



ERIE COUNTY WATER AUTHORITY

INTEROFFICE MEMORANDUM

05/06/2024

TO: Terrence D. McCracken – Secretary to the Authority

FROM: Lavonya C. Lester – Director of Administration *LCL*

SUBJECT: Snack Vending Machine Conversion

The Administration department was tasked with reviewing our existing agreement with our current snack vending machine supplier. It has come to our attention that there is no current contract in place and there have been numerous complaints about the quality of the food in the current machines. We have reviewed and compared our existing vendor with other comparable vendors in the local area. We have determined that it is in the best interest of the Authority to switch to a vendor that offers a better variety and selection of food/snack/drink options and has equipment that is up to date with modern technology. Extensive research and analysis were completed by obtaining pricing from four vendors:

Servomation Vending
Crickler Vending
Phantom Vending
Jackson Vending¹

These companies provided quotes for vending services at our Service Center, Van De Water, Sturgeon Point and Ellicott Square locations. Each vendor has agreed to provide their vending machines and snack/drink options to the Authority provided a contract is signed. We were looking for vendors that ensured out of pocket expenses or fees would not be incurred by the Authority and this includes no minimum spending requirement. Each vendor provides different benefits and drawbacks and after review, we determined that the Authority should select Servomation Vending. It provides healthy snack/drink options which have been requested by many employees. This vendor has a selection of vending and micro market options that we can look at in the future when we move to a new building. No set up fees and the machines accept many forms of payment (cash, credit, apple and google pay). In addition, it has a rewards program for frequent users of the machine. There is also a 5% sales commission given to the Authority which will be deposited into the existing employee activity account. We determined this company would be the best option for the Authority.

The Administration department is requesting the review and approval to move forward with Servomation Vending.

¹ Current vending company.

ERIE COUNTY WATER AUTHORITY
AUTHORIZATION FORM
For Approval/Execution of Documents
(check which apply)

Contract: _____ **Project No.:** 202400090
Project Description: Servomation Snack & Refreshment Vending Agreement

Item Description:

- | | | | |
|---|--|---|---------------------------------------|
| <input checked="" type="checkbox"/> Agreement | <input type="checkbox"/> Professional Service Contract | <input type="checkbox"/> Amendment | <input type="checkbox"/> Change Order |
| <input type="checkbox"/> BCD | <input type="checkbox"/> NYSDOT Agreement | <input type="checkbox"/> Contract Documents | <input type="checkbox"/> Addendum |
| <input type="checkbox"/> Recommendation for Award of Contract | <input type="checkbox"/> Recommendation to Reject Bids | | |
| <input type="checkbox"/> Request for Proposals | | | |
| <input type="checkbox"/> Other _____ | | | |

Action Requested:

- | | |
|---|--|
| <input checked="" type="checkbox"/> Board Authorization to Execute | <input type="checkbox"/> Legal Approval |
| <input type="checkbox"/> Board Authorization to Award | <input checked="" type="checkbox"/> Execution by the Chairman |
| <input type="checkbox"/> Board Authorization to Advertise for Bids | <input type="checkbox"/> Execution by the Secretary to the Authority |
| <input type="checkbox"/> Board Authorization to Solicit Request for Proposals | |
| <input type="checkbox"/> Other _____ | |

Approvals Needed:

APPROVED AS TO CONTENT:

- | | | |
|--|---|-------------------------|
| <input type="checkbox"/> Other (if Applicable) | _____ | Date: _____ |
| <input checked="" type="checkbox"/> Chief Operating Officer | <u></u> | Date: <u>05/08/2024</u> |
| <input type="checkbox"/> Executive Engineer | _____ | Date: _____ |
| <input checked="" type="checkbox"/> Director of Administration | <u></u> | Date: <u>05/06/2024</u> |
| <input checked="" type="checkbox"/> Risk Manager | <u></u> | Date: <u>5/8/2024</u> |
| <input checked="" type="checkbox"/> Chief Financial Officer | <u></u> | Date: <u>05/10/2024</u> |
| <input checked="" type="checkbox"/> Legal | <u></u> | Date: <u>5-08-2024</u> |

APPROVED FOR BOARD RESOLUTION:

- | | | |
|--|---|------------------------|
| <input checked="" type="checkbox"/> Secretary to the Authority | <u></u> | Date: <u>5/13/2024</u> |
|--|---|------------------------|

Remarks: Authorization to enter into contract with servomation vending company to provide snack and beverage vending services to all (4) locations.

Resolution Date: _____

Item No: _____

Servomation Refreshments Inc.

VENDING, MICRO-MARKET and OFFICE REFRESHMENT AGREEMENT

This is a Service Agreement by and between Servomation Refreshments Inc. with a business mailing address as set forth below, hereinafter called "Operator" and Erie County Water Authority with a business mailing address as set forth below, hereinafter called "Client". In consideration of the mutual premises and obligations hereinafter set forth to be performed and observed by each of the parties, the parties hereby covenant and agree as follows:

1. SCOPE OF VENDING SERVICES AND TERM. Client does hereby grant to Operator the exclusive right to sell snacks, candy, hot and cold carbonated and non-carbonated beverages, office refreshments and allied supplies, juices, dairy products, cold food, and similar items (collectively, "Vending Products") through vending machines and micro market kiosks, office refreshment systems and water filtration units (collectively, "Vending Equipment") at Client facilities located at 3030 Union RD. Cheektowaga, NY 14227 - 3750 River Rd, Tonawanda, NY 14150 - 722 Sturgeon Point Rd, Derby, NY 14047 & 295 Main Street Buffalo, NY 14203 (the "Premises") for a term of 36 months, beginning on _____ and continuing through _____ (the "Initial Term").

2. CONSIDERATION; OPERATOR SERVICES. During said term, or any renewal thereof:

- a. Operator and Client, as consideration for the exclusive rights granted herein, agree that the Operator will provide management and organizational support, purchasing and price considerations, equipment and technology investment at considerable cost to the Operator. Operator will perform service at no cost or remuneration to the Client, unless specifically agreed to by the parties in an addendum or attachment to this Agreement.
b. Operator shall cause, at its sole expense, the installation, servicing and repair of all Vending Equipment at the Premises and such other locations as may be from time to time mutually agreed to by the parties hereto. Client will assist Operator in determining the optimum placement of equipment to maximize sales.
c. Operator will maintain commercial general liability insurance, including but not limited to product liability, bodily injury and property damage in the amount not less than \$1,000,000 combined single limit; said coverage shall be provided on an "occurrence" basis, to protect the Client from Operator's gross negligence. Certificates of insurance shall be made available upon written request.
d. Operator is responsible for the creation and management of the product planogram including selling prices.
e. Operator shall be solely responsible for the management and operation of the Vending Equipment. Client will ensure only the Operator or its representatives may relocate, remove or replace Vending Equipment at the Client's Premises.
f. All Vending Equipment, including but not limited to water connections, electrical cable lines and installed kiosk and product monitoring fixtures together with the contents thereof, shall at all times remain, the property of the Operator and shall be removed promptly by Operator upon the expiration or termination of the Agreement. Vending Equipment shall not be removed prior to Client's payment, in full, of any outstanding financial obligations to Operator. If during the term of this Agreement all or part of the business conducted by the Client at the Premises is moved to a new location, then this Agreement, in Operator's sole discretion, shall be deemed amended and apply to Client's new location.
g. Operator shall be responsible for the collection and payment of all sales, or other taxes arising in connection with sales from the Vending Equipment located at Client's Premises.

3. CLIENT'S OBLIGATIONS:

- a. Client will use reasonable efforts to cooperate with Operator to facilitate the vending services. Client agrees to accept the Vending Equipment provided herein, and Client shall, at its expense, provide secure and adequate space at its Premises for the Vending Equipment and the utilities for the Vending Equipment's proper operation, including without limitation for electricity (including outlets), water, light, heat, extermination services, communication access and adequate drainage fixtures. Operator's communicates with it assets through WIFI (micro-markets) and cellular (vending) communication. If the Client cannot provide the required communication access, Operator will install an Opt. Connect device and invoice Client at \$39.95 per month to meet their communication access requirement.
b. Client shall exercise reasonable care in protecting the Vending Equipment from abuse, vandalism and theft, and shall immediately report to Operator any Vending Equipment malfunction or damage. Client understands the particular protection required in the Company's micro-market service. Should on site pilferage occur at the Client location, the Client will actively take measures to protect the assets of the Company on the Client's location. Should pilferage exceed 3.5% of revenue, the Client agrees to meet with Operator management and provide good faith assistance to the Operator to negate its gross sales losses incurred by the pilferage including switching to vending machines.
c. In the event of any unresolved Operator service issues, Client agrees to notify Operator of the nature of such problems in writing by certified or overnight mail, and Operator shall have the opportunity to cure any such issues within sixty (60) business days of receipt of such written notice. The Client shall make its best effort to assist the Operator in resolving any open issues at the location. This assistance shall be in the form of sharing written correspondence concerning service requirements, providing access to on site management and/or other instructive suggestions to remedy any open items.

4. CANCELLATION: The terms and conditions under which this Agreement may be cancelled are as follows:

- a. In the event that either the Operator or Client shall default in the performance of any of its obligations hereunder, and such default shall not be cured by that party within sixty (60) business days after receipt of a written notice sent by certified or overnight mail from the party claiming such default, then and in that event and for so long thereafter as such default shall not be cured, claiming party may elect to terminate this Agreement by sending to defaulting party by certified or overnight mail, a written notice of such termination, specifying the termination date of which shall be no less than sixty (60) business days from the date the defaulting party received such termination notice.

5. INDEMNIFICATION: Operator shall defend, hold harmless, and indemnify Client against any and all bodily injury and/or property damage claims, liabilities, damages, and expenses, including court costs and reasonable attorneys' fees, or judgments asserted against or imposed upon or incurred by Client that arise out of the gross negligence or intentional misconduct of Operator or its employees. Client shall defend, hold harmless, and indemnify Operator against any and all bodily injury and/or property damage claims, liabilities, damages, and expenses, including court costs and attorneys' fees, or judgments asserted against or imposed upon or incurred by Operator that arise out of the negligence or intentional misconduct of Client or its employees.

6. NOTICES: All notices required by the terms of this Agreement to be sent to the other party in writing shall be forwarded by certified or overnight mail, to the addresses indicated below Att: Corporate Counsel. Timely written notice of any address change is required.

7. ENTIRE AGREEMENT; MODIFICATIONS AND WAIVERS; SEVERABILITY; HEADINGS: This Agreement constitutes the entire Agreement between the parties with respect to the subject matter hereof and supersedes all previous communications, representations, understandings and agreements, oral or written between the parties. The terms and provisions of this Agreement may be modified, amended or waived

8. DISPUTE RESOLUTION; GOVERNING LAW: Client and Operator agree to meet and confer in good faith to resolve any issues or disputes that may arise under this Agreement. In the event the matter cannot be resolved between the day to day contacts, the parties shall meet at the corporate officer level, and, if still unresolved, shall submit to mediation, in a good faith attempt to resolve all claims prior to any litigation. Except to the extent that injunctive or emergency relief may be necessary to enforce any of the terms of this Agreement. Any disagreement that cannot be resolved between the parties shall be determined on request of either party by one arbitrator from the American Arbitration Association, with the losing party paying all of the prevailing party's damages, including loss of profits, reasonable attorney's fees, and disbursements. Venue shall be in Madison County, NY. In event of breach Client shall pay Servomation as liquidated damages a sum equal to the number of weeks remaining in this Agreement's term multiplied by Operator's average weekly profits (defined as gross receipts less 50% as cost of operations). The individual signing this contract represents to Servomation that they have the authority to enter into this Service Agreement.

9. BENEFIT: This Agreement shall be binding upon the parties hereto and shall inure to the benefit of, and be binding upon, the respective successors and assigns of each party hereto. Operator and Client each have the absolute right, in their sole discretion, to assign their rights and responsibilities under this Agreement.

10. COST OF PROCUREMENT: Client will have no obligation for the cost of Operator's procurement program. These costs will be offset in their entirety by the Operator through recovering benefits of volume purchasing contracts, brand allowances, rebates, cash discounts and/or slotting fees.

THIS AGREEMENT, THE TERMS OF WHICH HAVE BEEN FREELY NEGOTIATED BY EACH PARTY, IS SUBJECT TO THE TERMS AND CONDITIONS. CLIENT AND OPERATOR ACKNOWLEDGE TO HAVING READ AND ACCEPTED THE UNDERSIGNED EACH HEREBY ACKNOWLEDGE THAT THEY POSSESS THE REQUISITE AUTHORITY TO ENTER INTO THIS TRANSACTION AND SIGN THIS AGREEMENT.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as an instrument under seal as of this _____ day of _____, 20__.

OPERATOR: Servomation Refreshments Inc.
By: _____
Title _____
Print Name: _____

Mailing Address: 7098 Mount Pleasant Road
Canastota, NY 13032

CLIENT: _____
By: _____
Print Name _____
Title: _____
Mailing Address: _____

Client Notification Address:
[] Check if same as above, or:

Print Name:
Title:
Mailing Address _____

Addendum
Commissions

Financial Consideration:

Operator will provide Client the following rental commission in accordance with the terms and conditions of the Service Agreement:

- 5.00% commission rate on Bottle Soda, Can Soda, Chip, Chips, Generic, Premium Chips, Salty Snack, Snack, XVL

PAYMENT OF COMMISSION/RENTAL INCOME, SUBSIDY AND CHARGED SALES BILLINGS: Commissions/Rental Income, if any, shall be paid monthly or quarterly in accordance with Operator's fiscal months and quarters, on or before the thirtieth (30th) day of the month following the end of the applicable fiscal month or quarter of the Operator, based upon the Premises' projected receipts and the payment period set forth hereto. It is hereby agreed that in the event that the Commissions/Rental Income earned under this Agreement in any given quarter is less than Fifty Dollars (\$50.00), then no Rental Income shall be owed by the Operator to the Client. Payments will be based on net sales defined as gross sales less container deposits, applicable sales taxes, spoilage, condiments and permits. No commissions/rental income will include cold food or pastry sales. Operator has the right to offset rental income payments for technology, credit card fees and communications costs of \$3.40 per machine, per week to cover out of pocket technology communication costs. Notwithstanding anything to the contrary herein provided, in the event that there are any receivables owed by Client to the Operator that have been outstanding for more than 30 days in connection with this Agreement, the Operator shall be entitled to set-off any such receivables against any Rental Income owed pursuant hereto, which set-off taken shall be documented by the Operator in the next payment made of any monthly or quarterly Rental Income to the Client, as applicable. The parties further agree that any product or service sold to the Client will be paid within thirty (30) days from invoice date. Operator will be entitled to interest of one and a half (1.5%) percent for all balances not paid with thirty (30) days of invoice date.