

**EXHIBIT D
DRAFT**



Jacksonville Aviation Authority

Agreement for Vending Services

With

VENDING SERVICES AGREEMENT

This **Vending Services Agreement** ("Agreement") made and entered into on this ____ day of _____ 2018, by and between JACKSONVILLE AVIATION AUTHORITY, a body politic and corporate (JAA or AUTHORITY) AND _____, a corporation organized under the laws of _____ and authorized to do business in the state of Florida, whose registered office is at _____ (hereinafter referred to as "Contractor").

RECITALS

Whereas, JAA issued an RFP No. 18-20-43101 in order to procure a firm licensed, qualified, and interested in providing food and beverage vending services; and

Whereas, Contractor submitted its quote to JAA representing that it is capable of providing the necessary services as required by the RFP; and

Whereas, Contractor has been selected by JAA as the most qualified to provide the requested service.

Whereas, JAA hereby selects Contractor to perform the services as set forth in the RFP. The services shall be done strictly in accordance with this Contract, the RFP, which is attached hereto as Exhibit 1, and Company's quote (attached hereto as Exhibit 2), all of which are collectively are, the "Contract Documents".

Now therefore, based on the mutual promises and covenants herein contained, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. The Recitals above are incorporated herein by reference, and are a part of the Contract.
2. The term of this Contract shall commence on _____ **1, 2018** and terminate on _____ **31, 2021**. The Contract has two (2) consecutive one (1) year renewal options available at the sole discretion of JAA and based on Contractor performance, annual approved budgeted funds, and adherence to all terms and conditions of the Contract Documents.
3. Contractor shall pay Authority as set forth in the Contract Documents, which have been incorporated into and made a part of this Contract. JAA reserves the right to set off amounts owed to JAA against amounts owed to Contractor.
4. Nothing in this Contract shall be construed as making Contractor an employee, servant, or agent of JAA. Contractor shall pursue the Statement of Work under this Contract as an independent Contractor, and shall be solely responsible for the method, manner, and means

to be utilized in performing the Statement of Work, including but not limited to the supervision and compensation of its own personnel.

5. This Contract may be terminated for convenience by the Authority whenever the Authority determines that such termination is in the best interest of the Authority. Such termination will be effected by a thirty (30) day written notice to the Contractor stating the date upon which the termination shall become effective.
6. Unsatisfactory performance by the Contractor may result in a penalty up to fifty (\$50.00) dollars and immediate cancellation of this Contract.
7. Termination of this Contract in accordance with its agreed termination provisions will not give rise to any claims of improper termination, termination in bad faith, or the like or to the payment of any compensation, recoupment of expenditures made by Contractor pursuant to this Agreement, or the like predicted in such termination.
8. The Authority may give the Contractor written notice that there is a material breach of the contract or a written notice to discontinue some or all Services under the Contract in the event that:
 - A) The Contractor assigns or subcontracts the vending services without prior written permission;
 - B) Any petition is filed or any proceeding is commenced by or against the Contractor for relief under any bankruptcy or insolvency laws;
 - C) A receiver is appointed for the Contractor's properties or the Contractor commits any act of insolvency (however evidenced);
 - D) The Contractor makes an assignment for the benefit of creditors;
 - E) The Contractor suspends the operation of a substantial portion of its business;
 - F) The Contractor suspends the whole or any part of the Services to the extent that it impacts the Contractor's ability to meet the Service schedule, or the Contractor abandons the whole or any part of the Services;
 - G) The Contractor, at any time, violates any of the conditions or provisions of the Contract Documents, or fails to perform as specified in the Contract Documents, or is not complying with the Contract Documents;
 - H) The Contractor attempts to willfully impose upon the Authority items of workmanship that are in the Authority's sole opinion, defective or of unacceptable quality;

- I) The Contractor breaches any of the representations or warranties;
- J) The Contractor is determined, in the Authority's sole opinion, to have misrepresented the utilization of funds or misappropriated property belonging to the Authority;
- K) There is any material change in the financial or business condition of the Contractor.

9. Indemnification

To the fullest extent permitted by law, the Contractor agrees to indemnify, defend and hold harmless JAA, its officers, agents, volunteers, and employees from and against all claims, damages, losses, and expenses, including but not limited to all fees and charges of engineer(s), architect(s), attorney(s) and other professional(s), court costs, or other alternative dispute resolution costs arising out of, resulting from, or otherwise but for the performance or furnishing of Contractor's work or services under this Agreement; provided that any such claim, damage, loss or expense is attributable to bodily injury, sickness, disease, death or personal injury, or property damage, including the loss of use or diminution in value resulting there from; but only to the extent caused in whole or in part by the actual or alleged negligent acts, errors, or omissions of the Contractor, Subcontractor(s) or anyone directly or indirectly employed or hired by Contractor, or anyone for whose acts Contractor may be liable. JAA reserves the right, but not the obligation, to participate in defense without relieving Contractor of any obligation hereunder.

10. Insurance

Contractor agrees to maintain, on a primary basis and at its sole expense, at all times during the life of this contract the following insurance coverages, limits, including endorsements described herein. The requirements contained herein, as well as JAA's review or acceptance of insurance maintained by Contractor is not intended to and shall not in any manner limit or qualify the liabilities or obligations assumed by Contractor under this contract.

A. Commercial General Liability: Contractor agrees to maintain Commercial General Liability at a limit of liability not less than One Million Dollars (\$1,000,000) Each Occurrence. Contractor further agrees coverage shall not contain any endorsement(s) excluding nor limiting Product/Completed Operations, Contractual Liability, Cross Liability nor Professional Liability.

B. Business Automobile Liability: Contractor agrees to maintain Business Automobile Liability at a limit of liability not less than One Million Dollars (\$1,000,000) (non-AOA access) Each Occurrence. Contractor further agrees coverage shall include liability for Owned, Non-Owned & Hired automobiles. In the event Contractor does not own automobiles, Contractor agrees to maintain coverage for Hired & Non-Owned Auto Liability, which may be satisfied by way of endorsement to the Commercial General Liability policy or separate Business Auto Liability policy. In the event the Contractor requires AOA access, then the Business Automobile Liability Limit will be not less than Five Million Dollars (\$5,000,000).

C. Worker's Compensation Insurance & Employers Liability. Contractor shall maintain Worker's Compensation Insurance & Employer Liability in accordance with Chapter 440, Florida Statutes, as now or hereafter amended. Coverage shall be provided on a primary basis.

D. Additional Insured: Contractor agrees to endorse JAA as an Additional Insured with a CG2026 Additional Insured – Designated Person or Organization endorsement or similar endorsement, to the Commercial General Liability and Business Auto Liability. The Additional Insured shall read "Jacksonville Aviation Authority."

E. Waiver of Subrogation: Contractor agrees by entering into this contract to a Waiver of Subrogation for each required policy herein. When required by the insurer, or should a policy condition not permit Contractor to enter into an pre-loss agreement to waive subrogation without an endorsement, then Contractor agrees to notify the insurer and request the policy be endorsed with a Waiver of Transfer of Rights of Recovery Against Others, or its equivalent. This Waiver of Subrogation requirement shall not apply to any policy, which includes a condition specifically prohibiting such an endorsement, or voids coverage should Contractor enter into such an agreement on a pre-loss basis.

F. Certificate(s) of Insurance: Contractor agrees to provide JAA a Certificate(s) of Insurance evidencing that all coverages, limits and endorsements required herein are maintained and in full force and effect. Said Certificate(s) of Insurance shall include a minimum thirty (30) day endeavor to notify due to cancellation or non-renewal of coverage. The Certificate Holder address shall read:

Jacksonville Aviation Authority
Risk Management Department
14201 Pecan Park South Road
Jacksonville, FL 32218

G. Umbrella or Excess Liability: Contractor may satisfy the minimum liability limits required above for Commercial General Liability and Business Auto Liability under an Umbrella or Excess Liability policy. There is no minimum Per Occurrence limit of liability under the Umbrella or Excess Liability; however, the Annual Aggregate limit shall not be less than the highest "Each Occurrence" limit for the Commercial General Liability and Business Auto Liability. CONTRACTOR agrees to endorse JAA as an "Additional Insured" on the Umbrella or Excess Liability, unless the Certificate of Insurance states the Umbrella or Excess Liability provides coverage on a pure "True Follow-Form" basis.

H. Right to Revise or Reject: JAA reserves the right, but not the obligation, to review and revise any insurance requirement, not limited to limits, coverages and endorsements based on insurance market conditions affecting the availability or affordability of coverage; or changes in the scope of work / specifications affecting the applicability of coverage. Additionally, JAA reserves the right, but not the obligation, to review and reject any insurance policies failing to meet the criteria stated herein or any insurer providing coverage due

I. Incurrence Not to Relieve Obligations of Contractor. Compliance with the Authority's insurance requirements shall not relieve the Contractor of its liability and obligations under this Article or under any other provision of this Contract.

11. Commissions

The Respondent shall pay JAA a commission based on a percentage of total monthly gross sales, excluding sales tax, from all vending machines during the contract term. The Respondent shall submit a detailed monthly report of sales showing units and dollar values for each vending machine along with the commission payment. Commission payment shall be due to JAA on the 20th day of each month for the preceding month.

12. Annual Reporting

- A. Report of Gross Sales. Within ninety (90) days after close of each Contract Year, Contractor shall submit to the Authority, in a form and detail satisfactory to the Authority, a Statement of Gross Sales that (i) details Gross Sales for the prior Contract Year and (ii) separately identifies any exclusions from Gross Sales. The Authority may require the Statement of Gross Sales to be submitted electronically.
- B. Accounting Records. Contractor shall keep throughout the Term and any Renewal Term, in accordance with Generally Accepted Accounting Principles prescribed by the American Institute of Certified Public Accountants or any successor agency thereto, all books of accounts and records customarily used in this type of operation. Such books of accounts and records shall be retained and be available for five (5) years following the expiration or termination of this Agreement. Authority shall have the right to audit and examine during normal business hours all such books of accounts and records relating to Contractor's operations hereunder. If the books of accounts and records are kept at locations other than the Airport, Contractor shall, at its sole cost and expense, arrange for them to be brought to a location convenient to the auditors for Authority in order for Authority to conduct the audits and inspections as set forth in this Article. Failure to maintain books of accounts and records as required under this paragraph shall be deemed to be a material breach of this Agreement. The obligations arising under this paragraph shall survive the expiration or termination of this Agreement.
- C. Audit by Authority. Notwithstanding any provision in this Agreement to the contrary, Authority or its representative(s) may at any time perform audits of all or selected operations performed by Contractor under the terms of this Agreement.

12. This Contract constitutes the entire agreement between the parties hereto for the Services to be performed and furnished by the Contractor hereunder. No statement, representation, writing, understanding, agreement, course of action, or course of conduct made by either party, or any representative of either party, which is not expressed herein shall be binding. All changes to, additions to, modifications of, or amendment to the Contract, or any of the terms, provisions and conditions hereof, shall be binding only when in writing and signed by the authorized officer, agent or representative of each of the parties hereto.

13. Transition Requirements. The Contractor will be required to communicate and coordinate with the existing vending machine contractor all details regarding the replacement process. The successful Contractor shall be required to transition the vending machines as follows:

- a. Any vending machine marked as "Public" on Exhibit E shall be required to be switched so that there is no more than 1 hour when there is no vending machine in place.
- b. Other vending machines shall be switched so there is no more than 1 business day without a vending machine in place.

14. Any notice required to be served under this Contract shall be sent by certified mail, return receipt requested to the following:

For the Authority: Jacksonville Aviation Authority
14201 Pecan Park Road
Jacksonville, Florida 32218
Attn: Devin Reed, Procurement Director

With a copy to: Jacksonville Aviation Authority
14201 Pecan Park Road
Jacksonville, Florida 32218
Attn: Debra A. Braga, Chief Legal Officer

For the Contractor: _____

15. Non-Discrimination.

Civil Rights – 49 USC § 47123: Contractor agrees to comply with pertinent statutes, Executive Orders and such rules as are promulgated to assure that no person shall, on the grounds of race, creed, color, national origin, sex, age, or disability be excluded from participating in any activity conducted with or benefiting from Federal assistance. This provision binds Contractor from the solicitation period through the completion of the Agreement. This provision is in addition to that required of Title VI of the Civil Rights Act of 1964.

Nondiscrimination. The Contractor, for himself/herself, his/her heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree as a covenant running with the land that:

- no person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities,
- that in the construction of any improvements on, over, or under such land, and the furnishing of services thereon, no person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination,
- that the Contractor will use the premises in compliance with all other requirements imposed by or pursuant to the List of Pertinent Nondiscrimination Authorities.

With respect to the Agreement, in the event of breach of any of the above nondiscrimination covenants, Authority will have the right to terminate the Agreement and to enter or re-enter and repossess said land and the facilities thereon, and hold the same as if said Agreement had never been made or issued.*

Title VI List of Pertinent Nondiscrimination Authorities. (Source: Appendix E of Appendix 4 of FAA Order 1400.11, Nondiscrimination in Federally-Assisted Programs at the Federal Aviation Administration)

During the performance of this Agreement, the Contractor, for itself, its assignees, and successors in interest agrees to comply with the following non-discrimination statutes and authorities; including but not limited to:

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq., 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin);
- 49 CFR part 21 (Non-discrimination In Federally-Assisted Programs of The Department of Transportation—Effectuation of Title VI of The Civil Rights Act of 1964);
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 et seq.), as amended, (prohibits discrimination on the basis of disability); and 49 CFR part 27;
- The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 et seq.), (prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982, (49 USC § 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms “programs or activities” to include all of the programs or activities of the Federal-aid

recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);

- Titles II and III of the Americans with Disabilities Act of 1990, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131 – 12189) as implemented by Department of Transportation regulations at 49 CFR parts 37 and 38;
- The Federal Aviation Administration's Non-discrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures non-discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);
- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. 1681 et seq).

(The remainder of this page has been intentionally left blank)

IN WITNESS WHEREOF, Authority and Contractor have executed this Contract as of the day and year first written above.

ATTEST:

By: _____
Devin Reed
Director, Procurement

JAA

By: _____

WITNESSES TO AUTHORITY:

By: _____

Print Name: _____
Title: _____

CONTRACTOR

By: _____

Print Name: _____
Title: _____

**APPROVED AS TO FORM AND LEGALITY
FOR THE USE AND RELIANCE OF THE JACKSONVILLE
AVIATION AUTHORITY.**

By: _____
Debra A. Braga
Chief Legal Officer, JAA