

VENDING MACHINE AGREEMENT

THIS AGREEMENT is made and entered into as of this ____ day of _____, 20__ , by and between

THE SCHOOL BOARD OF BROWARD COUNTY, FLORIDA
(hereinafter referred to as "SBBC"),
a body corporate and political subdivision of the State of Florida,
whose principal place of business is
600 Southeast Third Avenue, Fort Lauderdale, Florida 33301

and

GILLY VENDING, INC.
d/b/a GILLY ENTERPRISES
(hereinafter referred to as "GILLY"),
whose principal place of business is
990 NW 166 Street
Miami, Florida 33169

SBBC and GILLY are referred to collectively herein as the "Parties"

WHEREAS, SBBC issues Invitation to Bid (ITB) 27-002B – Furnish, Install, Stock and Maintain Campus Vending Machine and bid was awarded on August 1, 2006. In order to meet the needs of the School District and in the best interest of SBBC, all bidders who were responsive and responsible bidders and who complied with all terms and conditions of the bid were considered pre-approved to do business with the School Board under this contract. GILLY was one of the multiple pre-approved vendors able to provide vending services under this contract.

WHEREAS, SBBC school and site administrators reserve the right to negotiate any income fees/commission rate(s), after award of this ITB due to any changes in policies (Federal, State, Local or School Board), adjustments made to, drink and vending machine operations, including product lines, pricing strategies, nutritional requirements or if it is in the best interest of SBBC.

WHEREAS, South Broward High School will make its best effort to maximize all sales opportunities for GILLY products, snacks and milk vendors.

NOW THEREFORE, in consideration of the premises and of the mutual covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereby agree as follows:

ARTICLE 1 - RECITALS

1.01 **Recitals.** The Parties agree that the foregoing recitals are true and correct and that such recitals are incorporated herein by reference.

ARTICLE 2 – SPECIAL CONDITIONS

2.01 **Scope.** The purpose of this Agreement (herein by reference to hereafter as "Agreement"), is to provide SBBC with a turn-key beverage and snack vending machine operation for campus areas only at **South Broward High School**. Vending services at cafeteria are excluded from this agreement see whereas. No beverages are to be sold on campus locations except for the administration main teacher's lounge only with frozen vending machines.

2.02 **Term of Agreement.** The term of this exclusive Agreement shall be for three years and commence from **date of School Board approval** and terminate **June 30, 2011** unless terminated earlier based on the terms and conditions of this Agreement.

2.03 **Revenue instead of Commission.** GILLY will provide the following vending machines and revenue to support the students and faculty of **South Broward High** as per **Attachment A**.

2.04 **Revenue Summary.** A potential three-year contract totaling \$225,000.00 for snack, beverage and ice cream vending machines.

2.05 **Order of Priority.** In the event of a conflict between documents, which are incorporated herein by reference, the Parties agree that the order of priority shall be as follows:

- A. This Agreement,
- B. Any Addendum issued to ITB 27-002B,
- C. Terms, Conditions and Specifications in ITB 27-002B; and
- D. GILLY's submitted Bid 27-002B.

2.06 **Remedies for Loss of Rights.**

A. In addition to any other legal or equitable remedy, parties reserve the right to terminate this Agreement as stated in General Condition 3.04.

B. If GILLY fails to make payment due to SBBC or breaches any material term or condition of this Agreement, SBBC is not obligated to return commission(s) or consideration(s) given to South Broward High prior to date of default.

C. If SBBC breaches any material term or condition of Agreement, SBBC will refund to GILLY any prepaid commission(s) or consideration(s) given in advance of end of current school year pro-rated to the date of termination or default. However, any commission or consideration paid or delivered by GILLY prior to that school year shall not be refunded. Calculation of the pro-rated amount shall be determined from the effective date of School Board approval or contract execution through the effective date of termination.

D. The entire school is closed for a period of 120 days or more, SBBC will refund to GILLY any prepaid commission or consideration given in advance as stated in Section "C" above.

ARTICLE 2 – SPECIAL CONDITIONS (Continued)

2.07 Indemnification.

A. By SBBC: SBBC agrees to be fully responsible for its acts of negligence or its agent's acts of negligence when acting within the scope of their employment and agrees to be liable for any damages resulting from said negligence.

B. By GILLY: GILLY agrees to indemnify, hold harmless and defend SBBC, its agents, servants and employees from any and all claims, judgments, costs, and expenses including, but not limited to, reasonable attorney's fees, reasonable investigative and discovery costs, court costs and all other sums which SBBC, its agents, servants and employees may pay or become obligated to pay on account of any, all and every claim or demand, or assertion of liability, or any claim or action founded thereon, arising or alleged to have arisen out of the products, goods or services furnished by GILLY, its agents, servants or employees; the equipment of GILLY, its agents, servants or employees while such equipment is on premises owned or controlled by SBBC; or the negligence of GILLY or the negligence of GILLY'S agents when acting within the scope of their employment, whether such claims, judgments, costs and expenses be for damages, damage to property including SBBC's property, and injury or death of any person whether employed by GILLY, SBBC or otherwise.

2.08 **Background Screening.** GILLY agrees to comply with all the requirements of Sections 1012.32 and 1012.465, Florida Statutes, and that GILLY and all its personnel who (1) are to be permitted access to school grounds when students are present, (2) will have direct contact with students, or (3) have access or control of school funds will successfully complete the background screening required by the referenced statutes and meet the standards established by the statutes. This background screening will be conducted by SBBC in advance of GILLY or its personnel providing any services under the conditions described in the previous sentence. GILLY will bear the cost of acquiring the background screening required under Section 1012.32, Florida Statutes, and any fee imposed by the Florida Department of Law Enforcement to maintain the fingerprints provided with respect to GILLY and its personnel. The Parties agree that the failure of GILLY to perform any of the duties described in this section shall constitute a material breach of this Agreement entitling SBBC to terminate immediately with no further responsibilities or duties to perform under this Agreement. GILLY agrees to indemnify and hold harmless SBBC, its officers and employees of any liability in the form of physical or mental injury, death or property damage resulting in GILLY's failure to comply with the requirements of this section or Sections 1012.32 and 1012.465, Florida Statutes.

SBBC issued identification badges must be worn at all times when on SBBC property and must be worn where they are visible and easily readable.

Each individual, for whom a SBBC photo identification badge is requested, must fill out the forms that are required, show his/her driver's license and social security card, and must be fingerprinted. A background check will be conducted for each badge applicant. SBBC reserves the right to require additional information, should it be necessary, and to deny the issuance of a badge to an applicant. Any applicant, that has been denied a badge, is prohibited from entering SBBC property as an employee, sub-contractor or agent of a contract awardee. Effective immediately, the total fee for the SBBC photo identification badge, fingerprinting and a FBI background check is currently \$80.00. The Money Order is to be made payable to **"PrideRock Holding Company"**. **Visa and Mastercard will be acceptable for**

2.08 Background Screening (Continued)

these fees. No cash, personal or company checks are acceptable. These fees are non-refundable and are subject to change without notice. Badges are issued for a one year period and must be renewed annually. The renewal date will be one year from date of issuance. Failure to renew the badge, at that time, will result in the vendor being required to re-apply and pay the going rate for badging and fingerprinting.

Badges are to be returned to SIU at the end of the contract or at the time an employee is terminated. Failure to return the badge to SBBC may result in the final payment being withheld until the badges are returned. For more information go to http://www.broward.k12.fl.us/supply/vendor_page.htm

SBBC issued identification badges must be worn at all times when on SBBC property and must be worn where they are visible and easily readable.

ARTICLE 3 – GENERAL CONDITIONS

3.01 No Waiver of Sovereign Immunity. Nothing herein is intended to serve as a waiver of sovereign immunity by any agency or political subdivision to which sovereign immunity may be applicable.

3.02 No Third Party Beneficiaries. The parties expressly acknowledge that it is not their intent to create or confer any rights or obligations in or upon any third person or entity under this Agreement. None of the parties intend to directly or substantially benefit a third party by this Agreement. The parties agree that there are no third party beneficiaries to this Agreement and that no third party shall be entitled to assert a claim against any of the parties based upon this Agreement. Nothing herein shall be construed as consent by an agency or political subdivision of the State of Florida to be sued by third parties in any matter arising out of any contract.

3.03 Non-Discrimination. The parties shall not discriminate against any employee or participant in the performance of the duties, responsibilities and obligations under this Agreement because of race, age, religion, color, gender, national origin, marital status, disability or sexual orientation.

3.04 Termination. This Agreement may be canceled with or without cause by SBBC or GILLY during the term hereof upon thirty (30) days written notice to the other parties of its desire to terminate this Agreement.

3.05 Records. Each party shall maintain its own respective records and documents associated with this Agreement in accordance with the records retention requirements applicable to public records. Each party shall be responsible for compliance with any public documents request served upon it pursuant to Section 119.07, Florida Statutes, and any resultant award of attorney's fees for non-compliance with that law.

3.06 Entire Agreement. This document incorporates and includes all prior negotiations, correspondence, conversations, agreements and understandings applicable to the matters contained herein and the parties agree that there are no commitments, agreements or

ARTICLE 3 – GENERAL CONDITIONS (Continued)

understandings concerning the subject matter of this Agreement that are not contained in this document. Accordingly, the parties agree that no deviation from the terms hereof shall be predicated upon any prior representations or agreements, whether oral or written.

3.07 **Amendments.** No modification, amendment, or alteration in the terms or conditions contained herein shall be effective unless contained in a written document prepared with the same or similar formality as this Agreement and executed by each party hereto.

3.08 **Preparation of Agreement.** The parties acknowledge that they have sought and obtained whatever competent advice and counsel as was necessary for them to form a full and complete understanding of all rights and obligations herein and that the preparation of this Agreement has been their joint effort. The language agreed to herein expresses their mutual intent and the resulting document shall not, solely as a matter of judicial construction, be construed more severely against one of the parties than the other.

3.09 **Waiver.** The parties agree that each requirement, duty and obligation set forth herein is substantial and important to the formation of this Agreement and, therefore, is a material term hereof. Any party's failure to enforce any provision of this Agreement shall not be deemed a waiver of such provision or modification of this Agreement. A waiver of any breach of a provision of this Agreement shall not be deemed a waiver of any subsequent breach and shall not be construed to be a modification of the terms of this Agreement.

3.10 **Compliance with Laws.** Each party shall comply with all applicable federal and state laws, codes, rules and regulations in performing its duties, responsibilities and obligations pursuant to this Agreement.

3.11 **Governing Law.** This Agreement shall be interpreted and construed in accordance with and governed by the laws of the State of Florida. Any controversies or legal problems arising out of this Agreement and any action involving the enforcement or interpretation of any rights hereunder shall be submitted to the jurisdiction of the State courts of the Seventeenth Judicial Circuit of Broward County, Florida.

3.12 **Binding Effect.** This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

3.13 **Assignment.** Neither this Agreement or any interest herein may be assigned, transferred or encumbered by any party without the prior written consent of the other party. There shall be no partial assignments of this Agreement including, without limitation, the partial assignment of any right to receive payments from SBBC.

3.14 **Force Majeure.** Neither party shall be obligated to perform any duty, requirement or obligation under this Agreement if such performance is prevented by fire, hurricane, earthquake, explosion, wars, sabotage, accident, flood, acts of God, strikes, or other labor disputes, riot or civil commotions, or by reason of any other matter or condition beyond the control of either party, and which cannot be overcome by reasonable diligence and without unusual expense ("Force Majeure"). In no event shall a lack of funds on the part of either party be deemed Force Majeure.

ARTICLE 3 – GENERAL CONDITIONS (Continued)

3.15 **Place of Performance.** All obligations of SBBC under the terms of this Agreement are reasonably susceptible of being performed in Broward County, Florida and shall be payable and performable in Broward County, Florida.

3.16 **Severability.** In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, unlawful, unenforceable or void in any respect, the invalidity, illegality, unenforceability or unlawful or void nature of that provision shall not effect any other provision and this Agreement shall be considered as if such invalid, illegal, unlawful, unenforceable or void provision had never been included herein.

3.17 **Notice.** When any of the parties desire to give notice to the other, such notice must be in writing, sent by U.S. Mail, postage prepaid, addressed to the party for whom it is intended at the place last specified; the place for giving notice shall remain such until it is changed by written notice in compliance with the provisions of this paragraph. For the present, the Parties designate the following as the respective places for giving notice:

To SBBC: Interim Superintendent of Schools
The School Board of Broward County, Florida
600 Southeast Third Avenue
Fort Lauderdale, Florida 33301

With a Copy to: The School Board of Broward County, Florida
Director of Purchasing
7720 West Oakland Park Boulevard, Suite 323
Sunrise, Florida 33351

To GILLY: Ms. Gilda Rosenburg
Gilly Vending, Inc. d/b/a Gilly Enterprises
990 N.W. 166th Street
Miami, Florida 33169

With a Copy to: _____
Name to be Provided by Other Party

Address

Address

3.18 **Captions.** The captions, section numbers, article numbers, title and headings appearing in this Agreement are inserted only as a matter of convenience and in no way define, limit, construe or describe the scope or intent of such articles or sections of this Agreement, nor in any way effect this Agreement and shall not be construed to create a conflict with the provisions of this Agreement.

3.19 **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.

3.20 **Excess Funds.** Any party receiving funds paid by SBBC under this Agreement agrees to promptly notify SBBC of any funds erroneously received from SBBC upon the discovery of such erroneous payment or overpayment. Any such excess funds shall be refunded to SBBC with interest calculated from the date of the erroneous payment or

ARTICLE 3 – GENERAL CONDITIONS (Continued)

overpayment. Interest shall be calculated using the interest rate for judgments under Section 55.03, Florida Statutes, applicable at the time the erroneous payment or overpayment was made by SBBC.

IN WITNESS WHEREOF, the Parties hereto have made and executed this Agreement on the date first above written.

FOR SBBC

(Corporate Seal)

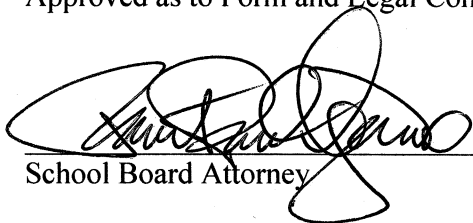
THE SCHOOL BOARD OF BROWARD
COUNTY, FLORIDA

ATTEST:

By _____
Robin Bartleman, Chair

James F. Notter,
Superintendent of Schools

Approved as to Form and Legal Content:



School Board Attorney

FOR GILLY

(Corporate Seal)

Gilda Rosen
Gilly Vending, Inc. d/b/a Gilly Enterprises

ATTEST:

Gilda Rosen
, Secretary

By President

-or-

[Signature]
Witness
[Signature]
Witness

The Following Notarization is Required for Every Agreement Without Regard to Whether the Party Chose to Use a Secretary's Attestation or Two (2) Witnesses.

STATE OF FLORIDA

COUNTY OF DADE

The foregoing instrument was acknowledged before me this 17th day of July, 2008 by GILDA ROSENBERG of

Name of Person

Gilly Vending, Inc. d/b/a Gilly Enterprises, on behalf of the corporation/agency.

He/She is personally known to me or produced [Signature] as identification and did/did not first take an oath. Type of Identification

My Commission Expires: MAY 22, 2009

Nancy Bencomo
Signature - Notary Public

Nancy BENCOMO
Printed Name of Notary

(SEAL)



Nancy Bencomo
Commission #DD432258
Expires: MAY 22, 2009
www.AARONNOTARY.com

DD 432258
Notary's Commission No.



ATTACHMENT "A"

Dear F. McRae,

PROPOSAL

Mr. Alan Strauss, Principal of **South Broward High School** and Gilda Rosenberg, President of Gilly Vending, Inc. have agreed to the following:

Potential three (3) year exclusive snack, ice cream, beverage and coffee (Teacher's Lounge) vending agreement between South Broward High School and Gilly Vending, Inc.

Both parties have agreed to:

- \$225,000.00 paid quarterly over a three (3) year period in 3 increments (first 3 quarters), (**See Payment Schedule**) in lieu of commission rates as stated in Bid 27-002B.

Should sales reach \$325,000.00 per year, Gilly Vending, Inc shall provide South Broward High School a revenue bonus of \$25,000.00 dollars. Should sales reach \$400,000.00 per year, Gilly Vending shall provide South Broward High School an additional revenue bonus of \$20,000.00 dollars.

(Minimum 28 – Snack, Beverage, Ice Cream Vending Machines for student & faculty access and Coffee vending machine in Teacher's Lounge)

Payment Schedule

Year	1st Quarter	2nd Quarter	3rd Quarter	Yearly Payment
	October 1st	January 1st	April 1st	
Year 1 - 2008/2009	\$ 25,000.00	\$ 25,000.00	\$ 25,000.00	\$ 75,000.00
Year 2 - 2009/2010	\$ 25,000.00	\$ 25,000.00	\$ 25,000.00	\$ 75,000.00
Year 3 - 2010/2011	\$ 25,000.00	\$ 25,000.00	\$ 25,000.00	\$ 75,000.00

Total	\$ 225,000.00
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Gilly Vending, Inc