

PURCHASING AND LICENSING COMMITTEE

11-0613R

RESOLUTION AUTHORIZING AN AMENDED AND RESTATED AGREEMENT
WITH THE STATE SERVICES FOR THE BLIND, BUSINESS
ENTERPRISES PROGRAM FOR VENDING OPERATIONS IN CITY HALL.

CITY PROPOSAL:

WHEREAS, the city and state services for the blind, business enterprises program entered into an agreement on or about November 29, 2010 (the "original agreement") under which a legally blind program participant operates coin operated vending machines for the retail sale of various products in city hall; and

WHEREAS, due to certain economic conditions, state services for the blind has requested modifications to the original agreement; and

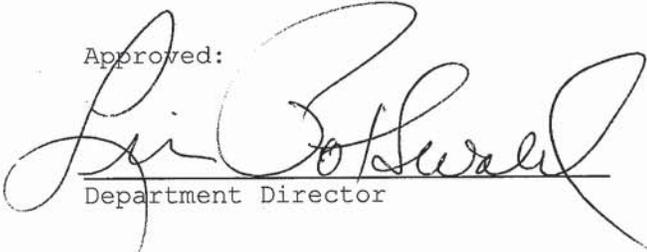
WHEREAS, the city and state services for the blind desire to terminate the original agreement and enter into an amended and restated agreement.

NOW, THEREFORE, BE IT RESOLVED, that the proper city officials are hereby authorized to enter into an amended and restated agreement, substantially in the form of that on file in the office of the city clerk as Public Document No.

_____, with the state services for the blind, business

enterprises program, to authorize operation of vending machines in city hall by a program participant.

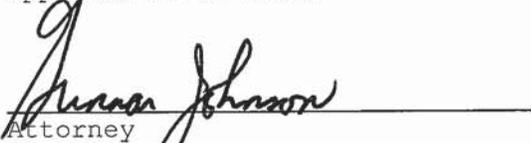
Approved:


Department Director

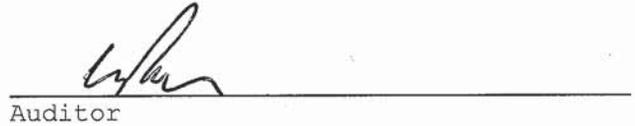
Approved for presentation to council:


Chief Administrative Officer

Approved as to form:


Attorney

Approved:


Auditor

CLERK/ATTY JMC:dma 11/15/2011

STATEMENT OF PURPOSE: This resolution authorizes an amended and restated agreement with the state services for the blind, business enterprises program to authorize operation of vending machines in City Hall by a legally blind program participant. This amended and restated agreement will allow the program participant to remove the frozen food vending machine which has been operating at a loss and waive the monthly utility charge of \$105 currently being charged to the participant for the operation of the vending machines. This will allow the program participant to continue to provide food and beverage service in City Hall and provide gainful employment to a legally blind person. Under the agreement, the city will derive no net revenue. The base term of the agreement commenced on November 1, 2009, and continues for five years with the possibility of two annual extensions.

AMENDED AND RESTATED
VENDING SERVICES AGREEMENT

CITY OF DULUTH
AND
STATE SERVICES FOR THE BLIND (SSB) BUSINESS ENTERPRISES PROGRAM (BEP)

THIS AMENDED AND RESTATED AGREEMENT (the "Agreement") is made and entered into by the CITY OF DULUTH, located at 411 West First Street, Duluth, Minnesota 55802, hereinafter referred to as the "CITY", and State Services for the Blind (SSB) Business Enterprises Program (BEP), located at 2200 University Avenue West, St. Paul, Minnesota 55114, hereinafter referred to as the "PROGRAM." The vending machines will be maintained by a legally blind individual enrolled in the BEP program and referred to as "LICENSED OPERATOR".

WITNESSETH THAT:

WHEREAS, the CITY and PROGRAM entered into an agreement on or about November 29, 2010 (the "Original Agreement") under which PROGRAM was granted the right to install and through its LICENSED OPERATOR to operate and maintain coin or currency operated vending machines for the retail sale of various products at the Duluth City Hall.

WHEREAS, due to certain economic conditions, the PROGRAM has requested modifications to the Original Agreement. .

WHEREAS, the CITY and PROGRAM wish to amend and restate the Original Agreement to accommodate modifications requested by PROGRAM as set forth herein.

NOW, THEREFORE, in consideration of the mutual covenants and promises described below, the Original Agreement is hereby amended and restated to read, and the CITY and PROGRAM agree, as follows:

- A. Subject to the terms and responsibilities set forth in this agreement, the CITY grants the right to the PROGRAM to install, operate and maintain certain vending machines for the retail sale of various products at mutually agreed upon locations owned by the CITY. This agreement between the CITY and the PROGRAM will have a term of five (5) years and upon negotiation and mutual agreement of all parties, two (2) annual extensions may be exercised. The five-year term of this agreement will commence November 1, 2009 to October 31, 2014, unless extended by a supplemental agreement pursuant to section E of this agreement.
- B. The CITY or the PROGRAM may terminate this agreement at any time prior to expiration date of this agreement, with or without cause, without liability to the other, upon a sixty (60) day written notice to the other.

C. The PROGRAM shall have the following responsibilities with the vending machine services.

1. The PROGRAM agrees to install and ensure that the LICENSED OPERATOR operates and maintains vending machines, automatically vending competitively priced products driven by customer satisfaction. Competitively priced is defined as average retail price in the local market. A list of equipment and addresses of each location is attached to this Agreement as Exhibit A and incorporated herein. Upon written approval of the CITY's Architect, PROGRAM may modify the list of equipment provided and/or the location of the equipment. PROGRAM will provide CITY with an Amended Exhibit A to be attached to the Agreement.
2. PROGRAM will ensure that the LICENSED OPERATOR will comply with applicable laws and regulations of the United States of America, the State of Minnesota, and any ordinances of sub-units of government.
3. PROGRAM will ensure that the LICENSED OPERATOR involved in the operation of the vending machines will carry and keep in force during the full term of this agreement a policy or policies of insurance, which, with the exception of 3.b. Workers' Compensation Insurance and 3.c. Automobile Liability Insurance listed below name(s) the CITY as an additional insured and are in the amounts and of the types as follows:

- a. General Liability insurance covering the operation and maintenance of the various vending machine facilities at the specified CITY location.

Insurance minimum limits are as follows:

\$2,000,000 - per occurrence
\$2,000,000 - annual aggregate
\$2,000,000 - annual aggregate - Products/Completed Operations

The following coverages shall be included:

Premises and Operations Bodily Injury and Property Damage
Personal & Advertising Injury
Blanket Contractual
Products and Completed Operations
CITY named as an Additional Insured

- b. Workers' Compensation insurance in accordance with the statutory requirements of the State of Minnesota, including Coverage B, Employer's Liability. LICENSED OPERATOR must provide Workers' Compensation insurance for all its employees, and in case any work is subcontracted, LICENSED OPERATOR will require the subcontractor to provide Workers' Compensation insurance in accordance with the

statutory requirements of the State of Minnesota, including Coverage B, Employer's Liability.

Insurance minimum limits are as follows:

\$100,000 - Bodily Injury by Disease per employee
\$500,000 - Bodily Injury by Disease aggregate
\$100,000 - Bodily Injury by Accident

- c. Automobile Liability Insurance covering liabilities arising out of the ownership, operation, maintenance or use of all owned, hired and non-owned automobiles that may arise from operations under this contract, and in case any work is subcontracted the LICENSED OPERATOR will require the subcontractor to maintain Automobile Liability Insurance.

Insurance minimum limits are as follows:

\$2,000,000 – Per Occurrence – Bodily Injury and Property Damage
Combined Single Limit

The following coverages shall be included:

Owned Automobiles
Non-owned Automobiles
Hired Automobiles

Additional Insurance Conditions:

- PROGRAM will ensure that LICENSED OPERATOR's policy (ies) shall be primary insurance to any other valid and collectible insurance available to the State of Minnesota with respect to any claim arising out of LICENSED OPERATOR's performance under this contract.
- PROGRAM will ensure that LICENSED OPERATOR's policy (ies) will provide the PROGRAM with thirty (30) days advance notice of cancellation.
- PROGRAM will ensure that LICENSED OPERATOR's policy (ies) include legal defense fees in addition to its liability policy limits.
- PROGRAM will ensure that LICENSED OPERATOR obtains insurance policies from an insurance company having an "AM BEST" rating of A- (minus); Financial Size Category (FSC) VII or better and must be authorized to do business in the State of Minnesota.

- An Umbrella or Excess Liability insurance policy may be used to supplement the LICENSED OPERATOR's policy limit to satisfy the full policy limits required by Minnesota state law. It is understood and agreed that any and all employees of the PROGRAM and all other persons affiliated or engaged in the installation, operation and/or maintenance of the vending machine facilities as provided for under this agreement shall not be considered employees of the CITY, and that any and all claims that may or might arise under the Workers Compensation Act of the State of Minnesota on behalf of said persons while so engaged shall in no way be the obligation or the responsibility of the CITY.
4. Each party agrees to be responsible for its own acts and the results thereof to the extent authorized by law and shall not be responsible for the acts of the other party and the results thereof. The State's liability shall be governed by the provisions of the Minnesota Tort Claims Act, Minn. Stat. Section 3.736, and other applicable law. The City's liability shall be governed by the provisions of Minnesota Statutes Chapter 466 and other applicable law.
 5. The LICENSED OPERATOR will operate all vending equipment during the entire year. However, due to reduced usage as a result of employee vacations, construction, or other factors, the PROGRAM may make machines which are experiencing reduced usage inoperative. Reduced usage is defined when a machine produces less than \$50 in sales per week.
 6. The LICENSED OPERATOR will reimburse to customers those refunds that may be applied for by customers under a plan to be developed by the CITY and the PROGRAM.
 7. PROGRAM will ensure that the LICENSED OPERATOR agrees to keep or cause to keep the vending machines in proper mechanical working order, making all necessary repairs and keep or cause to keep the vending machines adequately stocked so as to ensure continuous service to those who may desire to purchase the items offered. Service shall include cleaning and sanitizing the equipment, and providing repair service within a timely manner.
 8. The parties understand that all receipts from the vending service shall belong to the LICENSED OPERATOR, and that the LICENSED OPERATOR is responsible for any reasonable expenses associated with the normal operation of the vending service.

D. The CITY shall have the following responsibilities as to this agreement and the PROGRAM.

1. The CITY will provide janitorial services, rubbish removal, heat, lighting, and

electrical services to the PROGRAM at the specified location where the PROGRAM is providing vending services.

2. The CITY shall have the right at any time, in the presence of at least the LICENSED OPERATOR, to inspect the vending machines and storage areas for cleanliness and sanitation.
3. The CITY assumes no liability or responsibility for any losses occurring of any type due to the operation of the vending machines including but not limited to loss of inventory in storage on City property. The CITY shall, however, take reasonable measures to prevent theft, vandalism, and pilferage from and of machines.
4. The CITY shall allow the LICENSED OPERATOR access to such areas as are necessary for the completion of obligations under this agreement.
5. The CITY agrees that as long as this contract is in force, no other vending machines will be contracted for or utilized within the Duluth City Hall. Any exceptions to this responsibility must be recognized by a supplemental agreement pursuant to section E of this agreement.
6. The CITY shall permit the LICENSED OPERATOR to store product at no cost in a space large enough to hold a two week inventory. PROGRAM ensures that the LICENSED OPERATOR expressly understands and agrees this agreement is not intended to and does not create a landlord/tenant relationship between the parties or a bailment with regard to the equipment or inventory. PROGRAM shall inform the LICENSED OPERATOR that he/she is granted only a permit to occupy and use said space for purpose set forth. The CITY shall hold the right to enter and use the space at all reasonable times, with 24 hour verbal notification to the LICENSED OPERATOR for purposes of inspecting or of such other purposes as may be required by the CITY. PROGRAM shall ensure that the LICENSED OPERATOR maintains the space in a reasonably clean and sanitary condition. The CITY may change location of storage space at any time upon 60 days written notice to the LICENSED OPERATOR or PROGRAM conditional upon the CITY providing comparable storage space in terms of size, access to docks, access to key vending locations, and other factors consistent with the operation of the vending machines.

E. A written supplemental agreement must be executed by the parties for any change in any term or condition of this agreement.

SIGNATURES APPEAR ON THE FOLLOWING PAGE

IN WITNESS WHEREOF, THE PARTIES HERE TO HAVE SIGNED THIS AGREEMENT.

CITY OF DULUTH, a Minnesota
municipal corporation

STATE SERVICES FOR THE
BLIND

By: _____
Its Mayor

By: _____
Richard K. Strong

Attest:

Its: Director

By: _____
City Clerk
Date:

Countersigned:

City Auditor

Approved as to form:

City Attorney

Exhibit A

Equipment listing and location

Location

City of Duluth-City Hall

Vending Equipment

Hot Beverage Machine

Snack/Candy Machine

Cold Beverage Machine

Cold Beverage Machine