Contractor will not receive salary or remuneration, other than vacation pay, as an employee of another public agency for the actual time in which services are being performed under this Agreement.

**Anti-Discrimination:** It is the policy of the District that in connection with all work performed under contracts there be no discrimination against any employee engaged in the work because of race, color, ancestry, national origin, religious creed, physical or mental disability, medical

condition, marital status, sex, sexual orientation, gender, age or any other classification protected under applicable law, and therefore the Contractor agrees to comply with applicable Federal and California laws including, but not limited to, the California Fair Employment and Housing Act beginning with Government Code Section 12900 and Labor Code Section 1735. In addition, the Contractor agrees to require like compliance by all its subcontractor(s).

**Fingerprinting of Employees:** The Contractor shall comply with the provisions of Education Code section 415125.1 regarding the submission of employee fingerprints to the California Department of Justice and the completion of criminal background investigations of its employees. The Contractor shall not permit any employee to have any contact with District students until the Contractor has verified in writing to the Governing Board of the District that the employee has not been convicted of a felony, as defined in Education Code Section 45122.1. The Contractor's responsibility shall extend to all employees, subcontractors, agents, and employees or agents of subcontractors regardless of whether those individuals are paid or unpaid, concurrently employed by the District, or acting as independent contractors of the Contractor. Verification of compliance with this section and the Criminal Background Investigation Certification that may be required with this Agreement shall be provided in writing to the District before each individual's commencement of employment or performing any portion of the Services and before permitting contact with any student.

**Limitation of District Liability:** Notwithstanding any other provision of this Agreement, in no event, shall District be liable, regardless of whether any claim is based on contract or tort, for any special, consequential, indirect, or incidental damages, including, but not limited to, lost profits or revenue, arising out of or in connection with this Agreement for the services performed in connection with this Agreement.

**Confidentiality:** The Contractor and all Contractor's agents, personnel, employee(s), and/or subcontractor(s) shall maintain the confidentiality of all information received in the course of performing the Services. This requirement to maintain confidentiality shall continue after the termination of this Agreement.

**Notice:** Any notice required or permitted to be given under this Agreement shall be deemed to have been given, served, and received if given in writing and either personally delivered or deposited in the United States mail, registered or certified mail, postage prepaid, return receipt required, or sent by overnight delivery service, or facsimile transmission, addressed as follows:

**District**

Metropolitan Education District  
760 Hillsdale Ave, Bldg. 6  
San Jose, CA 95136

**Contractor**

C & S Vending Inc. 870 Commercial  
Street San Jose, CA 95112ATTN: Andy  
Owen General Manager

ATTN:

Dorothy Reconose  
Chief Business Official

Any notice personally given or sent by facsimile transmission shall be effective upon receipt. Any notice sent by overnight delivery service shall be effective the business day next following delivery thereof to the overnight delivery service. Any notice given by mail shall be effective three (3) days after deposit in the United States mail. Contractor shall be obligated to notify the District in writing of any change in the Contractor's address. Notice of change of address shall be effective only when done by this Section.

**Integration/Entire Agreement of Parties:** This Agreement, the Scope of Services, and all other attachments are intended to be a final, complete, and exclusive statement of the terms of the Contractor's engagement by the District. This Agreement supersedes all other prior and contemporaneous agreements, discussions, negotiations, and statements, whether written or oral, express or implied, pertaining in any manner to the engagement of the Contractor, and it may not be contradicted by evidence of any prior or contemporaneous statements, discussions, negotiations, or agreements. This Agreement may be amended or modified only by a written instrument executed by both Parties. This Agreement is not valid until approved/ratified by the Metropolitan Education District Board of Education. Work shall not be rendered under this Agreement until it has been approved/ratified.

**California Law:** This Agreement shall be governed by and the rights, duties, and obligations of the Parties shall be determined and enforced by the laws of the State of California. The Parties further agree that any action or proceeding brought to enforce the terms and conditions of this Agreement shall be maintained in Santa Clara County, California.

**Waiver:** The waiver by either party of any breach of any term, covenant, or condition herein contained shall not be deemed to be a waiver of such term, covenant, condition, or any subsequent breach of the same or any other term, covenant, or condition herein contained.

**Severability:** If any term, condition, or provision of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions will nevertheless continue in full force and effect, and shall not be affected, impaired, or invalidated in any way.

**Incorporation of Recitals and Exhibits:** The Recitals and each exhibit attached hereto are hereby incorporated herein by reference.

**Interpretation; Captions:** This Agreement shall be constructed as a whole, according to its fair meaning, and not in favor of or against any Party. By the way of example and not in limitation, this Agreement shall not be constructed in favor of the Party receiving a benefit nor against the Party responsible for any particular language in this Agreement. Captions are used for reference purposes only and should be ignored in the interpretation of the Agreement.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement on the date indicated below:

<b>Metropolitan Education District</b>	<b>Contractor</b> <u>  C &amp; S Vending inc.  </u>
Date: _____, 2022	Date: _____, 2022
Site/Department: SVAE	Signature: _____
Signature: _____	Signature: _____
Print Name: Dorothy Reconose	Print Name: Andy Owen
Title: Chief Business Official	Title: General Manager



Date: \_\_\_\_\_

Legal Name of Contractor or Company: C & S Vending Inc.

Signature(s): \_\_\_\_\_

Print Name: Andy Owen

Title: General Manager

(By Article 5 – commencing at Section 1860, Chapter 1, part 7, Division 2 of the Labor Code, the above certificate must be signed and filed with the District before performing any Work under this Contract.)

### **CRIMINAL BACKGROUND INVESTIGATION CERTIFICATION**

The undersigned does hereby certify to the governing board of the District as follows:

That I am a representative of the Contractor currently under contract ("Contract") with the District that I am familiar with the facts herein certified and am authorized and qualified to execute this certificate on behalf of Contractor.

Contractor certifies that it has taken at least one of the following actions concerning the services that are subject to the Contract (check all that apply):

- The Contractor has complied with the fingerprinting requirements of Education Code section 45125.1 concerning all Contractor's employees and all of its subcontractors' employees who may have contact with District pupils in the course of providing services under the Contract, and the California Department of Justice has determined that none of those employees has been convicted of a felony, as that term is defined in Education Code section 45122.1. A complete and accurate list of Contractor's employees and of all of its subcontractors' employees who may come in contact with District pupils during the course and scope of the Contract is attached hereto; and/or

Name: Andy Owen

Title: General Manager

- The Work on the Contract as at an unoccupied school site and/or will not be done on any District property and any employee and/or subcontractor or supplier of any tier of Contract shall come in contact with District pupils.

Contractor's responsibility for background clearance extends to all of its employees, Subcontractors, and employees of Subcontractors coming into contact with District students

regardless of whether they are designated as employees or acting as independent contractors of the Contractor.

Date: \_\_\_\_\_

Legal Name of Contractor or Company: C & S Vending Inc. \_\_\_\_\_

Signature: \_\_\_\_\_

Print Name: Andy Owen \_\_\_\_\_

Title: General Manager \_\_\_\_\_