

**City of Oak Harbor
Request for Proposal
Legal Notice**

Notice is hereby given that the City of Oak Harbor has issued the following Request for Proposal. The complete Request for Proposal, including all submittal requirements can be viewed at www.oakharbor.org. If further information is required and/or to schedule a site visit, please contact Sandra Place, Budget and Purchasing Specialist at splace@oakharbor.org.

RFP# 12-0003

RFP Title: Vending Services

RFP Due Date and Time: March 30, 2012 at 2:00 p.m.

Brief Scope of Services:

Provide all labor, materials, tools and equipment to perform Vending Services on City property.

Connie Wheeler, City Clerk

Published: Daily Journal of Commerce—March 10, 2012 and March 17, 2012
Whidbey News-Times – March 10, 2012 and March 17, 2012

REQUEST FOR PROPOSAL

Notice is hereby given that proposals will be received by the City of Oak Harbor, Washington for:

RFP# 12-0003

Vending Services

Proposals submitted after the due date and time will not be considered. The proposing party accepts all risks of late delivery of mailed proposals regardless of fault.

Detailed Request for Proposal (RFP) information including general information, general terms and conditions, requested services, proposal requirements and evaluation process is available from the City of Oak Harbor on the City's website at www.oakharbor.org.

The City of Oak Harbor reserves the right to reject any and all submittals and to waive irregularities and informalities in the submittal and evaluation process. This RFP does not obligate the City to pay any costs incurred by respondents in the preparation and submission of a proposal. Furthermore, the RFP does not obligate the City to accept or contract for any expressed or implied services.

The successful party must comply with the City of Oak Harbor equal opportunity requirements. The City is committed to a program of equal employment opportunity regardless of race, color, creed, sex, age, sexual orientation, nationality or disability.

It is the City of Oak Harbor's policy to assure that no person shall, on the grounds of race, color, national origin or sex, as provided by Title VI of the Civil Rights Act of 1964, be excluded from participation in, be denied the benefits of, or be otherwise discriminated against under any of its federally funded programs and activities.

DURATION OF SERVICES:

The term of the awarded Contract will be for five (5) years with a ninety (90) day termination clause.

QUALIFICATIONS:

The Vendor is required to have the following qualifications:

To be considered a responsive and responsible proposer, Contractor's submittal must clearly indicate compliance with the qualifications as required in Form #1 Contractor Qualification Certificate. Proposals that do not meet these standards may be rejected without further consideration by the City.

- Five (5) or more years of related experience;
- Experience working with municipal and regulatory entities;
- Strong written, verbal and interpersonal communication skills;
- Ability to meet required deadlines as demonstrated by prior project history;
- Strong expertise, knowledge and/or experience in requested services.

SUBMITTAL REQUIREMENTS:

Responses to this RFP must include the following:

- Copies of licenses and training certificates for key personnel who would be assigned to the contract.
- A completed and signed Form #1 Contractor Qualification Certificate
- A completed and signed RFP Proposal Form
- A completed and signed Cost Proposal Form

REQUIRED NUMBER OF PROPOSALS: Two completed proposal(s) must be received by the proposal due date and time. The City at its discretion may make additional copies of the proposal for the purpose of evaluation only. The original proposal will include original signatures, in ink, by authorized personnel, on all documents that require an authorized signature.

EVALUATION PROCEDURES: Vendors are encouraged to be creative in responding to this RFP; proposing alternatives in addition to a traditional service delivery model. A joint proposal between two Vendors may be submitted. Proposals will be evaluated by the Selection Committee. The Selection Committee will consider the completeness of a Vendor's proposal and how well the proposal meets the needs of the City. In evaluating the proposals, the City will be using a criteria evaluation process.

EVALUATION CRITERIA: Proposals will be evaluated by City staff based upon the responsiveness of the Proposal to this RFP, which may be weighted by the City in any manner it deems appropriate. Interviews, if considered necessary, will be held with selected Vendors based on an evaluation of the proposals. All proposals will be evaluated using the criteria listed below:

- Price;
- Experience working on similar service agreements;
- Qualifications of key personnel to be used on the project;
- Response of references;
- Ability to meet required deadlines.

REJECTION OF PROPOSALS: The City reserves the right to reject any and all Proposals and to waive irregularities and informalities in the submittal and evaluation process. This RFP does not obligate the City to pay any costs incurred by Vendors in the preparation and submission of their Proposals. Furthermore, the RFP does not obligate the City to accept or contract for any expressed or implied services.

RFP ADDENDA: The City reserves the right to change the RFP schedule or issue addenda to the RFP at any time. The City also reserves the right to cancel or reissue the RFP. All such addenda will become part of the RFP.

PROPOSAL MODIFICATION & CLARIFICATIONS: The City reserves the right to request that any Vendor clarify its proposal or to supply any additional material deemed necessary to assist in the evaluation of the proposal.

Modification of a proposal already received will be considered only if the modification is received prior to the submittal deadline. All modifications must be made in writing, executed and submitted in the same

form and manner as the original proposal.

EXCEPTIONS: If Vendor(s) takes exception to any term or condition set forth in this proposal and/or the Sample Agreement and any of its Exhibits and Attachments (including Insurance Requirements), said exceptions must be clearly identified on the RFP Proposal Form. Exceptions or deviations to any of the terms and conditions must not be added to the proposal pages but must be submitted on the RFP Proposal Form under "Exceptions". Such exceptions shall be considered in the evaluation and award process. The City shall be the sole determiner of the acceptability of any exception.

PROPOSAL VALIDITY PERIOD: Submission of a proposal will signify the Vendor's agreement that its proposal and the content thereof are valid for 60 days following the submission deadline unless otherwise agreed to in writing by both parties. The proposal will become part of the Contract that is negotiated between the City and the successful Vendor.

RESPONSE FORMAT: Proposals should be prepared simply, providing a straightforward, concise delineation of the approach and capabilities necessary to satisfy the requirements of the RFP. Technical literature and elaborate promotional materials, if any, must be submitted separately. Emphasis in the proposal should be on completeness, clarity of content, and adherence to the presentation structure required by the RFP.

Vendor proposals must be submitted in the format specified below. Vendors that deviate from this format may be deemed non-responsive. Faxed proposals will not be accepted.

COMPLETENESS OF PROPOSAL: The Vendor must submit a completed RFP Proposal Form (included in this RFP) signed by a Vendor representative authorized to bind the proposing company contractually.

PROPOSAL RESPONSE DATE AND LOCATION: Proposals must be submitted no later than 2:00 PM on March 30, 2012. All proposals and accompanying documentation will become the property of the City and will not be returned. Vendors accept all risk of late delivery of mailed proposals regardless of fault.

PROPOSAL SIGNATURES:

An authorized representative must sign proposals, with the Vendor's address, telephone and email information provided. Unsigned proposals may not be considered.

If the proposal is made by an individual, the name, mailing address and signature of the individual must be shown.

If the proposal is made by a firm or partnership, the name and mailing address of the firm or partnership and the signature of at least one of the general partners must be shown.

If the proposal is made by a corporation, the name and mailing address of the corporation and the signature and title of the person who signs on behalf of the corporation must be shown.

The City reserves the right to request documentation showing the authority of the individual signing the proposal to execute contracts on behalf of anyone, or any corporation, other than himself/herself. Refusal to provide such information upon request may cause the proposal to be rejected as non-responsive.

CONTRACT NEGOTIATION: The City reserves the right to negotiate with the highest ranked firm that, in the opinion of the City has submitted a proposal that is the "best value" to the City. In no event will the City be required to offer any modified terms to any other firm prior to entering into an agreement with a proposer and the City shall incur no liability to any proposer as a result of such negotiation or modifications. It is the intent of the City to ensure it has the flexibility it needs to arrive at a mutually acceptable agreement. Negotiations may include, but not be limited to, matters such as:

- Contract details

- Contract payment details
- Service requirements
- Minor changes to the scope of services

CONTRACT AWARD: The City reserves the right to make an award without further discussion of the submittals. Therefore, the proposal should be initially submitted on the most favorable terms the Vendor can offer. The Vendor selected as the apparently successful Vendor will be expected to enter into a contract with the City.

Once the City and Vendor have reached an agreement on the scope of services, a final contract will be prepared by the City. The foregoing should not be interpreted to prohibit either party from proposing additional contract terms and conditions during the negotiations of the final Contract. If the selected Vendor fails to sign the Contract within ten (10) business days of delivery of the final Contract, the City may elect to negotiate a Contract with the next-highest ranked Vendor. The City shall not be bound, or in any way obligated, until both parties have executed a Contract. No party may incur any chargeable costs prior to the execution of the final Contract.

TERMS & CONDITIONS

EQUAL OPPORTUNITY EMPLOYMENT: The successful Vendor or Vendors must comply with the City of Oak Harbor equal opportunity requirements. The City of Oak Harbor is committed to a program of equal employment opportunity regardless of: age, sex, marital status, sexual orientation, race, creed, color, national origin, honorably discharged veteran or military status, or the presence of any sensory, mental, or physical disability or the use of a trained dog guide or service animal by a person with a disability or any other status protected by law.

TITLE VI: It is the City of Oak Harbor policy to assure that no person shall, on the grounds of race, color, national origin or sex, as provided by Title VI of the Civil Rights Act of 1964, be excluded from participation in, be denied the benefits of, or be otherwise discriminated against under any of its federally funded programs and activities.

INSURANCE REQUIREMENTS: The selected Vendor, or Vendors, shall maintain insurance that is sufficient to protect the Vendor's business against all applicable risks, as set forth in the City's Standard Insurance Requirements Attachment "B."

Please review insurance requirements prior to submitting a Proposal. If selected Vendor is unable to meet these standard requirements, please note current or proposed insurance coverage in submittal as an Exception.

Standard requirements may be negotiated if it is in the best interest of the City.

INDEMNIFICATION: The Vendor shall hold harmless, defend, and indemnify the City and the City's officers, agents, and employees against any liability that may be imposed upon them because of the Vendor's failure to provide compensation coverage or liability coverage.

PREVAILING WAGE: This Contract is subject to the requirements of Chapter 39.12 RCW, and as it may be amended, relating to prevailing wages. On Public Works projects, funded in part or in whole with Federal Funds, laws and regulations shall also be applicable. NO WORKER, LABORER OR MECHANIC EMPLOYED IN THE PERFORMANCE OF ANY PART OF THIS CONTRACT SHALL BE PAID LESS THAN THE PREVAILING RATE OF WAGE as determined by the Industrial Statistician of the Department of Labor and Industries for the State of Washington. The schedule of prevailing wage rates for the Contract is made a part of this contract as set forth in Attachment "C" to this contract or as subsequently amended.

Prior to making any payment under this Contract, the City must receive an approved copy of the "Statement of Intent to Pay Prevailing Wages on Public Works Contracts" from the Department of Labor & Industries. It is the Vendor's responsibility to obtain and file the "Statement of Intent to Pay Prevailing Wage". The Vendor shall be responsible for all filing fees. Each invoice may include a signed statement that prevailing wages have been paid by the contractor and all subcontractors. Following the final acceptance of services rendered, the Vendor shall submit an "Affidavit of Wages Paid".

BUSINESS REGISTRATION AND TAXATION: The Vendor or Vendors awarded the contract will be subject to City of Oak Harbor's Registration and Business.

NON-ENDORSEMENT: As a result of the selection of a Vendor to supply products and/or services to the City, Vendor agrees to make no reference to the City in any literature, promotional material, brochures, sales presentation or the like without the express written consent of the City.

COMPLIANCE WITH LAWS AND REGULATIONS: In addition to nondiscrimination and affirmative action compliance requirements previously listed, the Vendor or Vendors ultimately awarded a contract shall comply with federal, state and local laws, statutes and ordinances relative to the execution of the work. This requirement includes, but is not limited to, protection of public and employee safety and health; environmental protection; waste reduction and recycling; the protection of natural resources; permits; fees; taxes; and similar subjects.

EXPANSION CLAUSE: Any resultant contract may be further expanded to include any other item normally offered by the vendor, as long as the price of such additional products based on the same cost/profit formula as the listed item.

OWNERSHIP OF DOCUMENTS: Any reports, studies, conclusions and summaries prepared by the Vendor shall become the property of the City.

CONFIDENTIALITY OF INFORMATION: All information and data furnished to the Vendor by the City, and all other documents to which the Vendor's employees have access during the term of the Contract, shall be treated as confidential to the City. Any oral or written disclosure to unauthorized individuals is prohibited.

INFORMATION SECURITY REQUIREMENTS: Reference Attachment "O" for information security details.

PUBLIC RECORDS: Under Washington state law, the documents (including but not limited to written, printed, graphic, electronic, photographic or voice mail materials and/or transcriptions, recordings or reproductions thereof) submitted in response to this RFP (the "documents") become a public record upon submission to the City, subject to mandatory disclosure upon request by any person, unless the documents are exempt from public disclosure by a specific provision of law

COOPERATIVE PURCHASING: RCW 39.34 allows cooperative purchasing between public agencies (political subdivisions) in the State of Washington. Public agencies that file an Interlocal Joint Purchasing Agreement with the City of Oak Harbor may also wish to procure the goods and/or services herein offered by the selected Vendor. The selected Vendor shall have the option of extending its offer to the City of

Oak Harbor to other agencies for the same cost, terms and conditions.

The City of Oak Harbor does not accept any responsibility for agreements, contracts or purchase orders issued by other public agencies to the Vendor. Each public agency accepts responsibility for compliance with any additional or varying laws and regulations governing purchase by or on behalf of the public agency. The City of Oak Harbor accepts no responsibility for the performance of the Vendor in providing goods and/or services to other public agencies, nor any responsibility for the payment price to the Vendor for other public agency purchases

ATTACHMENT "A"

SCOPE OF WORK-SEE VENDING AGREEMENT

ATTACHMENT "B"

INSURANCE REQUIREMENTS-SEE VENDING AGREEMENT

FORM #1 CONTRACTOR QUALIFICATION CERTIFICATE

(Form to be submitted with RFP)

GENERAL COMPANY INFORMATION

COMPANY NAME _____

ADDRESS

OWNER NAME _____

CONTACT PERSON'S NAME AND TITLE _____

E-MAIL _____

MINIMUM QUALIFICATIONS:

- 1. OPEN WASHINGTON STATE DEPARTMENT OF REVENUE BUSINESS LICENSE # (UBI);
- 2. ACTIVE WASHINGTON STATE CONTRACTOR LICENSE #;
- 3. CURRENT EMPLOYMENT SECURITY #;

VERIFY THE FOLLOWING

- 4. CHOOSE ONE:
 - Proposer has current industrial insurance coverage for employees working in Washington; or
 - Proposer is not required to have industrial insurance coverage for employees working in Washington as required by Title 51 RCW.
- 5. CHOOSE ONE:
 - Proposer has not been disqualified or debarred from bidding on any federal or state bidding; or
 - Proposer has been disqualified or debarred from bidding on any federal or state bidding;

Explain:

ADDITIONAL QUALIFICATIONS:

- 6. NUMBER OF YEARS IN BUSINESS UNDER CURRENT COMPANY NAME/LICENSE # _____
- 7. NUMBER OF EMPLOYEES IN YOUR COMPANY _____

8. EXPERIENCE WORKING WITH MUNICIPALITIES

9. PLEASE LIST EXPERIENCE OF "KEY PERSONNEL" THAT WILL BE ASSIGNED TO SUPERVISE OR WORK ON CITY CONTRACTED SITE:

10. PLEASE DESCRIBE CURRENT SCREENING PROCESS FOR HIRING EMPLOYEES:

11. PLEASE DESCRIBE CURRENT EMPLOYEE TRAINING AND/OR RELEVANT CERTIFICATIONS:

12. LIST YOUR COMPANIES RECENT EXPERIENCE IN REQUESTED SERVICES:

REQUIREMENTS AFTER CONTRACT AWARD

If awarded a contract, Contractor agrees to comply with and obtain the following requirements:

Provide a Certificate of Insurance with the City of Oak Harbor listed as an additional insured showing coverage amounts that meet or exceed the requested standard requirements (see ATTACHMENT "B").

Each Contractor, and each employee, must sign an affidavit allowing the City of Oak Harbor to conduct a criminal background investigation for any employee working on City property.

Obtain a City of Oak Harbor Business license.

Provide City with Statement of Intent to Pay Prevailing Wages prior to first payment.

Provide the City of Oak Harbor with a completed and signed Vending Agreement.

The undersigned certifies that the information provided above is a true representation of its company's qualifications and agrees to comply with these assurances following award of the Contract and during the performance of the Contract.

Authorized Signature: _____ Date: _____

Printed Name: _____

Title: _____

RFP PROPOSAL FORM

TO: City of Oak Harbor

FROM: Company Name: _____

COMPANY ADDRESS: _____

CITY, STATE, ZIP CODE: _____

PHONE, EMAIL & FAX NUMBER: _____

SUBMITTAL REQUIREMENTS CHECKLIST:

1. Copies of licenses and training certificates for key personnel who would be assigned to the contract.
2. A completed and signed Form #1 Contractor Qualification Certificate
3. A completed and signed RFP Proposal Form
4. A completed and signed Cost Proposal Form
5. A completed and signed Non-Collusion Certificate

Exceptions:

Except as noted below, the undersigned hereby agrees to comply with all the terms & conditions put forth in the City's Request for Proposal.

I hereby acknowledge I have read and understand the insurance requirements listed in Attachment "B", and have either 1) provided an insurance certificate showing amounts of current coverage or 2) provided a statement below indicating our company currently has the necessary coverage's or is willing to obtain, at our cost, the necessary coverage's required.

Authorized Signature

Date

Title

COST PROPOSAL FORM

Please provide the percentage amount of gross revenue from sales for each of the following:

2012 Total \$ _____
Duration-April-December

2013 Total \$ _____

2014 Total \$ _____

2015 Total \$ _____

2016 Total \$ _____

NON-COLLUSION CERTIFICATE

STATE OF

ss.

COUNTY OF

The undersigned, being duly sworn, deposes and says that the person, firm, association, co-partnership or corporation herein named, has not, either directly or indirectly, entered into any agreement, participated in any collusion, or otherwise taken any action in restraint of free competition in the preparation and submission of a proposal to the City of Bellevue for consideration in the award of a contract on the improvement described as follows:

Name of Company

Title

Sworn to before me this day of 2012 _____

Notary Public

VENDING AGREEMENT

THIS AGREEMENT made and entered into on this ____ day of _____ by and between the CITY OF OAK HARBOR, a municipal corporation under the laws of the State of Washington, hereinafter referred to as the "City," and _____, whose address is 865 SE Barrington Drive, Oak Harbor, WA 98277, hereinafter referred to as the "Vending Machine Operator."

1. License.

1.1 In accordance with the Vending Machine Services proposal submitted by Vending Machine Operator on _____, the City hereby grants Vending Machine Operator an exclusive license to locate and sell from vending machines on City-owned facilities on the terms and conditions set forth herein and in the Request for Proposals – License for Beverage Vending Machine Services – issued by the City on _____.

1.2 The facilities at which the Vending Machine Operator may locate and conduct sales from vending machines are:

Ft. Nugent Park	Up to 2 Machines
Windjammer Park	Up to 4 Machines
Flintstone Park	Up to 2 Machines
Oak Harbor Marina	Up to 1 Machine
Public Works Shop	Up to 3 Machines
City Hall	Up to 1 Machine

1.3 Exclusive Right. This Agreement grants the Vending Machine Operator the exclusive right to locate and sell from vending machines on the City-owned property designated in Paragraph 1.2 above for the duration of this Agreement.

2. Operational Responsibilities of Vending Machine Operator. Vending Machine Operator represents that it is fully qualified to provide and service vending machines appropriate for the above-listed locations.

2.1 Vending Machine Operator shall perform and conduct, in accordance with all requirements of this Agreement, the installation and operation of up to thirteen (13) vending machines, to be located in the above-listed six (6) City-owned facilities as described in 1.2 above. Vending Machine Operator shall be solely responsible for installation of the vending machines and shall install all vending machines within ten (10) calendar days of the beginning of the Term of this Agreement. Vending Machine Operator shall install and operate its vending machines and conduct all its operations at the above-listed locations in conformity

with all applicable federal and state laws, rules and regulations, local ordinances, and City Rules and Regulations for the above-listed locations.

- 2.2 Vending Machines. Automatic vending machines shall be new and/or of good quality as determined by the City. All vending machines shall be attractive in appearance using the latest designs in the marketplace and shall reasonably match each other at the same location either in color or style. Energy efficient machines are required and must have an energy saving device at each point of sale. In addition, the City reserves the right to turn off the interior vending lighting. Power to the vending machines must fit the present configuration at each location. The machines must accept any combination of nickels, dimes, quarters and one dollar bills. Vending machines must sense whether the product was dispensed and refund payment if the product is not dispensed.
- 2.3 Products Vended. Vending Machine Operator shall provide a list of products to be sold from the vending machines prior to the execution of this Agreement. Products shall generally be national brands. Vending Machine Operator will maintain fresh products in its vending machines and will ensure that all products vended shall conform in all respects to local, state, and federal laws and regulations relating to the standards of food and drink and shall be suitable for human consumption in all respects.
- 2.4 Prices for Products. Vending Machine Operator will not increase the prices charged for products sold in its vending machines, as detailed in the Bid Proposal, above the sales prices for the corresponding products specified for each year during the Term. City and Vending Machine Operator may, by mutual written agreement, adjust the sales prices for any product or products sold from the vending machines.
- 2.5 On-Call Service. Vending Machine Operator will provide on-call maintenance and repair service for its machines. Vending Machine Operator will make available to the City and to consumers a toll-free telephone number for service calls that will be displayed on machines.
- 2.6 Maintenance of Vending Machines. Vending Machine Operator shall service all its vending machines and related equipment as often as is necessary to keep the machines and equipment properly supplied and in good working order. Vending Machine Operator will maintain a program of regular preventive maintenance and replacement of worn, damaged, or malfunctioning machines. City may require Vending Machine Operator to replace vending machines that cannot be returned to service within four (4) working days of the service call. Replacement vending machines will be of a type and condition at least equal to the machines that are replaced. Vending Machine Operator will keep its vending machines neat and sanitary. Vending Machine Operator will clean all spills that occur while filling, cleaning, or maintaining its machines, clean the front and top of each vending machine each time Vending Machine Operator restocks or services it. Vending Machine Operator shall cooperate with City to promptly remedy any sanitary

problems related to Vending Machine Operator's machines. The City shall not be responsible in any way for any damage or loss to Vending Machine Operator's property, including vending machines, due to vandalism, theft, fire, casualty, natural disaster, crime, acts of terrorism, riot, or civil disorder.

- 2.7 Restocking Vending Machines. Vending Machine Operator will inspect and restock its machines as needed to ensure that the products advertised for sale are available upon payment. Vending Machine Operator may not maintain, store or keep any products outside of the vending machines or on the premises.
- 2.8 Operating Notices. Vending Machine Operator will affix to each vending machine a prominent notice containing instructions on how to (1) operate the machine, (2) report malfunctions, (3) comment on product quality, and (4) request refunds. Vending Machine Operator will affix a visible Unit Number to easily identify each machine for accounting and servicing requirements.
- 2.9 Refunds. All refunds will be processed exclusively between the Vending Machine Operator and the customer.
- 2.10 Costs of Operation. Vending Machine Operator shall have sole responsibility for paying all costs for installing, operating, servicing, and replacing its vending machines and any necessary related equipment. City shall furnish Vending Machine Operator with electrical energy for operation of Vending Machine Operator's vending machines free of cost. Vending Machine Operator shall absorb all money shortages that may develop due to theft, burglary, vandalism, inoperable vending machines or other cause.
- 2.11 Signs. Vending Machine Operator will not post signs or posters on the vending machines area, or elsewhere, and will not engage in any marketing or promotional activity without the City's written permission, which may be denied in the City's sole discretion.

3. Royalty Payments and Reports.

- 3.1 Royalty to City. In consideration for the license granted to Vending Machine Operator by the City under this Agreement, Vending Machine Operator shall pay a minimum of twenty-five percent (25%) of its gross revenue from sales pursuant to this license on a quarterly basis to the City of Oak Harbor, 865 SE Barrington Drive, Oak Harbor, WA 98277. Vending Machine Operator shall make all royalty checks payable to "The City of Oak Harbor". A statement of accounts which includes the timeframe for the collections, the dollar amount of sales from each vending machine referenced by Unit Number, gross receipts, and the percentage due the City must be included with each check.
- 3.2 Vending Machine Operator will keep accurate records of its sales and will make these records available to the City upon request during the Term of the Agreement and for up to four (4) years after the expiration of the Term. Vending Machine

Operator shall permit authorized representatives of City to accompany Vending Machine Operator's employees during cash collection and counting and to randomly examine the receipts of the vending machines operated by Vending Machine Operator.

4. Term. This Agreement shall remain in force and effective for five (5) years from date of Agreement. Unless canceled by written notice delivered to either party at least ninety (90) days prior to the termination of the initial term or any renewal term of this Agreement, this Agreement shall automatically renew at the end of the initial term upon the same terms and conditions as set forth herein.
5. Termination. Termination does not waive, release, or forego any legal remedy for any violation, breach, or non-performance of any of the provisions of this Agreement.
6. Risk Management.

- 6.1 Indemnification/Hold Harmless. The Vending Machine Operator shall defend, indemnify and hold the City, its officers, officials, employees and volunteers harmless from any and all claims, injuries, damages, losses or suits including attorney fees, arising out of or in connection with the performance of this Agreement, except for injuries and damages caused by the sole negligence of the City.

For purposes of this indemnification and hold harmless agreement, the Vending Machine Operator waives any immunity that may be granted to it under the Washington State Industrial Insurance Act, Title 51 RCW. The parties expressly agree that this waiver of workers' compensation immunity has been negotiated.

- 6.2 Insurance. The Vending Machine Operator shall procure and maintain for the duration of the Agreement, insurance against claims for injuries to persons or damage to property which may arise from or in connection with products and materials supplied to the City.
 - 6.2.1. No limitation. Vending Machine Operator's maintenance of insurance as required by the Agreement shall not be construed to limit the liability of the Vending Machine Operator to the coverage provided by such insurance, or otherwise limit the City's recourse to any remedy available at law or in equity.
 - 6.2.2. Minimum Scope of Insurance. Vending Machine Operator shall maintain the following insurance limits:

Commercial General Liability insurance shall be written with limits no less than One Million Dollars (\$1,000,000) each occurrence, One Million Dollars (\$1,000,000) general aggregate and a Two Million Dollar (\$2,000,000) products liability aggregate limit.

Automobile Liability Insurance with a minimum combined single limit for bodily injury and property damage of One Million Dollars (\$1,000,000) per accident.

- 6.2.3 Other Insurance Provisions. The insurance policies are to contain, or be endorsed to contain, the following provisions for Commercial General Liability insurance:

The Vending Machine Operator's insurance coverage shall be primary insurance with respect to the City. Any Insurance, self-insurance, or insurance pool coverage maintained by the City shall be excess of the Vending Machine Operator's insurance and shall not contribute with it.

The Vending Machine Operator's insurance shall be endorsed to state that coverage shall not be cancelled by either party, except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the City.

- 6.2.4 Acceptability of Insurers. Insurance is to be placed with insurers with a current A.M. Best rating of not less than A:VII.

- 6.2.5 Verification of Coverage. Vending Machine Operator shall furnish the City with original certificates and a copy of the amendatory endorsements including, but not necessarily limited to, the additional insured endorsement, evidencing the insurance requirements of the Vending Machine Operator before goods, materials or supplies will be accepted by the City.

- 6.2.6 Material Breach. Vending Machine Operator acknowledges that any failure to comply with the requirements of this section may be deemed by the City to be a material breach and cause for termination of this Agreement.

7. Independent Contractor.

- 7.1 The parties do not intend to constitute nor create an employer-employee relationship because Vending Machine Operator is an independent contractor. Vending Machine Operator shall be responsible for all obligations relating to federal income tax, self-employment FICA taxes and contributions, and all other so called employer taxes and contributions including, but not limited to, industrial insurance (Workmen's Compensation). Vending Machine Operator agrees to indemnify, defend and hold the City harmless from any claims, valid or otherwise, made against the City, because of these obligations.

- 7.2 Any and all employees of Vending Machine Operator, while engaged in the performance of any work, shall be considered employees of Vending Machine Operator only and not of the City, and any and all claims that may or might arise under the Worker's Compensation Act on behalf of said employees or Vending Machine Operator, while so engaged in any and all claims made by a third party as a consequence of any negligent act or omission on the part of Vending Machine Operator's employees, while so engaged on any of the work, shall be the sole obligation and responsibility of Vending Machine Operator.
- 7.3 Vending Machine Operator assumes full responsibility for the payment of all payroll taxes, use, sales, income, or other form of taxes (such as state, and city business and occupation taxes), fees, licenses, excises or payments required by any city, federal or state legislation which are now or may during the term of the Agreement be enacted as to all persons employed by Vending Machine Operator and as to all duties, activities and requirements by Vending Machine Operator in performance of the work and Vending Machine Operator shall assume exclusive liability therefore, and meet all requirements thereunder pursuant to any rules or regulations that are now or may be promulgated in connection therewith.
8. Employment. Vending Machine Operator warrants that it had not employed or retained any company or person, other than a bona fide employee working solely for Vending Machine Operator, to solicit or secure this Agreement and that it has not paid or agreed to pay any company or person, other than a bona fide employee working solely for Vending Machine Operator, any fee, commission, percentage, brokerage fee, gifts, or any other consideration, contingent upon or resulting from the award or making of this Agreement. For breach or violation of this warranty, the City shall have the right to terminate this Agreement without liability or, in its discretion, to deduct from the Agreement price or consideration or otherwise recover, the full amount of such fee, commission, percentage, brokerage fee, gift, or contingent fee.
9. Miscellaneous.
- 9.1 Audits and Inspections. At any time during normal business hours and as often as the City may deem necessary, Vending Machine Operator shall make available to the City for the City's examination all of Vending Machine Operator's books, records and documents with respect to all matters covered by this Agreement and, furthermore, Vending Machine Operator will permit the City to audit, examine and make copies, excerpts or transcripts from such records, and to audit all contracts, invoices, materials, deposits, receipts, tax returns and other data relating to all matters covered by this Agreement.
- 9.2 City of Oak Harbor Business License. Vending Machine Operator shall obtain a City of Oak Harbor business license prior to performing any work pursuant to this Agreement.

- 9.3 State of Washington Requirements. Vending Machine Operator shall register and obtain any State of Washington business licenses, Department of Revenue account and/or unified business identifier number as required by RCW 50.04.140 and RCW 51.08.195 prior to performing this Agreement.
- 9.4 Compliance with Federal, State and Local Laws. Vending Machine Operator shall comply with and obey all federal, state, and local laws, regulations, and ordinances applicable to the operation of its business and to its performance of work hereunder.
- 9.5 Subletting/Assignment of Agreement. Vending Machine Operator shall not sublet or assign any of the work without the express, prior written consent of the City.
- 9.6 Waiver. Any waiver by Vending Machine Operator or the City or the breach of any provision of this Agreement by the other party will not operate, or be construed, as a waiver of any subsequent breach by either party or prevent either party from thereafter enforcing any such provisions.
- 9.7 Complete Agreement. This Agreement contains the complete and integrated understanding and Agreement between the parties and supersedes any understanding, Agreement or negotiation whether oral or written not set forth herein.
- 9.8 Non-Discrimination.
- 9.8.1 The City is an equal opportunity employer.
- 9.8.2 Non-discrimination in Employment. In the performance of this Agreement, the Vending Machine Operator will not discriminate against any employee or applicant for employment on the grounds of race, creed, color, national origin, sex, marital status, sexual orientation, age, honorably discharged veteran or military status, or the presence of any sensory, mental or physical disability, or the use of a trained guide dog or service animal by a person with a disability; provided, that the prohibition against discrimination in employment because of disability, or the use of a trained guide dog or service animal by a person with a disability, shall not apply if the particular disability prevents the proper performance of the particular worker involved. The Vending Machine Operator shall ensure that applicants are employed, and that employees are treated during employment without discrimination because of their race, creed, color, national origin, sex, marital status, sexual orientation, age, honorably discharged veteran or military status, or the presence of any sensory, mental or

physical disability or the use of a trained guide dog or service animal by a person with a disability. Such action shall include, but not be limited to: employment, upgrading, demotion or transfers, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and programs for training including apprenticeships. The Vending Machine Operator shall take such action with respect to this Agreement as may be required to ensure full compliance with local, state and federal laws prohibiting discrimination in employment.

9.8.3 Non-discrimination in Services. The Vending Machine Operator will not discriminate against any recipient of any services or benefits provided for in this Agreement on the grounds of race, creed, color, national origin, sex, marital status, sexual orientation, age, honorably discharged veteran or military status, or the presence of any sensory, mental or physical disability or the use of a trained guide dog or service animal by a person with a disability.

9.8.4 If any assignment and/or subcontracting has been authorized by the City, said assignment or subcontract shall include appropriate safeguards against discrimination. The Vending Machine Operator shall take such action as may be required to ensure full compliance with the provisions in the immediately preceding paragraphs herein.

9.9 Modification of Agreement. This Agreement may be modified by a writing explicitly identified as a modification of this Agreement that is signed by authorized representatives of the City and Vending Machine Operator.

9.10 No Partnership. The parties do not intend to create any joint venture or partnership by this Agreement.

9.11 Other Rights. The parties do not intend to confer any rights or benefits on any third parties by this Agreement.

9.12 Severability. If any part of this Agreement is found to be in conflict with applicable laws, such part shall be inoperative, null and void, insofar as it is in conflict with said laws, and the remainder of the Agreement shall remain in full force and effect.

9.13 Notices. Notices to the City of Oak Harbor shall be sent to the following address:

City of Oak Harbor
Attn: Connie Wheeler, City Clerk
865 SE Barrington Drive
Oak Harbor, WA 98277

Notices to Vending Machine Operator shall be sent to the following address:

Vending Machine Operator
Attn: _____

9.14 Venue. Any lawsuit arising out of this Agreement shall be brought in Island County Superior Court and the laws of the state of Washington shall apply to this Agreement.

IN WITNESS WHEREOF, the City and Vending Machine Operator have executed this Agreement as of the date first above written.

CITY:

VENDING MACHINE OPERATOR

CITY OF OAK HARBOR
865 SE Barrington Drive
Oak Harbor, WA 98277

Scott Dudley, Mayor

ATTEST:

Connie Wheeler, City Clerk