

PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS

AGENDA ITEM SUMMARY

Meeting Date: August 20, 2019

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: **A) approve** a Vending Service Agreement with the State of Florida Department of Education Division of Blind Services for the period of August 20, 2019, through August 19, 2020, to provide vending machine services at Palm Beach County Parks and Recreation facilities; and **B) authorize** the County Administrator or designee to sign amendments to the Vending Service Agreement which add, subtract, or change the number or location of vending machines, but do not change the terms or conditions of the Vending Service Agreement.

Summary: On December 4, 2012, the Parks and Recreation Department entered into a Vending Service Agreement (R2012-1854) with the State of Florida Department of Education Division of Blind Services ("Division") which expired on December 5, 2017. The Department has 19 locations within its operated and/or controlled facilities that would continue to benefit the public by having vending machine services available. This Agreement requires the Division to provide a selection of healthy snacks and drinks equal to 50% of the total of its product line in accordance with Palm Beach County Health Department protocols. The Division will pay the County a 10% commission on gross profit for all Parks public vending machine sales. The Parks and Recreation Department will routinely review the locations of vending machines. During this process, staff will determine whether it is necessary to add, subtract or change vending machine locations. In order to streamline this process, staff is requesting the Board delegate authority to the County Administrator or designee to sign Amendments to the Vending Service Agreement, which will add, subtract or change the location of vending machines. The initial term of this Agreement is one year with four renewal options, each for one year. Countywide (AH)

Background and Justification: In accordance with Countywide PPM CW-F-039, the Parks and Recreation Department may form agreements with non-profit organizations to locate vending machines on County property. The initial term of this Agreement is one year with four renewal options, each for one year. The Division will pay the County a 10% commission on gross profit for all Parks public vending machine sales with the exception of vending machines identified as Palm Beach County Parks' employee vending machines. These vending machines will provide discounted prices for employees. Product changes and price increases will be limited to once each year upon approval of the Parks and Recreation Department Director. The Division is responsible for providing maintenance and security for their vending machines. The County will provide electric and other necessary utilities. The County also has the right to terminate the agreement for any reason upon ninety (90) days written notice.


Attachment: Vending Service Agreement

Recommended by:


Department Director

7-30-19
Date

Approved by:


Deputy County Administrator

8-6-19
Date

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	2019	2020	2021	2022	2023
Capital Expenditures	_____	_____	_____	_____	_____
Operating Costs	_____	_____	_____	_____	_____
External Revenues	(450)	(4,950)	_____	_____	_____
Program Income (County)	_____	_____	_____	_____	_____
In-Kind Match (County)	_____	_____	_____	_____	_____
NET FISCAL IMPACT	<u>(450)</u>	<u>(4,950)</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>
# ADDITIONAL FTE POSITIONS (Cumulative)	_____	_____	_____	_____	_____
Is Item Included in Current Budget:		Yes	<u>X</u>	No	_____
Does this item include use of federal funds?		Yes	_____	No	<u>X</u>

Budget Account No.: Fund 0001 Department 580 Unit 5111
 Revenue 4461 Program N/A

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


Concessions Food & Beverage 0001-580-5111-4461 (5,400)

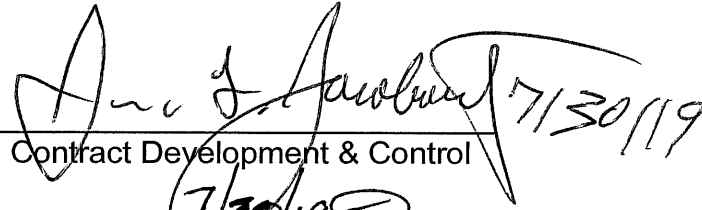
*Estimated net revenue for this agreement is \$5,400.

C. Departmental Fiscal Review: 

III. REVIEW COMMENTS

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

 7/24/19
 OFMB AP 7/23 BR 7/23

 7/30/19
 Contract Development & Control
 (7/30/19 TW)

B. Legal Sufficiency:

Anne Welfant 8-5-19
 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

PALM BEACH COUNTY
VENDING SERVICE AGREEMENT

Between

PALM BEACH COUNTY
A POLITICAL SUBDIVISION OF THE
STATE OF FLORIDA
(COUNTY)

And

FLORIDA STATE
DEPARTMENT OF EDUCATION
DIVISION OF BLIND SERVICES
(DIVISION)

VENDING SERVICE AGREEMENT

THIS VENDING SERVICE AGREEMENT, hereinafter referred to as "Agreement" made and entered into _____, by and between PALM BEACH COUNTY, FLORIDA, a political subdivision of the State of Florida, hereinafter referred to as "COUNTY" and the DEPARTMENT OF EDUCATION, DIVISION OF BLIND SERVICES, an agency of the State of Florida; hereinafter referred to as "DIVISION".

WITNESSETH:

WHEREAS, COUNTY is the owner of various real properties where DIVISION desires to locate vending equipment; and

WHEREAS, COUNTY is willing to allow the location and operation of vending equipment on such property by DIVISION according to the terms and conditions set forth herein.

NOW THEREFORE, in consideration of the payments, covenants and agreements hereinafter reserved and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereby agree as follows:

ARTICLE I BASIC AGREEMENT PROVISIONS

Section 1.01 Services

In consideration of the payments, covenants and agreements hereafter reserved and contained on the part of the DIVISION to be observed and performed, COUNTY shall allow DIVISION to install vending equipment at the locations listed on **Exhibit A**, attached hereto and incorporated herein. DIVISION through its licensed blind vendors, shall provide vending machines services which consist of providing and maintaining vending equipment on COUNTY property that sells non-alcoholic beverages (carbonated and non-carbonated soft drinks, fruit drinks and water) and food products (snack items).

Section 1.02 Length of Term and Commencement Date

The term of this Agreement shall commence upon the Effective Date, as hereinafter defined (the "Commencement Date") and shall extend for a period of one (1) year (the "Initial Term"), and unless sooner terminated pursuant to the provisions of this Agreement.

Section 1.03 Option to Renew

Upon written approval by COUNTY, and provided DIVISION is not then in default of this Agreement, the DIVISION may renew the Initial Term of this Agreement for four (4) successive one (1) year period (s) each under the same terms and conditions of this Agreement and commencing upon the expiration of the Initial Term of this Agreement or any renewal thereof. DIVISION shall exercise its option to renew, if at all, by written notice to the COUNTY received by the COUNTY on or before 90 days prior to the expiration of the Initial Term of this Agreement or any renewal thereof. Failure of DIVISION to duly and timely exercise its option to renew the Initial Term of this Agreement and any renewal thereof shall be deemed a waiver of DIVISION's right to said option and all further options. The Director of the Parks and Recreation Department is hereby authorized to provide written approval to DIVISION, to renew this Agreement, on behalf of the COUNTY.

Section 1.04 Excuse of County's Performance

The COUNTY shall not be deemed in default with respect to failure to perform any of the terms, covenants and conditions of this Agreement if such failure to perform shall be due to any strike, lockout, civil commotion, war-like operation, natural disaster, invasion, rebellion, military power, sabotage, government regulations or controls over which COUNTY has no amendatory powers, inability to obtain any material, utilities, service or financing, through Act of God or any other cause beyond the reasonable control of the COUNTY.

Section 1.05 Customer Service

DIVISION is responsible for all problems associated with the vending equipment which result in a complaint from a consumer, including merchandise past its sale date. DIVISION shall provide and maintain a petty cash fund of \$15.00 with the COUNTY at each COUNTY location where vending equipment is located. DIVISION shall supply the COUNTY with the envelopes required to provide refunds to unsatisfied consumers of the DIVISION's vending equipment.

DIVISION shall provide the DIVISION's vendor contact information on the vending equipment advising users how to contact the DIVISION's vendor regarding problems with the vending equipment.

Section 1.06 Amount of Deposit

DIVISION, with its execution of this Agreement, has deposited with the COUNTY the sum of Five Hundred Dollars (\$500.00) as security for the full, faithful and timely performance of each and every term, covenant and conditions to be performed by DIVISION under this Agreement (the "Security Deposit"). The Security Deposit may be commingled with other funds of COUNTY, and COUNTY shall have no liability for the accrual or payment of any interest thereon. In the event of the failure of DIVISION to keep and perform any of the terms, covenants and conditions of this Agreement to be kept and performed by DIVISION, then the COUNTY, at its option, may appropriate and apply said Security Deposit, or so much thereof as COUNTY may deem necessary to compensate the COUNTY for all loss or damage sustained or suffered by COUNTY due to such default or failure on the part of DIVISION. In no event shall the amount of said Security Deposit be deemed to limit DIVISION liability under this Agreement. Should any portion of the Security Deposit be so appropriated and applied by COUNTY, then DIVISION shall, upon the demand of COUNTY, forthwith remit to COUNTY a sufficient amount in cash to restore said Security Deposit to the original sum deposited, and DIVISION failure to do so within five (5) days after receipt of such demand shall constitute a default of this Agreement. Should DIVISION comply with all of the terms, covenants and conditions of this Agreement and promptly pay all of the Monthly Payments and Additional Payments herein provided for as it becomes due, and all other sums payable by DIVISION to COUNTY hereunder, said Security Deposit shall be returned in full to DIVISION within thirty (30) days of the expiration of this Agreement, or upon the earlier termination hereof.

**ARTICLE II
PAYMENTS**

Section 2.01 Monthly Payments

DIVISION shall pay COUNTY a 10% commission on gross profit for all Parks general public access vending machines. Gross profit for the purpose of this Agreement is defined as gross sales minus sales tax. Percentage of commission may be adjusted by mutual agreement of the COUNTY and the DIVISION. Failure to mutually agree may result in either party terminating this agreement upon written notice to the other party. Monthly Payments shall be made payable within thirty (30) days following the end of each month to the Palm Beach County Board of County Commissioners and shall be delivered to

the Palm Beach County Parks and Recreation Department, 2700 6th Avenue South, Lake Worth, FL 33461.

Section 2.02 Sales and Use Taxes, Assessments, Personal Property Taxes

DIVISION shall pay all sales and use taxes assessed by any governmental authority against the Monthly Payments, if any, even if such tax is intended to be imposed against COUNTY. DIVISION shall pay before delinquency all tangible or intangible personal property taxes and assessments of any kind or nature which may be levied by any governmental authority against the DIVISION's personal property located on COUNTY property.

Section 2.03 Unpaid Fees, Holdover

In the event DIVISION fails to make timely payment of any fees, charges, and payments due and payable in accordance with the terms of this Agreement within ten (10) days after same shall become due and payable, interest at the rate established from time to time by the Board of County Commissioners [currently set at one and one-half percent (1 1/2 %) per month] shall accrue against the delinquent payment(s) from the date due until the date payment is received by COUNTY. Such interest shall constitute Additional Payments. Notwithstanding the foregoing, COUNTY shall not be prevented from terminating this Agreement for default in the payment of fees, charges, and payments due to COUNTY pursuant to this Agreement or from enforcing any other provisions contained herein or implied by law. In the event DIVISION shall holdover, refuse or fail to remove the vending equipment at the expiration or termination of this Agreement, DIVISION shall be strictly liable to pay to COUNTY during the entire period of such holdover, double Monthly Payments. In addition to the Monthly Payments, DIVISION shall pay all other charges or costs imposed upon DIVISION by this Agreement, and all sales taxes assessed against such increased Monthly Payments. Such tenancy shall be subject to all the other conditions, provisions and obligations of this Agreement.

Section 2.04 Accord and Satisfaction

In the event DIVISION pays any amount that is less than the amount stipulated to be paid under this Agreement, such payment shall be considered to be made only on account of the stipulated amount. No endorsement or statement on any check or letter shall be deemed an accord and satisfaction. The COUNTY may accept any check or payment without prejudice to COUNTY's right to recover the balance due or to pursue any other remedy available to COUNTY pursuant to this Agreement or under the law.

**ARTICLE III
CONDUCT OF BUSINESS AND SERVICES OF CONCESSIONAIRE**

Section 3.01 Vending Equipment

DIVISION shall provide vending equipment at the locations listed on **Exhibit A** of this Agreement. The type of vending equipment shall correspond to the type assigned to the location on **Exhibit A**. DIVISION shall provide vending equipment of current manufacture. DIVISION shall provide vending equipment which is in excellent physical and mechanical condition, aesthetically pleasing and clean, and equipped with both dollar and coin changers.

DIVISION shall not add any vending equipment to a location on **Exhibit A** or locate any vending equipment at a new COUNTY location without the approval of the COUNTY through its Director of the Parks and Recreation Department ("DEPARTMENT") and an amendment to this Agreement executed by both the DEPARTMENT and DIVISION.

DIVISION shall not remove vending equipment subject to this Agreement from COUNTY

property without the approval of the COUNTY through the Department and an amendment to this Agreement executed by both the DEPARTMENT and DIVISION.

The COUNTY, through the DEPARTMENT, shall evaluate each request from the DIVISION to remove equipment and permission shall not be unreasonably withheld. Isolated cases of vandalism or a downturn in sales on a seasonal basis shall not be considered valid reasons for the removal of vending equipment, but a sustained inability to generate a profit shall be considered a valid reason to remove or change the location of vending equipment.

Section 3.02 Vending Products

DIVISION shall provide for sale a variety of articles as are typically found in vending machines, including, but not limited to, soft drinks, water, juices, chips, candy bars, crackers, pastries, and gum on Park and Recreation Department premises to employees and visitors. The DIVISION agrees to provide a selection of healthy snacks and drinks equal to fifty (50) percent of the total of its product line in accordance with Palm Beach County Health Department Protocols.

DIVISION shall charge prices for merchandise that does not exceed retail prices and shall provide the COUNTY with a list of its prices charged for food, beverages and other items upon request. In lieu of commission, vending machines that are accessible by employees only shall maintain a price that is, at a minimum, 10 (ten) percent lower than the public vending machines.

Section 3.03 Vending Services

DIVISION shall monitor and maintain the product inventory of all vending equipment. DIVISION shall keep the vending equipment supplied with fresh merchandise, with unexpired dates of sale, at all times. DIVISION shall remove all expired merchandise no later than the printed expiration date if not sold. Sale of stale or expired merchandise shall be considered default of this Agreement. If the DIVISION repeatedly allows one or more pieces of vending equipment to be out of inventory, the COUNTY may terminate with ten (10) days written notice to DIVISION.

DIVISION shall collect all revenue from each piece of vending equipment on a regular basis which is defined as at least once every ten (10) calendar days. DIVISION shall ensure that all of its employees have been provided with the safety standards for the vending equipment and are trained to operate the vending equipment in a safe manner. The DIVISION shall provide instructions on the vending equipment advising users how to operate the vending equipment safely and properly.

The DIVISION shall equip all vending equipment located outdoors with vandal-proof enclosures or cages. The enclosure or cage, however, is subject to COUNTY approval prior to installation.

Section 3.04 Operation of Business

DIVISION shall operate its business during the Term of this Agreement and any extension thereof with due diligence and efficiency and in a manner prudent and in accord with generally accepted business techniques within the locale for DIVISION's business.

DIVISION shall obtain all licenses and permits necessary to operate the vending equipment at DIVISION's own expense. The DIVISION shall conduct operations in such a manner as to meet all applicable health standards and codes and shall maintain the vending equipment in a clean and sanitary condition. DIVISION shall remove all packing materials, commercial garbage and debris generated by the DIVISION from the COUNTY's property. Under no circumstances shall the DIVISION dispose of any debris, refuse or garbage in COUNTY provided trash receptacles.

The DIVISION and DIVISION's staff, when on COUNTY property, shall wear attire which, in the sole determination of the COUNTY, is appropriate, and conduct themselves in a professional manner at all times.

Section 3.05 Records and Reports

DIVISION shall maintain, during the term of this Agreement, all books of accounts, reports, and records customarily used in this type of operation and necessary to document its activities pursuant to this Agreement and all monies collected hereunder in accordance with generally accepted accounting principals. All such books of account and records shall be retained and available for inspection. During this Agreement, and for up to three years after its expiration, the COUNTY shall have the right to audit and examine all such records and books of account relating to the DIVISION's operation hereunder, including revenue and expense reports, Florida State sales tax returns, and federal payroll tax returns, during normal working hours.

The parties agree that records associated with this Agreement are subject to the requirements of Chapter 119, Florida Statutes, to the extent they are not determined to be confidential or exempt from disclosure. The parties agree to 1. Keep and maintain public records required to perform the services included in this Agreement; 2. Upon request from the other party's custodian of public records, provide the other party 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 a party does not transfer the records to the other party.

IF THE DIVISION HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE DIVISION'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT (561) 355-6681.

Section 3.06 Waste or Nuisance

DIVISION shall not commit any waste upon COUNTY property, or commit any nuisance or other act or thing which may disturb the quiet enjoyment of visitors of COUNTY property, or which may result in damage or depreciation of value of COUNTY property or which results in an unsightly condition.

Section 3.07 Governmental Regulations

DIVISION shall, at DIVISION's sole cost and expense, comply with all ordinances, laws, statutes and regulations promulgated there under of all county, municipal, state, federal and other applicable governmental authorities, now in force, or which may hereafter be in force, pertaining to DIVISION or DIVISION's services.

Section 3.08 Non-Discrimination

DIVISION shall assure and certify that it will comply with Title IV of the Civil Rights Act of 1964, as amended, and Palm Beach County Resolution No. R92-13, and shall not discriminate against any individual on the basis of their race, color, national origin, religion, ancestry, sex, age, marital status, sexual orientation, disability, familial status, gender identity or expression or genetic information with respect to any service under this Agreement.

The COUNTY is committed to assuring equal opportunity in the award of contracts and complies with all laws prohibiting discrimination. Pursuant to Palm Beach County Resolution R2017-1770, as may be amended, the DIVISION warrants and represents that throughout the term of the Contract, including any renewals thereof, if applicable, all of its employees are treated equally during employment without regard to race, color, religion, disability, sex, age, national origin, ancestry, marital status, familial status, sexual

orientation, gender identity or expression, or genetic information. Failure to meet this requirement shall be considered default of the Contract.

As a condition of entering into this Contract, the DIVISION represents and warrants that it will comply with the COUNTY's Commercial Nondiscrimination Policy as described in Resolution 2017-1770, as amended. As part of such compliance, the DIVISION shall not discriminate on the basis of race, color, national origin, religion, ancestry, sex, age, marital status, familial status, sexual orientation, gender identity or expression, disability, or genetic information in the solicitation, selection, hiring or commercial treatment of subcontractors, vendors, suppliers, or commercial customers, nor shall the DIVISION retaliate against any person for reporting instances of such discrimination. The DIVISION shall provide equal opportunity for subcontractors, vendors and suppliers to participate in all of its public sector and private sector subcontracting and supply opportunities, provided that nothing contained in this clause shall prohibit or limit otherwise lawful efforts to remedy the effects of marketplace discrimination that have occurred or are occurring in the COUNTY's relevant marketplace in Palm Beach County. The DIVISION understands and agrees that a material violation of this clause shall be considered a material breach of this Contract and may result in termination of this Contract, disqualification or debarment of the company from participating in COUNTY contracts, or other sanctions. This clause is not enforceable by or for the benefit of, and creates no obligation to, any third party. DIVISION shall include this language in its subcontracts.

Section 3.09 Removal of Equipment

Upon termination or expiration of this Agreement, DIVISION, at its sole cost and expense, shall remove DIVISION's personal property and equipment from COUNTY property.

Section 3.10 Hazardous Substance

DIVISION shall not use, maintain, store or dispose of any contaminants including, but not limited to, Hazardous Materials or toxic substances, chemicals or other agents used or produced in DIVISION's service, on COUNTY property, or any adjacent land in any manner not permitted by Environmental Laws. Furthermore, DIVISION shall not cause or permit the disposal of Hazardous Materials upon COUNTY property or upon adjacent lands and shall operate on COUNTY property in compliance with all Environmental Laws. For purposes hereof, Hazardous Materials shall mean any hazardous or toxic substance, material, waste of any kind, petroleum product or by-product, contaminant or pollutant as defined or regulated by Environmental Laws. Disposal shall mean the release, storage, use, handling, discharge or disposal of such Hazardous Materials. Environmental Laws shall mean any applicable federal, state or local laws, statutes, ordinances, rules, regulations or other governmental restrictions.

Any disposal of a Hazardous Material, whether by DIVISION or any third party, shall be reported to COUNTY immediately upon DIVISION's becoming aware of such disposal. DIVISION shall be solely responsible for the entire cost of remediation and clean up of any Hazardous Materials disposed of or discovered upon COUNTY property, or emanating there from onto adjacent lands, as a result of the use of COUNTY property by DIVISION, or DIVISION's agents, licensees, invitees, subcontractors or employees.

Section 3.11 Security

DIVISION acknowledges and accepts full responsibility for the security and protection of the vending equipment and its inventory placed on or installed in or upon COUNTY property. DIVISION expressly acknowledges that any security measures deemed necessary or desirable for protection of the vending equipment shall be the sole responsibility of DIVISION at no cost to COUNTY. Notwithstanding the above, DIVISION shall immediately notify COUNTY of any losses incurred or security incidents.

DIVISION shall be solely responsible for any loss or damage to the vending machines, including merchandise, proceeds in the vending machines and loss of future proceeds, irrespective of cause.

Furthermore, COUNTY reserves the right to subject DIVISION's employees to fingerprint-based background checks to the extent permitted by law and to deny access rights to any DIVISION employee in accordance with adopted laws, policies and procedures. DIVISION shall comply with the provisions of Ordinance 2003-030, the Criminal History Records Check Ordinance ("Ordinance"), if DIVISION's employees or subcontractors are required under this Agreement to enter a "critical facility" as identified in Resolution R-2003-1274. The DIVISION acknowledges and agrees that all employees and subcontractors who are to enter a "critical facility" will be subject to a fingerprint based criminal history records check. Although COUNTY agrees to pay for all applicable FDLE/FBI fees required for criminal history record checks, the DIVISION shall be solely responsible for the financial, schedule, and staffing implications associated in complying with Ordinance 2003-030. DIVISION shall have no recourse or claim against COUNTY for denied access rights.

**ARTICLE IV
SIGNAGE**

Section 4.01 Signs

DIVISION shall not place any sign or advertising matter on COUNTY property or the DIVISION's vending equipment without first obtaining the written approval of the DEPARTMENT. DIVISION further agrees that such signs or advertising matter or other things, as may be approved, shall be maintained in good condition and repair at all times.

**ARTICLE V
REPAIRS AND MAINTENANCE OF MACHINES**

Section 5.01 Responsibility of Division

DIVISION shall maintain all vending equipment in a clean and sanitary condition. DIVISION shall maintain all vending equipment in working order at all times except due to circumstances beyond the DIVISION's control, such as during periods of electrical power outages. DIVISION shall repair or replace any machine that is damaged or unsightly within three (3) business days of verbal notice from the COUNTY.

DIVISION shall immediately notify the DEPARTMENT of any possible health, safety and/or security hazards that may exist within the vending equipment location so corrective actions can be determined and implemented.

COUNTY shall not be obligated or required to make or conduct any maintenance or repairs to any vending equipment.

**ARTICLE VI
UTILITIES**

Section 6.01 Utilities

COUNTY shall provide electric utility service to the vending equipment, at no cost to the DIVISION, from existing outlets. COUNTY shall also provide any improvements necessary to expand existing electrical outlet locations if such improvements are deemed necessary in the sole discretion of the

COUNTY. In no event shall COUNTY be liable for an interruption or failure in the supply of electric utility service to the vending equipment.

ARTICLE VII INSURANCE AND INDEMNITY

Section 7.01 Indemnification

Without waiving the right to sovereign immunity as provided for in Florida Statute, Section 768.28, DIVISION shall indemnify the COUNTY from any claim, suit, judgment, debt, or damages, arising out of performance or failure to perform or negligent or wrongful acts or omissions under this Agreement of any of the DIVISION's employees, servants, or agents while acting in the scope of their employment. Neither Party waives its sovereign immunity, except to the extent provided by law. Nothing in this Agreement may be construed as the consent of either Party to be sued by third parties in any matter arising out of this Agreement. This section shall survive the termination of this Agreement.

Section 7.02 Insurance

Without waiving the right to sovereign immunity as provided by section 768.28, Florida Statutes, (Statute), the DIVISION represents that it is self-insured with coverage subject to the limitations of the Statute, as may be amended.

If DIVISION is not self-insured, DIVISION shall, at its sole expense, purchase and maintain in full force and effect at all times during the life of this contract, insurance coverage at limits not less than those contained in the Statute.

Should DIVISION purchase excess liability coverage, DIVISION agrees to include COUNTY as an Additional Insured.

The DIVISION agrees to maintain or to be self-insured for Workers' Compensation insurance in accordance with Chapter 440, Florida Statutes.

Should DIVISION contract with a third-party (Contractor) to perform any service related to the Agreement, DIVISION shall require the Contractor to provide the following minimum insurance:

- Commercial General Liability insurance with minimum limits of \$1,000,000 combined single limit for property damage and bodily injury per occurrence and \$2,000,000 per aggregate. Such policy shall be endorsed to include DIVISION and COUNTY as Additional Insureds. DIVISION shall also require that the Contractor include a Waiver of Subrogation against COUNTY.
- Business Automobile Liability insurance with minimum limits of \$1,000,000 combined single limits for property damage and bodily injury per occurrence.
- Workers' Compensation insurance in compliance with Chapter 440, Florida Statutes, and which shall include coverage for Employer's Liability with minimum limits of \$1,000,000 each accident.

When requested, the DIVISION shall provide an affidavit or Certificate of Insurance evidencing insurance or self-insurance.

Compliance with the foregoing requirement shall not relieve the DIVISION of its liability and obligations under this Agreement.

ARTICLE VIII DESTRUCTION OF EQUIPMENT

Section 8.01 Destruction of Equipment

In the event COUNTY property containing the DIVISION's vending equipment shall be damaged or injured by fire, the elements, unavoidable accident or other casualty, during the Term of this Agreement or any extension thereof, the COUNTY shall not be liable for any damage to DIVISION's equipment or merchandise. After such an occurrence, the DIVISION shall then have the option to reduce the Monthly Payments proportionate to the amount of equipment destroyed or to replace the destroyed equipment.

**ARTICLE IX
ASSIGNMENT**

Section 9.01 Consent Required

DIVISION shall not assign, mortgage, pledge or encumber this Agreement, in whole or in part, nor enter into any management licensing or similar agreement without the prior written consent of COUNTY in each instance, which may be granted or withheld at COUNTY's sole and absolute discretion. The consent by COUNTY to any assignment shall not constitute a waiver of the necessity for such consent to any subsequent assignment. If this Agreement is assigned and DIVISION is in default under its obligations under this Agreement, COUNTY may collect payment from the assignee or sub division, and apply the net amount collected to the payment herein reserved, but no such assignment or collection shall be deemed a waiver of this covenant, or the acceptance of the assignee or sub division as DIVISION or a release from the further performance by DIVISION of the covenants on the part of DIVISION herein contained. This provision shall be construed to include a prohibition against any assignment, mortgage, pledge, or encumbrance, by operation of law, legal process, receivership, bankruptcy, or otherwise, whether voluntary or involuntary. Notwithstanding any assignment, DIVISION shall remain fully liable on this Agreement and shall not be released from performing any of the terms, covenants and conditions hereof or any payments or other sums to be paid hereunder. DIVISION acknowledges and agrees that all right and interest of the COUNTY in this Agreement may be conveyed, assigned or encumbered at the sole discretion of the COUNTY at any time.

**ARTICLE X
RULES AND REGULATIONS**

Section 10.01 Rules and Regulations

DIVISION, its representatives and employees shall adhere to all COUNTY and State laws and regulations relating to the use of COUNTY parks and beaches, including the rules and regulations appended to this Agreement as **Exhibit B**, and are hereby made a part of this Agreement, and DIVISION agrees to comply with and abide by same. DIVISION's failure to keep and observe said rules and regulations shall constitute a default under the terms and conditions of this Agreement. COUNTY reserves the right from time to time to amend and supplement the rules and regulations, and to impose additional rules and regulations. Notice of such rules and regulations and amendments and supplements thereto, if any, shall be given to the DIVISION. DIVISION agrees to comply with all additional and supplemental rules and regulations upon notice of same from COUNTY.

**ARTICLE XI
DEFAULT**

Section 11.01 Default by Division

The occurrence of any one or more of the events set forth below in (a) to (m), inclusive (any of

which is referred to hereinafter as an “Event of Default”), shall constitute an Event of Default by DIVISION under this Agreement:

- a) DIVISION fails to begin services within sixty (60) days of the Commencement Date.
- b) DIVISION fails to pay any one or more of said Monthly Payments, or any other sums due hereunder as Additional Payments, as and when the same become due.
- c) DIVISION ceases to fully conduct its business as specified herein for a period of five (5) consecutive business days as determined by the COUNTY.
- d) A petition in bankruptcy under any present or future bankruptcy laws (including but not limited to reorganization proceedings) is filed by or against the DIVISION and such petition is not dismissed within thirty (30) days from the filing thereof, or in the event DIVISION is adjudged bankrupt.
- e) An assignment for the benefit of creditors is made by DIVISION.
- f) An appointment, by any court, of a receiver or other court officer of DIVISION’s property and such receivership is not dismissed within thirty (30) days from such appointment.
- g) DIVISION’s estate is taken by execution, attachment or process of law or subjected to any bankruptcy proceeding.
- h) DIVISION removes, attempts to remove, or permits to be removed from COUNTY Property, except upon COUNTY approval, the vending equipment of the DIVISION brought thereon.
- i) DIVISION abandons its vending equipment before the expiration of the Term of this Agreement and without the written consent of the COUNTY, or uses the same for purposes other than the purposes for which the same are hereby licensed.
- j) An execution or other legal process is levied upon the vending equipment of DIVISION brought on COUNTY property, or upon the interest of DIVISION in this Agreement, and the same is not satisfied or dismissed within ten (10) days from such levy.
- k) DIVISION violates any other term, condition or covenant herein on the part of DIVISION to be performed, and DIVISION fails to commence and proceed with diligence and dispatch to remedy the same within ten (10) days after written notice thereof is given by COUNTY to DIVISION.
- l) DIVISION fails to pay the Monthly Payments or Additional Payments by the first day of the month without any prior demand.
- m) An audit report containing a qualified opinion, an adverse opinion, or a disclaimer of opinion, as defined in the Statements on Auditing Standards, as may be amended from time to time, issued by the Auditing Standards Board of the American Institute of Certified Public Accountants, or any successor thereto, is received by the COUNTY.

If any Event of Default occurs, then at any time thereafter while the Event of Default continues, COUNTY shall have the right to pursue such remedies as may be available to COUNTY under the law, including, without limitation, the right to give DIVISION notice that COUNTY intends to terminate this Agreement upon a specified date not less than three (3) days after the date notice is received by DIVISION, in which event this Agreement shall then expire on the date specified as if that date had been originally fixed as the expiration date of the Term of this Agreement. If, however, the default is cured within the three (3) day period and the COUNTY is so notified, this Agreement will continue.

Section 11.02 Default by County

COUNTY shall not be in default unless COUNTY fails to perform its obligations hereunder within the time specified and if none, within a reasonable time, but in no event later than thirty (30) days after written notice by DIVISION to COUNTY, specifying how COUNTY has failed to perform such

obligations; provided, however, that if the nature of COUNTY's obligations is such that more than thirty (30) days are required for performance, then COUNTY shall not be in default if COUNTY commences performance within such thirty (30) day period and thereafter diligently pursues the same to completion.

**ARTICLE XII
ANNUAL BUDGETARY FUNDING/CANCELLATION**

Section 12.01 Annual Appropriations

This Agreement and all obligations of COUNTY hereunder are subject to and contingent upon annual budgetary funding and appropriations by the Palm Beach County Board of County Commissioners. Notwithstanding anything in this Agreement to the contrary, COUNTY shall have the right to cancel this Agreement for any reason upon ninety (90) days prior written notice to the Concessionaire, whereupon the parties shall be relieved of all further obligation hereunder.

This Agreement and all obligations of DIVISION hereunder are subject to and contingent upon the availability of funds by the DIVISION's Board.

**ARTICLE XIV
MISCELLANEOUS**

Section 13.01 Entire Agreement

This Agreement and any Exhibits attached hereto constitute all agreements, conditions and understandings between COUNTY and DIVISION and supersedes all other negotiations, representations, or agreement, written or oral, relating to this Agreement. Except as herein otherwise provided, no subsequent alteration, waiver, change or addition to this Agreement shall be binding upon COUNTY or DIVISION unless reduced to writing and signed by them.

Section 13.02 Amendments

This Agreement may be modified and amended only by written instrument executed by the parties hereto.

Section 13.03 Notices

All notices, consents, approvals, and elections (collectively, "notices") to be given or delivered by or to any party hereunder shall be in writing and shall be (as elected by the party giving such notice) hand delivered by messenger, courier service, or national overnight delivery service, telecopied or faxed, or alternatively shall be sent by United States Certified Mail, with Return-Receipt Requested. The effective date of any notice shall be the date of delivery of the notice if by personal delivery, courier services, or national overnight delivery service (provided in each case a receipt is obtained), or on the date of transmission with confirmed answer back if telecopier or fax if transmitted before 5PM on a business day and on the next business day if transmitted after 5PM or on a non-business day, or if mailed, upon the date which the return receipt is signed or delivery is refused or the notice designated by the postal authorities as non-deliverable, as the case may be. The parties hereby designate the following addresses as the addresses to which notices may be delivered, and delivery to such addresses shall constitute binding notice given to such party:

If to the County at:

Parks & Recreation Department
Attn: Director of Special Facilities
John Prince Park

2700 6th Avenue South
Lake Worth, FL 33461
Telephone 561-966-6626
Fax 561-242-6972

With copies to:

Palm Beach County
Attn: County Attorney
301 North Olive Avenue, Suite 601
West Palm Beach, FL 33401
Telephone 561-355-2225
Fax 561-355-4398

If to the Division at:

Attn: Bureau Chief, Bureau of Business Enterprise
325 West Gaines Street, Suite 1114
Tallahassee, FL 32399
Telephone 850-245-0300
Fax 850-245-0364

Any party may from time to time change the address to which notice under this Agreement shall be given such party, upon three (3) days prior written notice to the other parties.

Section 13.04 Severability

If any term of this Agreement or the application thereof to any person or circumstances shall be determined by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Agreement, or the application of such term to persons or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each term of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

Section 13.05 Recording

DIVISION shall not record this Agreement, or any memorandum or short form thereof, in the public records of Palm Beach County. Any such recording shall constitute a default hereunder and shall result in immediate termination of this Agreement.

Section 13.06 Waiver of Jury Trial

THE PARTIES HERETO WAIVE TRIAL BY JURY IN CONNECTION WITH PROCEEDINGS OR COUNTER CLAIMS BROUGHT BY EITHER OF THE PARTIES HERETO AGAINST THE OTHER IN CONNECTION WITH THIS AGREEMENT OR DIVISION'S USE AND OCCUPANCY OF THE PREMISES.

Section 13.07 Governing Law and Venue

This Agreement shall be governed by and interpreted according to the laws of the State of Florida. Venue shall be in a State court of competent jurisdiction in Palm Beach County, Florida.

Section 13.08 Time of Essence

The parties expressly agree that time is of the essence in this Agreement and the failure by a party to complete performance within the time specified, or within a reasonable time if no time is specified herein, shall, at the option of the other party without liability, in addition to any other rights or remedies, relieve the other party of any obligation to accept such performance.

Section 13.09 Waiver, Accord and Satisfaction

No waiver of any provision of this Agreement shall be effective against any party hereto unless it is in writing and signed by the party(s) waiving such provision. A written waiver shall only be effective as to the specific instance for which it is obtained and shall not be deemed a continuing or future waiver. The waiver by COUNTY of any default of any term, condition or covenant herein contained shall not be a waiver of such term, condition or covenant, or subsequent default of the same or any other term, condition or covenant herein contained. The consent or approval by COUNTY to or of any act by DIVISION requiring COUNTY's consent to or approval shall not be deemed to waive or render unnecessary COUNTY's consent to or approval of any subsequent similar act by DIVISION. The receipt of payment after default or condition broken, or delay on the part of COUNTY to enforce any right hereunder, shall not be deemed a waiver of any proceeding default by DIVISION of any term, covenant or condition of this Agreement, or a waiver of the right of the COUNTY to terminate this Agreement.

Section 13.10 Construction

No party shall be considered the author of this Agreement since the parties hereto have participated in extensive negotiations and drafting and redrafting of this document to arrive at a final agreement. Thus, the terms of this Agreement shall not be strictly construed against one party as opposed to the other party based upon who drafted it. In the event that any section, paragraph, sentence, clause, or provision hereof is held by a court of competent jurisdiction to be invalid, such shall not affect the remaining portions of this Agreement and the same shall remain in full force and effect.

Section 13.11 Incorporation by Reference

Exhibits attached hereto and referenced herein shall be deemed to be incorporated into this Agreement by reference.

Section 13.12 Survival

Notwithstanding any early termination of this Agreement, DIVISION shall remain obligated hereunder to perform any duty, covenant or obligation imposed upon DIVISION hereunder arising prior to the date of such termination; subject to the availability of funds.

Section 13.13 Effective Date of Agreement

This Agreement is expressly contingent upon the approval of the Palm Beach County Board of County Commissioners, and shall become effective only when signed by all parties and approved by the Palm Beach County Board of County Commissioners.

Section 13.14 Successors

All rights and liabilities herein given to, or imposed upon, the respective parties hereto shall extend to and bind the several respective heirs, executors, administrators, successors, and permitted assigns of the said parties.

Section 13.15 Public Entity Crimes

As provided in Section 287.131-133, Florida Statutes, by entering into this Agreement or

performing any work in furtherance hereof, DIVISION certified 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 effective date hereof. This notice is required by Section 287.133(3) (a), F.S.

Section 13.16 Arrears

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

Section 13.17 Independent Contractor Relationship

The DIVISION is, and shall be, in the performance of all work, services and activities under this Agreement, 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 Agreement shall at all times, and in all places, be subject to Concessionaire's sole direction, supervision and control. The DIVISION shall exercise control over the means and manner in which it and its employees perform the work, and in all respects the DIVISION'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 DIVISION does not have the power or authority to bind the COUNTY in any promise, agreement or representation.

Section 13.18 Paragraph Headings

The headings of the various articles and sections of this Agreement are for convenience and ease of reference only, and shall not be construed to define, limit, augment or describe the scope, context or intent of this Agreement.

Section 13.19 Inspector General

Palm Beach County has established the Office of the Inspector General in Palm Beach County Code, Section 2-2421 -2- 440, as amended. The Inspector General's authority includes but is not limited to the power to review past, present and proposed COUNTY contracts, transactions, accounts and records, to require the production of records, and to audit, investigate, monitor, and inspect the activities of the DIVISION, its officers, agents, employees and lobbyists in order to ensure compliance with contract requirements and detect corruption and fraud.

Failure to cooperate with the Inspector General or interfering with of impending any investigation shall be in violation of the Palm Beach County Code, Section 2-421 – 2-440, and punished pursuant to Section 125.69, Florida Statutes, in the same manner as a second degree misdemeanor.

Section 13.20 Division Posture

It is understood that, although DIVISION is a direct party to this Agreement for vending services, DIVISION contracts separately with one of its licensed blind vendors (DIVISION licensees) by means of a Licensed Operator Facility Agreement (LOFA), who is directly responsible thereunder to DIVISION for the administration of the vending services to be provided under and according to this Agreement.

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement as of the day and year first above written.

WITNESS:

[Signature]

(Witness signature)

Sheilene Smith

(Print witness name)

[Signature]

(Witness signature)

Jamie Welsh

(Print witness name)

DIVISION:

[Signature]

By: Richard Corcoran

Title: Commissioner of Education

J. Alex Kelly
Chad & Staff

Date: 5/18/19

Approved as to Form and Legal Sufficiency

[Signature]

Brent McNeal
Deputy General Counsel

Date: 5/8/19

ATTEST:

SHARON R. BOCK
CLERK & COMPTROLLER

COUNTY:

PALM BEACH COUNTY, FLORIDA,
BY ITS BOARD OF COUNTY
COMMISSIONERS

By: _____
Deputy Clerk

By: _____
Mack Bernard, Mayor

APPROVED AS TO FORM
AND LEGAL SUFFICIENCY

APPROVED AS TO TERMS
AND CONDITIONS

By: _____
Assistant County Attorney

By: [Signature]
Department Director

EXHIBIT A

Palm Beach County Parks Public Vending Machine Locations

Westgate Rec Center-	2 Beverage, 2 Snack
West Jupiter Rec Center-	1 Beverage, 1 Snack
North County Pool-	2 Beverages, 1 Snack
John Prince Park Campground-	3 Beverages
Therapeutic Rec Center-	1 Beverage, 1 Snack
Pioneer Park Pool-	1 Beverage
West Boynton Rec Center-	1 Beverage, 1 Snack
Ocean Inlet Park-	2 Beverages
Gulfstream Park-	1 Beverage
Aqua Crest Pool-	1 Beverage, 1 Snack
South County Civic Center-	1 Beverage

Palm Beach County Parks Employee Vending Machine Locations

North County Maintenance Compound-	1 Beverage
Okeehetee Park Maintenance Compound-	1 Beverage
Okeehetee Park Sheriff's Compound-	1 Beverage
John Prince Park Administration Bldg-	1 Beverage, 1 Snack
John Prince Park Maintenance Compound-	2 Beverages, 1 Snack
South District Maintenance Compound-	1 Beverage
Morikami Museum-	1 Beverage
Lake Ida Playhouse-	1 Beverage

EXHIBIT B

RULES AND REGULATIONS

1. DIVISION shall not make, or permit to be made, any unseemly or disturbing noises or disturb or interfere with visitors of County properties, whether by the use of any musical instrument, radio, television set, or other audio device, musical noise, whistling, singing, or in any other way.
2. There shall not be used on County property, either by DIVISION or by their agents or contractors, in the delivery of merchandise, freight or other matter, any hand trucks or other means of conveyance except those equipped with rubber tires, rubber side guards and such other safeguards as the County may require.



DEPARTMENT OF FINANCIAL SERVICES
Division of Risk Management

**STATE RISK MANAGEMENT
TRUST FUND**

Policy Number: WC-1000 State Employee Workers' Compensation
and Employer's Liability
Certificate of Coverage

Name Insured: Department of Education

Coverage Limits:

Coverage A - Compensation coverage is provided to comply with the applicable State Workers' Compensation, Occupational Disease Laws and any rule promulgated thereunder.

Coverage B \$200,000.00 each person
\$300,000.00 each occurrence

Inception Date: July 1, 2019

Expiration Date: July 1, 2020



DEPARTMENT OF FINANCIAL SERVICES
Division of Risk Management

STATE RISK MANAGEMENT
TRUST FUND

Policy Number: AL-1000 Fleet Automobile Liability
Certificate of Coverage

Name Insured: Department of Education

Automobile Liability Coverage provided pursuant to Chapter 284, Part II, Section 768.28, Florida Statutes, the Florida Vehicle No-Fault Law, and any rules promulgated thereunder.

Coverage Limits:

General Liability: \$200,000.00 each person
\$300,000.00 each occurrence

Personal Injury: \$10,000.00 each person
\$10,000.00 each occurrence

Inception Date: July 1, 2019

Expiration Date: July 1, 2020



DEPARTMENT OF FINANCIAL SERVICES
Division of Risk Management

**STATE RISK MANAGEMENT
TRUST FUND**

Policy Number: FC-1000

Federal Civil Rights Liability and
Employment Discrimination
Certificate of Coverage

Name Insured: Department of Education

Federal Civil Rights Liability Coverage provided pursuant to Chapter 284, Part II,
Section 768.28, Florida Statutes, and any rules promulgated thereunder.

Federal Civil Rights:

Liability: Unlimited each person
Unlimited each occurrence

Inception Date: July 1, 2019

Expiration Date: July 1, 2020