

1600-007-2/4633

Box #

Queen City Vending - Vending Machine Services

Legal Administration - Contracts & Agreements - Authorized by Clerk

VENDING AGREEMENT

This agreement dated for reference this 19 day of July, 2013.

Between:

CITY OF REGINA, a city continued under *The Cities Act*, c. C-11.1, S. S. 2002
(the "City")

and

QUEEN CITY VENDING CORPORATION a body corporate,
incorporated pursuant to the laws of Saskatchewan
(the "Vendor")

The Parties agree as follows:

Term

- 1 The City grants to the Vendor the exclusive license to install and operate snack and beverage vending machine services in the City-owned buildings listed in Schedule A (the "Facilities"), from July 1, 2013 to May 31, 2016 (the "Term").
- 2 The City, at its option, may renew the Agreement for a further period of up to two years, subject to terms and conditions agreeable to both parties, and subject to terms that are no less favorable for the City than the terms of the initial agreement.
- 3 The license in Section 1 does not include concession services or bulk vending services.

License Fee

- 4 For each year of the Term the Vendor will pay to the City 25% of net sales from all machines at all locations plus GST with a minimum annual guarantee of \$35,500 plus GST in each year. Net sales shall mean gross sales less any sales taxes.
- 5 Should the City suspend all of its operations at any one facility for greater than 5 days the minimum annual guarantee shall be reduced by an amount representing the fraction of vending machines rendered inaccessible and the number of full days of the closure. The City shall not otherwise be liable to the Vendor for partial suspension of operations or closures of less than 5 full days.
- 6 The Vendor will provide the City with a cheque for the City's portion of the sales no later than the 10th day of each month broken out by facility and product category (snack, hot beverage, cold beverage) for the preceding month's sales, and within 10 days after the expiration or termination of the Agreement for the final month's sales.
- 7 If the sales in any year of the term do not equal the minimum annual guarantee then the Vendor shall pay to the City, no later than July 31st of that year, the difference between the amount paid in that year of the term for sales and the minimum annual guarantee.

- 8 Payments owing from the Vendor to the City for the vending machine services that are not paid as of the due date, will be subject to a late payment charge of 1.5% per month (18% per annum).
- 9 The Vendor will acquire and pay for all licenses and pay all taxes lawfully imposed in respect of the vending machine services.

Records and Accounting

- 10 The Vendor will provide a detailed accounting of sales in monthly reports which reports will be provided to the City no later than the 10th day of each month for the preceding month's activities.
- 11 The accounting sales reports in section 10 and all payments to the City pursuant to this Agreement shall be delivered or mailed to:

City of Regina
Community Development, Recreation and Parks Department
6th Floor City Hall
P.O. Box 1790
Regina, Saskatchewan
S4P 3C8

- 12 (1) The Vendor will keep books and records enabling the production of annual financial statements including a statement of revenue in accordance with Canadian generally accepted audit standards or Canadian generally accepted standard for review engagements.
- (2) Upon request by the City, the Vendor will submit the statements including a balance sheet, and a statement of revenue and expenditure.
- (3) Upon request, the Vendor will provide an audited statement to the City.
- (4) The Vendor will bear the cost of the audit under subsection (3), if the audited statement shows a discrepancy of over 5% from the previous statements provided.
- (5) The City will bear the cost of the audit under subsection (3), if the audited statement shows a discrepancy of 5% or less from the previous statements provided.

Deposit

- 13 Upon execution of this Agreement, the Vendor will provide to the City and maintain a deposit of \$5,000 (the "Deposit") that will be held by the City in trust for the Term and any renewals thereof.
- 14 If the Vendor fails to comply with any of the terms of the Agreement, the City may apply the Deposit to compensate for any revenues owing to the City from the Vendor under the

Agreement, and for any expenses incurred by the City as a result of the Vendor's failure to comply.

- 15 Upon termination of the Agreement, once the City has recovered any revenues or expenses, the City will return the remainder of the Deposit to the Vendor.

Vending Items

- 16 The City will not set the menu for the vending services. However prices shall be clearly posted for the information of the general public and must include a variety of products that would reasonably be available in similar type vending machines.
- 17 (1) The City may monitor the quality and quantity of the items provided in the vending machines by the Vendor.
- (2) The Vendor will promptly comply with the City's reasonable demands that quality of the items be improved or the quantity of the items be increased.
- (3) The City reserves the right to implement policies excluding the sale of certain items or products during the term of this Contract, and the Vendor shall abide by such policy.

City's Covenants

- 18 The City shall grant to the Vendor the right to be the only snack and beverage vending service provider at the Facilities. This covenant does not include concession or bulk vending, which may also be present at some Facilities.
- 19 The City shall provide electrical power and water if necessary for the vending services.

Vendors Covenants

- 20 (1) The Vendor shall, at its own cost and expense:
- (a) provide any additional or new services, such as electricity, water or structural change, that may be required for the vending equipment;
 - (b) provide a change float for the refund of money lost in the vending equipment;
 - (c) service the vending equipment;
 - (d) maintain the vending equipment in good operating condition;
 - (e) keep the vending machines well stocked;
 - (f) install a change machine in the City Facility where the vending machine is located as required based on number of machines and volume of business;

- (g) install the vending equipment with consideration for the surrounding decor;
 - (h) not dispense glass, other breakable containers or sunflower seeds in the vending machines;
 - (i) address and manage customer concerns, suggestions, and complaints; and
 - (j) provide good customer service.
- (2) The float in subsection 20(1) will be under the custody and control of City staff at the Facility in which the vending machine is located.
- (3) If maintaining a float is not possible at one or more of the Facilities, the Vendor will dispatch a serviceperson to those locations to reimburse customers who lose money in the vending machines.
- 21 The Vendor shall comply with all applicable federal and provincial Statutes, Regulations, Codes and Rules and with all applicable Bylaws and Resolutions as amended or replaced from time to time, including, but not limited to: *The Occupational Health and Safety Act, 1993; The Labour Standards Act, The Worker's Compensation Act, 1979 and The Public Health Act, 1994.*
- 22 The Vendor shall take precautions to prevent fire from occurring and shall observe and comply with all laws and regulations in force respecting fire safety, and with all instructions given from time to time by the City of Regina Fire Department, or any other authority, with respect to fire safety and extinguishing of fires.

Installation

- 23 Subject to the terms of this Agreement, the Vendor shall install vending machines in accordance with Schedule A.
- 24 The physical location and method of affixation of the vending machines will be selected by the Vendor and the City by mutual agreement but subject ultimately to the City's approval; which may include relocation during the contract term.
- 25 The Vendor agrees not to alter, add to or in any way make any repairs, alterations or installations without having first obtained the consent in writing of the City providing that any such alterations or additions shall be made at the sole cost and expense of the Vendor. Any such repairs, alterations or additions shall accrue to the ownership of the City upon expiration or termination of the agreement.
- 26 The Vendor shall replace or repair, to the satisfaction of the City any furnishings and equipment provided by the City that are damaged or destroyed by affixation of the vending equipment or because of improper use or because of negligence by any officer, servant, agent or other person under the control or supervision of the Vendor.

- 27 The vending machines or equipment installed by the Vendor at the Facilities are the exclusive property of the Vendor, notwithstanding any attachment or affixation to City property.
- 28 The vending equipment will be installed at the Facilities at the risk of the Vendor.
- 29 (1) The Parties may, by written agreement, add additional Facilities to Schedule A.
- (2) Any services provided to a Facility added to Schedule A during the Term, will be subject to the terms and conditions of this Agreement.
- 30 (1) The City or Vendor may delete a Facility from Schedule A by providing the other Party with 30 days written notice.
- (2) If the City deletes a Facility pursuant to subsection (1), it will not be required to provide compensation to the Vendor.

Honouring City Agreements

- 31 (1) In the event that the City of Regina has entered into an exclusive marketing arrangement with a supplier, the Vendor shall exclusively purchase and sell products of that supplier only, and shall not market, advertise, promote or sell any products which might compete with the supplier's products.
- (2) The City reserves the right to enter into future agreements outlined in subsection (1).
- (3) During any special event being held at the Facility at which food or beverage product sponsors are contracted to supply any food and beverages, the City may in its sole discretion require the Vendor to honour the terms of the contract with the product sponsors (whether the City is a party to the contract or not) with respect to the purchasing, marketing and sale of any particular good or beverage products in the vending machines and the rest of the Facility.
- (4) The City will give the Vendor at least 72 hours notice of the City's decision to rely on subsection (3).

Conform to Policies

- 32 (1) The Vendor will conform to any environmental policies or recycling programs adopted by the federal or provincial governments or by City Council prior to or during the Term.
- (2) the Vendor will not purchase or use any items that produce chlorofluorocarbons in their production, sale or disposal.
- (3) The Vendor will bear the costs associated with conforming to any of the policies or

regulations under subsection (1) or (2).

- 33 The City has initiated a process to develop a Nutrition Policy for vending services. The Vendor will be invited to enter into the policy development process as outlined above with the understanding that, should the Policy be completed within the contract time frame, changes to the selection of menu items may be necessary.
- 34 The sale of tobacco products is not permitted.
- 35 The Vendor may advertise its services upon receiving written consent of the City to do so but must conform to the City's Advertising Policy attached as Schedule B and shall not enter into sponsorship agreements relating to the services provided under this Agreement.

Insurance and Indemnification

- 36 The Vendor shall, within 7 days of becoming aware an the incident, notify the City of any incident that may result in a claim against either the Vendor or the City, including, but not limited to such losses as, property damage to City assets, third party property damage, injury or death of any Vendor employee, instructor or volunteer and any third party bodily injury.
- 37 (1) In this section, "**City**" includes the City's officers, agents, employees and affiliates.
- (2) The Vendor will fully indemnify the City and hold the City harmless from and against any and all claims, demands, suits, causes of action, losses, damages, liabilities and costs relating to, arising out of, or connected to, directly or indirectly, with the Vendor's activities under the agreement including, without limitation and no matter when asserted, claims relating to:
- (a) the injury (physical or psychological) or death of any person; and
- (b) damages to or loss of any property.
- (3) The indemnity in subparagraph (2) does not apply to the extent that any claim results from an act or omission amounting to the City's negligence, breach of contract, legal or wilful misconduct or non-compliance with a statute, rule or regulation.
- 38 The Vendor must obtain, maintain, pay the premiums on, and provide the City with Certificates of Insurance for policies of:
- (a) general liability insurance including public liability and property damage insurance in the amount of \$2,000,000.00 dollars per occurrence;
- (b) in the event that automobiles are required to provide the Services, maintain automobile accident liability in the amount of no less than \$1,000,000.00 dollars per occurrence; and

- (c) provide the City with proof of the insurance in subclauses (a) and (b) in a form satisfactory to the City's Risk Manager;
- 39 Insurance provided under the agreement shall contain a statement whereby the insurer waives all rights of subrogation against any party named or contemplated as an insured party in the required policies.
- 40 The Vendor is solely responsible for full payment of any deductible amount which may be due in the event of any and all claims under policies required by the agreement.
- 41 The Vendor shall ensure that all insurance policies required by the agreement contain an endorsement by the insurer that states that the policies and coverage thereunder shall neither be amended or cancelled until 30 calendar days after written notice to such effect has been given to all named insureds.
- 42 The City of Regina shall be named as an additional insured on all policies of insurance with respect to the Vendor's activities as they relate to the agreement.
- 43 The Vendor will not have, nor make any claim or demand, nor bring any action or suit or petition against the City for any damage, which the Vendor may sustain by reason of any suspension, interruption or discontinuance in the services, supplied hereunder.

Termination

- 44 The Agreement may, prior to the expiration of the term, be terminated immediately by the City if:
- (a) the Vendor disbands, dissolves or is wound up;
 - (b) the Vendor is adjudged bankrupt or insolvent, or a Receiver is appointed with respect to the Vendor's assets or if a general assignment be made in favour of creditors of the Vendor;
 - (c) the Vendor is in default of its obligations under the Agreement and the default is not remedied within 30 days from the date the Vendor receives notice of default under the Agreement, provided that if the breach is of such a nature that it could not be remedied by the Vendor within the 30 days acting reasonably and promptly and provided such delay is not the result of financial inability of the Vendor, then the period for remedy of the breach shall be equitably extended by the City; or
 - (d) notwithstanding subparagraph (c), the Vendor commits and, after written notice to remedy, repeats any breach whatever of the agreement, whether such breach be substantial or otherwise.
- 45 Subject to section 44, the Agreement may be terminated by either Party by providing 90 days written notice to the other Party.

46 Unless otherwise directed by the City, no later than 30 days following the expiration or termination of the Agreement, the Vendor will:

- (a) remove any and all vending equipment from the Facilities;
- (b) repair, at its own expense, any damage to the Facilities caused by the vending services or removal of the vending equipment;
- (c) pay all amounts owing to the City under this Agreement.

Notices

47 (1) Any notices to be given by either Party to the other under this Agreement will be personally delivered or sent by prepaid registered mail, addressed as follows:

For the City:	For the Vendor:
City of Regina	Queen City Vending
Community Development,	Box 1802
Recreation and Parks Department	Regina, SK
6th Floor City Hall	S4P 3C6
Regina, Saskatchewan	
S4P 3C8	
Attention: Market Research Analyst	

or to such alternate address as either Party may, from time to time, by notice advise, and if mailed as aforesaid will be deemed to be given on the third business day after the date of such mailing.

- (2) If postal service is interrupted or substantially delayed, any notice, demand or consent or other instrument will be hand-delivered.

Independent Contractor

48 The Vendor and anyone the Vendor employs or allows to perform any part of the services are not and will not ever be considered employees of the City within the meaning of *The Labour Standards Act* of Saskatchewan (or otherwise) or entitled to any of the benefits of an employee of the City as a result of their performance of any part of the services.

General Provisions

49 The Agreement may not be assigned or subcontracted without the prior written consent of the other Party. Any consent given according to this section will not relieve the Vendor from the Vendor's obligations under this Agreement or impose any liability on the City related to the subcontractor.

50 This Agreement will enure to the benefit of and be binding upon the Parties, their permitted successors and assigns.

- 51 This Agreement and its schedules constitutes the entire Agreement between the Parties and supersedes all prior oral and written agreements and statements between the Parties with respect to the vending machine services.
- 52 This Agreement may be amended only in writing by agreement of both Parties.
- 53 No waiver will be inferred or implied by any forbearance by either Party or anything done or omitted to be done by either Party with respect to any breach unless it is an express written waiver. A waiver by either Party of any breach of the Agreement will not be or deemed to be a waiver of any continuing or subsequent breach, or a waiver of either Party's rights under the Agreement. The subsequent acceptance of payment by a Party is not a waiver of any preceding breach or continuing breach by the other Party, regardless of knowledge of any such preceding breach at the time payment is accepted.
- 54 (1) If either party is delayed or prevented from performing any obligation under the agreement due to fire, flood, explosion, acts of God, war, civil disturbance, strikes or other cause beyond the control of the party affected (except by reason of the financial condition of the party), the time for performance will be extended by the period of the delay.
- (2) Neither the City nor the Vendor is entitled to relief under paragraph 52(1), unless the party claiming relief gives written notice to the other party of the delay as soon as is practicable after they start the delay.

THIS CONTRACT IS EXECUTED BY THE CITY OF REGINA **QUEEN CITY VENDING CORPORATION**

THE CITY OF REGINA
 City Clerk J. Swednicka



28(1) Signature Removed
 Signature of Authorized Corporate Signing Officer _____

Date July 19, 2013

Name of Authorized Corporate Signing Officer (please print) _____

Date July 15 / 13



(* Note: If the Vendor does not affix its corporate seal, the Authorized Signing Officer must swear the attached Affidavit of Corporate Signing Authority before a Commissioner for Oaths, a Lawyer or a Notary Public who is not also a City of Regina employee).