



CONTRACT FOR SERVICES

This Agreement is between **The College of the Florida Keys** (hereinafter the "College") and **Refreshment Services Pepsi** (hereafter called "Contractor").

1. Independent Contractor

The Contractor shall perform any and all work due under this Agreement as an independent entity. It is explicitly understood and agreed that the Contractor, its employees, agents and representatives are not employees of the College. No part of this Agreement shall be construed to represent the creation of an employer/employee relationship. Contractor expressly represents and warrants that it will comply with all federal and state employment laws with any and all of Contractor's employees working under this Agreement.

2. Statement of Work

Contractor agrees to accomplish the following work under this contract:

- Description of Service – Provide and maintain at no charge all necessary vending machines and equipment needed to dispense Refreshment Services Pepsi products.
- **Contractor's work is detailed in a Statement of Work attached hereto as Exhibit "A", which is incorporated herein by express reference.**

3. Consideration

a. Contractor agrees to grant to College a total rate as stated on Exhibit "A" for accomplishment of the work due under this Agreement (the "Contract Price").

b. College agrees to use Refreshment Services Pepsi as its sole provider of beverages on the Key West Campus. "Beverages" shall mean all carbonated and non-carbonated nonalcoholic beverages, including but not limited to soft drinks, ready to drink coffee, protein drink mixers, flavored and nonflavored waters, fruit punches and ades, isotonic energy and fluid replacement drinks (sometimes referred to as "sports drinks"), tea drinks, and all drink and beverage bases, whether in the form of syrups, powders, crystals, concentrates or otherwise from which such drink and beverages are made.

c. College agrees to not allow a competitor to place any beverage dispensing equipment on the Key West Campus during the duration of this contract.

4. Authority to Contract and Subcontract

The Contractor shall have no authority to incur any obligations or liabilities on behalf of the College. Contractor shall not represent to any party, or parties, that it possesses any authority in regards to this Agreement that it does not actually have. Contractor shall not enter into any subcontracts for any of the work scheduled under this Agreement, other than those described in Exhibit "A", without obtaining prior written approval from the College. Should the Contractor obtain prior written approval to enter into a subcontract with a qualified provider of services, the Subcontractor shall acknowledge the binding nature of this Agreement and incorporate this Agreement, with attachments, into any subcontract entered. Should a subcontract be used, the Contractor hereby agrees to indemnify College for any and all acts of its subcontractor, and from any and all liabilities, claims, causes of action, or controversies brought by any party on account of any acts or omissions of subcontractor. Contractor further agrees to be solely responsible to the College for the performance of any Subcontractor hired by Contractor to complete any work associated in any way with this Agreement.

5. Funds Available and Authorized

The College certifies that sufficient funds are available within the College's current appropriation budget and the College is further authorized to finance the costs of this Agreement. It is agreed that in the event funding to the College is not continued beyond the current budgetary period at a level sufficient to allow for future payments to the Contractor for all the services identified in Paragraph 2, then College will notify Contractor of same, tender

Contractor _____

payment for authorized work completed during the prior budgetary period, and the obligations of both parties will thereafter terminate.

6. Term and Termination

Term. The Term of this contract is effective on 02/01/2024 and will terminate on 01/31/2029.

Termination. This Agreement may be terminated by mutual consent of both parties in writing and delivered by certified mail or in person 30 days prior to termination date. Upon delivery of written notice to the Contractor, the College may immediately terminate the whole or any part of this Agreement if:

The Contractor fails to provide services called for by this Agreement within the time

- a) specified herein, or any extension thereof; or
- b) The Contractor fails to perform any of the other provisions of this Agreement, or so fails to pursue the work as to endanger performance of this Agreement in accordance with its terms, and after receipt of written notice from the College, fails to correct such failures within ten (10) days or such longer period as the College may authorize.

The rights and remedies of the College provided in the above clause related to defaults (including breach of contract) by the Contractor shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Agreement. Any such termination of this Agreement, other than from breach of contract, shall be without prejudice to any obligations or liabilities of either party already accrued prior to such termination.

Should the College terminate this Agreement because the Contractor has breached it, then at the College's option, the Contractor shall immediately reimburse the College the amount of all money the College granted the Contractor under this Agreement as reasonable liquidated damages to cover the College's costs in completing performance due under this Agreement.

7. Contract Management

Notwithstanding the Contractor's responsibility for total management responsibility during the performance of the Agreement, the administration of the Agreement will require coordination between the College and the Contractor.

College's Technical Representative

The College's Technical Representative (TR) will be designated on authority of the College's Authorized Officers to monitor all technical aspects of, and to assist in the administration of, the Agreement. The types of actions within the purview of the TR's authority are, without limitation: to assure that the Contractor performs the technical requirements of the Agreement; to perform or cause to be performed inspections necessary in connection with the performance of the Agreement; to maintain both written and oral communications with the Contractor concerning all aspects of the written interpretations of the technical requirements pertaining to the Statement of Work; to monitor the Contractor's performance under the Agreement and notify the College of any deficiencies observed.

College's Authorized Officers

All contractual administration will be carried out by the College's Authorized Officers, noted below.

Communications pertaining to administration of the Agreement will be addressed to either of the Authorized Officers:

- Jonathan Gueverra, President
- Brittany Snyder, Executive Vice President and CFO

The College's Authorized Officers are the only persons authorized to approve changes in any of the requirements under the Agreement.

8. Access to Records

Under Florida’s Public Records Law, upon request the public shall have broad access to the books, documents, papers and records of the Contractor which are directly related to this Agreement.

9. Compliance with Law

The Contractor shall comply with all federal, state, and local laws, ordinances and codes applicable to the work due under this Agreement.

College is an E-Verify employer. Contractor must be enrolled in E-Verify with the federal Department of Homeland Security at the time of performance of services under this Agreement. Contractor must provide proof of enrollment as a professional in E-Verify at the time of the College’s award of this Agreement to Contractor. If not, then the College may terminate this Agreement immediately upon notice to Service Partner for any violation of this provision. After enrollment in E-Verify, Contractor shall use E-Verify to initiate verification of employment eligibility of all new hires, including consultants, agents, or representatives of Contractor who are assigned to the Project or intended to perform work or services under this Agreement. Contractor shall complete the E-Verify of Contractor’s new hires within three (3) business days after the date of hire.

The College will not give a preference to a vendor based on the vendor’s social, political, or ideological beliefs, and will not request document to or considering a vendor’s social, political or ideological beliefs when determining if the vendor is a responsible vendor.

10. Indemnity and Insurance

The Contractor shall save and hold harmless the State of Florida and the College, its officers, agents, employees, and members, from any and all claims, suits, or actions of whatsoever nature from any party resulting from or arising out of any of the activities of the Contractor or its subcontractors, agents, or employees, under this Agreement.

11. Ownership of Work Product

All work product of the Contractor resulting from this Agreement shall be considered property of the College, unless specifically exempted in Exhibit “A”, or another executed Amendment to this Agreement.

12. Nondiscrimination

The College of the Florida Keys does not discriminate on the basis of race, color, national origin, ethnicity, age, sex (including sexual orientation and gender identity), marital status, military status, protected veteran status, genetic information, religion, pregnancy, or disability in its programs, activities, or employment practices. The following persons have been designated to handle inquiries and grievances regarding the non-discrimination policies:

- Equity Officer: Dr. Jenee Mendez Manager, Talent Acquisition, Development and Accountability (305) 809-3118 or jenee.mendez@cfk.edu
- Title IX Coordinator: Jessica Losardo, Director, Advancement, Development and Alumni Relations (305) 809-3105 or jessica.losardo@cfk.edu
- Disability Services: Nicole Gerrard, Associate Dean, Student Success Services (305) 809-3262 or nicole.gerrard@cfk.edu
- Mailing Address: The College of the Florida Keys, 5901 College Road, Key West, FL 33040

13. Applicable Law / Forum Selection

This Agreement shall be governed by and construed in accordance with the laws of the State of Florida. Venue for any and all controversies arising out of this Agreement shall be granted exclusively to the Courts located in the City of Key West, Monroe County, Florida, and to the exclusion of any and all other venues.

14. Captions

The captions or headings in this Agreement are for convenience only and in no way define, limit, or describe the scope or intent of any provisions of this Agreement.

15. Execution and Counterparts

This Agreement may be executed in counterparts, each of which together shall constitute the same, original instrument. Signatures transmitted by facsimile, scan, or similar electronic means, shall be treated as true original signatures.

16. Amendments

The terms of this Agreement shall not be waived, altered, modified, supplemented, or amended, in any manner whatsoever, except by written instrument signed by the parties.

17. Notices

All notices, certificates or other communications shall be sufficiently given when delivered or mailed, postage prepaid, to the parties at their respective places of business as previously set forth, or as detailed below, or at a place designated hereafter in writing by the parties.

For The College of the Florida Keys:
Dr. Jonathan Gueverra
President
5901 College Road
Key West, Florida 33040

18. Authorization / Successors in Interest

Each party signing below specifically represent and warrant that they are authorized to sign this Agreement in the capacity represented. The provisions of this Agreement shall be binding upon, and shall inure to the benefit of, the parties hereto, and their respective successors and assigns.

19. Attorney's Fees

In the event a lawsuit of any kind is instituted to enforce any provision of this Agreement, the prevailing party shall be entitled to its reasonable attorney's fees and costs incurred therein, including any and all costs incurred upon appeal.

20. Severability

The parties agree that if any term or provision of this Agreement is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the Agreement did not contain the particular term or provision held to be invalid.

21. Waiver

The failure of the College to enforce any provisions of this Agreement shall not constitute a waiver by the College of that or any other provision.

22. Merger Clause

This Agreement constitutes the entire agreement between the parties. There are no understandings, agreements, or representations, either oral or written, regarding this Agreement that are not specified herein. Contractor, by the signature below of its authorized representative, hereby acknowledges that the Contractor has read this Agreement, understands it, and agrees to be bound by its terms and conditions.

23. Background Screening

In accordance with the legislative mandate set out in sections 1012.32, 1012.465, and 435.04, Florida Statutes (2005) as well as with the requirements of HB 1877, The Jessica Lunsford Act (2005), effective September 1, 2005, Contractor agrees that all of its employees and sub-contractors, including employees of sub-contractors, who provide or may provide services under this contract have completed all background screening requirements pursuant to the above-referenced statutes. It is recognized and agreed that the provisions and exceptions relating to the dictates of The Jessica Lunsford Act, and codified at sections 1012.321, 1012.465, 1012.467 and 1012.468 of the Florida Statutes, shall apply to the requirement of this paragraph where so applicable.

Contractor agrees to bear any and all costs associated with acquiring the required background screenings. Contractor agrees to require all affected employees and sub-contractors to sign a statement, as a condition of employment with Contractor in relation to performance under this contract, that the employee and/or sub-contractor will abide by the terms and notify Contractor/Employer of any arrest or conviction of any offense enumerated in section 435.04, Florida Statutes within forty-eight (48) hours of their occurrence. Contractor agrees to provide the College with a list of all employees and/or sub-contractors who have completed background screenings as required by the above referenced statutes and they meet the statutory requirements contained therein. Contractor agrees that it has an ongoing duty to maintain and update these lists as new employees and/or subcontractors are hired and in the event that any previously screened employee fails to meet the statutory standards. Contractor further agrees to notify the College immediately upon becoming aware that one of its employees, who was previously certified as completing the background check, and meeting the statutory standards, is subsequently arrested or convicted of any disqualifying offense. Failure by Contractor to notify the College of such arrest or conviction within forty-eight (48) hours of being put on notice by the employee/sub-contractor and within five (5) days of its occurrence shall constitute grounds for immediate termination of this contract by the Contractor. The parties further agree that failure by Contractor to perform any of the duties described in their paragraph shall constitute a materials breach of the contract entitling the College to terminate this Contract immediately with no further responsibility to make payment or perform any other duties under this contract.

**The College of the Florida Keys
Confidentiality Statement for Accessing College Records
Consultants and Independent Contractors**

I understand that in the course of my work for The College of the Florida Keys (“the College”), I may be given or have access to personal information regarding employee, faculty, student and/or parent accounts with the College (e.g., name, address, social security number, employment, type and/or amount of debt owed, payment, banking, medical and/or other similar information) and other information that is confidential (collectively, “Confidential Information”) including, but not limited to, students, parents, custodians, customers and lists (actual or prospective and including charges and payment histories); financial information, including financial statements, purchases; computer programs and/or systems information; information relating to College operations, methods, strategies and techniques and their use and effectiveness; and employee information (including disciplinary and other similar matters). This information may be on paper, contained in software, visible on screen displays, in computer readable form or otherwise. I understand that from time to time, the College may revise the description of “Confidential Information” and that I may obtain clarification as to what is “Confidential Information”.

I will receive and hold all personal information as highly confidential, and hereby affirm that I will not (i) use any of it except in my work for the College; (ii) copy any of it except as necessary to such permitted use; and/or (iii) publish, disclose or provide access to any of it (including to a student’s parents unless written permission is received) except for limited disclosure and access to other College employees who need to know for the same permitted use or as otherwise directed by College. Upon the termination of my Contract, or earlier as instructed by College, I will return to the College all copies (original and duplicate) of all materials in whatever form containing Confidential Information.

I understand I am responsible for reading, understanding and complying with all College Policies, as well as the related responsibilities outlined by the College. I certify that, in order to ensure the privacy and security of data, I agree to:

- Access, distribute, share, and retain confidential data only as authorized and only as needed to conduct College business as required to perform my job duties
- Store under secure conditions all confidential data that I retain and ensure its confidential and timely destruction when no longer needed to conduct College business as required by my job
- Respect the confidentiality and privacy of individuals whose data I access

- Observe all ethical restrictions that apply to data to which I have access
- Protect confidential information located at my workstation with password-activated screensavers, strong Passwords and not posting passwords near my computer or sharing passwords with others
- Report immediately to my supervisor any and all apparent and suspected security breaches
- Comply with all department and College security policies and procedures

I certify that I agree NOT to:

- Discuss verbally or distribute in electronic or printed formats any confidential data except as authorized and as needed to conduct College business as required to perform my job duties
- Make unauthorized copies of confidential data
- Knowingly falsely identify myself
- Gain or attempt to gain unauthorized access to confidential data or College computing systems
- Share my user ID(s) and password(s) with anyone nor use anyone else's user ID(s) or password(s), except as authorized by Information Technology
- Leave my workstation unattended and unsecured while logged-in to College computing systems
- Use or allow other persons to use College data for personal gain
- Engage in any activity that could compromise the security or confidentiality of data held in College records

I understand and agree that any violation by me of the foregoing may result in disciplinary action, including termination of my contract.

AGREED TO BY THE PARTIES ON THE DATES NOTED BELOW

THE COLLEGE OF THE FLORIDA KEYS

By: _____

Title: Brittany Snyder, Executive Vice President and CFO

Date: _____

CONTRACTOR

By: _____

Title/Co. _____

Date: _____

Exhibit "A"

Statement of Contractor's Work

1. Provide and maintain at no charge all necessary vending machines and equipment needed to dispense Refreshment Services Pepsi products.
2. Provide route service as necessary to keep the vending machines full.
3. Provide repair service as needed on all equipment.
4. Provide twenty (20) cases per month at no charge for events held at the college during each academic calendar year.
(12 x 20cs = 240 @\$18cs = \$4,320 value)
5. Refreshment Services Pepsi will pay the following:
 - a. 30% commission per year on vend products, with the exemption of Gatorade items at 10% commission, will be paid monthly.
 - b. All commissions are based on net sales. Net sales are vend price minus applicable taxes minus refunds.
6. Provide a \$1,500 scholarship per year to a college-bound graduating senior from The College of the Florida Keys Academy.