

**AGREEMENT #2012-07
VENDING MACHINE SERVICES FOR
THE CITY OF NORTH PORT**

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THIS AGREEMENT ("Agreement") is made and entered into this 16th day of May, 2012, by and between the CITY OF NORTH PORT, a municipal corporation of the State of Florida, hereinafter referred to as the "CITY" and SNACKWORKS, INC. of Bradenton, Florida, a registered to conduct business in the State of Florida, hereinafter referred to as "CONTRACTOR."

WITNESSETH:

WHEREAS, the CITY has determined that it is necessary, expedient, and in the best interest of the CITY to hire a vendor to provide and manage vending machine services at City of North Port facilities;

WHEREAS, the CITY issued a Request for Proposal, #2012-07, on January 3, 2012;

WHEREAS, the CITY evaluated and ranked the proposals; and

WHEREAS, the CITY has determined to award the agreement to CONTRACTOR.

NOW, THEREFORE, in consideration of the mutual covenants contained herein, the parties agree as follows:

1. CONTRACTOR'S SERVICES

- A. The CONTRACTOR agrees to diligently and timely perform services for the CITY relating to providing and managing vending machines. The overall Scope of Services is described in detail in Exhibit A.
- B. This Agreement shall commence immediately upon the execution of the Agreement by both the CITY and the CONTRACTOR and upon the CONTRACTOR's receipt of the written Notice to Proceed from the CITY's Purchasing Office and shall continue through expiration or termination of the Agreement.

2. COMPENSATION AND PAYMENT

- A. **COMPENSATION**
The CONTRACTOR shall pay to the CITY a percentage of its vending machine receipts ("Vending Commissions") as described in the Scope of Services. Payment shall be due for each month ten (10) calendar days after the end of that month.
- B. **METHOD OF PAYMENT**
Contractor shall make monthly payments to the City of North Port of the Vending Commissions as described in Exhibit A. All payments will be made payable to the City of North Port and will be accompanied by an itemized report identifying all revenues generated through this Agreement.

3. TERM OF AGREEMENT

The term of this Agreement shall be for five (5) years, beginning on May 14, 2012 and ending May

13, 2017. This Agreement may, by mutual written agreement of the parties, be extended for one (1) additional five (5) year term. The total contract term shall not to exceed ten (10) years.

4. LIABILITY OF CONTRACTOR

The CONTRACTOR shall be fully liable for the actions of its directors, officers, members, partners, or subcontractors, and the employees and agents of each of them, and shall fully indemnify and hold harmless the CITY, its employees, agents and assigns from all demands, claims, suits, actions, judgments, damages, fines, fees, taxes, assessments, penalties, losses, expenses, costs of every type and description, and reasonable attorneys' fees (at both trial and appellate levels), of any nature or kind whatsoever caused by, or arising out of or related to the performance or breach of this Agreement by the CONTRACTOR, its officers, directors, members, partners, or subcontractors, and employees or agents of any of them; provided, however, that the CONTRACTOR shall not indemnify for that portion of any loss or damages proximately caused by the negligent act or omission of the CITY.

To the extent applicable, the CONTRACTOR shall fully indemnify and hold harmless the CITY, and its agents, employees and assigns from any demands, claims, suits, actions, judgments, damages, fines, fees, taxes, assessments, penalties, losses, expenses, costs of every type and description, and reasonable attorneys' fees (at both trial and appellate level), arising from or relating to violation or infringement of a trademark, copyright, patent, trade secret or intellectual property right; provided, however, that the foregoing obligation shall not apply to the misuse or modification of CONTRACTOR's products by the CITY or any of its agents, employees, and assigns, or to the operation or use of CONTRACTOR's products by the CITY or any of its agents, employees, and assigns in a manner not contemplated by the Agreement.

In the event of a claim, the CITY shall promptly notify the CONTRACTOR in writing by prepaid certified mail (return receipt requested), or by delivery through any nationally recognized courier service (such as Federal Express or UPS) which provides evidence of delivery, at the address provided in Section 19. Notification may also be provided by fax transmission to the number provided in Section 19, if provided.

The CITY shall provide all available information and assistance that the CONTRACTOR may reasonably require regarding any claim. This agreement for indemnification shall survive termination or completion of this Agreement. The insurance coverage and limits required in this Agreement may or may not be adequate to protect the CITY and such insurance coverage shall not be deemed a limitation on the CONTRACTOR's liability under the indemnity provided in this section. In any proceedings between the parties arising out of or related to this Indemnity provision, the prevailing party shall be reimbursed all costs, expenses and reasonable attorney fees through all proceedings (at both trial and appellate levels).

Nothing in this Agreement shall be deemed to affect the rights, privileges and immunities of the CITY as set forth in Florida Statutes § 768.28.

5. CONTRACTOR'S INSURANCE

- A. Before performing any contract work, CONTRACTOR shall procure and maintain during the life of the Agreement the insurance listed below, unless otherwise specified. The policies of insurance shall be primary and written on forms acceptable to the CITY and placed with insurance carriers approved and licensed by the Insurance Department in the State of Florida

and meet a minimum financial AM Best and Company rating of no less than "Excellent." No changes are to be made to these specifications without prior written specific approval by the City Manager or designee. The City Manager or designee may alter the amounts or types of insurance policies required by this Agreement upon agreement with CONTRACTOR.

1. Workers Compensation: Coverage to apply for all employees at the statutory limits provided by state and federal laws. The policy must include Employers' Liability with a limit of \$100,000 each accident; \$100,000 each employee; and \$500,000 policy limit for disease.
2. Comprehensive Commercial General Liability Insurance: Occurrence from required. Aggregate must apply separately to this Agreement. Minimum \$300,000 each occurrence; \$600,000 general aggregate; \$600,000 products and completed ops; and \$100,000 fire damage.
3. Automobile Insurance: To include all vehicles owned, leased, hired and non-owned vehicles with limits of not less than \$300,000 per each accident and for property damage and bodily injury, with contractual liability coverage for all work performed under this Agreement.
4. General requirements: The City of North Port is to be named additional insured on Comprehensive Commercial General Liability Policy, and the Business Auto Policy. Certification of same shall be required. All certificates of insurance must be on file with and approved by the CITY before commencement of any work activities under this Agreement.

Any and all deductibles to the above referenced policies are to be the responsibility of the CONTRACTOR. The CONTRACTOR's insurance is considered primary for any loss regardless of any insurance maintained by the CITY. The CONTRACTOR is responsible for all insurance policy premiums, deductibles, or SIR (self-insured retentions) or any loss or portion of any loss that is not covered by any available insurance policy.

All insurance policies must be issued by companies of recognized responsibility licensed to do business in Florida and must contain a provision that prohibits cancellation unless the CITY is provided notice as stated within the policy. It is the CONTRACTOR's responsibility to provide notice to the CITY.

B. WAIVER OF SUBROGATION

All required insurance policies are to be endorsed with a waiver of subrogation. The insurance companies, by proper endorsement or thru other means, agree to waive all rights of subrogation against the CITY, its officers, officials, employees and volunteers, and the CITY's insurance carriers, for losses paid under the terms of these policies that arise from the contractual relationship or work performed by the CONTRACTOR for the CITY. It is the CONTRACTOR's responsibility to notify their insurance company of the Waiver of Subrogation and request written authorization or the proper endorsement. Additionally, the CONTRACTOR, its officers, officials, agents, employees, volunteers, and any subcontractors, agree to waive all rights of subrogation against the CITY and its insurance carriers for any losses paid, sustained or incurred, but not covered by insurance, that arise from the contractual relationship or work performed. This waiver also applies to any deductibles or self-insured retentions the CONTRACTOR or its agents may be responsible for.

C. POLICY FORM

1. All policies, required by this Agreement, with the exception of Workers Compensation, or unless specific approval is given by Risk Management through the CITY's Purchasing Office, are to be written on an occurrence basis, shall name the City of North Port, its Commissioners, officers, agents, employees and volunteers as additional insured as their interest may appear under this Agreement. Insurer(s), with the exception of Workers Compensation, shall agree to waive all rights of subrogation against the City of North Port, its Commissioners, officers, agents, employees or volunteers.
2. Insurance requirements itemized in this Agreement, and required of the CONTRACTOR, shall be provided by or on behalf of all subcontractors to cover their operations performed under this Agreement. The CONTRACTOR shall be held responsible for any modifications, deviations, or omissions in these insurance requirements as they apply to subcontractors.
3. Each insurance policy required by this Agreement shall:
 - a. Apply separately to each insured against whom claim is made and suit is brought, except with respect to limits of the insurer's liability.
 - b. Be endorsed to state that coverage shall not be suspended, voided or cancelled by either party except after notice is delivered in accordance with the policy provisions. The CONTRACTOR is to notify the City Purchasing Office by written notice via certified mail, return receipt requested.
4. The CITY shall retain the right to review, at any time, coverage, form, and amount of insurance.
5. The procuring of required policies of insurance shall not be construed to limit CONTRACTOR's liability nor to fulfill the indemnification provisions and requirements of this Agreement. The extent of CONTRACTOR's liability for indemnity of the CITY shall not be limited by insurance coverage or lack thereof, or unreasonably delayed for any reason, including but not limited to, insurance coverage disputes between the CONTRACTOR and its carrier.
6. The CONTRACTOR shall be solely responsible for payment of all premiums for insurance contributing to the satisfaction of this Agreement and shall be solely responsible for the payment of all deductibles and retentions to which such policies are subject, whether or not the CITY is an insured under the policy.
7. Claims Made Policies will be accepted for hazardous materials and such other risks as are authorized by the CITY's Purchasing Office. All Claims Made Policies contributing to the satisfaction of the insurance requirements herein shall have an extended reporting period option or automatic coverage of not less than two (2) years. If provided as an option, the CONTRACTOR agrees to purchase the extended reporting period on cancellation or termination unless a new policy is affected with a retroactive date, including at least the last policy year.
8. Certificates of Insurance evidencing Claims Made or Occurrences form coverage and conditions to this Agreement, as well as the Agreement number and description of work, are

to be furnished to the CITY's Purchasing Office (4970 City Hall Boulevard, Suite 337 North Port, FL 34286) prior to commencement of work AND a minimum of thirty (30) calendar days prior to expiration of the insurance contract when applicable. All insurance certificates shall be received by the CITY's Purchasing Office before the CONTRACTOR will be allowed to commence or continue work. The Certificate of Insurance issued by the underwriting department of the insurance carrier shall certify compliance with the insurance requirements provided herein.

9. Notices of Accidents (Occurrences) and Notices of Claims associated with work being performed under this Agreement shall be provided to the CONTRACTOR's insurance company and the CITY's Purchasing Office as soon as practicable after notice to the insured.

6. RESPONSIBILITY OF THE CONTRACTOR

- A. The CONTRACTOR shall be responsible for the professional quality, technical accuracy, and the coordination of all reports, specifications, other documents and data used or produced by or at the behest of the CONTRACTOR under this Agreement. The CONTRACTOR shall, without additional compensation, correct or revise any errors or deficiencies in its reports, specifications, other documents and data.
- B. If the CONTRACTOR is comprised of more than one legal entity, each entity shall be jointly and severally liable hereunder.
- C. The CONTRACTOR warrants that it has not employed or retained any company or person (other than a bona fide employee working solely for the 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 the CONTRACTOR, any fee, commission, percentage, gift or any other consideration, contingent upon or resulting from the award of this Agreement.
- D. CONTRACTOR shall perform its services in accordance with generally accepted industry standards and practices customarily utilized by competent vending machine firms in effect at the time CONTRACTOR's services are rendered. The CONTRACTOR covenants and agrees that it and its employees shall be bound by the Standards of Conduct of Florida Statutes, Section 112.313, as it relates to work performed under this Agreement. The CONTRACTOR agrees to incorporate the provisions of this paragraph in any subcontract into which it might enter with reference to the work performed.
- E. The CONTRACTOR shall comply with all federal, state, and local laws, regulations and ordinances applicable to the work or payment for work thereof, and shall not discriminate on the grounds of race, color, religion, sex, or national origin in the performance of work under this Agreement.
- F. The CONTRACTOR shall maintain books, records, documents, and other evidence directly pertaining to or connected with the services under this Agreement which shall be available and accessible at the CONTRACTOR's offices for the purpose of inspection, audit, and copying during normal business hours by the CITY, or any of its authorized representatives. Such records shall be retained for a minimum of three (3) years after completion of the services.

7. OWNERSHIP AND USE OF DOCUMENTS

It is understood and agreed that all the documents, or reproducible copies, developed by the CONTRACTOR in connection with its services, including but not limited to reports, specifications, and data, shall be delivered to, and shall become the property of the CITY as they are received by the CITY. CONTRACTOR may keep copies of all work products for its records. The CONTRACTOR hereby assigns all its copyright and other proprietary interests in the products of this Agreement to the CITY. Specific written authority is required from the CITY's Administrative Agent for the CONTRACTOR to use any of the work products of this Agreement on any non-CITY project.

Notwithstanding the above, any reuse of the work products by the CITY on other projects will be at the risk of the CITY.

8. TIMELY PERFORMANCE OF CONTRACTOR'S PERSONNEL

The timely performance and completion of the required services is vitally important to the interest of the CITY. The CONTRACTOR shall assign a Project Manager, together with such other personnel as are necessary, to assure faithful prosecution and timely delivery of services pursuant to the requirements of this Agreement. The personnel assigned by the CONTRACTOR to perform the services of this Agreement shall comply with the information presented in the vending services response proposal made a part hereof by reference. The CONTRACTOR shall ensure that all key personnel, support personnel, and other agents are fully qualified and capable to perform their assigned tasks. Any change or substitution to the CONTRACTOR's key personnel must receive the CITY's Administrative Agent's written approval before said changes or substitution can become effective.

- A. The services to be rendered by the CONTRACTOR shall commence within one (1) week of the CONTRACTOR's receipt of written Notice to Proceed from the CITY.
- B. The CONTRACTOR specifically agrees that all work performed under the terms and conditions of this Agreement shall be completed within the time limits as set forth, subject only to delays caused through no fault of the CONTRACTOR or the CITY. Time is of the essence in the performance of this Agreement.

9. OBLIGATIONS OF CITY

- A. The CITY's Administrative Agent is designated to serve as project coordinator and to do all things necessary to properly administer the terms and conditions of this Agreement. If necessary, a specific program manager will be authorized to perform the responsibilities of the CITY's Administrative Agent. The CITY shall designate any specific program manager in the Notice to Proceed. The responsibility of the CITY's Administrative Agent shall include:
 - 1. Examination of all reports, estimates, proposals, and other documents presented by the CONTRACTOR, and render in writing, decisions pertaining thereto within a reasonable time.
 - 2. Transmission of instructions, receipt of information, interpretation and definition of CITY policies and decisions with respect to materials, selection of products, location and number of vending machines and other matters pertinent to the work covered by this Agreement.
 - 3. Review for approval or rejection all of the CONTRACTOR's documents and reports.

- B. The CITY shall, upon request, furnish the CONTRACTOR with all existing data, plans, studies and other information in the CITY's possession which may be useful in connection with the services to be provided under this Agreement, all of which shall be and remain the property of the CITY and shall be returned to the CITY's Administrative Agent upon completion of the services to be performed by the CONTRACTOR.
- C. The CITY's Administrative Agent shall conduct periodic reviews of the work of the CONTRACTOR necessary for the completion of the CONTRACTOR's services during the period of this Agreement, and may make other CITY personnel available, where required and necessary to assist the CONTRACTOR. The availability and necessity of said personnel to assist the CONTRACTOR shall be determined solely within the discretion of the CITY.
- D. The CITY shall not provide any services to the CONTRACTOR in connection with any claim brought on behalf of or against the CONTRACTOR.

10. TERMINATION

- A. The City Manager or designee shall have the right at any time upon thirty (30) calendar days written notice to the CONTRACTOR to terminate the services of the CONTRACTOR and, in that event, the CONTRACTOR shall cease work and shall deliver to the CITY all documents (including but not limited to reports, specifications, and all other data) prepared or obtained by the CONTRACTOR in connection with its services. The CONTRACTOR shall pay to the CITY any remaining amounts owed to CITY, including but not limited to the CITY's share of revenues received through the date of termination, within ten (10) days of the termination effective date. The CONTRACTOR shall also remove its vending machines from City property within 14 days of the termination effective date.
- B. FUNDING IN SUBSEQUENT FISCAL YEARS: It is expressly understood by the CITY and the CONTRACTOR that funding for any subsequent fiscal year of the Agreement is contingent upon appropriation of monies by the City Commissioners. In the event that funds are not available or appropriated, the CITY reserves the right to terminate the Agreement. The CITY will be responsible for payment of any outstanding invoices and work completed by the CONTRACTOR prior to such termination.
- C. In the event that the CONTRACTOR has abandoned performance under this Agreement, then the City Manager or designee may terminate this Agreement upon three (3) calendar days' written notice to the CONTRACTOR indicating its intention to do so. The written notice shall state the evidence indicating the CONTRACTOR's abandonment.
- D. The City Manager or designee reserves the right to terminate and cancel this Agreement in the event the CONTRACTOR shall be placed in either voluntary or involuntary bankruptcy, a receiver is appointed for the CONTRACTOR or an assignment is made for the benefit of creditors.
- E. In the event CONTRACTOR breaches this Agreement, the CITY shall provide written notice of the breach and CONTRACTOR shall have ten (10) days from the date the notice is received to cure. If CONTRACTOR fails to cure within the ten (10) days, the City Manager or designee shall have the right to immediately terminate the Agreement and/or refuse to make any additional payment, in whole or in part, and, if necessary, may demand the return of a portion or the entire amount previously paid to CONTRACTOR due to:

1. The quality of a portion or all of the CONTRACTOR's services not being in accordance with the requirements of this Agreement;
2. The quantity of the CONTRACTOR's vending receipts not being as represented in the CONTRACTOR's vending receipts report, or otherwise misrepresented;
3. Claims made, or likely to be made, against the CITY or its property;
4. Loss caused by the CONTRACTOR;
5. The CONTRACTOR's failure or refusal to perform any of its obligations to the CITY, after written notice and a reasonable opportunity to cure as set forth above.

In the event that the CITY makes written demand upon the CONTRACTOR for amounts previously paid by the CITY as contemplated in the clause, the CONTRACTOR shall promptly comply with such demand. The CITY's rights hereunder survive the term of this Agreement, and are not waived by final payment and/or acceptance.

11. INDEPENDENT CONTRACTOR

The CONTRACTOR is, and shall be, in the performance of all work services and activities under this Agreement, an independent contractor, and not an employee, agent or servant of the CITY. All persons engaged in any of the work or services performed pursuant to this Agreement shall at all times, and in all places, be subject to the CONTRACTOR'S sole direction, supervision, and control. The CONTRACTOR shall exercise control over the means and manner in which it and its employees perform the work, and in all respects the CONTRACTOR'S relationship and the relationship of its employees to the CITY shall be that of an independent contractor and not as employees or agents of the CITY. The CONTRACTOR does not have the power or authority to bind the CITY in any promise, agreement or representation other than as specifically provided for in this Agreement. The CONTRACTOR shall not pledge the CITY'S credit or make it a guarantor of payment of surety for any contract, debt, obligation, judgment, lien or any form of indebtedness. The CONSULTANT further warrants and represents that it has no obligation or indebtedness that would impair its ability to fulfill the terms of this Agreement.

12. ENTIRE AGREEMENT

This Agreement constitutes the sole and complete understanding between the parties and supersedes all agreements between them, whether oral or written with respect to the subject matter.

13. AMENDMENT

No amendment, change or addendum to this Agreement is enforceable unless agreed to in writing by both parties and incorporated into this Agreement. For any change in the compensation for the services, the City Manager or designee for the CITY and the duly authorized representative for the CONTRACTOR shall agree in writing to this change. For all other changes, the CITY's Administrative Agent and the CONTRACTOR's representative shall agree in writing to the change.

14. ASSIGNMENT

The CONTRACTOR shall not assign any interest in this Agreement and shall not transfer any interest

in same (whether by assignment or novation) without prior written consent of the City Manager or designee, except that claims for the money due or to become due the CONTRACTOR from the CITY under this Agreement may be assigned to a financial institution or to a trustee in bankruptcy without such approval from the CITY. Notice of any such transfer or assignment due to bankruptcy shall be promptly given to the CITY.

15. WAIVER

The exercise by either party of any rights or remedies provided herein shall not constitute a waiver of any other rights or remedies available under this Agreement or any applicable law.

16. GOVERNING LAW, VENUE AND SEVERABILITY

The rights, obligations and remedies of the parties under this Agreement shall be governed by the laws of the State of Florida and the exclusive venue for any legal or judicial proceedings in connection with the enforcement or interpretation of this Agreement shall be in Sarasota County, Florida. If any term, condition or covenant of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions of this Agreement shall be valid and binding on each party.

17. AUTHORITY

The parties covenant and agree that each is duly authorized to enter into and perform this Agreement and those executing this Agreement have all requisite power and authority to bind the parties.

18. NO HIRE

The CONTRACTOR shall not hire any CITY employee associated with this project throughout the duration of the Agreement and for a period of one (1) year after completion.

19. NOTICES

Any notices, invoices, reports, or any other type of documentation required by this Agreement shall be sent by certified mail, return receipt requested, or via a recognized national courier service in a manner that provides for written or electronic record of delivery, to the addresses listed below:

CONTRACTOR'S REPRESENTATIVE:

Lisa R. Leuchter , Vice President
Snackworks, Inc.
59th Avenue Drive East
Bradenton, Florida 34203
TEL (941)751-3333
FAX (941) 751-4543
EMAIL: lisa@snackworksinc.com

CITY'S ADMINISTRATIVE AGENT:

Victor DiRamio, Management Analyst-Revenue
City of North Port
4970 City Hall Blvd.
North Port, Florida 34286
TEL (941) 429-7118
FAX (941) 429-7209
EMAIL : vdiramio@cityofnorthport.com

20. PARAGRAPH HEADINGS

Paragraph headings are for the convenience of the parties and for the reference purposes only and shall be given no legal effect.

21. ATTORNEYS' FEES

In any proceedings between the parties arising out of or related to this Agreement, the prevailing party shall be reimbursed all costs, expenses and reasonable attorney fees through all proceedings (at both trial and appellate levels).

22. CONFLICTS

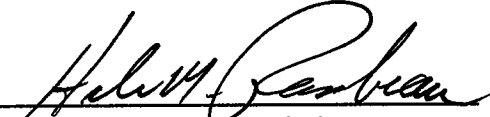
In the event of any conflict between the provisions of this Agreement and the Scope of Services, RFP No.2012-07 or CONTRACTOR's response, which are made a part hereof by reference, this Agreement shall control.

IN WITNESS WHEREOF, the parties have executed the Agreement as of the date first above written.

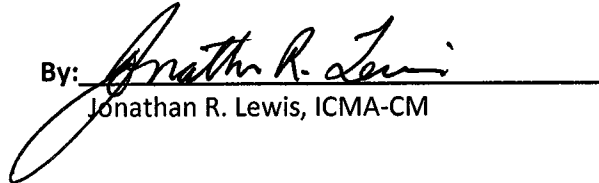
ATTEST:

CITY OF NORTH PORT, FLORIDA

By:

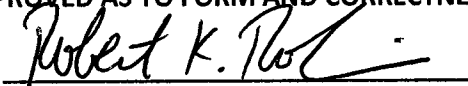

Helen Raimbeau, City Clerk, MMC

By:


Jonathan R. Lewis, ICMA-CM

APPROVED AS TO FORM AND CORRECTNESS:

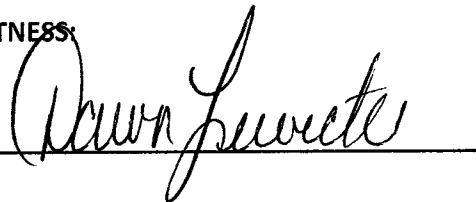
By:


Robert K. Robinson, City Attorney

WITNESS:

SNACKWORKS, INC.

By:



By:

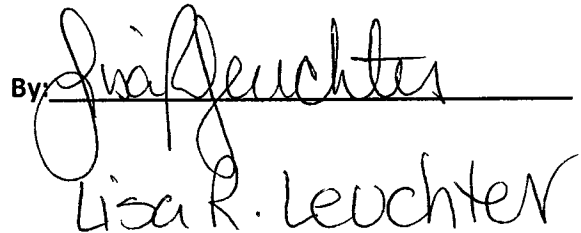

Lisa R. Leuchter

EXHIBIT A – SCOPE OF SERVICES

SCOPE OF SERVICE AND FEES

1 GENERAL TERMS

- 1.1** The City Of North Port, shall be referred to as the "City," and Snackworks, Inc. shall be referred to as "Contractor" herein.

- 1.2** Contractor shall have access to most vending machines five (5) days per week (Monday-Friday) between the hours of 8:00 a.m. and 5:00 p.m. (EDT). Morgan Family Center is Monday-Friday 7:00 a.m. to 10:00 p.m. and Saturday between the hours of 8:00 a.m. and 4:00 p.m. (EDT). George Mullen Activity Center is Monday-Thursday 8:00a.m. to 9:00p.m., Friday 8:00 a.m. to 10:00 p.m., and Saturday 8:00 a.m. to 4:00 p.m. Contractor will be provided a key to access the Skate and Bike Park at will. Contractor will be provided contact personnel for each location. If City is having special events they are to notify the Contractor no less than two weeks prior to the event so Contractor can accommodate the City outside of the regular schedule visit, if necessary, and only on weekdays.

- 1.3** All machines will be new or in first class operational condition. All beverage machines will be Energy Efficient/Energy Saver. All machines will contain dollar bill reader/changers.

- 1.4** The Contractor will determine the equipment to be installed. The Contractor will only install snack machines in areas where 45 or more people have regular public access to the machine. The Contractor will only install beverage machines where 30 or more people have regular public access to the machine. The Contractor will make an exception for the Fire Stations and will provide beverage machines in those areas.

- 1.5** Contractor shall service and stock all vending machines regularly to insure they do not become empty of any products on a repetitive basis.

- 1.6** Contractor shall have trained competent repair persons available within one (1) working day to make repairs on the vending machines during normal business hours Monday through Friday. Contractor will have a sticker with contact information on all the machines for maintenance and assistance.

- 1.7** Contractor will provide each facility refund slips. These refund slips allow the Contractor to gather information in order to troubleshoot maintenance issues therefore reducing repeat refunds. The City of North Port understands that Contractor retains the right to refuse an immediate refund if abuse is suspected. In that case Contractor would wait until an accounting of the equipment could be made to repay a refund. The City of North Port will provide Contractor with a designated responsible party, their hours worked and the hours of the facility for each building where equipment is installed. (See attached list of employees responsible for each designated facility). Contractor will provide a refund bag (vinyl teal blue bank bag with Contractor name on it) with \$10 in coins and refund slips to City Hall, George Mullen Center and Morgan Center to a responsible party designated by the City of North Port. The Contractor requires a completed refund slip to replenish the refund bag for the same amount. The Contractor will provide instructions to the City designee at each facility. Since there isn't a permanent City employee available at the Bike Park and the Skate Park to handle refunds, the Contractor will provide refunds directly to the customer. Contractor will display refund instructions in those areas. At all other locations that are solely employee based, Contractor will

provide refunds through a responsible party designated by the City of North Port during a regular service by the route driver. These locations are the Fire Stations, Police Department, Utilities Administration and Public Works/Fleet Maintenance.

- 1.8 Contractor must use generally accepted accounting principles. The City or its designee may audit, examine and copy any and all books, records and information relating to Contractor's operation of its vending machines designated in this Agreement. The Contractor further agrees that failure to keep, maintain, and make available these records to City for any reason, whether within the Contractor's control or not, shall constitute a material breach of the contract. Contractor shall keep and maintain all records for a minimum of three (3) years.
- 1.9 Contractor shall obtain and maintain current all necessary permits and licenses for the operation of a Vending Service.
- 1.10 Contractor shall be responsible for any and all damage to any City property resulting from Contractor's operation, and any such damage shall be promptly repaired by the Contractor at its sole expense. Contractor shall receive written approval by the City prior to making repairs.
- 1.11 Contractor shall not operate, or permit to be operated by Contractor's employees, any other business of any kind, or any other vending machines other than as specified herein, unless approved in writing by the City, prior to implementation.
- 1.12 Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the work. Contractor shall take all necessary precautions for the safety of and shall provide the necessary protection to prevent damage, injury or loss to:
 - 1.12.1 All employees on the work and other persons or organizations who may be affected thereby.
 - 1.12.2 All the work and materials and equipment to be incorporated therein, whether in storage on or off the site.
- 1.13 Contractor shall comply with all applicable laws and regulations of any public body having jurisdiction for the safety of person or property or to protect them from damage, injury or loss; and shall erect and maintain all necessary safeguards for such safety and protection.

2 FOOD SELECTIONS AND PRICING

2.1 HEALTHY OPTIONS



Contractor purchases nationally branded and advertised products for the highest quality, widest variety and acceptance by its customers. Contractor purchases its products from several distributors and directly from manufacturers. Contractor turns its inventory over weekly providing the freshest products available. On the product list, there is a column headed Category that has the word "green" listed for all of the current approved items under our SNACKWORKS SMART SELECTIONS program. Under the Category header the "red" items are

those that do not qualify as a better choice under our SNACKWORKS SMART SELECTIONS program. If there is nothing filled in that column then the item isn't currently in Contractor's warehouse. Shown on the product list are the current products carried or rotated. This product list changes on a regular basis and can be provided upon request.

Contractor uses a national standard that qualifies each product within seven different nutritional requirements for determination of SNACKWORKS SMART SELECTIONS status. These items are a collection of the better choices to make, within each product category. The seven nutritional requirements are equal to or less than each of the following: 45% calories from fat, 0% trans fat, 500 calories, 34 grams of sugar, 30% calories from sugar, 500 mg sodium, 20% calories from saturated fat. Contractor will set up each snack machine with its standard healthy planogram and will expand the healthier options based on demand at individual locations.

Description	Category	Description	Category	Description	Category
20 oz Soda		*12 oz Soda*		*12 oz Juice*	
Coke 20oz	Red	Coke 12oz	Red	Welchs 100% Apple	Red
Coke* Diet 20oz	Green	Coke* Diet 12oz	Green	Welchs 100% Orange	Red
Coke* Zero 20oz	Green	Sprite 12oz	Red	Welchs App Cran	Red
Coke* Cherry Zero 20oz	Green	Sprite* Zero 12oz	Green	Welchs FP	Red
Coke* CF Diet 20oz	Green	Fanta Orange 12oz	Red	Welchs Grape	Red
Coke* Diet w/Lime 20oz	Green	Fanta Grape 12oz	Red	Welchs Or/Pine	Red
Sprite 20oz	Red	Coke* CF Diet 12oz	Green	V8 12oz	Red
Sprite* Zero 20oz	Green	Coke CF 12oz	Red	*Bev Other*	
Barqs 20oz	Red	Coke Cherry 12oz	Red	Red Bull 8oz	Red
Fanta Grape 20oz	Red	Coke* Cherry Diet 12oz	Green	Gold Peak BlkTea	Red
Fanta Orange 20oz	Red	Barqs 12oz	Red	RockStar Diet	Red
Fanta Pineapple 20oz	Red	Barqs* Diet 12oz	Green	RockStar	Red
Vault 20oz	Red	Mr Pibb 12oz	Red	RockStar Juiced	Red
Nestea 20oz	Red	Fresca 12oz	C-Soda	YooHoo 11oz	Red
MM Lemonade 20oz	Red	Seagrams Gingerale 12oz	Red	Frap Mocha	Red
Nestea Red 20oz	Red	Nestea 12oz	Red	Frap Vanilla	Red
Coke Cherry 20oz	Red	MM Lemonade 12oz	Red	Sobe Energy	Red
Pepsi 20oz	Red	Pepsi 12oz	Red	Monster Energy	Red
Pepsi* Diet 20oz	Green	Pepsi* Diet 12oz	Green	Monster Locarb Energy	Red
Mt Dew 20oz	Red	Mt Dew 12oz	Red	5* Hour Energy	Green
Mt* Dew Diet 20oz	Green	Mt* Dew Diet 12oz	Green	Red* Bull SF 8oz	Green
Mt Dew Code Red 20oz	Red	Dr Pepper 12oz	Red	*16 oz Juice*	
Mt Dew Live Wire 20oz	Red	Dr* Pepper Diet 12oz	Green	MM Apple	Red
Mt Dew Voltage 20oz	Red	Lip Brisk 12oz	Red	MM Orange	Red
Dr Pepper 20oz	Red	Pepsi Wild Cherry 12oz	Red	MM Ruby Red	Red
Dr* Pepper Diet 20oz	Green	Sierra Mist 12oz	Red	MM CranAppRasp	Red
Pepsi Wild Cherry 20oz	Red	Trop Twister Orange 12oz	P-Soda	V8 Splash Trop	Red
Sierra Mist 20oz	Red	Orange Crush 12oz	Red	V8 Splash Berry	Red
Trop Fruit Punch 20oz	Red	*20 oz Sport*		OS Orange	Red
Trop Pink Lem 20oz	Red	Power Lemon Lime	Red	OS Apple	Red
Lip Brisk 20oz	Red	Power Frt Punch	Red	OS RubyRed	Red
Lip* Green Diet 20oz	Green	Power Mt Blast	Red	OS CranGrp	Red
Lip Green 20oz	Red	Gator Lemon Lime	Red	*Candy/Sn Regular*	
Lip Wht Rasp 20oz	Red	Gator Frt Punch	Red	Mars M&M Peanut	
MT Dew GF	Red	G2 Orange	P-Sport	Mars Snickers	Red
MT Dew Ult Vlt DT	Red	G2 Blue Pommegranate	P-Sport	Mars Twix	Red
Mt Dew WO 20oz	Red	Gator Orange	Red	Mars M&M Plain	Red
Mug Rootbeer 20oz	Red	Gator Riptide	Red	Nest Butterfinger	Red

Orange Crush 20oz	Red	G2 Frt Punch	P-Sport	Mars Skitt Original	
Pepsi* Max 20oz	Green	Gator CB	Red	Mars Skitt Tropical	Red
20 oz Water		*Chip/Sn Regular*		Mars Skitt Wildberry	Red
Dasani* 20oz	Green	FL Smartfood Popcorn	Red	JB Mike&Ike Original	Red
VW Power C	Red	Herrs Salt/Pep		JB Mike&Ike Berry	Red
VW XXX	Red	MacsPorkRindsBBQ	Red	Nab Oreo Cookies	Red
VW Revive	Red	FL Lays Slit&Vin	SSS	JB Mike&Ike Tangy Twister	
Aquafina*	Green	FL Munch Ch&PntBttr	Red	Nest Baby Ruth	Red
Aquafina* Wildberry 20oz	Green	FL Munchie Tst&PntBttr	Red	Nest Gobstopper	
Aquafina Raspberry 20oz	Green	Herrs Chd/Sour		PIM Nuclear Sqworms	
LW Blkbry Grape	Red	Sny Pretzel		PIM SourJacks	Red
LW Pom Cherry	Red	FL Ruffles Ched & SC	Red	PIM SourJacks Watermelon	Red
Chip/Sn Large		Herrs BBQ Chips		Mars Starburst Tropical	Red
FL Dorito Nacho	Red	Honey BBQ Wise		Mars Starburst Original	Red
FL Cheetos Crunchy	Red	Snyder Kosher Dill		Mars 3 Musketeers	Red
FL Rold Gold	Red	MacsPorkRindsHot	Red	Nab Snackwells	Red
FL Sunchp Peppercorn	SSS	FL Tangy Car BBQ	Red	Mars Milkyway	
FL* Sunchp Cheddar	Green	FL Sm Cheetos		Mars StarbrstFaveREDS	Red
FL Fritos Original	Red	FL Sm Funyuns		Hersh Regular	Red
FL Lays Regular	Red	FL Sm Lays Regular		NV* OatHon Granola	Red
TGI Fridays	Red	FL Sm Dorito Nacho		NV PNB Granola	Green
KK Cheez-it	Red	FL Sm Fritos Chili Chesse		NV* Oat Darkchoc.	
FL* Bkd Ched Snk Mix	Green	Bugles Sm		Hersh Cook/Creme	Green
Andy* Capp Hot Fries	Green	TGI Sm Fridays	Red	Mars M&M Prtzi	Red
Salsitas Tortilla	Red	Andy* Capp SM	Green	Mars Skitt Crzy Cores	Red
FL Funyuns	SSS	FL SM Sunchp Cheddar		JB Sour Bags	Red
FL Baked Lays	SSS-Sod	Lnce* Chdr Whle Grn Cracker	Green	*Candy Large*	
Animal* Snacker	Green	Lnce Toastchee Pbtr Ch Cracker		Hersh Reese PBC	Red
KK* Famous Amos	Green	Lnce Nekot Pbtr Cookie		Hersh Almond	Red
FL Grandmas Oat	Cookie	*Snack Other*		Hersh Payday	Red
FL Grandmas VanMini	Red	Stacy Pita Cinnamon		Hersh Kit Kat	Red
FL Grandmas PNB	Cookie	Stacy* Pita Naked	Green	*Pastry/Sn*	Green
FL Cheeto FlmHot	Red	Stacy Pita Parmesan	Green	Clov Honey Bun	
FL Sunchp FrOnion		KK Speck Dble Choc	Green	Clov* Big Texas	Red
PF Ched Goldfish		KK Speck ChocPNB	Red	Dolly Madison	Green
FL Hot Funyuns		Duplex Cookies	Red	KK Ptart Strawberry	Red
Gem Bugles		KK Kashi Go Lean	Red	Mars Combos Pizza	Red
FL Kettle Chd		Beef Jerky	Red	KK Fruit Snk Mix Berry	Red
FL Baked Ruffles		Snickers Multi Grain	Red	Act2 But Popcorn	Red
FL* Bkd SC&O Lays	Green	Snickers Dark Choc	Red	KK Rice Krispy Treat	Red
PF Mix Up ADV		Snickers Honey Toasted Almond	Red	Van SF Wafers	Red
FL Miss Vickies Sea Salt		PIM Gumi Orig	Red	Welch Frt Sn Mixed Fruit	Red
FL Grandmas Choc Chip Cook.		PIM Gumi Sour	Red	Clov Glazed Choc. Donut	Red
FL Cheetos Jalpchr	Red	Gen Cinn Crisps	Red	Clov Choc Gems	Red
FL Lays Cajun Hrb spc	Red	Gen* Choc Crisps	Red	Clov Aple Rnd	Red
FL* Bkd Lays Bbq Crisps	Green	Zone* PB	Green	Clov Chs Rnd	Red
FI Cheetos Mty Zinger		Zone Caramel	Green	Clov Big Bear Claw	Red
FL* Bkd Ruff C&SC	Green	RW* Sweet Chili	Red	Doll Choc Cupcke	Red
BA Knotts Rasb Short		RW* Salsa Fresca	Green	Doll Creme Zinger	Red
FL Dorito Cool Ranch		Bldr* Chiplte Rice&Beans	Green	Doll Dunkin Stick	Red
FL* Sunchip Orig	Green	*Gum & Mint*	Green	Doll Cin Struesel	Red
FL Frito Chili Cheese	Red	Wrig Juicy Fruit		Clov Straw Cheese	Red
Nab Ritz Bts Cheese		Wrig Doublemint	Red	Clov Big Cheese Claw	Red
FL Dorito Taco	Red	Cad Dentyne Spearmint	Red	DollyVan Zinger	Red
Nut & Mixes	Red	Fox Peppermint	Red	Dolly Devils Zinger	Red

FL* Peanuts		Wrig Winterfresh	Red	Sny* HM&O Pretzel Pieces	Red
Planters* Nut Mix	Green	Wrig Big Red	Red	Welch Tangy Fruit Snack	Green
Kar* All Energy Trail	Green	Extra* Spear	Red	KK Large Rice Krispy Treat	Red
Kar* Wasabi Nut	Green	Cad Dentyne Cinn.	Green	Clov StrawBan	Red
Kar Swt/Salty	Green	Extra* Peppermint	Red	CI Donut Powdered Gem	Red
Kar* Hot Peanuts	Red	Fox Wild Cherry	Green	CI Crunch Gem	Red
Kar* Pnt 1.5	Green	Fox 5 Flavor	Red	CI Pound Cake	Red
MN* Cr Cashew	Green		Red	Clov Key Lime Strip	Red

2.2 **PRODUCT PLACEMENT CONSIDERATIONS**

Vending machines shall be located based on available space, electricity and security. Contractor shall also consider minimum revenue of \$70.00 per week per machine (with certain exceptions), regular waste or removal of products to avoid waste, vandalism, and low employee count (30 or less for beverage and 45 or less for snack) in placing machines. Contractor shall make an exception for the City of North Port fire stations, which will each be provided a beverage machine. 1.2 The initial number and placement of vending machines shall be identified on Attachment A, which may be amended from time to time.

2.3 **PRICING STRUCTURE**

The pricing/commission structure selected by the City of North Port is bolded in the chart below. It is understood by both parties that although these are the initial price/commission points, the City of North Port can choose to adjust the price/commission point based on the structure shown below. Thirty (30) days written notice to Contractor is required to implement a change in price/commission structure. Future price increases are not reflected in the structure shown below. Prices may be adjusted quarterly as mutually agreed.

Contractor - Product Categories, Commission Rate and Corresponding Price - Please note that any product category commission rate and corresponding price can be mixed and matched. All commissions are paid after Florida State sales tax on the items is deducted.									
Product Categories	Price	Commission %	Price	Commission %	Price	Commission %	Price	Commission %	Commission %
<u>Pastry Category</u>	\$ 1.25	18%	\$1.15	15%	\$ 1.00	6%	\$0.90	0%	0%
<u>Small Chips Category</u>	\$ 0.85	25%	\$0.75	15%	\$ 0.70	6%	\$0.65	0%	0%
<u>Crackers Category</u>	\$ 0.85	25%	\$0.75	15%	\$ 0.70	6%	\$0.65	0%	0%
<u>Large Serve Chip & Snacks Category</u>	\$ 1.25	25%	\$1.00	15%	\$ 0.90	6%	\$0.85	0%	0%
<u>Nuts Category</u>	\$ 1.25	18%	\$1.15	10%	\$ 1.00	6%	\$0.85	0%	0%
<u>Standard Size Candy Category</u>	\$ 1.25	18%	\$1.15	10%	\$ 1.00	6%	\$0.90	0%	0%
<u>Large Sized Candy Category</u>	\$ 1.50	18%	\$1.40	10%	\$ 1.35	6%	\$1.25	0%	0%
<u>Mints Category</u>	\$ 0.75	25%	\$0.70	15%	\$ 0.65	6%	\$0.65	0%	0%
<u>Snack Other Category</u>	\$ 2.00	18%	\$1.90	15%	\$ 1.75	6%	\$1.75	0%	0%
<u>20 oz. Beverage Category</u>	\$ 1.60	20%	\$1.50	15%	\$ 1.35	6%	\$1.35	0%	0%
<u>20 oz. Sports Beverage Category</u>	\$ 1.75	20%	\$1.65	15%	\$ 1.50	6%	\$1.50	0%	0%
<u>16 oz 100% Juice Category</u>	\$ 2.00	25%	\$2.00	15%	\$ 2.00	6%	\$2.00	0%	0%
<u>16 oz Energy Drink Category</u>	\$ 3.25	15%	\$3.00	10%	\$ 2.75	6%	\$2.50	0%	0%
<u>16 oz Other Beverage Category</u>	\$ 2.00	25%	\$1.75	15%	\$ 1.50	6%	\$1.50	0%	0%

3 PAYMENT

3.1 STATEMENTS

Commission Statements will be provided monthly, and the form of the report shall be approved by the City. Each month the report will be separated by the individual customer (i.e. City Hall, Police Department) then the location (i.e. Lobby, Employee Break Room) and then the individual machine. Each machine will be further defined by the product group (i.e. nuts & mixes, pastry, small chips & snacks, large chips & snacks). The gross revenue, tax, commission rate and commission owed will be shown by each product group. Then the commissions will be subtotaled by location and then totaled by customer. Contractor shall submit all fees owed to the City within ten (10) calendar days following the conclusion of the previous monthly period on those vending machines that are listed on Attachment A, as may be amended from time to time.

3.2 COMMISSIONS

Contractor will pay the Vending Commissions to the City of North Port on a monthly basis. The commission for each item sold shall equal a percentage, which is identified in Section 2.3, as amended, of Revenue Basis. Revenue Basis for an item is determined by the Price minus the sales tax owed on the item. All of the individual commissions shall be added together to determine the amount of Vending Commission owed for that month. Vending Commissions may also be paid on a fixed amount per unit sold, if agreed to by the parties. "Accommodation" low volume machines that generate less than \$70.00 in gross weekly revenue shall be excluded from the commission calculations. Commissions will be paid from the first dollar of revenue generated for machines generating \$70, or more per week in gross revenue.

The payee for commissions will be City of North Port. All checks and commission statements will be mailed to Victor DiRamio, Sr. Management Analyst at City Hall, 4970 City Hall Boulevard, North Port, FL 34286. The City of North Port will notify Contractor if the person to receive the commission statements and checks change.

3.3 TAXES AND FEES

Contractor agrees to pay all applicable Federal, State and Local taxes chargeable to the Vending Service and Contractor's operation. Sales tax owed for the sale of food and beverage shall be collected and remitted by Contractor to the Department of Revenue.

Contractor shall pay to the City sales tax owed for the license to use City property. The amount of the tax is based on the amount of Vending Commissions received by the City each month multiplied by the then current sales tax rate. Alternatively the Contractor may provide the City with a direct pay permit, and the Contractor can pay the tax directly to the Department of Revenue.

4 TRANSITION

At the beginning of the Agreement and at the end of the Agreement term, the Contractor shall coordinate with the City Designee for the installation and removal of the vending machines to provide a smooth transition with no interruption to service. Contractor will be able to begin placement of equipment in 3 to 4 weeks, depending on the exact number of machines, after execution of the Agreement.