

**RESOLUTION NO. 2020-134**

A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF HIALEAH, FLORIDA, AUTHORIZING A "PIGGY BACK CONTRACT" PURSUANT TO HIALEAH CODE OF ORDINANCES § 2-818 AND AUTHORIZING THE CITY TO ENTER INTO AN AGREEMENT WITH BETTOLI TRADING CORP.; PROVIDING FOR AUTHORIZATION; AND PROVIDING AN EFFECTIVE DATE.

**WHEREAS;** pursuant to Hialeah Code of Ordinances § 2-818 the City is authorized to piggyback and enter into contracts without competitive bidding by utilizing existing local, state or other governmental authorities that followed a competitive bidding procedure leading to the award of a contract; and

**WHEREAS,** The City of Pembroke Pines issued a Request for Proposals RFP# RE-18-12 advertised on August 28, 2018, entitled: "Vending Machine Services", substantially similar to the RFP process used by the City in its procurement of goods and services; and

**WHEREAS,** Bettoli Trading Corp., was awarded the contract to provide such services on January 16, 2019 with a term of two years, with additional three year renewals of one year each if agreed upon by both parties.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND THE CITY COUNCIL OF THE CITY OF HIALEAH, FLORIDA, THAT:

**Section 1:** The above recitals are true and correct and incorporated herein.

**Section 2:** The Mayor and City Council hereby approve and authorize the City to enter into the Bettoli/City of Hialeah Agreement Exhibit "1."

**Section 3: Authorization of City Officials.**

The City of Hialeah, Florida hereby authorizes the Mayor and the City Clerk, as attesting witness, on behalf of the City, to take all steps necessary to implement the terms and conditions of this resolution and to execute the purchase on substantial material terms, including scope and prices.

**Section 4: Effective Date.**

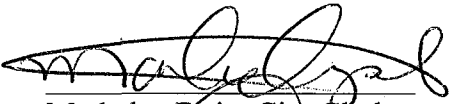
This resolution shall become effective upon signature of the Mayor of the City of Hialeah, Florida or at the next regularly scheduled City Council meeting, if the Mayor's signature is withheld or if the City Council overrides the Mayor's veto.

PASSED AND ADOPTED this 13 day of October, 2020.

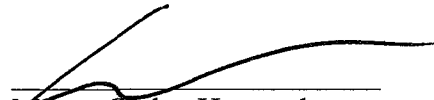


Paul B. Hernandez  
Council President

Attest: Approved on this 2 day of November, 2020.

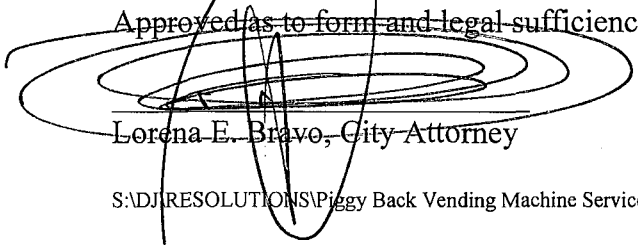


Marbelys Fatjo, City Clerk



Mayor Carlos Hernandez

~~Approved as to form and legal sufficiency~~



Lorena E. Bravo, City Attorney

Resolution was adopted by 6-0-1 vote with Councilmembers, Cue-Fuente, Garcia-Roves, Hernandez, Perez, Tundidor and Zogby voting "Yes" and with Council Vice President De la Rosa not present during roll call. Council Vice President De la Rosa recorded his vote as "Yes" after the item was approved.

**EXHIBIT "1"**

**PROFESSIONAL SERVICES AGREEMENT TO FURNISH, INSTALL, STOCK,  
REPLENISH AND MAINTAIN BEVERAGE AND SNACK MACHINES**

This Agreement ("Agreement") is made this \_\_\_\_\_ day of \_\_\_\_\_, 2020 ("Effective Date"), by and between the City of Hialeah, a Florida municipality ("CITY"), Bettoli Trading Corp., a Florida Corporation, properly registered and doing business in Florida ("CONTRACTOR").

**WHEREAS**, pursuant to Hialeah Code of Ordinances § 2-818 the CITY is authorized to piggyback and enter into contracts without competitive bidding by utilizing existing local, state or other governmental authorities that followed a competitive bidding procedure leading to the award of a contract; and

**WHEREAS**, the CONTRACTOR provides services substantially similar to those required by the CITY pursuant to the City of Pembroke Pines Request for Proposals RFP# RE-18-12 advertised on August 28, 2018, entitled: "Vending Machine Services", and CONTRACTOR was awarded the contract Exhibit "A" attached to provide such services on with a term of two years, with additional three year renewals of one year each if agreed upon by both parties; and

**WHEREAS**, the CITY has elected to purchase off the City of Pembroke Pines/CONTRACTOR Agreement, subject to modifications herein to address local needs and requirements; and

**WHEREAS**, the CITY and the CONTRACTOR wish to document their agreement concerning their respective obligations.

NOW THEREFORE, for an in consideration the mutual promises set forth in this Agreement, and other good and valuable consideration, the receipt and sufficiency of which are hereby expressly acknowledged by the Parties to this Agreement, the Parties agree to the following terms and conditions:

1. Incorporation by Reference. The City of Pembroke Pines/CONTRACTOR Agreement attached as Exhibit "A" is incorporated herein by reference. This Agreement shall prevail in the event of any conflict with the provisions in the Pembroke Pines/CONTRACTOR Agreement.

2. Term. Effective the date executed by the last party to sign this agreement.

3. The terms and conditions provided for in City of Pembroke Pines/CONTRACTOR Agreement attached as Exhibit "A" apply, subject to the following amendments:

#### ARTICLE 4: COMPENSATION AND METHOD OF PAYMENT

4.2 Payment and statement for previous month's gross receipts shall be received by the CITY by the fifteenth (15<sup>th</sup>) of the following month. CONTRACTOR shall remit to CITY on a monthly basis the higher of either \$2,958.00 (\$51.00 per machine per month) or 20% of the CONTRACTORS's monthly gross sales, whichever is higher.

#### ARTICLE 8: INSURANCE

8.6.1 The City of Hialeah must be shown as an additional insured with respect to this coverage.

8.7.1 The City of Hialeah shall be named as an Additional Insured on each of the General Liability policies required herein.

#### ARTICLE 19: PUBLIC RECORDS

The CONTRACTOR shall comply with all applicable requirements contained in the Florida Public Records Law (Chapter 119, Florida Statutes), including any applicable provisions in Section 119.0701, Florida Statutes. To the extent that the CONTRACTOR and this Agreement are subject to the requirements in Section 119.0701, Florida Statutes, the CONTRACTOR shall:

- (a) Keep and maintain public records required by the CITY to perform the services provided hereunder.
- (b) Upon request from the CITY's custodian of public records, provide the City 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, Florida Statutes, 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 term of this Agreement and following completion of this Agreement if the CONTRACTOR does not transfer the records to the CITY.
- (d) Upon completion of the Agreement, transfer, at no cost, to the CITY all public records in the possession of the CONTRACTOR or keep and maintain public records required by the CITY to perform the service. If the CONTRACTOR transfers all public records to the CITY upon completion of the Agreement, 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 Agreement, the CONTRACTOR shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the CITY, upon request from the CITY's custodian of public records, in a format that is compatible with the information technology systems of the CITY.

If the CONTRACTOR fails to comply with the requirements in this Section 7, the CITY may enforce these provisions in accordance with the terms of this Agreement. If the CONTRACTOR fails to provide the public records to the City within a reasonable time, it may be subject to penalties under Section 119.10, Florida Statutes.

**IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, THE CONTRACTOR SHOULD CONTACT THE CITY'S CUSTODIAN OF PUBLIC RECORDS: THE CITY CLERK, BY TELEPHONE (305/883-5820), E-MAIL ([CITYCLERK@HIALEAHFL.GOV](mailto:CITYCLERK@HIALEAHFL.GOV)), OR MAIL (CITY OF HIALEAH, OFFICE OF THE CITY CLERK, 501 PALM AVENUE, 3<sup>RD</sup> FLOOR, HIALEAH, FLORIDA 33010).**

ARTICLE 20 MISCELLANEOUS

20.6. Notice. Notices pursuant to this Agreement shall be in writing, and shall be deemed sufficient when directly presented in person, or sent pre-paid, first class United States Mail as follows:

20.17 Venue. Venue shall be in the Courts or in Arbitration in Miami-Dade County, Florida.

As to the City:

David Fernandez  
501 Palm Avenue  
Hialeah, FL 33010

**IN WITNESS WHEREOF**, and intending to be legally bound, the CITY and the CONTRACTOR by their duly authorized officers, has caused this Agreement to be properly executed this \_\_\_\_\_ day of \_\_\_\_\_, 2020.

**CONTRACTOR:**

**CITY:**

<b>Bettoli Trading Corp., a Florida Corporation</b>	<b>CITY OF MIAMI</b>
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By: \_\_\_\_\_

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

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

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

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



City of Pembroke Pines

EXHIBIT "A"

**AGREEMENT**

THIS IS AN AGREEMENT, dated the 5<sup>th</sup> day of February, 2019, by and between:

**THE CITY OF PEMBROKE PINES**, a municipal corporation of the State of Florida with a business address of 601 City Center Way, Pembroke Pines, Florida 33025 hereinafter referred to as "CITY",

and

**BETTOLI TRADING CORP.** a company authorized to do business in the State of Florida, with a business address of 6095 NW 167<sup>TH</sup> Street, Ste. D-4, Miami, FL 33015, hereinafter referred to as "CONTRACTOR".

**WITNESSETH:**

In consideration of the mutual terms and conditions, promises, covenant and payments hereinafter set forth, CITY and CONTRACTOR agree as follows:

**ARTICLE 1  
PREAMBLE**

In order to establish the background, context and form of reference for this agreement, and to generally express the objectives and intentions of the respective parties herein, the following statements, representations, and explanations shall be accepted as predicates for the undertaking and commitments included within the provisions which follow, and may be relied upon by the parties as essential elements of the mutual considerations upon which this Agreement is based.

1.1 On August 28, 2018, the CITY advertised its notice to bidders of the CITY's desire to hire a firm to furnish, install, replenish and maintain beverage machines, snack machines or both at various City locations as more particularly described in Exhibit "A" attached hereto and by this reference made part hereof, for the said bid entitled:

**RFP # RE-18-12  
Vending Machine Services**

- 1.2 On September 25, 2018 the bids were opened at the offices of the City Clerk.
- 1.3 On January 16, 2019 the CITY awarded the bid to CONTRACTOR and authorized the proper CITY officials to negotiate and enter into an agreement with CONTRACTOR to render the services more particularly described herein below.
- 1.4 Negotiations pertaining to the services to be performed by the CONTRACTOR were undertaken and



this Agreement incorporates the results of such negotiation.

**ARTICLE 2**  
**SERVICES AND RESPONSIBILITIES**

2.1 CONTRACTOR hereby agrees to furnish, install, stock, replenish and maintain beverage machines, snack machines or both at various CITY locations, as more particularly described in **Exhibit "A"** attached hereto and by this reference made a part hereof..

2.2 CONTRACTOR shall furnish all services, labor, equipment, and materials necessary and as may be required in the performance of this Agreement, except as otherwise specifically provided for herein, and all work performed under this Agreement shall be done in a professional manner.

2.3 CONTRACTOR shall ensure vending machines to be "state of the art." Equipment shall be no more than five (5) years old at any given time during the term of this Agreement. All costs for delivery, set-up, stocking, replenishment, servicing, replacement and removal, when necessary, are to be borne by the CONTRACTOR. The machines shall have the ability to make change. All machines shall remain the property of the CONTRACTOR. All equipment shall adhere to proper safety codes. CONTRACTOR shall bear the cost for electrical upgrades where necessary..

2.4 CONTRACTOR hereby represents to CITY, with full knowledge that CITY is relying upon these representations when entering into this Agreement with CONTRACTOR, that CONTRACTOR has the professional expertise, experience and manpower to perform the services to be provided by CONTRACTOR pursuant to the terms of this Agreement.

2.5 CONTRACTOR hereby represents to CITY that CONTRACTOR is properly licensed by the applicable federal, state, and local agencies to provide the services under this Agreement. Furthermore, CONTRACTOR agrees to maintain such licenses during the term of this Agreement. If CONTRACTOR's license is revoked, suspended, or terminated for any reason by any governmental agency, CONTRACTOR shall notify the CITY immediately.

2.6 CONTRACTOR shall comply with any and all Federal, State, and local laws and regulations now in effect, or hereinafter enacted during the term of this Agreement, which are applicable to CONTRACTOR, its employees, agents or subcontractors, if any, with respect to the work and services described herein. A violation of any federal, state, or local law or regulation may be cause for breach, allowing the CITY to terminate this Agreement.

**ARTICLE 3**  
**TERM AND TERMINATION**

3.1 CONTRACTOR shall provide the services as identified in **Exhibit "A"** attached hereto and made part hereof, for a term that shall be two (2) years, with the option of being renewed for three (3) additional one (1) year periods upon the written Agreement by both PARTIES.





3.2 *Termination for Convenience:* This Agreement may be terminated by CITY for convenience, upon three (3) business days of written notice by the CITY to the other party for such termination in which event CONTRACTOR shall be paid its compensation for services performed to termination date, including services reasonably related to termination. In the event that CONTRACTOR abandons this Agreement or causes it to be terminated, CONTRACTOR shall indemnify CITY against loss pertaining to this termination.

3.3 *Default by CONTRACTOR:* In addition to all other remedies available to CITY, this Agreement shall be subject to cancellation by CITY for cause, should CONTRACTOR neglect or fail to perform or observe any of the terms, provisions, conditions, or requirements herein contained, if such neglect or failure shall continue for a period of ten (10) days after receipt by CONTRACTOR of written notice of such neglect or failure.

#### **ARTICLE 4** **COMPENSATION AND METHOD OF PAYMENT**

4.1 The CITY hereby agrees to compensate CONTRACTOR for all services performed by CONTRACTOR pursuant to the provisions of this Agreement.

4.2 Payment and statement for previous month's gross receipts shall be received by the CITY by the fifteenth (15th) of the following month. CONTRACTOR shall remit to CITY on a monthly basis, the higher of either \$1,836.00 (\$51.00 per machine per month for 36 machines) or 20% of the CONTRACTOR's monthly gross sales. In the event that the CONTRACTOR fails to make this payment within five (5) days of the due date, there shall be an additional charge of \$50.00 payable to the City for such late payment.

The CONTRACTOR shall be responsible for collecting and remitting all sales tax to the State of Florida. CONTRACTOR is advised that payments made to the City of Pembroke Pines for the right to operate any vending are considered taxable as rental payments. Therefore, the rental payments due the CITY on the fifteenth (15th) of the month will include applicable sales tax. CONTRACTOR is responsible for any and all real property taxes, special assessments, and any other taxes imposed against the premises.

4.3 All payments shall be governed by the Local Government Prompt Payment Act, as set forth in Part VII, Chapter 218, Florida Statutes.

#### **ARTICLE 5** **CHANGES IN SCOPE OF WORK**

5.1 CITY or CONTRACTOR may request changes that would increase, decrease, or otherwise modify the Scope of Services, as described in Exhibit "A," to be provided under this Agreement as described in Article 2 of this Agreement. Such changes or additional services must be in accordance with the provisions of the Code of Ordinances of the CITY, and must be contained in a written amendment, executed by the PARTIES hereto, with the same formality, equality and dignity herewith



prior to any deviation from the terms of this Agreement, including the initiation of any additional or extra work.

5.2 In no event will the CONTRACTOR be compensated for any work which has not been described in a separate written agreement executed by the PARTIES hereto.

**ARTICLE 6**  
**RESERVED**

**ARTICLE 7**  
**INDEMNIFICATION**

7.1 The CONTRACTOR shall indemnify and hold harmless the CITY, its trustees, elected and appointed officers, agents, servants, assigns and employees, from and against any and all claims, demands, or causes of action whatsoever, and the resulting losses, costs, expenses, reasonable attorneys' fees, including paralegal expenses, liabilities, damages, orders, judgments, or decrees, sustained by the CITY or any third party arising out of, by reason of, or resulting from the CONTRACTOR's acts, errors, or omissions or the failure of the CONTRACTOR to take out and maintain insurance as required under this Agreement.

7.2 Upon completion of all Services, obligations and duties provided for in this Agreement, or in the event of termination of this Agreement for any reason, the terms and conditions of this Article shall survive indefinitely.

7.3 CITY reserves the right to select its own legal counsel to conduct any defense in any such proceeding and all costs and fees associated therewith shall be the responsibility of CONTRACTOR.

7.4 Nothing contained herein is intended nor shall be construed to waive CITY's rights and immunities under the common law or §768.28, Florida Statutes, as may be amended from time to time.

**ARTICLE 8**  
**INSURANCE**

8.1 The CONTRACTOR shall indemnify and hold harmless the CITY and its officers, employees, agents and instrumentalities from any and all liability, losses or damages, including attorneys' fees and costs of defense, which the CITY or its officers, employees, agents or instrumentalities may incur as a result of claims, demands, suits, causes of actions or proceedings of any kind or nature arising out of, relating to or resulting from the performance of this Agreement by the CONTRACTOR or its employees, agents, servants, partners principals or subcontractors. The CONTRACTOR shall pay all claims and losses in connection therewith and shall investigate and defend all claims, suits or actions of any kind or nature in the name of the CITY, where



applicable, including appellate proceedings, and shall pay all costs, judgments, and attorney's fees which may issue thereon. The CONTRACTOR expressly understands and agrees that any insurance protection required by this Agreement or otherwise provided by the CONTRACTOR shall in no way limit the responsibility to indemnify, keep and save harmless and defend the CITY or its officers, employees, agents and instrumentalities as herein provided.

8.2 CONTRACTOR shall not commence work under this Agreement until it has obtained all insurance required under this paragraph and such insurance has been approved by the Risk Manager of the CITY nor shall the CONTRACTOR allow any subcontractor to commence work on his subcontract until all similar such insurance required of the subcontractor has been obtained and similarly approved.

8.3 Certificates of Insurance, reflecting evidence of the required insurance, shall be filed with the CITY's Risk Manager prior to the commencement of this Agreement. Policies shall be issued by companies authorized to do business under the laws of the State of Florida. Policyholders and Financial Ratings must be no less than "A" and Class VI, respectively, as set forth in the latest edition of "Best's Key Rating Guide," published by A.M. Best Guide

8.4 Insurance Companies selected must be acceptable the CITY. Policies shall be endorsed to provide the CITY thirty (30) days' notice of cancellation, material change or non-renewal of policies required under the contract. If the carrier will not agree to this notification, the CONTRACTOR or its insurance broker shall notify the CITY of any cancellation or reduction in coverage within seven (7) days of receipt of insurer's notification of cancellation or reduction in coverage.

8.5 Insurance shall be in force until all obligations required to be fulfilled under the terms of the Agreement are satisfactorily completed as evidenced by the formal acceptance by the CITY. In the event the insurance certificate provided indicates that the insurance shall terminate and lapse during the period of this Agreement, then in that event, the CONTRACTOR shall furnish, at least forty-five (45) days prior to the expiration of the date of such insurance, a renewed certificate of insurance as proof that equal and like coverage for the balance of the period of the Agreement and extension thereunder is in effect. The CONTRACTOR shall not commence nor continue to provide any services pursuant to this Agreement unless all required insurance remains in full force and effect. CONTRACTOR shall be liable to CITY for any lapses in service resulting from a gap in insurance coverage.

## 8.6 REQUIRED INSURANCE

8.6.1 Comprehensive General Liability Insurance including, but not limited to: coverage for bodily injury and property damage, personal & advertising injury, products & completed operations, and liability assumed under an Insured Contract (including tort liability of another assumed in a business contract), and independent contractors. Coverage must be written on



an occurrence basis, with limits of liability no less than:

1. Each Occurrence Limit - \$1,000,000
2. Fire Damage Limit (Damage to rented premises) - \$100,000
3. Personal & Advertising Injury Limit - \$1,000,000
4. General Aggregate Limit - \$2,000,000
5. Products & Completed Operations Aggregate Limit - \$2,000,000

This coverage must not exclude: Assault and Sexual Abuse unless covered elsewhere.

Required Limits will be increased to a minimum of \$2,000,000 each occurrence for any rides and/or activities that are deemed to be high risk by the CITY's Risk Manager.

**The City of Pembroke Pines must be shown as an additional insured with respect to this coverage.** Furthermore, the CITY'S Additional Insured status shall extend to any coverage beyond the minimum requirements for limits of liability found herein

8.6.2 Worker's Compensation and Employers Liability Insurance covering all employees, and/or volunteers of the CONTRACTOR engaged in the performance of the scope of work associated with this Agreement. In the case any work is sublet, the CONTRACTOR shall require the subcontractors similarly to provide Workers Compensation Insurance for all the latter's employees unless such employees are covered by the protection afforded by the CONTRACTOR. Coverage for the CONTRACTOR and his subcontractors shall be in accordance with applicable state and/or federal laws that may apply to Workers' Compensation Insurance with limits of liability no less than:

1. Workers' Compensation: Coverage A – Statutory
2. Employers Liability: Coverage B \$500,000 Each Accident  
\$500,000 Disease – Policy Limit  
\$500,000 Disease – Each Employee

If CONTRACTOR claims to be exempt from this requirement, CONTRACTOR shall provide CITY proof of such exemption along with a written request for CITY to exempt CONTRACTOR, written on CONTRACTOR letterhead.

8.6.3 Comprehensive Auto Liability Insurance covering all owned, non-owned and hired vehicles used in connection with the performance of work under this Agreement, with a combined single limit of liability for bodily injury and property damage no less than:

1. Any Auto (Symbol 1)  
Combined Single Limit (Each Accident) - \$1,000,000
2. Hired Autos (Symbol 8)  
Combined Single Limit (Each Accident) - \$1,000,000
3. Non-Owned Autos (Symbol 9)  
Combined Single Limit (Each Accident) - \$1,000,000



8.6.4 Professional Liability/Errors & Omissions Insurance, when applicable, with a limit of liability no less than \$1,000,000 per wrongful act. This coverage shall be maintained for a period of no less than two (2) years after final payment of the contract.

8.6.5 Sexual Abuse may not be excluded from any policy.

#### 8.7 REQUIRED ENDORSEMENTS

8.7.1 The City of Pembroke Pines shall be named as an Additional Insured on each of the General Liability policies required herein

8.7.2 Waiver of all Rights of Subrogation against the CITY

8.7.3 Thirty (30) Day Notice of Cancellation or Non-Renewal to the CITY

8.7.4 CONTRACTOR's policies shall be Primary & Non-Contributory

8.7.5 All policies shall contain a "severability of interest" or "cross liability" liability clause without obligation for premium payment of the CITY

8.7.6 The City of Pembroke Pines shall be named as a Loss Payee on all Property and/or Inland Marine Policies as their interest may appear.

8.8 CONTRACTOR shall name the CITY, as an additional insured on each of the General Liability policies required herein and shall hold the CITY, its agents, officers and employees harmless on account of claims for damages to persons, property or premises arising out of the services provided hereunder.

8.9 Any insurance required of the CONTRACTOR pursuant to this Agreement must also be required by any subcontractor in the same limits and with all requirements as provided herein, including naming the CITY as an additional insured, in any work that is subcontracted unless such subcontractor is covered by the protection afforded by the CONTRACTOR and provided proof of such coverage is provided to CITY. The CONTRACTOR and any subcontractors shall maintain such policies during the term of this Agreement.

8.10 The CITY reserves the right to require any other additional types of insurance coverage and/or higher limits of liability it deems necessary based on the nature of work being performed under this Contract.

### ARTICLE 9

#### NON-DISCRIMINATION & EQUAL OPPORTUNITY EMPLOYMENT

9.1 During the performance of the Agreement, neither CONTRACTOR nor its subcontractors shall discriminate against any employee or applicant for employment because of race, religion, color, gender, national origin, sex, age, marital status, political affiliation, familial status, sexual orientation, or disability if qualified. CONTRACTOR will take affirmative action to ensure that employees are treated during employment, without regard to their race, religion, color, gender, national origin, sex, age, marital status, political affiliation, familial status, sexual orientation, or disability if qualified. Such actions must include, but not be limited to, the following: employment, promotion; demotion or transfer; recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including



apprenticeship. CONTRACTOR shall agree to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause. CONTRACTOR further agrees that he/she/it will ensure that subcontractors, if any, will be made aware of and will comply with this nondiscrimination clause.

#### **ARTICLE 10** **INDEPENDENT CONTRACTOR**

10.1 This Agreement does not create an employee/employer relationship between the parties. It is the intent of the parties that the CONTRACTOR is an independent contractor under this Agreement and not the CITY's employee for all purposes, including but not limited to, the application of the Fair Labor Standards Act minimum wage and overtime payments, Federal Insurance Contribution Act, the Social Security Act, the Federal Unemployment Tax Act, the provisions of the Internal Revenue Code, the State Workers' Compensation Act, and the State unemployment insurance law. The CONTRACTOR shall retain sole and absolute discretion in the judgment of the manner and means of carrying out CONTRACTOR's activities and responsibilities hereunder provided, further that administrative procedures applicable to services rendered under this Agreement shall be those of CONTRACTOR, which policies of CONTRACTOR shall not conflict with CITY, State, H.U.D., or United States policies, rules or regulations relating to the use of CONTRACTOR's Funds provided for herein. The CONTRACTOR agrees that it is a separate and independent enterprise from the CITY, that it has full opportunity to find other business, that it has made its own investment in its business, and that it will utilize a high level of skill necessary to perform the work. This Agreement shall not be construed as creating any joint employment relationship between the CONTRACTOR and the CITY and the CITY will not be liable for any obligation incurred by CONTRACTOR, including but not limited to unpaid minimum wages and/or overtime premiums.

#### **ARTICLE 11** **UNCONTROLLABLE FORCES**

11.1 Neither CITY nor CONTRACTOR shall be considered to be in default of this Agreement if delays in or failure of performance shall be due to Uncontrollable Forces, the effect of which, by the exercise of reasonable diligence, the non-performing party could not avoid. The term "Uncontrollable Forces" shall mean any event which results in the prevention or delay of performance by a party of its obligations under this Agreement and which is beyond the reasonable control of the nonperforming party. It includes, but is not limited to fire, flood, earthquakes, storms, lightning, epidemic, war, riot, civil disturbance, sabotage, and governmental actions.

11.2 Neither party shall, however, be excused from performance if nonperformance is due to forces, which are preventable, removable, or remediable, and which the nonperforming party could have, with the exercise of reasonable diligence, prevented, removed, or remedied with reasonable dispatch. The nonperforming party shall, within a reasonable time of being prevented or delayed from performance by an uncontrollable force, give written notice to the other party describing the circumstances and uncontrollable forces preventing continued performance of the obligations of this Agreement.



**ARTICLE 12**  
**AGREEMENT SUBJECT TO FUNDING**

12.1 This Agreement shall remain in full force and effect only as long as the expenditures provided for in the Agreement have been appropriated by the City Commission of the City of Pembroke Pines in the annual budget for each fiscal year of this Agreement, and is subject to termination based on lack of funding.

**ARTICLE 13**  
**VENUE**

13.1 This Agreement shall be governed by the laws of the State of Florida as now and hereafter in force. The venue for actions or claims arising out or related to this Agreement shall be in Broward County, Florida.

**ARTICLE 14**  
**SIGNATORY AUTHORITY**

14.1 CONTRACTOR shall provide CITY with copies of requisite documentation evidencing that the signator for CONTRACTOR has the authority to enter into this Agreement.

**ARTICLE 15**  
**MERGER; AMENDMENT**

15.1 This Agreement constitutes the entire Agreement between CONTRACTOR and CITY, and negotiations and oral understandings between the PARTIES are merged herein. This Agreement can be supplemented or amended only by a written document executed by both CONTRACTOR and CITY with the same formality and equal dignity herewith.

**ARTICLE 16**  
**BLANK**

**ARTICLE 17**  
**BANKRUPTCY**

17.1 It is agreed that if CONTRACTOR is adjudged bankrupt, either voluntarily or involuntarily, then this Agreement shall terminate effective on the date and at the time the bankruptcy petition is filed.



**ARTICLE 18**  
**DISPUTE RESOLUTION**

18.1 **Arbitration.** In addition to any other remedy provided hereunder, CITY, at its option, may use arbitration to resolve any controversy or claim arising out of or relating to this Agreement if arbitration is elected by CITY. Any controversy or claim arising out of or relating to this Agreement, or breach thereof, may be settled by arbitration in accordance with the rules of the American Arbitration Association and judgment upon the award rendered by the arbitrators may be entered into by any court having jurisdiction thereof. In the event arbitration is elected by CITY, such controversy or claim shall be submitted to one arbitrator selected from the National Panel of The American Arbitration Association.

18.2 **Operations During Dispute.**

18.2.1 In the event that a dispute, if any, arises between CITY and CONTRACTOR relating to this Agreement, performance or compensation hereunder, CONTRACTOR shall continue to render service in full compliance with all terms and conditions of this Agreement as interpreted by CITY regardless of such dispute.

18.2.2 CONTRACTOR expressly recognizes the paramount right and duty of CITY to provide adequate maintenance of CITY's Property, and further agrees, in consideration for the execution of this Agreement, that in the event of such a dispute, if any, it will not seek injunctive relief in any court, but will negotiate with CITY for an adjustment on the matter or matters in dispute and, upon failure of said negotiations to resolve the dispute, may present the matter to a court of competent jurisdiction in an appropriate suit therefore instituted by it or by CITY.

18.2.3 Notwithstanding the other provisions in this Section, CITY reserves the right to terminate the Agreement at any time, whenever the service provided by CONTRACTOR fails to meet reasonable standards of the trade after CITY gives written notice to the CONTRACTOR of the deficiencies as set forth in the written notice within fourteen calendar (14) days of the receipt by CONTRACTOR of such notice from CITY.

**ARTICLE 19**  
**PUBLIC RECORDS**

19.1 The City of Pembroke Pines is public agency subject to Chapter 119, Florida Statutes. The Contractor shall comply with Florida's Public Records Law. Specifically, the Contractor shall:

19.1.1 Keep and maintain public records required by the CITY to perform the service;

19.1.2 Upon request from the CITY's custodian of public records, provide the CITY 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, Fla. Stat., or as otherwise provided by law;





19.1.3 Ensure that public records that are exempt or that are confidential and exempt from public record disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and, following completion of the contract, CONTRACTOR shall destroy all copies of such confidential and exempt records remaining in its possession after the CONTRACTOR transfers the records in its possession to the CITY; and

19.1.4 Upon completion of the contract, CONTRACTOR shall transfer to the CITY, at no cost to the CITY, all public records in CONTRACTOR's possession. All records stored electronically by the CONTRACTOR must be provided to the CITY, upon request from the CITY's custodian of public records, in a format that is compatible with the information technology systems of the CITY.

19.2 The failure of Contractor to comply with the provisions set forth in this Article shall constitute a Default and Breach of this Agreement and the CITY shall enforce the Default in accordance with the provisions set forth in Article 3.

**IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT**

**CITY CLERK  
10100 PINES BOULEVARD, 5<sup>th</sup> FLOOR  
PEMBROKE PINES, FL 33026  
(954) 450-1050  
[mgraham@ppines.com](mailto:mgraham@ppines.com)**

**ARTICLE 20  
MISCELLANEOUS**

20.1 **Ownership of Documents.** Reports, surveys, studies, and other data provided in connection with this Agreement are and shall remain the property of CITY, whether or not the project for which they are made is completed.

20.2 **Legal Representation.** It is acknowledged that each party to this Agreement had the opportunity to be represented by counsel in the preparation of this Agreement, and accordingly, the rule that a contract shall be interpreted strictly against the party preparing same shall not apply herein due to the joint contributions of both PARTIES.



20.3 **Records.** CONTRACTOR shall keep such records and accounts and require any and all subcontractors to keep records and accounts as may be necessary in order to record complete and correct entries as to personnel hours charged to this engagement, and any expenses for which CONTRACTOR expects to be reimbursed. Such books and records will be available at all reasonable times for examination and audit by CITY and shall be kept for a period of ten (10) years after the completion of all work to be performed pursuant to this Agreement. Incomplete or incorrect entries in such books and records will be grounds for disallowance by CITY of any fees or expenses based upon such entries.

20.4 **Assignments; Amendments.** This Agreement, and any interests herein, shall not be assigned, transferred or otherwise encumbered, under any circumstances, by CONTRACTOR without the prior written consent of CITY. For purposes of this Agreement, any change of ownership of CONTRACTOR shall constitute an assignment which requires CITY approval. However, this Agreement shall run to the benefit of CITY and its successors and assigns.

It is further agreed that no modification, amendment, or alteration in the terms or conditions contained herein shall be effective unless contained in a written document executed with the same formality and of equal dignity herewith.

20.5 **No Contingent Fees.** CONTRACTOR warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for CONTRACTOR to solicit or secure this Agreement, and that it has not paid or agreed to pay any person, company, corporation, individual or firm, other than a bona fide employee working solely for CONTRACTOR any fee, commission, percentage, gift, or other consideration contingent upon or resulting from the award or making of this Agreement. For the breach or violation of this provision, CITY shall have the right to terminate the Agreement without liability at its discretion, to deduct from the contract price, or otherwise recover the full amount of such fee, commission, percentage, gift or consideration.

20.6 **Notice.** Whenever any party desires to give notice unto any other party, it must be given by written notice, sent by certified United States mail, with return receipt requested, addressed to the party for whom it is intended and the remaining party, at the places last specified, and the places for giving of notice shall remain such until they shall have been changed by written notice in compliance with the provisions of this section. For the present, CONTRACTOR and CITY designate the following as the respective places for giving of notice:

CITY Charles F. Dodge, City Manager  
City of Pembroke Pines  
601 City Center Way  
Pembroke Pines, Florida 33025  
Telephone No. (954) 431-4884  
Facsimile No. (954) 437-1149

Copy To: Samuel S. Goren, City Attorney  
Goren, Cherof, Doody & Ezrol, P.A.  
3099 East Commercial Boulevard, Suite 200



Fort Lauderdale, Florida 33308  
Telephone No. (954) 771-4900  
Facsimile No. (954) 771-4923

Contractor **MAURIZIO BETTOLI, PRESIDENT**  
**MAURIZIO BETTOLI**  
**BETTOLI TRADING CORP.**  
**6095 NW 167<sup>th</sup> STREET, Ste. D-4**  
**MIAMI, FL 33015**  
Telephone No: **305-626-0740**  
Facsimile No: **305-623-0108**  
E-Mail: **maurizio@bettolivending.com**

20.7 **Binding Authority.** Each person signing this Agreement on behalf of either party individually warrants that he or she has full legal power to execute this Agreement on behalf of the party for whom he or she is signing, and to bind and obligate such party with respect to all provisions contained in this Agreement.

20.8 **Headings.** Headings herein are for the convenience of reference only and shall not be considered in any interpretation of this Agreement.

20.9 **Exhibits.** Each Exhibit referred to in this Agreement forms an essential part of this Agreement. The exhibits if not physically attached should be treated as part of this Agreement and are incorporated herein by reference.

20.10 **Severability.** If any provision of this Agreement or application thereof to any person or situation shall to any extent, be held invalid or unenforceable, the remainder of this Agreement, and the application of such provisions to persons or situations other than those as to which it shall have been held invalid or unenforceable, shall not be affected thereby, and shall continue in full force and effect, and be enforced to the fullest extent permitted by law.

20.11 **Entire Agreement and Conflicts:** This Agreement is intended by the PARTIES hereto to be final expression of this Agreement, and it constitutes the full and entire understanding between the PARTIES with respect to the subject hereof, notwithstanding any representations, statements, or agreements to the contrary heretofore made. In the event of a conflict between this Agreement, the RFP and the CONTRACTOR's bid proposal, this Agreement shall govern, then the RFP, and then the bid proposal.

20.12 **Waiver.** Failure of CITY to insist upon strict performance of any provision or condition of this Agreement, or to execute any right therein contained, shall not be construed as a waiver or relinquishment for the future of any such provision, condition, or right, but the same shall remain in full force and effect.



20.13 **Attorney's Fees.** In the event that either party brings suit for enforcement of this Agreement, each party shall bear its own attorney's fees and court costs, except as otherwise provided under the indemnification provisions set forth herein above.

20.14 **Protection of City Property.** At all times during the performance of this Agreement, CONTRACTOR shall protect CITY's property from all damage whatsoever on account of the work being carried on under this Agreement.

20.15 **Compliance with Statutes:** It shall be the Contractor's responsibility to be aware of and comply with all statutes, ordinances, rules, orders, regulations and requirements of all local, City, state, and federal agencies as applicable; specifically the Jessica Lunsford Act - Chapter 1012, Florida Statutes, which provides for the screening of individuals who are vendors or contractors with a Florida public school or district.

20.16 **Scrutinized Companies.** CONTRACTOR certifies that it and any of its affiliates are not scrutinized companies as identified in Section 287.135, Florida Statutes. In addition, CONTRACTOR agrees to observe the requirements of Section 287.135, Florida Statutes, for applicable sub-agreements entered into for the performance of work under this Agreement. Pursuant to Section 287.135, Florida Statutes, the CITY may immediately terminate this Agreement for cause if CONTRACTOR, its affiliates, or its subcontractors are found to have submitted a false certification; or if CONTRACTOR, its affiliates, or its subcontractors are found to have submitted a false certification; or if CONTRACTOR, its affiliates, or its subcontractors are placed on any applicable scrutinized companies list or engaged in prohibited contracting activity during the term of the Agreement. As provided in Subsection 287.135(8), Florida Statutes, if federal law ceases to authorize these contracting prohibitions, then they shall become inoperative.



**EXHIBIT "A"**

City of Pembroke Pines Request for Proposals  
RFP # RE-18-12 entitled "Vending Machine Services"  
Available upon request