

Agenda Item #: **3.M.15.**

PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS

AGENDA ITEM SUMMARY

Meeting Date: June 5, 2007

Consent
 Ordinance

Regular
 Public Hearing

Department: Parks and Recreation

Submitted By: Parks and Recreation Department

Submitted For: Parks and Recreation Department

I. EXECUTIVE BRIEF

Motion and Title: Staff recommends motion to approve: First Amendment to the Contract with The ICEE Company, for the provision of frozen carbonated beverage drinks and dispensing equipment to County Waterparks for the period June 8, 2007, through June 7, 2008.

Summary: On June 8, 2004, the Board of County Commissioners approved a Contract with The ICEE Company (R2004-1360) to provide frozen carbonated beverage drinks and dispensing equipment to County Waterparks. The original Contract provided for an initial three (3) year term which will expire on June 7, 2007, with two (2) one (1) year renewal options. This amendment renews the Contract for the first option period June 8, 2007, through June 7, 2008, and increases the per item amount the County will pay to The ICEE Company for frozen carbonated beverages for the period June 8, 2007, through February 29, 2008, by replacing Exhibit A of the original Contract with Exhibit A-1. All other terms of the Contract remain the same. Districts 5 and 6 (AH)

Background and Justification: The Parks & Recreation Department provides the public with items for resale at its food and beverage concessions located in County Waterparks. The ICEE Company has been providing frozen carbonated beverages to the County for the past (3) three years and based upon the satisfactory levels of service provided and the success of this product at the waterparks, staff recommends exercising the first renewal option for one (1) year of continued service.

Attachments:

1. First Amendment to the Contract
2. Contract (R2004-1360)

Recommended by: 
Department Director

5/14/07
Date

Approved by: 
Assistant County Administrator

5/25/07
Date

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	2007	2008	2009	2010	2011
Capital Expenditures	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>
Operating Costs	<u>10,000</u>	<u>20,000</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>
External Revenues	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>
Program Income (County)	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>
In-Kind Match (County)	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>
NET FISCAL IMPACT	<u>10,000</u>	<u>20,000</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>
# ADDITIONAL FTE POSITIONS (Cumulative)	_____	_____	_____	_____	_____

Is Item Included in Current Budget? Yes X No _____
 Budget Account No.: Fund 0001 Department 580 Unit 5234 & 5251
 Object 5253 Program N/A

Revenue Budget: 0001-580-5234 & 5251-4728

B. Recommended Sources of Funds/Summary of Fiscal Impact:

		FY2007	FY2008
Coconut Cove Waterpark	0001-580-5234-5253	\$5,000	\$10,000
Calypso Bay Waterpark	0001-580-5251-5253	<u>\$5,000</u>	<u>\$10,000</u>
	Total	\$10,000	\$20,000

C. Departmental Fiscal Review: ckopelakis

III. REVIEW COMMENTS

A. OFMB Fiscal and/or Contract Development & Control Comments:

The profit margin for ICEE drinks is 80%. Sales of these drinks may generate revenues of up to \$50,000 in FY 2007 and \$100,000 in FY 2008.

CA OFMB
5/21/07
ms CN
5/21/07 5/15/07

Mr. J. J. J.
5/23/07
 Contract Development & Control
5/23/07

B. Legal Sufficiency:

This amendment complies with our review requirements.

Anne Delgado 5/24/07
 Assistant County Attorney

C. Other Department Review:

 Department Director

REVISED 10/95
 ADM FORM 01

This summary is not to be used as a basis for payment

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**FIRST AMENDMENT
TO THE CONTRACT FOR
FROZEN CARBONATED BEVERAGES AND RELATED EQUIPMENT
AT COUNTY WATERPARKS**

THIS FIRST AMENDMENT, dated _____, 2007, to the Contract dated June 8, 2004 (R2004-1360), by and between Palm Beach County, a Political Subdivision of the State of Florida, by and through its Board of Commissioners, hereinafter referred to as the "COUNTY", and The ICEE Company, 4701 Airport Drive, Ontario, California 91761, a foreign corporation authorized to do business in the State of Florida with an office located at 3125 JP Curci Drive, Bay 5, Hallandale, Florida 33009, hereinafter referred to as the "CONTRACTOR".

WITNESSETH:

WHEREAS, the parties have entered into that certain Contract dated June 8, 2004 (R2004-1360), hereinafter referred to as the "Contract", whereby the CONTRACTOR has agreed to provide frozen carbonated beverages and related equipment; and

WHEREAS, the parties desire to amend ARTICLE 1, SERVICES, by changing respectively the County's representative, and the Contractor's representative; and

WHEREAS, the parties desire to amend ARTICLE 2, SCHEDULE, to renew the Contract for the period June 8, 2007 through June 7, 2008 with one (1) option for renewal; and

WHEREAS, the parties desire to amend ARTICLE 4, PAYMENTS TO CONTRACTOR paragraph C, by adding Exhibit A-1 to show the new pricing for Frozen Carbonated Beverages (FCB) to be effective June 8, 2007 through February 29, 2008 ; and

WHEREAS, the parties desire to amend ARTICLE 28, NOTICE, by changing the County's recipient of a copy of notices.

NOW THEREFORE, in consideration of the mutual covenants and agreements expressed herein, the COUNTY and the CONTRACTOR agree to amend the Contract to read as follows:

1. ARTICLE 1 – SERVICES, second and third paragraph, is hereby amended to read as follows:
The COUNTY'S representative/liason during the performance of this Contract shall be Dave Lill, telephone number (561)966-6630 or designee.

The CONTRACTOR'S representative/liaison during the performance of this Contract shall be Don Nothington, telephone number (407)295-7522, or (1-800-443-0502).

2. ARTICLE 2 – SCHEDULE, is hereby amended to read as follows:

Contractor shall commence services on June 8, 2004, and complete all services by June 7, 2008. County shall, at its sole discretion, have the option to renew this Agreement upon the same terms and conditions for an additional one (1) year period.

3. ARTICLE 4 – PAYMENTS TO CONTRACTOR, paragraph C, is hereby amended to read as follows:

During the period June 8, 2004 through May 31, 2007, COUNTY agrees to purchase the syrup and supplies at the prices set forth on Exhibit "A". During the period June 8, 2007 through February 29, 2008, COUNTY agrees to purchase the syrup and supplies at the prices set forth on Exhibit "A-1", attached hereto and incorporated herein by reference. All payments required under this Agreement shall be made to The ICEE Company at 4701 Airport Drive, Ontario, California 91761-7817. The due date for payment for all syrup and supplies delivered shall be net 45 days. COUNTY shall pay interest on any amount not paid after 45 days from the due date at the rate of 1.0% per month.

4. ARTICLE 28 – NOTICE, is hereby amended by deleting COUNTY's copies of notices address and in lieu thereof inserting the following:

Copies of notices sent to the COUNTY shall be addressed to:

Dave Lill, Director
Aquatics Division
Palm Beach County Parks and Recreation Department
2700 6th Avenue South
Lake Worth, FL 33461

5. All other provisions of said CONTRACT, dated June 8, 2004, are hereby confirmed and, except as provided herein, are not otherwise altered or amended and shall remain in full force and effect.
6. In accordance with Palm Beach County Code Chapter 2, Article III, Section 2.51, this FIRST AMENDMENT shall not take effect until executed by the parties hereto.

THE REST OF THIS PAGE IS LEFT BLANK INTENTIONALLY

IN WITNESS WHEREOF, the Board of County Commissioners of Palm Beach County, Florida has made and executed this First Amendment on behalf of the COUNTY and CONTRACTOR has hereunto set its hand as of the date first above written.

ATTEST:
SHARON R. BOCK
Clerk & Comptroller

PALM BEACH COUNTY BOARD
OF COUNTY COMMISSIONERS

By: _____
Deputy Clerk

By: _____
Addie L. Greene, Chairperson

WITNESS:

CONTRACTOR:

THE ICEE COMPANY

Sharon Taylor
Signature

By: Lisa R Perez
Signature

SHARON TAYLOR
Print Name

Lisa R Perez
Print Name

Regional Acct Executive
Title

APPROVED AS TO FORM
AND LEGAL SUFFICIENCY

APPROVED AS TO TERMS
AND CONDITIONS

By: _____
County Attorney

By: Dennis E. [Signature]
Director/Assistant Director
Parks & Recreation Department

EXHIBIT A-1

Product List

PRODUCTS - FCB (Frozen Carbonated Beverages)

The FCB pricing is subject to change during the term of the Contract; however, the pricing changes are limited to once a year in February and a ceiling of no more than 3% annually. Additional flavors may be added at the same unit cost.

<u>FCB Syrups</u>	<u>Price</u>
Coca Cola FCB Syrup (2.5 gal.)	\$ 63.65
Coca Cola FCB Syrup (5 gal.)	\$ 127.30
Minute Maid FCB Cherry Syrup (2.5 gal.)	\$ 63.65
Minute Maid FCB Cherry Syrup (5 gal.)	\$ 127.30
Minute Maid FCB Raspberry Syrup (2.5 gal.)	\$ 63.65
Minute Maid FCB Raspberry Syrup (5 gal.)	\$ 127.30
Minute Maid FCB Raspberry/Lemonade Syrup (2.5 gal.)	\$ 63.65
Minute Maid FCB Peach Syrup (2.5 gal.)	\$ 63.65
Minute Maid FCB Watermelon Syrup (2.5 gal.)	\$ 63.65
Minute Maid FCB White Cherry Syrup (2.5 gal.)	\$ 63.65
Minute Maid FCB Grape Syrup (2.5 gal.)	\$ 63.65
Minute Maid FCB Fruit Punch Syrup (2.5 gal.)	\$ 63.65

The Contractor will provide fixed pricing on cups, lids, straws and RTU frozen beverage as listed below.

<u>Cups, Lids and Straws</u>	<u>Price</u>
16 oz. Cups (Icee)	\$40.00/(1000 per case)
24 oz. Cups (Icee)	\$60.00/(1000 per case)
32 oz. Cups (Icee)	\$45.00/(per 500 per case)
32 oz. Sport Sipper Bottles	\$42.00/(48 per case)
16 oz. Domed Lids	\$29.00/(1000 per case)
24 oz. Domed Lids	\$33.00/(1000 per case)
32 oz. Domed Lids	\$20.00/(per 500 per case)
Spoon Straws	\$45.00/(3000 per case)

<u>RTU (Ready to Use) Frozen Beverage</u>	<u>Price</u>
RTU Mocha Cappuchino Java Freeze	\$26.50/(12, 32 oz. cartons per case)
RTU French Vanilla Java Freeze	\$26.50/(12, 32 oz. cartons per case)
RTU Smoothie Strawberry Banana	\$20.00/(12, 32 oz. cartons per case)
RTU Smoothie Wild Berry	\$20.00/(12, 32 oz. cartons per case)
RTU Smoothie Sour Cherry	\$20.00/(12, 32 oz. cartons per case)
RTU Raspberry Lemonade	\$20.00/(12, 32 oz. cartons per case)
RTU Peach	\$20.00/(12, 32 oz. cartons per case)

<u>Frozen Uncarbonated Beverage</u>	<u>Price</u>
FUB Blue Raspberry, Lemonade, and Red Cherry	\$60.00/(4, 1 gallon bottles per case)

FUB pricing for this item does not include dispensing equipment.
Additional flavors may be added at the same unit cost.

**CONTRACT FOR FROZEN CARBONATED BEVERAGES AND
RELATED EQUIPMENT AT COUNTY WATERPARKS**

This Contract is made as of this _____ day of JUN 08 2004, 2004, by and between Palm Beach County, a Political Subdivision of the State of Florida, by and through its Board of Commissioners, hereinafter referred to as the COUNTY, and The ICEE Company, 4701 Airport Drive, Ontario, California, 91761, a foreign corporation authorized to do business in the State of Florida, hereinafter referred to as the CONTRACTOR, whose Federal I. D. is 952499371 .

In consideration of the mutual promises contained herein, the COUNTY and the CONTRACTOR agree as follows:

ARTICLE 1 - SERVICES

The CONTRACTOR'S responsibility under this Contract is to provide items for resale to the Parks and Recreation Department, in accordance with The Pricing and Products list, attached here to as Exhibit "A".

The COUNTY'S representative/liaison during the performance of this Contract shall be Kevin V. Abbate, telephone number (561) 274-1151 or designee.

The CONTRACTOR'S representative/liaison during the performance of this Contract shall be Ira Klein, telephone number (786) 295-6012.

ARTICLE 2 - SCHEDULE

CONTRACTOR shall commence services on June 8, 2004, and complete all services by June 7, 2007. County shall, at its sole discretion, have the option to renew this Agreement upon the same terms and conditions for two (2) separate, successive, one (1) year periods beginning at the end of the initial term.

ARTICLE 3 - PRODUCT RIGHTS

COUNTY hereby grants CONTRACTOR the exclusive right to sell or distribute Frozen Carbonated Beverages (FCB) at both Coconut Cove and Calypso Bay Waterparks. COUNTY shall purchase all FCB syrup, and ready to use (RTU) syrup dispensed at the waterpark, and all cups, lids and straws necessary to serve such products, directly from CONTRACTOR during the term of this Agreement. COUNTY and its concessionaires shall purchase all Frozen Carbonated Beverage cups, straws and lids from CONTRACTOR. The terms "Frozen Carbonated Beverages (FCB)" and "ready to use (RTU)" shall not include frozen "slushie" drinks and unflavored milk.

ARTICLE 4 - PAYMENTS TO CONTRACTOR

- A. The total amount to be paid by the COUNTY under this Contract for all materials shall not exceed a total amount of thirty thousand dollars (\$ 30,000.00) per year.
- B. Invoices received from the CONTRACTOR pursuant to this Contract will be reviewed and approved by the COUNTY'S representative, indicating that services have been rendered in conformity with the Contract. Approved invoices will be sent to the Finance Department for payment.
- C. COUNTY agrees to purchase the syrup and supplies at the prices set forth on Exhibit "A". All payments required under this Agreement shall be made to The ICEE Company at 4701 Airport Drive, Ontario, California 91761-7817. The due date for payment for all syrup and supplies delivered shall be net 45 days. COUNTY shall pay interest on any amount not paid after 30 days from the due date at the rate of 1.0% per month.
- D. Final Invoice: In order for both parties herein to close their books and records, the CONTRACTOR will clearly state "final invoice" on the CONTRACTOR'S final/ last billing to the COUNTY. This shall constitute CONTRACTOR'S certification that all services have been properly performed and all charges and costs have been invoiced to the COUNTY. Any further charges, if not properly included on this final invoice, are waived by the CONTRACTOR.

ARTICLE 5 - EQUIPMENT AND SIGNAGE

- A. CONTRACTOR will provide a minimum of two, multi-barrel high volume outdoor use "FCB" dispensers, and one multi-barrel indoor use "RTU" dispenser (Machines) at each waterpark for COUNTY's use at the waterparks. The ownership of the Machines shall remain in CONTRACTOR, and is and shall remain personal property. The Machines are to be used only to sell ICEE® drinks and use only syrup approved by CONTRACTOR. COUNTY shall, at its cost, prepare its premises for installation of the Machines. CONTRACTOR, at its sole cost, shall, during the Term of the Agreement, provide service, make repairs and supply replacement parts to the Machines.
- B. No representation as to the Machines or any other matter by CONTRACTOR shall in any way affect COUNTY's duty to perform its obligations as set forth in this Agreement. Upon the termination of the agreement, CONTRACTOR shall be entitled to remove the Machines. Any repair or restoration of COUNTY's premise shall be the responsibility of COUNTY.
- C. COUNTY may utilize ICEE® Point-of-sale and merchandising displays which may include window signs, hanging mobiles, or banners. COUNTY agrees to display the FCB machine in a prominent place to aid in the promotion and sales of ICEE products, and to allow CONTRACTOR to install point-of-sale material to aid in selling product. COUNTY shall maintain final authority on the placement of all items on COUNTY property.

ARTICLE 6 - TRUTH-IN-NEGOTIATION CERTIFICATE

Signature of this Contract by the CONTRACTOR shall also constitute the execution of a truth-in-negotiation certificate certifying that the wage rates, over-head charges, and other costs used to determine the compensation provided for in this Contract are accurate, complete, and current as of the date of the Contract and no higher than those charged the CONTRACTOR'S most favored customer for the same or substantially similar service.

The said rates and costs shall be adjusted to exclude any significant sums should the COUNTY determine that the rates and costs were increased due to inaccurate, incomplete, or noncurrent wage rates or due to inaccurate representation(s) of fees paid to outside contractors. The COUNTY shall exercise its rights under this Article 5 within three (3) years following final payment.

ARTICLE 7 - TERMINATION

This Contract may be terminated by the CONTRACTOR upon sixty (60) days prior written notice to the COUNTY in the event of substantial failure by the COUNTY to perform in accordance with the terms of this Contract through no fault of the CONTRACTOR. It may also be terminated, in whole or in part, by the COUNTY, with or without cause, immediately upon written notice to the CONTRACTOR. Unless the CONTRACTOR is in breach of this Contract, the CONTRACTOR shall be paid for services rendered to the COUNTY'S satisfaction through the date of termination. After receipt of a Termination Notice, except as otherwise directed by the COUNTY in writing, the CONTRACTOR shall:

1. Stop work on the date and to the extent specified.
2. Terminate and settle all orders and subcontracts relating to the performance of the terminated work.
3. Transfer all work in process, completed work, and other materials related to the terminated work to the COUNTY.
4. Continue and complete all parts of the work which have not been terminated.

ARTICLE 8 - PERSONNEL

The CONTRACTOR represents that it has, or will secure at its own expense, all necessary personnel required to perform the services under this Contract. Such personnel shall not be employees of or have any contractual relationship with the COUNTY.

All of the services required herein under shall be performed by the CONTRACTOR, or under its supervision, and all personnel engaged in performing the services shall be fully qualified and, if required, authorized or permitted under state and local law to perform such services.

Any changes or substitutions in the CONTRACTOR'S key personnel, as may be listed in Exhibit "A", attached hereto and incorporated herein, must be made known to the COUNTY'S representative and written approval must be granted by the COUNTY'S representative before said change or substitution can become effective.

The CONTRACTOR warrants that all services shall be performed by skilled and competent personnel to the highest professional standards in the field.

All of the CONTRACTOR'S personnel (and all subcontractor's) will comply with all COUNTY requirements governing conduct, safety, and security while on COUNTY premises.

ARTICLE 9 - SUBCONTRACTING

The COUNTY reserves the right to accept the use of a subcontractor or to reject the selection of a particular subcontractor and to inspect all facilities of any subcontractors in order to make a determination as to the capability of the subcontractor to perform properly under this Contract. The CONTRACTOR is encouraged to seek additional small business enterprises for participation in subcontracting opportunities. If the CONTRACTOR uses any subcontractors on this project the following provisions of this Article shall apply:

If a subcontractor fails to perform or make progress, as required by this Contract, and it is necessary to replace the subcontractor to complete the work in a timely fashion, the CONTRACTOR shall promptly do so, subject to acceptance of the new subcontractor by the COUNTY.

The Palm Beach County Board of County Commissioners has established a minimum goal for SBE participation of 15% on all County solicitations.

The CONTRACTOR agrees to abide by all provisions of the Palm Beach County Code establishing the SBE Program, as amended, and understands that failure to comply with any of the requirements will be considered a breach of contract.

The CONTRACTOR understands that each SBE firm utilized on this Contract must be certified by Palm Beach County in order to be counted toward the SBE participation goal.

The CONTRACTOR shall provide the COUNTY with a copy of the CONTRACTOR'S contract with any SBE subcontractor or any other related documentation upon request.

The CONTRACTOR understands the requirements to comply with the tasks and proportionate dollar amounts throughout the term of this Contract as it relates to the use of SBE firms.

The CONTRACTOR will only be permitted to replace a certified SBE subcontractor who is unwilling or unable to perform. Such substitutions must be done with another certified SBE in order to maintain the SBE percentages established in this Contract. Requests for substitutions of SBE's must be submitted to the COUNTY's representative and to the Office of Small Business Assistance.

The CONTRACTOR shall be required to submit to the COUNTY Schedule 1 (Participation of SBE-M/WBE Contractors) and Schedule 2 (Letter of Intent) to further indicate the specific participation anticipated, where applicable.

The CONTRACTOR agrees to maintain all relevant records and information necessary to document compliance pursuant to Palm Beach County Code, Chapter 2, Article III, Sections 2-71 through 2-80.13 and any revisions thereto, and will allow the COUNTY to inspect such records.

ARTICLE 10 - FEDERAL AND STATE TAX

The COUNTY is exempt from payment of Florida State Sales and Use Taxes. The COUNTY will sign an exemption certificate submitted by the CONTRACTOR. The CONTRACTOR shall not be exempted from paying sales tax to its suppliers for materials used to fulfill contractual obligations with the COUNTY, nor is the CONTRACTOR authorized to use the COUNTY'S Tax Exemption Number in securing such materials.

The CONTRACTOR shall be responsible for payment of its own and its share of its employees' payroll, payroll taxes, and benefits with respect to this contract.

ARTICLE 11 - AVAILABILITY OF FUNDS

The COUNTY'S performance and obligation to pay under this Contract is contingent upon an annual appropriation for its purpose by the Board of County Commissioners.

ARTICLE 12 - INSURANCE

It shall be the responsibility of the CONTRACTOR to provide evidence of the following minimum amounts of insurance coverage to Palm Beach County Purchasing Department, 50 South Military Trail, Suite 110, West Palm Beach, FL 33415, Attention: Contracts Section.

The CONTRACTOR shall, on a primary basis and at its sole expense, maintain in full force and effect, at all times during the life of this Contract, insurance coverages and limits (including endorsements) as described herein. Failure to maintain the required insurance will be considered default of the Contract. The requirements contained herein, as well as COUNTY'S review or acceptance of insurance maintained by CONTRACTOR, are not intended to and shall not in any manner limit or qualify the liabilities and obligations assumed by CONTRACTOR under the

Contract.

- A. **Commercial General Liability:** CONTRACTOR shall maintain Commercial General Liability at a limit of liability not less than \$500,000 Each Occurrence. Coverage shall not contain any endorsement(s) excluding Contractual Liability or Cross Liability.
- B. **Business Auto Liability:** CONTRACTOR shall maintain Business Auto Liability at a limit of liability not less than \$500,000 Each Occurrence for all owned, non-owned, and hired automobiles. In the event CONTRACTOR owns no automobiles, the Business Auto Liability requirement shall be amended allowing CONTRACTOR to maintain only Hired & Non-Owned Auto Liability. This amended requirement may be satisfied by way of endorsement to the Commercial General Liability, or separate Business Auto coverage form.
- C. **Workers' Compensation Insurance & Employer's Liability:** CONTRACTOR shall maintain Workers' Compensation & Employer's Liability in accordance with Florida Statute Chapter 440.
- D. **Additional Insured Clause:** Except as to Business Auto, Workers' Compensation and Employer's Liability (and Professional Liability, when applicable) the Certificate(s) of Insurance shall clearly confirm that coverage required by the Contract has been endorsed to include Palm Beach County as an Additional Insured.
- E. **Waiver of Subrogation:** CONTRACTOR hereby waives any and all rights of Subrogation against the COUNTY, its officers, employees and agents for each required policy. When required by the insurer, or should a policy condition not permit an insured to enter into a pre-loss agreement to waive subrogation without an endorsement, then CONTRACTOR shall notify the insurer and request the policy be endorsed with a Waiver of Transfer of Rights of Recovery Against Others, or its equivalent. This Waiver of Subrogation requirement shall not apply to any policy which includes a condition to the policy specifically prohibiting such an endorsement, or voids coverage should CONTRACTOR enter into such an agreement on a pre-loss basis.
- F. **Certificate(s) of Insurance:** Within forty-eight (48) hours of the COUNTY'S request to do so, the CONTRACTOR shall deliver to the COUNTY Certificate(s) of Insurance evidencing that all types and amounts of insurance coverages required by this Contract have been obtained and are in full force and effect. Such Certificate(s) of Insurance shall include a minimum thirty (30) day endeavor to notify due to cancellation or non-renewal of coverage.
- G. **Umbrella or Excess Liability:** If necessary, CONTRACTOR may satisfy the minimum

limits required above for either Commercial General Liability, Business Auto Liability, and Employer's Liability coverage under Umbrella or Excess Liability. The Umbrella or Excess Liability shall have an Aggregate limit not less than the highest "Each Occurrence" limit for either Commercial General Liability, Business Auto Liability, or Employer's Liability. The COUNTY shall be specifically endorsed as an "Additional Insured" on the Umbrella or Excess Liability, unless the Certificate of Insurance notes the Umbrella or Excess Liability provides coverage on a "Follow-Form" basis.

- H. **Right to Revise or Reject:** COUNTY, by and through its Risk Management Department in cooperation with the contracting/monitoring department, reserves the right to review, modify, reject, or accept any required policies of insurance, including limits, coverage's, or endorsements, herein from time to time throughout the term of this Contract. COUNTY reserves the right, but not the obligation, to review and reject any insurer providing coverage because of poor financial condition or failure to operate legally.

ARTICLE 13 - INDEMNIFICATION

CONTRACTOR shall protect, defend, reimburse, indemnify, and hold COUNTY, its agents, employees and elected officials harmless from and against any and all claims, liability, loss, cost, damages, or causes of action of every kind or character, including attorneys's fees and costs, whether at trial or appellate levels or otherwise, arising during and as a result of their performance of the terms of this Contract or due to the acts or omissions of CONTRACTOR.

ARTICLE 14 - SUCCESSORS AND ASSIGNS

The COUNTY and the CONTRACTOR each binds itself and its partners, successors, executors, administrators and assigns to the other party of this Contract and to the partners, successors, executors, administrators and assigns of such other party, in respect to all covenants of this Contract. Except as above, neither the COUNTY nor the CONTRACTOR shall assign, sublet, convey, or transfer its interest in this Contract, without the prior written consent of the other. Nothing herein shall be construed as creating any personal liability on the part of any officer or agent of the COUNTY, nor shall it be construed as giving any rights or benefits hereunder to anyone other than the COUNTY and the CONTRACTOR.

ARTICLE 15 - REMEDIES

This Contract shall be governed by the laws of the State of Florida. Any and all legal action necessary to enforce the Contract will be held in Palm Beach County. No remedy herein conferred upon any party is intended to be exclusive of any other remedy, and each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder now or hereafter existing at law, or in equity, by statute or otherwise. No single or partial exercise by any party of any right, power, or remedy hereunder shall preclude any other or further exercise thereof.

ARTICLE 16 - CONFLICT OF INTEREST

The CONTRACTOR represents that it presently has no interest and shall acquire no interest, either direct or indirect, which would conflict in any manner with the performance or services required hereunder, as provided for in Chapter 112, Part III, Florida Statutes. The CONTRACTOR further represents that no person having any conflict of interest shall be employed for said performance or services.

The CONTRACTOR shall promptly notify the COUNTY'S representative, in writing, by certified mail, of all potential conflicts of interest for any prospective business association, interest, or other circumstance which may influence, or appear to influence, the CONTRACTOR'S judgment or quality of services being provided hereunder. Such written notification shall identify the prospective business association, interest or circumstance, the nature of work that the CONTRACTOR may undertake and request an opinion of the COUNTY as to whether the association, interest or circumstance would, in the opinion of the COUNTY, constitute a conflict of interest if entered into by the CONTRACTOR. The COUNTY agrees to notify the CONTRACTOR of its opinion by certified mail within thirty (30) days of receipt of notification by the CONTRACTOR. If, in the opinion of the COUNTY, the prospective business association, interest or circumstance would not constitute a conflict of interest by the CONTRACTOR, the COUNTY shall so state in the notification and the CONTRACTOR shall, at its option, enter into said association, interest or circumstance and it shall be deemed not in conflict of interest with respect to services provided to the COUNTY by the CONTRACTOR under the terms of this Contract.

ARTICLE 17 - EXCUSABLE DELAYS

The CONTRACTOR shall not be considered in default by reason of any failure in performance if such failure arises out of causes reasonably beyond the control of the CONTRACTOR, or its subcontractor(s), and without their fault or negligence. Such causes include, but are not limited to: acts of God; force majeure; natural or public health emergencies; labor disputes; freight embargoes; and abnormally severe and unusual weather conditions.

Upon the CONTRACTOR'S request, the COUNTY shall consider the facts and extent of any failure to perform the work; and, if the CONTRACTOR'S failure to perform was without it or its subcontractors fault or negligence, the Contract Schedule and/or any other affected provision of this Contract shall be revised accordingly, subject to the COUNTY'S rights to change, terminate, or stop any or all of the work at any time.

ARTICLE 18 - ARREARS

The CONTRACTOR shall not pledge the COUNTY'S credit or make it a guarantor of payment or surety for any contract, debt, obligation, judgment, lien, or any form of indebtedness. The

CONTRACTOR further warrants and represents that it has no obligation or indebtedness that would impair its ability to fulfill the terms of this Contract.

ARTICLE 19 - DISCLOSURE AND OWNERSHIP OF DOCUMENTS

The CONTRACTOR shall deliver to the COUNTY'S representative for approval and acceptance, and before being eligible for final payment of any amounts due, all documents and materials prepared by and for the COUNTY under this Contract.

To the extent allowed by Chapter 119, Florida Statutes, all written and oral information not in the public domain or not previously known, and all information and data obtained, developed, or supplied by the COUNTY, or at its expense, will be kept confidential by the CONTRACTOR and will not be disclosed to any other party, directly or indirectly, without the COUNTY'S prior written consent, unless required by a lawful court order. All drawings, maps, sketches, programs, data bases, reports and other data developed or purchased under this Contract for the COUNTY, or at the COUNTY'S expense, shall be and remain the COUNTY'S property and may be reproduced and reused at the discretion of the COUNTY.

All covenants, agreements, representations and warranties made herein, or otherwise made in writing by any party pursuant hereto, including but not limited to any representations made herein relating to disclosure or ownership of documents, shall survive the execution and delivery of this Contract and the consummation of the transactions contemplated hereby.

ARTICLE 20 - INDEPENDENT CONTRACTOR RELATIONSHIP

The CONTRACTOR is, and shall be, in the performance of all work, services, and activities under this Contract, an Independent Contractor and not an employee, agent, or servant of the COUNTY. All persons engaged in any of the work or services performed pursuant to this Contract shall at all times, and in all places, be subject to the CONTRACTOR'S sole direction, supervision, and control. The CONTRACTOR shall exercise control over the means and manner in which it and its employees perform the work, and in all respects the CONTRACTOR'S relationship, and the relationship of its employees, to the COUNTY shall be that of an Independent Contractor and not as employees or agents of the COUNTY.

The CONTRACTOR does not have the power or authority to bind the COUNTY in any promise, agreement, or representation other than specifically provided for in this Contract.

ARTICLE 21 - CONTINGENT FEES

The CONTRACTOR warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the CONTRACTOR, to solicit or secure this Contract and that it has not paid or agreed to pay any person, company, corporation, individual,

or firm, other than a bona fide employee working solely for the CONTRACTOR, any fee, commission, percentage, gift, or any other consideration contingent upon or resulting from the award or making of this Contract.

ARTICLE 22 - ACCESS AND AUDITS

The CONTRACTOR shall maintain adequate records related to all charges, expenses, and costs incurred in estimating and performing the work for at least three (3) years after completion or termination of this Contract. The COUNTY shall have access to such books, records, and documents as required in this section for the purpose of inspection or audit during normal business hours, at the CONTRACTOR'S place of business.

ARTICLE 23 - NONDISCRIMINATION

The CONTRACTOR warrants and represents that all of its employees are treated equally during employment without regard to race, color, religion, disability, sex, age, national origin, ancestry, marital status, or sexual orientation.

ARTICLE 24 - AUTHORITY TO PRACTICE

The CONTRACTOR hereby represents and warrants that it has, and will continue to maintain, all licenses and approvals required to conduct its business; and, that it will, at all times, conduct its business activities in a reputable manner. Proof of such licenses and approvals shall be submitted to the COUNTY'S representative upon request.

ARTICLE 25 - SEVERABILITY

If any term or provision of this Contract or the application thereof to any person or circumstances shall, to any extent, be held invalid or unenforceable, the remainder of this Contract, or the application of such terms or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected, and every other term and provision of this Contract shall be deemed valid and enforceable to the extent permitted by law.

ARTICLE 26 - PUBLIC ENTITY CRIMES

As provided in F.S. 287.132-133, by entering into this Contract or performing any work in furtherance hereof, the CONTRACTOR certifies that it, its affiliates, suppliers, subcontractors and consultants who will perform hereunder, have not been placed on the convicted vendor list maintained by the State of Florida Department of Management Services within the thirty-six (36) months immediately preceding the date hereof. This notice is required by F.S. 287.133(3)(a).

ARTICLE 27 - MODIFICATIONS OF WORK

The COUNTY reserves the right to make changes in Scope of Work, including alterations, reductions therein, or additions thereto. Upon receipt by the CONTRACTOR of the COUNTY'S notification of a contemplated change, the CONTRACTOR shall, in writing: (1) provide a detailed estimate for the increase or decrease in cost due to the contemplated change; (2) notify the COUNTY of any estimated change in the completion date; and (3) advise the COUNTY if the contemplated change shall affect the CONTRACTOR'S ability to meet the completion dates or schedules of this Contract.

If the COUNTY so instructs, in writing, the CONTRACTOR shall suspend work on that portion of the Scope of Work affected by a contemplated change, pending the COUNTY'S decision to proceed with the change.

If the COUNTY elects to make the change, the COUNTY shall initiate a Contract Amendment, and the CONTRACTOR shall not commence work on any such change until such written amendment is signed by the CONTRACTOR and approved and executed on behalf of Palm Beach County.

ARTICLE 28 - NOTICE

All notices required in this Contract shall be sent by certified mail (return receipt requested), hand delivered, or sent by other delivery service requiring signed acceptance. If sent to the COUNTY, notices shall be addressed to:

Dennis Eshleman, Director
Palm Beach County Parks and Recreation Department
2700 6th Ave South
Lake Worth, FL 33461

With a copy to:

Jon Herrick, Director
Special Facilities and Beaches Division
2700 6th Ave South
Lake Worth, FL 33461

If sent to the CONTRACTOR, notices shall be addressed to:

Kent Galloway, Vice President
The ICEE Company
4701 Airport Drive
Ontario, CA 91761

ARTICLE 29 - ENTIRETY OF CONTRACTUAL AGREEMENT

The COUNTY and the CONTRACTOR agree that this Contract sets forth the entire agreement

between the parties, and that there are no promises or understandings other than those stated herein. None of the provisions, terms, and conditions contained in the Contract may be added to, modified, superseded or otherwise altered, except by written instrument executed by the parties hereto in accordance with Article 26 - Modifications of Work.

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IN WITNESS WHEREOF, the Board of County Commissioners of Palm Beach County, Florida has made and executed this Contract on behalf of the COUNTY and CONTRACTOR has hereunto set its hand the day and year above written.

R2004 1360

ATTEST:
DOROTHY H. WILKEN, Clerk

By: Linda C. Wilken
Deputy Clerk



PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS:

By: [Signature]
Karen T. Marcus, Chair JUN 08 2004

WITNESS:

[Signature]
Signature

David Lauder
Name (type or print)

[Signature]
Signature

Debbie McKeon
Name (type or print)

CONTRACTOR:

The ICEE Company
Company Name

[Signature] 5/3/04
Signature

Kent Galloway
Typed Name

VP/CFO
Title

APPROVED AS TO FORM
AND LEGAL SUFFICIENCY

By: Nancy J. Dolan
County Attorney

APPROVED AS TO TERMS AND CONDITIONS

By: [Signature]
Dennis L. Eshleman, Director
Parks & Recreation Department

Exhibit A

Product List

PRODUCTS – FCB (Frozen Carbonated Beverages)

The FCB pricing is subject to change during the term of the Contract; however, the pricing changes are limited To once a year in February and a ceiling of no more than 3% annually. Additional flavors may be added at the same unit cost.

<u>FCB Syrups</u>	<u>Price</u>
Coca Cola FCB Syrup (2.5 gal.)	\$60
Coca Cola FCB Syrup (5 gal.)	\$120
Minute Maid FCB Cherry Syrup (2.5 gal.)	\$60
Minute Maid FCB Cherry Syrup (5 gal.)	\$120
Minute Maid FCB Raspberry Syrup (2.5 gal.)	\$60
Minute Maid FCB Raspberry Syrup (5 gal.)	\$120
Minute Maid FCB Raspberry/Lemonade Syrup (2.5 gal.)	\$60
Minute Maid FCB Peach Syrup (2.5 gal.)	\$60
Minute Maid FCB Watermelon Syrup (2.5 gal.)	\$60
Minute Maid FCB White Cherry Syrup (2.5 gal.)	\$60
Minute Maid FCB Grape Syrup (2.5 gal.)	\$60
Minute Maid FCB Fruit Punch Syrup (2.5 gal.)	\$60

The Contractor will provide fixed pricing on Cups, lids, straws and RTU frozen beverage as listed below.

<u>Cups, Lids and Straws</u>	<u>Price</u>
16 oz. Cups (Icee)	\$40.00/ (1000 per case)
24 oz. Cups (Icee)	\$60.00/ (1000 per case)
32 oz. Cups (Icee)	\$45.00/ (per 500 per case)
• 32 oz. Sport Sipper Bottles	\$42.00/ (48 per case)
16 oz. Domed Lids	\$29.00/ (1000 per case)
24 oz. Domed Lids	\$33.00/ (1000 per case)
32 oz. Domed Lids	\$20.00/ (per 500 per case)
• Spoon Straws	\$45.00/ (3000 per case)

RTU (Ready to Use) Frozen Beverage

	<u>Price</u>
RTU Mocha Cappuccino Java Freeze	\$26.50/ (12, 32 ounce cartons per case)
RTU French Vanilla Java Freeze	\$26.50/ (12, 32 ounce cartons per case)
RTU Smoothie Strawberry Banana	\$20.00/ (12, 32 ounce cartons per case)
RTU Smoothie Pina Colada	\$20.00/ (12, 32 ounce cartons per case)
RTU Smoothie Wild Berry	\$20.00/ (12, 32 ounce cartons per case)
RTU Smoothie Sour Cherry	\$20.00/ (12, 32 ounce cartons per case)
RTU Raspberry Lemonade	\$20.00/ (12, 32 ounce cartons per case)
RTU Peach	\$20.00/ (12, 32 ounce cartons per case)

Frozen Uncarbonated Beverage

FUB Blue Raspberry, Lemonade, and Red Cherry	\$60.00/ (4, 1gallon bottles per case)
FUB pricing for this item does not include dispensing equipment. Additional flavors may be added at the same unit cost.	