



**Cooper City Commission Meeting
Agenda Item Request Form**

Commission Meeting/Workshop Date: December 17, 2019

Requesting Department: Recreation

Subject: Vending Machines Contract

Section:

Presentation

Consent

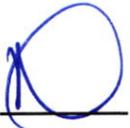
Regular

Discussion

There are a number of vending machines installed in the Community Center and at the Pool & Tennis Center. This contract would provide for a single vendor to supply and service the vending machines.

Approvals:

Finance Director _____

City Manager 

City Clerk _____

Attached: 1. Proposed Contract

AGREEMENT FOR VENDING MACHINE SERVICES

THIS IS AN AGREEMENT (the "Agreement"), dated this ____ day of _____
2019, by and between:

THE CITY OF COOPER CITY, a municipal corporation organized
and existing under the laws of the State of Florida, hereinafter
referred to as "CITY,"

and

HEALTHY SELECTIONS VENDING, a Florida corporation
organized and existing under the laws of the State of Florida,
hereinafter referred to as "VENDOR". VENDOR and the CITY may
be collectively referred to as the "Parties."

W I T N E S S E T H:

WHEREAS, on or about May 31, 2019, the VENDOR and the Cooper City Community Center (the "Community Center") entered into a vending machine location agreement, whereby the VENDOR installed two (2) vending machines at the Community Center (the "Community Center Agreement"); and

WHEREAS, the Community Center Agreement may be terminated by either party, at any time, upon thirty (30) days' notice; and

WHEREAS, the Parties seek to terminate the Community Center Agreement and replace it with this Agreement for Vending Machine Services, which shall supersede the Community Center Agreement in its entirety; and

WHEREAS, the CITY seeks to expand the services provided by the VENDOR to include the City's pool and tennis center, in addition to the Community Center, in accordance with the terms and conditions set forth herein; and

WHEREAS, prior to the execution of this Agreement, the VENDOR, in a good faith effort to serve the CITY; made certain capital expenditures in order to accommodate the additional services sought by the CITY; and

WHEREAS, the services provided the VENDOR enhance the resident user experience at the CITY's facilities where vending machines are located; and

WHEREAS, Section 2-258(i) of the City's Code of Ordinances authorizes the city commission to waive the CITY's procurement procedures upon the recommendation of the city manager that it is in the CITY's best interest to do so; and

WHEREAS, in light of the CITY's existing relationship with the VENDOR pursuant to the Community Center Agreement, coupled with the VENDOR's good faith expenditures to

further serve the CITY, the interim city manager has recommended entering into this agreement in accordance with Section 2-258(i) of the City's Code of Ordinances.

NOW THEREFORE, in consideration of the mutual terms and condition, promises, covenants, and payments hereinafter set forth, CITY and VENDOR agree as follows:

1. Services; Responsibilities; Equipment.

- 1.1 VENDOR will install 2 beverage/snack vending machines at the following locations and provide efficient service ensuring the products are safe and appropriate:

Cooper City Community Center
9000 S.W. 50th Place
Cooper City, Florida 33328-4227

- 1.2 VENDOR will service the machines as often as needed, during normal business hours, to keep the vending machines filled with products. VENDOR will also ensure that the machines are in good working condition.
- 1.3 VENDOR is responsible for all applicable licenses and taxes arising out of this Agreement or the Services or sales arising pursuant hereto.
- 1.4 VENDOR shall furnish all Services, including but not limited to labor goods, services, equipment, and materials necessary and as may be required in the performance of this Agreement and all work performed under this Agreement shall be done in a professional manner.
- 1.5 Should service be required to repair a vending machine, the repair will be given priority by VENDOR and service will be provided within forty eight (48) hours from receipt of email for repair by VENDOR.
- 1.6 VENDOR hereby represents to CITY, with full knowledge that CITY is relying upon these representations when entering into this Agreement with VENDOR, that VENDOR has the professional expertise, experience and staff to perform the services to be provided by VENDOR pursuant to the terms of this Agreement.
- 1.7 Equipment. VENDOR shall deliver and install the vending machines and/or any replacement part, replacement, additions or accessories (collectively, the "Equipment") at the location specified in Section 1, and CITY shall use the Equipment only at such location.
- 1.7.1 Ownership. VENDOR is and at all times shall remain the exclusive owner of the Equipment. VENDOR agrees to supply and deliver all of the products stored in or sold through the Equipment. VENDOR shall not place any lien on any property, real or personal, owned by CITY.

1.7.2 Maintenance and Repair. VENDOR agrees to provide reasonable service and maintenance for the Equipment during the term hereof. With prior City approval, the VENDOR shall be allowed to enter above stated premises during normal operating hours for the purpose of inspection or performance of such maintenance and repair, or necessary replacement or return of the Equipment.

1.8 The CITY, in its sole discretion and subject to the approval of the VENDOR, may add additional locations at other CITY-owned facilities, at locations desired by the City.

1.9 The CITY shall furnish all necessary electrical connections and suitable space for the installation and operation of the vending machines.

1.10 The CITY is not responsible for any loss due to fire, theft, vandalism or any other damage to any property installed by the VENDOR in the CITY for any reason.

2. Term and Termination.

2.1 The term of this Agreement shall be for one (1) year commencing on _____. This Agreement may be renewed for one (1) additional one (1) year renewal term, subject to the mutual written consent of both parties.

2.2 This Agreement may be terminated by either party for cause or for convenience, upon seven (7) days written notice. Upon expiration or termination of this Agreement for any reason, VENDOR shall, within thirty (30) days, remove all Equipment provided hereunder and restore the condition of the CITY's property to its original condition that existed at the commencement of this Agreement, ordinary wear and tear excepted.

3. Compensation

3.1 VENDOR shall pay to the CITY a monthly commission equal to 15% of the net sales of the drink vending machines and 20% of the net sales of the snack vending machines provided and maintained by the VENDOR. The net sales shall exclude taxes paid by Vendor. All commission payments shall be made on a quarterly basis and shall be received by the CITY within ten (10) days following the start of each quarter.

3.2 The VENDOR shall, , provide a detailed accounting of the records for each vending machine installed in the CITY, which provide a basis for determining the compensation paid to the CITY pursuant to this Agreement, with each quarterly payment.

4. Indemnification.

VENDOR shall indemnify and save harmless and defend the CITY, its trustees, elected and appointed officials, agents, servants and employees from and against any and all claims, demands, or causes of action of whatsoever kind or nature sustained by the CITY or any third party arising out of, or by

reason of, or resulting from acts, error, omission, or negligent act of VENDOR, its agents, servants or employees in the performance under this Agreement, and for all costs, losses and expenses, including but not limited to, damages to persons or third party property, judgments and attorneys' fees arising out of or in connection with the performance by VENDOR pursuant to this Agreement.

5. Independent Contractor.

This Agreement does not create an employee/employer relationship between the parties. It is the intent of the parties that the VENDOR 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 VENDOR shall retain sole and absolute discretion in the judgment of the manner and means of carrying out VENDOR's activities and responsibilities hereunder provided, further that administrative procedures applicable to services rendered under this Agreement shall be those of VENDOR, which policies of VENDOR shall not conflict with CITY, or United States policies, rules or regulations relating to the use of VENDOR's funds provided for herein. The VENDOR 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 VENDOR and the CITY and the CITY will not be liable for any obligation incurred by VENDOR, including but not limited to unpaid minimum wages and/or overtime premiums.

6. Assignments; Amendments.

This Agreement, or any interest herein, shall not be assigned, transferred or otherwise encumbered, under any circumstances, by either party without the prior written consent of the other party.

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.

7. No Contingent Fees.

VENDOR warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the VENDOR 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 VENDOR 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, the 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.

8. 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, the VENDOR and the CITY designate the following as the respective places for giving of notice:

CITY: Patrick Lynn, Interim City Manager
City of Cooper City
9090 S.W. 50th Place
Cooper City, Florida 33329
Phone: (954) 390-2103
Fax: (954) 390-2199

Copy To: Jacob G. Horowitz, City Attorney
Goren, Cherof, Doody & Ezrol, P.A.
3099 East Commercial Boulevard, Suite 200
Fort Lauderdale, Florida 33308
Phone: (954) 771-4500
Fax: (954) 771-4923

VENDOR: Health Selections Vending

9. 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.

10. Headings.

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

11. 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.

12. Waiver.

Failure of either party to insist upon strict performance of any covenant or condition of this Agreement, or to execute any right herein contained, shall not be construed as a waiver or relinquishment for the future of any such covenant, condition or right, but the same shall remain in full force and effect.

13. 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.

14. 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, except that this provision shall not be deemed to deprive any party of any legal remedy, including termination.

15. Extent of Agreement.

The Community Center Agreement between the Parties, entered into on or about May 31, 2019, is hereby terminated and superseded with this Agreement. This Agreement represents the entire and integrated agreement between the CITY and the VENDOR and supersedes all prior negotiations, representations or agreements, either written or oral.

16. Attorney's Fees.

In the event that either party brings suit for enforcement of this Agreement, the prevailing party shall be entitled to attorney's fees and court costs in addition to any other remedy afforded by law.

17. AMERICANS WITH DISABILITIES ACT.

VENDOR shall not unlawfully discriminate against any person in its operations and activities in its use or expenditure of the funds or any portion of the funds provided by this Agreement and shall affirmatively comply with all applicable provisions of the Americans with Disabilities Act (ADA) in the course of providing any services funded in whole or in part by CITY, including Titles I and II of the ADA (regarding nondiscrimination on the basis of disability), and all applicable regulations, guidelines, and standards.

18. Scrutinized Companies.

18.1 VENDOR shall comply with Section 287.135, Florida Statutes, which prohibits agencies from contracting with companies for goods or services

of any amount that are on the Scrutinized Companies that Boycott Israel List or that are participating in a boycott of Israel; The boycott Israel list is created pursuant to 215.4725, Florida Statutes.

- 18.2 As the person authorized to sign on behalf of VENDOR, the undersigned hereby certify that the VENDOR is not participating in a boycott of Israel. I understand and agree that pursuant to section 287.135, Florida Statutes, the submission of a false certification; or being placed on the Scrutinized Companies that Boycott Israel List, or engaging in a boycott of Israel will be cause for the CITY to terminate this Agreement at the option of the CITY. In addition, the VENDOR may be subject to civil penalties, attorney's fees, and/or costs.

19. Public Records.

- 19.1 The CITY is public agency subject to Chapter 119, Florida Statutes. The VENDOR shall comply with Florida's Public Records Law. Specifically, the VENDOR 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, Florida Statutes, or as otherwise provided by law;

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

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

- 19.2 The failure of VENDOR to comply with the provisions set forth in this section shall constitute a Default and Breach of this Agreement which shall result in termination by the CITY pursuant to Section 2 of this Agreement.

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

OF PUBLIC RECORDS AT

**KATHRYN SIMS
PO BOX 290910
COOPER CITY, FL 33329
(954) 434-4300
ksims@coopercityfl.org**

20. Execution.

The Agreement may be executed and distributed by facsimile or electronically by pdf and a copy of the Agreement executed and distributed by facsimile or electronically by pdf shall be deemed an original for all purposes. The Agreement may be executed in counterparts, each of which shall be deemed to be an original, but all of which, taken together, shall constitute one and the same agreement.

IN WITNESS OF THE FOREGOING, the parties have set their hands and seals the day and year first written above.

CITY OF COOPER CITY

BY: _____
GREG ROSS, MAYOR

ATTEST:

KATHRYN SIMS, CMC
CITY CLERK

APPROVED AS TO FORM.

JACOB G. HOROWITZ
CITY ATTORNEY

HEALTHY SELECTIONS VENDING

WITNESSES:

[Signature]
Jason Cornelison
Print Name

[Signature]
Priscilla K. Dizon
Print Name

BY: [Signature]
MARIA L. COLUCCI, President

STATE OF FLORIDA
COUNTY OF BROWARD

BEFORE ME, an officer duly authorized by law to administer oaths and take acknowledgments, personally appeared Maria L. Colucci, on behalf of Healthy Selection Vending, and acknowledged that she has executed the foregoing instrument for the use and purposes mentioned in it, and who is personally known to me or has produced Florida Driver License as identification.

IN WITNESS WHEREOF, I have set my hand and seal in the State and County aforesaid this 10th day of December, 2019.



[Signature]
Priscilla K. Dizon
Print or Type Name
My Commission Expires: