

RESOLUTION NO. 2015 - \_\_\_\_\_

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF VERO BEACH, FLORIDA GRANTING A NON-EXCLUSIVE VENDING MACHINE CONCESSION LICENSE TO ALL COUNTY VENDING, INC.; PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS**, All County Vending, Inc. (hereinafter "Vendor") is in the business of installing, maintaining, and servicing vending machine equipment and advertising and selling its products through such equipment, which products include various beverages and snack foods; and

**WHEREAS**, the City Council previously granted Vendor a concession license to install, maintain, and service its equipment and advertise and sell its products at certain City facility locations for the benefit and convenience of the public and City employees; and

**WHEREAS**, the Vendor and City desire to have Vendor provide additional vending machines at existing and new locations at City facilities and to otherwise modify the locations; and

**WHEREAS**, it is advantageous for the use, enjoyment, and convenience of the public and City employees to grant Vendor a new vending machine concession license with certain rights, privileges and conditions, and to install, maintain and operate its equipment at specified City facilities in order to make available Vendor's products to the public and City employees;

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF VERO BEACH, FLORIDA, THAT:**

1. The foregoing "Whereas" clauses are adopted and incorporated herein as forming the legislative intent and purpose of this Resolution.
2. In accordance with Chapter 54-4 of the Code of the City of Vero Beach, the City Council hereby grants a vending machine concession license to All County Vending, Inc. pursuant to the "Vending Machine Concession License Agreement" attached hereto and incorporated herein and hereby authorizes the Mayor to execute said agreement on behalf of the City of Vero Beach.
3. This Resolution and the attached Vending Machine Concession License Agreement supersede and replace in their entirety Resolution No. 2013-05 and the vending machine concession license granted pursuant to said resolution.
4. This Resolution shall become effective upon adoption by the City Council.

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This Resolution was heard on the \_\_\_\_\_ day of \_\_\_\_\_ 2015, after which hearing it was moved for adoption by Councilmember \_\_\_\_\_, seconded by Councilmember \_\_\_\_\_, and adopted by the following vote of the City Council:

Mayor Jay Kramer	_____
Vice-Mayor Randolph B. Old	_____
Councilmember Pilar E. Turner	_____
Councilmember Richard G. Winger	_____
Councilmember Harry Howle, III	_____

ATTEST:

CITY OF VERO BEACH, FLORIDA

\_\_\_\_\_  
Tammy K. Vock  
City Clerk

\_\_\_\_\_  
Jay Kramer  
Mayor

[SEAL]

Approved as to form and legal  
sufficiency:

Approved as conforming to  
municipal policy:

  
\_\_\_\_\_  
Wayne R. Coment  
City Attorney

\_\_\_\_\_  
James R. O'Connor  
City Manager

## Vending Machine Concession License Agreement

This *Vending Machine Concession License Agreement* (hereinafter "Agreement") is entered into as of the last date entered below ("Effective Date") by and between the **CITY OF VERO BEACH, FLORIDA**, a Florida municipal corporation, (hereinafter "City") and **ALL COUNTY VENDING, INC.**, a Florida for-profit corporation, (hereinafter "Vendor").

**Whereas**, Vendor is in the business of installing, maintaining, and servicing vending machine equipment (hereinafter "Equipment" or "Machine") and selling its products through such Equipment; and

**Whereas**, Vendor desires to install, maintain, and service its Equipment and sell its products on the premises of City; and

**Whereas**, City deems it advantageous to itself and for the use, enjoyment, and safety of the public and employees to grant to Vendor a license with the rights, privileges, and conditions as set forth herein to install, maintain, and operate its Equipment on City's premises and to make available Vendor's products to the public and employees;

**Now, Therefore**, in consideration of the premises and mutual agreements, covenants, and understandings herein contained, the parties agree as follows:

**1. Concession License.** City grants to Vendor a nonexclusive license to install, access, operate, maintain, and service its Equipment for the advertising and sale of Vendor's products of the type specified, upon the premises of City at such locations (collectively "locations" or "premises") and in such number as are more specifically described as follows:

See the attached "**Schedule of Licensed Vending Machine Locations**" which is incorporated into and made a part of this Agreement.

The specific placement of Equipment at each location and product selection shall be coordinated with and approved by the City Recreation Department Director and/or the affected City department director or designee.

This Agreement and the license granted hereunder supersedes and replaces in their entirety all prior concession license agreements and addendums thereto entered into between the parties on the subject matter of this Agreement.

This Agreement and the license, with respect to any specific Equipment, area or location, or all Equipment, areas and locations, may be terminated by either party in the manner provided herein.

**2. Additional Equipment and Locations.** Additional Equipment may only be installed or locations granted in the future as may be authorized by City pursuant to City Council resolution, and an addendum or amendment hereto, or entry into an updated agreement. Such additional

Equipment or locations shall be subject to the terms of this Agreement. Should Vendor decline to install, keep, or maintain Equipment in any particular location for which City requests service or grants Vendor a license, City is free to install or have installed other vending machine service for the type products requested or licensed at that location, regardless of any rights granted to Vendor.

**3. Term and Renewal.** The term of this Agreement shall commence on the date last written below and shall continue for five (5) years thereafter. This Agreement may be renewed for additional terms of five (5) years or less upon mutual agreement of the parties in writing. The City Manager shall have the authority and discretion to renew this Agreement and the license on behalf of the City for additional terms.

**4. Responsibilities of Vendor.**

**(a) Installation and Operation.** Vendor, at its sole cost and expense, shall furnish, deliver and install its Equipment at the locations specified herein and in any applicable addendum, as well as provide for Equipment security and patron safety. Vendor shall not, without written consent of the City Manager, post, erect or operate in or upon City's premises any signs or other similar advertising device, a sign or advertising device built into and a part of Vendor's Equipment excepted.

**(b) Service, Maintenance and Repair.** Vendor, at its sole cost and expense, shall keep its Equipment stocked with product, clean and in good and safe operating condition and shall timely collect the receipts derived from sale of products through the Equipment. Vendor shall promptly repair any malfunction or interruption of service of which it has knowledge.

**(c) License Fee.** Vendor shall pay City a percentage license fee of Twelve and one-half percent (12.5%) of gross receipts derived by Vendor from all product sales through the Equipment. In addition to the percentage license fee, Vendor agrees to provide to City the following additional consideration(s): No other monetary consideration.

Vendor, within ten (10) business days after the end of each calendar month, shall furnish to the City Finance Director a separate monthly report of gross receipts for each Equipment location for such prior calendar month, together with report of the quantity of product vended, both certified by Vendor, together with payment to City of the percentage license fee and any other applicable fees for said calendar month. All other consideration to be provided hereunder by Vendor shall be coordinated with City's Recreation Department Director.

**(d) Records of Vendor.** Vendor shall, with respect to business done by it at the Equipment locations, keep true, complete and accurate accounts, records, books, and data, in accordance with generally accepted accounting procedures consistently applied, which shall, among other things, show all sales made and the gross receipts of the business done at the Equipment locations. In addition to the reports required in subsection (c) above, Vendor shall, upon request, furnish such other financial and statistical reports as City may require from time to time.

(e) **Licenses and Permits.** Vendor shall maintain, at its sole expense, all licenses and permits authorizing each Machine, its service, and operation, as well as all other permits and licenses necessary for the installation of the Machines and for service and operation.

(f) **Insurance.** Vendor shall, at all times during the term or renewal hereof, provide and maintain comprehensive commercial general liability insurance against personal injury, death, and property damage, with a company authorized to do business in the State of Florida, covering any and all claims for damages to persons and property as a result of or arising in any manner out of the installation, location, use, service, or maintenance of Vendor's Equipment on City premises. Said insurance policy shall either name or be endorsed to include City as an additional insured and have limits of coverage not less than \$500,000 per occurrence combined single limit for bodily injury liability and property damage liability. Such insurance shall be primary to any other insurance available and any insurance that City may maintain shall be separate and not shall contribute with Vendor's insurance. Vendor shall cause the insurer to provide the policy endorsement and certificate of insurance to City before installation of Vendor's Equipment and shall cause the insurer to continue to supply such endorsement and proof to City for each term of insurance coverage. The additional insured endorsement shall contain language no less restrictive than ISO form CG 20 10 07 04 or ISO form CG 20 33 07 04. Vendor shall maintain business automobile liability insurance, and workers' compensation insurance coverage as and to the extent required pursuant to Florida law.

## 5. Responsibilities of CITY.

(a) **Equipment Utility Requirements.** City will provide, at its sole cost and expense, reasonably necessary electric service at the agreed upon Equipment locations. Existing electric outlets shall be utilized unless determined unsuitable by City.

(b) **Access to Premises.** City shall allow Vendor reasonable access to the Equipment locations during City's normal business hours, subject to ordinances, rules and regulations governing the City's premises, for the purpose of Vendor's business operations, including, but not limited to, Equipment installation, repair, maintenance, replacement, removal, stocking, and collection of receipts.

(c) **Service Requests.** City will promptly notify Vendor of any malfunction or material interruption of service of any Equipment of which City has knowledge.

6. **Assumption of Risk; Release and Indemnification.** For and in consideration of the sum of Ten Dollars (\$10.00) and other good and valuable consideration paid by City to Vendor, the receipt and sufficiency of which is hereby acknowledged, Vendor agrees as follows:

(a) **Premises "As Is."** Vendor acknowledges that it has inspected the Equipment locations and accepts the premises "as is" and expressly and fully releases City from and assumes all risks, known and unknown, that arise or might arise incidental to or in any way connected with the condition, use of, access to, or security of the premises and assumes all the risk in the operation of its business under this Agreement and use of City property. City shall not be liable for any loss, damage, or destruction to Vendor's Equipment, merchandise, or receipts,

whatsoever. The City has not made and makes no warranty of any kind whatsoever as to the condition of the premises or their fitness for any particular purpose.

**(b) Indemnification.** Vendor shall indemnify and hold the City, its elected officials, officers, employees, and agents harmless from and against any and all liabilities, claims, demands, damages, actions, lawsuits, judgments, penalties, losses, costs, or expenses, of any kind or nature, including, but not limited to, costs of investigation and attorneys' fees and costs through trial and appeal, arising out of, incidental to, or in any way connected with Vendor's operations or Vendor's use, occupancy, or maintenance of the premises, or any act or omission of Vendor or any employee, representative, agent, contractor, or sub-contractor of Vendor, including but not limited to any claim for personal injury, death, or property damage (including damage to the premises).

**7. Termination/Expiration.** Either party may, at its sole discretion, terminate this Agreement in its entirety or only as to a specific Equipment or location at any time, with or without cause, by giving the other party at least ten (10) business days written notice of such termination. Upon termination or expiration of this Agreement or any renewal term, City shall allow Vendor reasonable access to the Equipment locations during City's normal business hours for the purpose of removing Vendor's Equipment. Vendor will leave each Equipment location in as good a condition as it was at the inception of this Agreement, less normal wear and tear, when removing its Equipment. Unless otherwise agreed by the parties in writing, Vendor shall remove its Equipment within ten (10) business days after the effective date of any termination or expiration of this Agreement or the effective date of termination of a specific Equipment location license. Any Equipment not removed by the end of such period, or within such time as otherwise agreed by the parties in writing, shall be deemed abandoned and City may remove or otherwise dispose of such abandoned Equipment, without further notice to Vendor, in any manner deemed appropriate by City in its sole discretion and without liability to Vendor for such removal or disposal. All applicable terms, conditions, and covenants of this Agreement, including payment of the license fee by Vendor, shall remain effective and in full force during the time between the effective date of termination or expiration and the date of actual removal of the Equipment by Vendor.

**8. Title to Equipment.** The Equipment installed under this Agreement shall remain the sole and exclusive property of Vendor, and nothing contained herein shall be construed to grant City any right, title, or interest in said Equipment except as provided herein for abandonment. Upon written request of Vendor, City, unless said Equipment has been abandoned as provided herein, shall acknowledge in writing that it holds no right, title, or interest in said Equipment.

**9. Assignment.** This Agreement may not at any time be assigned or reassigned by either party without the other party's prior written consent.

**10. Successors.** The obligations and rights under this Agreement shall be binding upon and inure to the benefit of the parties hereto, their respective heirs, personal representatives, trustees, receivers and successors, particularly and specifically in the event of the sale or other transfer of Vendor or substantially all its assets, or its bankruptcy or receivership.

**11. Waiver of Compliance; Consents.** Any term or condition of this Agreement may be waived by the party that is entitled to the benefit thereof, but no such waiver shall be effective unless set forth in a written instrument duly executed by or on behalf of the party waiving such term or condition. Any waiver by any party of any condition, or of the breach of any provision, term, covenant, representation, or warranty contained in this Agreement, in any one or more instances, shall not invalidate this Agreement, nor shall such waiver be deemed to be nor construed as a furthering or continuing waiver of any such condition, or of the breach of any other provision, term, covenant, representation or warranty of this Agreement. Except as otherwise provided herein, the failure of a party to assert any of its rights under this Agreement or otherwise shall not constitute a waiver of such rights. A waiver by a party shall not invalidate this Agreement, nor shall such waiver be construed as a waiver of any other covenant, condition, representation, or warranty. A waiver by a party of the time for performing any act shall not constitute a waiver of time for performing any other act or the time for performing an identical act required to be performed at a later time.

**12. Status of Parties.** Nothing in this Agreement or any addendum or attachment is intended or should be construed as in any way creating or establishing the relationship of copartners or joint venturers between City and Vendor.

**13. Notices.** Any notice required or permitted to be given hereunder shall be in writing and deemed to have been duly given: (i) upon delivery (personally, by courier service such as UPS or FedEx, or other messenger) to the address of the appropriate party; or (ii) upon receipt as evidenced by the appropriate form of the United States Postal Service after mailing by United States registered or certified mail, return receipt requested, postage prepaid to such address; or (iii) upon mailing if such registered or certified mail is refused by the recipient or returned unclaimed to the sender. All notices shall be given to the respective party at the address set forth below or at such other address as specified by written notice delivered in accordance with this provision.

<b>For City:</b>	City of Vero Beach Division of Purchasing 3455 Airport West Drive P.O. Box 1389 Vero Beach, Florida 32961-1389 Telephone: (772)978-5473	<b>For Vendor:</b>	All County Vending, Inc. 1590 SE Niemeyer Circle Port St. Lucie, Florida 34952  Telephone: (772)398-8108
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**14. Entire Agreement/Amendments.** This Agreement, together with its attachments and addendums, if any, is the entire agreement between the parties hereto, and no representations have been made or relied upon by either party except as contained herein or in the attachments or addendums hereto. The headings and titles contained herein are for convenience of reference only and are not intended to define or limit the scope of any provision of this Agreement. Except as otherwise provided herein, no amendment or changes to this Agreement will be effective unless in writing and executed by the parties. Unless a term or condition provided herein is specifically referenced and its amendment or waiver is acknowledged by the parties in writing, the terms and conditions of this Agreement shall be superior and prevail over any conflicting term contained in any addendum or attachment hereto or any document executed in furtherance

of this Agreement. In the event any term or condition contained herein is held to be invalid by a court of competent jurisdiction, that invalidity shall in no way affect any other term or condition.

**15. Remedies.** This Agreement shall be interpreted and enforced pursuant to Florida Law. Venue for resolution of any dispute or legal action arising between the parties shall be in Indian River County, Florida. The parties shall bear their own costs and attorneys' fees except as otherwise provided herein.

**IN WITNESS WHEREOF,** the parties have executed this Agreement as of the dates entered below and each party's respective signatory whose signature appears below hereby warrants and represents that such signatory has been and is on the date of execution of this Agreement duly authorized to execute this Agreement on behalf their respective party.

**WITNESSES:**

**ALL COUNTY VENDING, INC.**

Sign: \_\_\_\_\_  
Print: \_\_\_\_\_

By: \_\_\_\_\_  
George DeAngelis  
Director

Sign: \_\_\_\_\_  
Print: \_\_\_\_\_

(SEAL)

**ATTEST:**

**CITY OF VERO BEACH**

\_\_\_\_\_  
Tammy K. Vock  
City Clerk

By: \_\_\_\_\_  
Jay Kramer  
Mayor

(SEAL)

Approved as to form and legal  
sufficiency:

Approved as conforming to municipal  
policy:

  
\_\_\_\_\_  
Wayne R. Coment  
City Attorney

\_\_\_\_\_  
James R. O'Connor  
City Manager

**SCHEDULE  
OF LICENSED VENDING  
MACHINE LOCATIONS**

**Number and type of vending machines and locations licensed and authorized:**

Up to one (1) drink vending machine and one (1) snack food vending machine at each of the following City facility locations:

- **Community Center, 2266 14<sup>th</sup> Avenue, Vero Beach, Florida**
- **Charles Park, 2307 15<sup>th</sup> Street, Vero Beach, Florida**
- **Public Works Facility, 3405 Airport West Dr, Vero Beach , Florida**
- **Riverside Park Tennis Shop, 350 Dahlia Lane, Vero beach, Florida**
- **Vero Beach Police Department, 1055 20<sup>th</sup> Street, Vero Beach , Florida**

Up to two (2) drink vending machines and two (2) snack food vending machines at each of the following City facility locations:

- **Leisure Square, 3705 16<sup>th</sup> Street, Vero Beach, Florida**
- **Vero Beach Municipal Marina, 3611 Rio Vista Blvd, Vero Beach, Florida**
- **Vero Beach Municipal Marina South Complex, 3599 Rio Vista Blvd, Vero Beach, Florida**
- **Vero Beach Regional Airport (Terminal Building), 3400 Cherokee Dr, Vero Beach, Florida**
- **City Hall, 1053 20<sup>th</sup> Place, Vero Beach, Florida**

Up to three (3) drink vending machines and three (3) snack food vending machines at each of the following City facility locations:

- **Royal Palm Pointe Park, 2 Royal Palm Pointe, Vero Beach, Florida**
  - **South Beach Park, 1702 Ocean Blvd, Vero Beach, Florida**
-