

**VENDING MACHINE SERVICES CONTRACT BETWEEN  
CITY OF CLEARWATER AND BUREAU OF BUSINESS ENTERPRISE**

This Contract, entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2019 by and between the CITY OF CLEARWATER, a Florida municipal corporation, hereinafter referred to as "City" P.O. Box 4748, Clearwater, Florida 33758 and Bureau of Business Enterprise, Division of Blind Services, Department of Education, an agency of the State of Florida, hereinafter referred to as "BBE" 325 W. Gaines Street, Turlington Bldg, Suite 1114, Tallahassee, Florida 32399.

WHEREAS, the City desires to continue providing healthy snack vending services, promoting a culture of wellness for the benefit of employees and the general community; and

WHEREAS, BBE agrees to provide healthy snack vending services at the lowest possible costs (no commissions to be paid to the City);

WHEREAS, BBE has provided these services to the City very successfully for the past four years;

NOW THEREFORE, in consideration of the promises stated herein, the City and BBE mutually agree as follows:

**1. SCOPE OF PROJECT**

BBE agrees to provide snack vending services as set forth in Exhibit A, which is incorporated by reference and attached hereto. The parties acknowledge that BBE will provide these services through a licensed blind vendor (hereinafter referred to as "Vendor"), who may be replaced with another Vendor if and as necessary. Vendor will be an independent contractor, and neither Vendor nor its employees shall be considered employees of the City or BBE. BBE shall ensure, through incorporation of this Contract into its agreement with Vendor, that Vendor complies with all the requirements of this Contract and its attached Exhibits.

**2. TERM**

The initial Contract Term shall commence September 1, 2019 and end August 31, 2022. One (1), three (3) year renewal term is provided.

**3. COMPENSATION**

In exchange for provided services, the City forgoes the payment of commissions in order to maintain lower vending prices.

**4. NOTICES AND CHANGES OF ADDRESS**

Any notice required or permitted to be given by the provisions of this Contract shall be

conclusively deemed to have been received by a party hereto on the date it is hand delivered to such party at the address indicated below (or at such other address as such party shall specify to the other party in writing), or if sent by registered or certified mail (postage prepaid) on the fifth (5th) business day after the day on which such notice is mailed and properly addressed.

Bureau of Business Enterprises (BBE)  
William Findley  
Bureau Chief

City of Clearwater  
Art Kader  
Parks and Recreation, Director

325 W. Gaines Street  
Turlington Bldg. Suite 1114  
Tallahassee, FL 32399

PO Box 4748  
Clearwater, FL 33758

Phone: 850-245-0343  
Fax: 850-245-0364

Phone: 727-562-4800

## **5. TERMINATION OF CONTRACT**

The City reserves the right to terminate this Contract, with or without cause, upon thirty (30) calendar days written notice. BBE shall have the right to terminate this Contract, without penalty, if a state-owned building becomes available to BBE for occupancy and given six (6) months advance written notice to the City by Certified mail, Return Receipt Requested.

## **6. INDEMNIFICATION & INSURANCE**

Neither City nor BBE elects to indemnify the other or third parties 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 Contract of any of its employees, servants, or agents acting within the employee's, servant's or agent's office under this Contract. Neither City nor BBE waives its sovereign immunity or any provision of Section 768.28, Florida Statutes Nothing in this Contract may be construed as the consent of the parties to be sued by the other or third parties in any matter arising out of this Contract. This section shall survive the termination of this Contract.

Insurance requirements are set forth in Exhibit B which is incorporated by reference and attached hereto.

## **7. INTERESTS OF PARTIES**

BBE covenants that its officers, employees and shareholders have no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with

the performance and/or provision of services required under the terms and conditions of this Contract.

## **8. CONFORMANCE WITH LAWS**

BBE agrees to comply with all applicable federal, state and local laws during the life of this Contract. Pursuant to Florida Statute, 119.0701(2), BBE and Vendor are ~~is~~ required to comply with public records laws, specifically to:

- (a) Keep and maintain public records required by the public agency to perform the service.
- (b) Upon request from the public agency's custodian of public records, provide the public agency 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 this chapter or as otherwise provided by law.
- (c) Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and following completion of the contract if the contractor does not transfer the records to the public agency.
- (d) Upon completion of the contract, transfer, at no cost, to the public agency all public records in possession of the contractor or keep and maintain public records required by the public agency to perform the service. If the contractor transfers all public records to the public agency upon completion of the contract, the contractor shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the contractor keeps and maintains public records upon completion of the contract, the contractor shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the public agency, upon request from the public agency's custodian of public records, in a format that is compatible with the information technology systems of the public agency.

## **9. AVAILABILITY OF FUNDS**

As provided in Florida Statute Section 255.2502, BBE's performance and obligation to pay under this contract is contingent upon an annual appropriation by the Legislature.

## **10. ATTORNEY FEES**

In the event that either party seeks to enforce this Contract through attorneys at law, then the parties agree that each party shall bear its own attorney fees and costs.

## **11. GOVERNING LAW AND VENUE**

The laws of the State of Florida shall govern this Contract, and any action brought by either party shall lie in Pinellas County, Florida.

## **12. MISCELLANEOUS**

a) This Contract shall be subject to all applicable laws, rules, orders, permits, and regulations of any federal, state, or local governmental authority having jurisdiction over the parties, their facilities, or the transactions contemplated.

b) This Contract constitutes the entire understanding and agreement between the Parties and supersedes any and all prior negotiations, understandings or agreements.

c) No failure to exercise, delay in exercising, or single or partial exercise of any right, power or remedy by either party shall constitute a waiver of, or shall preclude any other or further exercise of, the same or any other right, power or remedy.

d) Whenever possible, each provision of this Contract shall be interpreted in such a manner as to be effective and valid under applicable law, but if any provision of this Contract or the application thereof to any party hereto or circumstance is prohibited by or invalid under applicable law, that provision shall be effective only to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Contract or the application of the same.

e) This Contract may be executed in any number of counterparts, and all the counterparts taken together shall be deemed to constitute one (1) and the same instrument. The captions, headings, titles, and subtitles herein are inserted for convenience of reference only and are to be ignored in any construction of the provisions of this Contract.

f) Any exhibit attached to this Contract is incorporated by reference herein.

g) Nothing contained herein shall be construed as a joint venture, partnership or any other similar relationship between City and BBE. Nothing in this Contract shall be construed as creating any rights, benefits or interests in a person or group that is not a party to this Contract.

h) Except as provided in Section 1, this Contract may not be assigned either in

whole or in part without first receiving the City's written consent. Any attempted assignment, either in whole or in part, without such consent will be null and void and in such event the City will have the right at its option to terminate the Contract. No granting of consent to any assignment will relieve BBE from any of its obligations and liabilities under the Contract.

i) The City, in its sole discretion, reserves the right to request the materials or services set forth herein from other sources when deemed necessary and appropriate. No exclusive rights are encompassed through this Contract.

j) There will be no oral changes to this Contract. This Contract can only be modified in a writing signed by both parties. No charge for extra work or material will be allowed unless approved in writing, in advance, by the City and BBE.

k) This Agreement shall not be deemed to be a lease or conveyance of any real property rights nor shall this Agreement constitute an agreement for the use of real property that would subject the parties to the provisions of any statute regarding landlord and tenant rights. This Agreement shall not establish a landlord-tenant relationship between the parties. BBE and its Vendors shall not obtain any prescriptive rights, easements, or other legal or equitable interest in any premises of the City by reason of the execution of this Agreement, or by compliance with the terms thereof. Ownership of the premises shall at all times remain with the City of Clearwater, and BBE and its Vendors shall not do anything inconsistent with such ownership, except as may be permitted by this Agreement. This Agreement does not vest in BBE or its Vendors any interest in any premises of the City which may be mortgaged, encumbered or lien, and no action of BBE or its Vendors shall cause or create any interests in real estate or any encumbrance upon any such real property.

IN WITNESS WHEREOF, the parties hereto have executed this Contract as of the date set forth above.

Countersigned:

CITY OF CLEARWATER, FLORIDA

\_\_\_\_\_  
Frank Hibbard  
Mayor

\_\_\_\_\_  
William B. Horne, II  
City Manager

Approved as to form:

Attest:

\_\_\_\_\_  
Owen Kohler  
Assistant City Attorney

\_\_\_\_\_  
Rosemarie Call  
City Clerk

Florida Department of Education

By: \_\_\_\_\_

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

Florida Division of Blind Services

By: \_\_\_\_\_

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

Approved as to form for DBS

By: \_\_\_\_\_

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

## **EXHIBIT A**

Vendor will manage all aspects of snack vending machines, including but not limited to sufficient inventory, product stocking, revenue collection, service/maintain equipment, handling refunds and other customer issues. Services will be provided at designated City locations, including worksites and recreational facilities, between the hours of 8:00 A.M. and 5:00 P.M., Monday through Friday, excluding City holidays. All costs associated with performance of the resulting contract are the responsibility of Vendor.

Beverage vending is not included in this agreement.

Nutrition Standards guidelines established by the USDA's Smart Snacks in Schools are preferred at all City facilities where youth are served (recreational facilities). Products that are not USDA program compliant may be considered for employee locations.

In consideration of the rights and privileges that will be granted, Vendor shall strive for reduced costs of vended product. The City will not collect any commissions from vending sales.

**Equipment.** BBE shall be solely responsible for the placement of full- service vending machines to be serviced by Vendor. Machines and locations may be added or removed at the City's discretion and BBE must not unreasonably refuse to add equipment. All equipment shall be equipped with, at a minimum, dollar validators and coin-operated mechanisms with change return, slug rejection and coin-return features. Equipment that offers credit card payment options is preferred.

Equipment, whether indoor or outdoor, shall have crime and vandalism prevention measures in place. Equipment must comply with all Federal, State, County and City Codes. Upon expiration or termination of this Contract, Vendor must remove all machines within ten (10) business days of notification.

**Energy efficiency.** All equipment provided by BBE shall conserve energy and reduce energy related costs through energy efficiency. To satisfy this requirement, BBE either can install machines with an Energy Star® label (or equivalent) or can utilize energy-saving devices such as the Vending Miser® or equivalent. Automatically operated dispensing equipment shall be adequately metered with non-reset meters and shall operate on AC-110 volts. All equipment shall be double insulated or grounded.

**Maintenance.** Vendor shall be responsible for keeping all equipment in a clean and sanitary condition. Vendor shall be solely responsible for their upkeep and repair to ensure they are in good working condition at all times. Equipment that is damaged or unsightly shall be removed and replaced within five (5) days notice from the City.

**Employees.** Vendor's vehicles shall be properly placarded with company name and contact information. Vendor's employees shall present a neat appearance, with nametag/badges and company logo clearly identified.

Vendor acknowledges that children, the elderly, and/or disabled persons will be present at various City locations. Therefore, if not otherwise required to conduct background checks by law, Vendor voluntarily agrees to register with the Florida Department of Law Enforcement (FDLE) to participate in the Volunteer & Employee Criminal History System (VECHS) for background checks, as authorized by the National Child Protection Act (NCPA), as amended, and Florida Statute 943.0542, as may be amended from time to time.

**Americans with Disabilities Act.** All vending machines shall meet the requirements of the Americans with Disabilities Act, as may be amended from time to time.

**Snack items.** Compliance with Smart Snacks in Schools standards is preferred. Healthy Snack Items, as defined by the USDA's Smart Snacks in Schools, should meet the following generally stated Nutrition Standards, per item:

- 200 calories or less per snack item package, maximum 230 mg sodium
- 350 calories or less per entrée item, maximum 480 mg sodium
- Not to exceed 35% of calories from total fat (exemptions per USDA Standards)
- Not to exceed 10% calories from saturated fat
- Zero (0) grams trans fat
- Not to exceed 35% of calories from total sugar (exemptions per USDA Standards)
- Accompaniments such as cream cheese, dressing or butter must be included in the nutrient profile as part of the food items
- Each snack item must meet one of the following criteria:
  - Be a "whole grain-rich" grain product; or
  - Have as the first ingredient a fruit, vegetable, dairy product or protein food; or
  - Be a combination food that contains at least ¼ cup of fruit and/or vegetable; or
  - Contain 10% of the Daily Value (DV) of one of the nutrients of public health concern in the 2010 Dietary Guidelines for Americans (calcium, potassium, vitamin D or dietary fiber)
- Fruits that are fresh, frozen or canned in water, 100% juice, light syrup or extra light syrup and vegetables that are fresh, frozen or canned with no added ingredients except water and small amount of sugar for processing, are exempt from meeting the standards

Additionally, the City would prefer snacks meet the additional criteria:



- 3 grams or more of fiber in items claiming to be a whole grain product
- Yogurts with no more than 25 grams of sugar per 8 oz. serving
- Nuts or seeds with no added fats or sweeteners

All machines should provide a broad assortment of choices. Out-of-date products are to be removed immediately from the machines. Expiration dates should be on each of the products offered for sale and should clearly show the month and year of expiration.

## **EXHIBIT B**

**INSURANCE REQUIREMENTS.** Vendor shall, at its own cost and expense, acquire and maintain (and cause any subcontractors, representatives or agents to acquire and maintain) during the term with the City, sufficient insurance to adequately protect the respective interest of the parties. Coverage shall be obtained with a carrier having an AM Best Rating of A-VII or better. In addition, the City has the right to review Vendor's deductible or self-insured retention and to require that it be reduced or eliminated.

Specifically, Vendor must carry the following minimum types and amounts of insurance on an occurrence basis or in the case of coverage that cannot be obtained on an occurrence basis, then coverage can be obtained on a claims-made basis with a minimum three (3) year tail following the termination or expiration of this Agreement:

- a. **Commercial General Liability Insurance** coverage, including but not limited to, personal injury, death, property damage, premises operations, products/completed operations, products liability, contractual liability, and advertising injury, in the minimum amount of \$1,000,000 (one million dollars) per occurrence and \$2,000,000 (two million dollars) general aggregate.
- b. **Commercial Automobile Liability Insurance** coverage for any owned, non-owned, hired or borrowed automobile is required in the minimum amount of \$1,000,000 (one million dollars) combined single limit.
- c. Unless waived by the State of Florida, statutory **Workers' Compensation Insurance** coverage in accordance with the laws of the State of Florida, and **Employer's Liability Insurance** in the minimum amount of \$100,000 (one hundred thousand dollars) each employee each accident, \$100,000 (one hundred thousand dollars) each employee by disease and \$500,000 (five hundred thousand dollars) aggregate by disease with benefits afforded under the laws of the State of Florida. Coverage should include Voluntary Compensation, Jones Act, and U.S. Longshoremen's and Harbor Worker's Act coverage where applicable. Coverage must be applicable to employees, contractors, subcontractors, and volunteers, if any.
- d. If Vendor is using its own property or the property of City in connection with the performance of its obligations under this Agreement, then **Property Insurance** on an "All Risks" basis with replacement cost coverage for property and equipment in the care, custody and control of others is required.

The above insurance limits may be achieved by a combination of primary and umbrella/excess liability policies.

### **Other Insurance Provisions**

- a. Prior to operating, and then annually upon the anniversary date(s) of the insurance policy's renewal date(s) for as long as this Agreement remains in effect, Vendor will furnish the City with a Certificate of Insurance(s) (using appropriate ACORD certificate, SIGNED by the Issuer, and with applicable endorsements) evidencing all of the coverage set forth above and naming the City as an "Additional Insured." In addition, when requested in writing from the City, Vendor will provide the City with certified copies of all applicable policies. The address where such certificates and certified policies shall be sent or delivered is as follows:

**City of Clearwater  
Attn: Purchasing Department  
P.O. Box 4748  
Clearwater, FL 33758-4748**

- b. Vendor shall provide thirty (30) days written notice of any cancellation, non-renewal, termination, material change or reduction in coverage.
- c. Vendor's insurance as outlined above shall be primary and non-contributory coverage for Vendor's negligence.
- d. Vendor reserves the right to appoint legal counsel to provide for the Vendor's defense, for any and all claims that may arise related to Agreement, work performed under this Agreement, or to Vendor's design, equipment, or service. Vendor agrees that the City shall not be liable to reimburse Vendor for any legal fees or costs as a result of Vendor providing its defense as contemplated herein.

**The stipulated limits of coverage above shall not be construed as a limitation of any potential liability to the City, and failure to request evidence of this insurance shall not be construed as a waiver of Vendor's obligation to provide the insurance coverage specified.**