
AGREEMENT

THIS AGREEMENT is by and between INDIAN RIVER COUNTY, a Political Subdivision of the State of Florida organized and existing under the Laws of the State of Florida, (hereinafter called COUNTY) and Florida Department of Education, Division of Blind Services hereinafter called CONTRACTOR). COUNTY and CONTRACTOR, in consideration of the mutual covenants hereinafter set forth, agree as follows:

ARTICLE 1 - WORK

Contractor shall complete all Work as specified or indicated in the RFP Documents. The Work is generally described as follows:

The provision and operation of vending machines at various County facilities and parks.

ARTICLE 2 - THE PROJECT

The Project for which the Work under the Contract Documents may be the whole or only a part is generally described as follows:

Project Name:	Vending Machine Services
RFP Number:	2025054
Project Address:	As described in section 5 below

ARTICLE 3 - CONTRACT TERM

This Agreement shall be in effect for a term of thirty six (36) months. The County retains the right to automatically renew this Agreement with the consent of Contractor, under the same terms and conditions, for two additional twelve (12) month terms. Additional terms and/or services may be added to this Agreement upon satisfactory negotiation of terms between the County and Contractor. Contractor must receive written notification from the County to cancel no less than 60 days prior to the end of the initial term.

ARTICLE 4 – PAYMENTS

As set forth in their proposal, Contractor will provide the following compensation to the County in return for the ability to place the vending machines:

15% of monthly proceeds to County
\$100.00 Minimum monthly guaranteed to County

ARTICLE 5 – MACHINE LOCATIONS

The County has seven main sites where vending machines are needed. Each facility requires at least two vending machines: one refrigerated for beverages and one for general snacks. The County reserves the right to add/remove locations or modify the number of machines at each location.

1. Intergenerational Recreation Facility is located at 1590 9th Street SW, Vero Beach, FL 32962. In addition to housing the County's Recreation Division, the facility hosts classes, meetings and numerous events. The building will typically be open to the public Monday - Thursday 9 a.m. – 9 p.m., Friday and Saturday 9 a.m. – 5 p.m. and Sunday noon – 5 p.m. The vending machines will

be located in the designated alcove near the center of the main hallway, behind the reception desk. Electrical power (110V) is provided.

2. North County Aquatic Center is located at 9450 CR 512, Sebastian, FL 32958. The aquatic Center is open 6:00 a.m. - 6:00 p.m. (Activity Pool is open 9:00 a.m. - 5:00 p.m.) Monday, Wednesday, and Friday, Tuesday and Thursday 7:00 a.m. - 7:00 p.m. (Activity Pool is open 9:00 a.m.- 5:00 p.m.), Saturday 9:00 a.m. - 5 p.m., Sunday 12:00 p.m. -5:00 p.m. June 1st through August 12th. Activity Pool Saturday and Sunday August 12th through September 13th. Lap pool hours the same as summer except Tuesday and Thursday 9 a.m. - 6 p.m. August 13th through May 31st.
3. Gifford Aquatic Center at 4895 43rd Avenue, Vero Beach. The aquatic Center is open 6:00 a.m. - 6:00 p.m. (Activity Pool is open 9:00 a.m. - 5:00 p.m.) Monday, Wednesday, and Friday, Tuesday and Thursday 7:00 a.m. - 7:00 p.m. (Activity Pool is open 9:00 a.m.- 5:00 p.m.), Saturday 9:00 a.m. - 5 p.m., Sunday 12:00 p.m. -5:00 p.m. June 1st through August 12th. Activity Pool Saturday and Sunday August 12th through September 13th. Lap pool hours the same as summer except Tuesday and Thursday 9 a.m. - 6 p.m. August 13th through May 31st.
4. Public Shooting Range located at 10455 102nd Terrace, Sebastian. The facility is open Thursday through Monday from 9:00 a.m. until 5:00 p.m. This location will require 3 refrigerated drink machines and 1 snack machine.
5. County Administration Building A (Utilities/PW Breakroom) is located at 1801 27th Street, Vero Beach, FL 32960. The Administration Building is open from 8:00 a.m. - 5 p.m. Monday - Friday.
6. County Administration Building B is located at 1800 27th Street, Vero Beach, FL 32960. The Administration Building is open from 8:00 a.m. - 5 p.m. Monday - Friday.
7. Health Department is located at 1901 27th St, Vero Beach, FL 32960. The Health Department is open from 8 a.m. - 5 p.m. Monday - Friday.

ARTICLE 6 - SERVICE

The following conditions apply regarding the servicing of all machines:

- a) All servicing of vending machines shall take place during normal business hours, unless otherwise authorized by the County representative. Restocking should minimize the impact on functions being held at the facility. The County shall not be responsible for the service or maintenance of any vending machines.
- b) Service shall be provided to ensure adequate stock of merchandise with a minimum of 75% fill rate expected daily.
- c) Vendor(s) shall inspect and correct any malfunction of any vending machine within twenty-four (24) hours of notification.
- d) Vendor(s) must have the capability to provide refrigerated snack vending machines at select locations, as requested.
- e) A 24/7 local or toll-free customer service number shall be provided on each vending machine that may be used for inquiries, reporting empty or out of order conditions, or to call for refunds.
- f) The County may require the Vendor to remove any of the Vendor's employees from the premises for any reason sufficient to the County. Any such removals shall be made in the name of the Vendor.
- g) No on-site storage will be available for supplies/stock.

ARTICLE 7 – MACHINE INSTALLATION

The following conditions apply regarding the installation of all machines:

Contractor shall install or contract installation of the machine. For insurance requirements and security purposes, the machine must be bolted to the floor. Contractor shall provide all labor involved with service and maintenance of the machine, including supplies.

The County shall be responsible for the electrical line installation (standard 110 volt outlet), and the ongoing monthly cost for electrical service. Contractor, at its discretion and expense, shall connect the machine through a wireless device, if necessary.

Contractor shall be allowed to erect signage, subject to review and approval by the County, as necessary to attract business. Signage shall not be placed in view from the exterior of the building.

Upon removal of the machine, Contractor is not responsible for restoring the County's property to its pre-installation condition (i.e. replacing flooring), unless caused by Contractor's negligence or intentional damage.

ARTICLE 8 – MISCELLANEOUS

8.1 Indemnification and Insurance. Contractor shall defend, indemnify and hold harmless the County and its commissioners, officers, employees and agents, from any and all losses, damages, expenses (including reasonable attorneys fees) and other liabilities of any type whatsoever, arising out of or relating to any negligence, intentional tort, breach of contract, or breach of applicable law by the Contractor, or its employees, agents, subcontractors, or other persons or entities performing work under this Agreement.

The Contractor agrees to provide and maintain at all times during the Term , and if applicable, the Renewal Term of this Agreement, without cost or expense to the County, policies of insurance generally known as comprehensive general liability policies, including molestation liability, insuring the Contractor against any and all claims, demands, or clauses of action whatsoever for the injuries received and damage to property incurred in connection with the use, occupation and management or control of the property and any improvements thereon by Contractor. Such policies of insurance shall insure the Contractor in the amount not less than \$1,000,000.00 to cover any and all liability claims arising in connection with any particular accident or occurrence. Such liability policies shall provide that the County is an additional insured. The County shall be notified in writing of any reduction, cancellation or substantial change of policy or policies at least thirty (30) days prior to the effective date of such action.

The Contractor shall provide the described insurance on policies and with insurers acceptable to the County and licensed and authorized under the laws of the State of Florida. These insurance requirements shall not relieve or limit the liability of the Contractor. The County does not in any way represent that these types or amounts of insurance are sufficient or adequate to protect the Contractor's interest or liabilities, but are merely minimums.

A certificate of insurance indicating that the Contractor has coverage in accordance with the requirements of the Agreement shall be furnished by the Contractor to the Indian River County Parks and Recreation, prior to commencement of operations in the Parks.

All personal property housed or placed at the Parks shall be at the risk of Contractor, and the County shall have no liability for any damage or loss to any personal property located thereon for any cause whatsoever. The Contractor agrees and understands that the County does not and shall not carry liability, fire, or theft insurance on the operation of these facilities to cover the Contractor's interest therein. The Contractor further agrees and understands that no storage will be made available for his/her

use, unless a negotiated monthly rent has been negotiated [if agreement is for Commissioner Fran B. Adams Park, NCAC or GAC].

8.2. Covenants Against Assignment and Subletting. The Contractor shall not assign any portion of the Agreement nor allow same to be assigned by operation of law without the express written approval of the County.

8.3 Independent Contractor: The Contractor shall perform the conditions of this Agreement as an independent contractor and nothing herein shall be construed to be inconsistent with this relationship or status. Nothing in the Agreement shall be in any way construed to constitute the Contractor or any of his agents or employees as the agent, employee, or representative of the County.

8.4 Additional Locations: Upon written agreement by the parties, this Agreement may include additional concession locations at various other county parks. The terms of this Agreement shall form the basis of any future written document, notwithstanding that a different term, location, and hours of operation would apply.

8.5 Attorney's Fees: In the event of any legal action to enforce the terms of this Agreement each party shall bear its own attorney's fees and costs.

8.6 Contractor is registered with and will use the Department of Homeland Security's E-Verify system (www.e-verify.gov) to confirm the employment eligibility of all newly hired employees for the duration of this agreement, as required by Section 448.095, F.S. Contractor is also responsible for obtaining proof of E-Verify registration and utilization for all subcontractors.

8.7 Governing Law: This Agreement shall be deemed to have been executed and entered into in the State of Florida and this Agreement, and any dispute arising hereunder, shall be governed, interpreted and construed according to the laws of the State of Florida.

8.8 Venue: Venue for any legal action brought by any party to this Agreement to interpret, construe or enforce this Agreement shall be in a court of competent jurisdiction in and for Indian River County, Florida, and any trial shall be non-jury.

8.9 Public Entity Crimes: A person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid on a contract to provide any goods or services to a public entity, may not submit a bid on a contract with a public entity for the construction or repair of a public building or public work, may not submit bids on leases of real property to a public entity, may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with a public entity, and may not transact business with any public entity in excess of Category Two for a period of thirty-six (36) month from the date of being placed on the convicted vendor list. Contractor represents and warrants that no fact or circumstance exists which constitutes a violation of the above prohibitions.

8.10 Modification: No modification of this Agreement shall be binding on the County or the Contractor unless reduced to writing and signed by a duly authorized representative of the County and the Contractor.

8.11 Emergencies: In the case of a declared emergency in Indian River County by the Board of County Commissioners, the County retains the right to immediately resume occupation, management, and maintenance of the facility, to use the facility to meet any emergency needs of the citizens of Indian River County for the period of that emergency and a reasonable period of time thereafter as deemed necessary

by the County.

8.12 Force Majeure: Neither the County nor the Contractor shall be considered in breach of this Agreement to the extent that performance of their respective obligations (excluding payment obligations) is prevented by an Event of Force Majeure that arises after the effective date of this Agreement. An "Event of Force Majeure" shall include, but not be limited to an act of God (such as, but not limited to, fires, explosions, earthquakes, drought, tidal waves and floods); war, hostilities (whether declared or not), invasion, act of foreign enemies, mobilization, requisition, or embargo; rebellions, revolution, insurrection, or military or usurped power, or civil war; contamination by radioactivity from any nuclear fuel, or from any nuclear waste from the combustion of nuclear fuel, radioactive toxic explosive, or other hazardous properties of any explosive nuclear assembly or nuclear component of such assembly; riot, commotion, strikes, go slows, lock outs or disorder, unless solely restricted to employees of any supplier or of its subcontractors; or acts or threats of terrorism.

8.13 Public Records Compliance: Indian River County is a public agency subject to Chapter 119, Florida Statutes. The Contractor shall comply with Florida's Public Records Law. Specifically, the Contractor shall:

- (1) Keep and maintain public records required by the County to perform the service.
- (2) Upon request from the County's Custodian of Public Records, provide the County with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119 or as otherwise provided by law.
- (3) Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and following completion of the contract if the Contractor does not transfer the records to the County.
- (4) Upon completion of the contract, transfer, at no cost, to the County all public records in possession of the Contractor or keep and maintain public records required by the County to perform the service. If the Contractor transfers all public records to the County upon completion of the contract, the Contractor shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the Contractor keeps and maintains public records upon completion of the contract, the Contractor shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the County, upon request from the Custodian of Public Records, in a format that is compatible with the information technology systems of the County.

B. IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT:

**(772) 226-1424
publicrecords@indianriver.gov
Indian River County Office of the County Attorney
1801 27th Street
Vero Beach, FL 32960**

- C. Failure of the Contractor to comply with these requirements shall be a material breach of this Agreement.

9: TERMINATION OF CONTRACT

A. The occurrence of any of the following shall constitute a default by CONTRACTOR and shall provide the COUNTY with a right to terminate this Contract in accordance with this Article, in addition to pursuing any other remedies which the COUNTY may have under this Contract or under law:

- (1) if in the COUNTY's opinion CONTRACTOR is improperly performing work or violating any provision(s) of the Contract Documents;
 - (2) if CONTRACTOR neglects or refuses to correct defective work or replace defective parts or equipment, as directed by the Engineer pursuant to an inspection;
 - (3) if in the COUNTY's opinion CONTRACTOR's work is being unnecessarily delayed and will not be finished within the prescribed time;
 - (4) if CONTRACTOR assigns this Contract or any money accruing thereon or approved thereon;
- or
- (5) if CONTRACTOR abandons the work, is adjudged bankrupt, or if he makes a general assignment for the benefit of his creditors, or if a trustee or receiver is appointed for CONTRACTOR or for any of his property.

B. COUNTY shall, before terminating the Contract for any of the foregoing reasons, notify CONTRACTOR in writing of the grounds for termination and provide CONTRACTOR with ten (10) calendar days to cure the default to the reasonable satisfaction of the COUNTY.

C. If the CONTRACTOR fails to correct or cure within the time provided in the preceding Sub-Article B, COUNTY may terminate this Contract by notifying CONTRACTOR in writing. Upon receiving such notification, CONTRACTOR shall immediately cease all work hereunder and shall forfeit any further right to possess or occupy the site or any materials thereon; provided, however, that the COUNTY may authorize CONTRACTOR to restore any work sites.

D. A vendor or service provider that breaches this agreement during an emergency recovery period (1-year period that begins on the date that the governor initially declared a state of emergency for a natural emergency) is to pay a \$5,000 penalty and damages which may be either actual and consequential damages or liquidated damages. Additionally, the CONTRACTOR shall be liable for:

- (1) any new cost incurred by the COUNTY in soliciting bids or proposals for and letting a new contract; and
- (2) the difference between the cost of completing the new contract and the cost of completing this Contract;
- (3) any court costs and attorney's fees associated with any lawsuit undertaken by COUNTY to enforce its rights herein.

E. TERMINATION IN REGARDS TO F.S. 287.135: CONTRACTOR certifies that it and those related entities of CONTRACTOR as defined by Florida law are not on the Scrutinized Companies that Boycott Israel List, created pursuant to s. 215.4725 of the Florida Statutes, and are not engaged in a boycott of Israel. In addition, if this agreement is for goods or services of one million dollars or more, CONTRACTOR certifies that it and those related entities of CONTRACTOR as defined by Florida law are not on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, created pursuant to Section 215.473 of the Florida Statutes and are not engaged in business operations in Cuba or Syria.

F. COUNTY may terminate this Contract if CONTRACTOR, including all wholly owned subsidiaries, majority-owned subsidiaries, and parent companies that exist for the purpose of making profit, is found to have been placed on the Scrutinized Companies that Boycott Israel List or is engaged in a boycott of Israel as set forth in section 215.4725, Florida Statutes. COUNTY may terminate this Contract if CONTRACTOR is found to have submitted a false certification as provided under section 287.135(5), Florida Statutes, been placed on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or been engaged in business operations in Cuba or Syria, as defined by section 287.135, Florida Statutes.

IN WITNESS WHEREOF, OWNER and CONTRACTOR have signed this Agreement in duplicate. One counterpart each has been delivered to OWNER and CONTRACTOR. All portions of the Contract Documents have been signed or identified by OWNER and CONTRACTOR or on their behalf.

This Agreement will be effective on _____.

OWNER:
INDIAN RIVER COUNTY

CONTRACTOR:
Florida Department of Education, Division of
Blind Services

By: _____
Joseph E. Flescher, Chairman

By: _____
(Contractor)
(CORPORATE SEAL)

By: _____
John A. Titkanich Jr., County Administrator

Attest _____

APPROVED AS TO FORM AND LEGAL
SUFFICIENCY:

(If Contractor is a corporation or a partnership,
attach evidence of authority to sign.)

By: _____
Jennifer W. Shuler, County Attorney

Designated Representative:

Name:

Title:

Address:

Ryan L. Butler, Clerk of Court and Comptroller

Attest: _____
Deputy Clerk

Phone:

Email:

(SEAL)

Designated Representative:

Name: Shelby Ball

Title: Procurement Specialist

Address: 1800 27th St, Vero Beach, FL 32960

Phone: 772-226-1416

Email: purchasing@indianriver.gov