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ZANE STATE COLLEGE &
OHIO UNIVERSITY-ZANESVILLE
VENDING SERVICES AGREEMENT

^{CLM}
January 2009 This Vending Services Agreement (the "Agreement") is entered into this 6th day of ~~November, 2008~~, by and between Zane State College and Ohio University-Zanesville (the "College") and Ohio Rehabilitation Services Commission, Bureau of Services for the Visually Impaired, Business Enterprise Program (the "Contractor").

WITNESSETH:

WHEREAS, the parties are entering into this Agreement pursuant to Ohio Revised Code Sections 3304.28 et seq.

NOW THEREFORE, in consideration of the mutual covenants and conditions set forth herein, the College and the Contractor agree to each as follows:

1. SERVICES

- 1.1 Sale of Certain Products. The College grants the Contractor, through its licensed blind operator, the right to sell candy, snacks, and beverages in specified vending areas from vending machines.
- 1.2 Vending Service Locations. The Contractor shall provide vending services at the existing approved vending locations in the selected College and University buildings as follows: College Hall, Health Science Hall, The Campus Center, Littick Hall, Elson Hall, and Willett-Pratt Training Center and other agreed upon locations between the Contractor and College. Should new locations arise at the College from time to time a written addendum shall be executed between the College and Contractor for these services.

2. TERM

This agreement, unless otherwise terminated as permitted herein, shall be effective as of the date first written above. The Agreement shall initially terminate on June 30, 2009, (the "Initial Term"), but will automatically renew on July 1, 2009, for a two (2) year period ending June 30, 2011 (a "Renewal Term"). At that time College may renew this contract, on the same terms and conditions, by giving written notice to the Contractor by June 1, 2011.

3. VENDORS EQUIPMENT AND FACILITIES

- 3.1 Equipment. The Contractor will provide, install, maintain, and service the vending equipment. The vending equipment shall be UL approved, and quiet and

energy efficient by industry standards. The number and types of machines may be increased or reduced by mutual agreement between Contractor and College. Equipment must have variable pricing capabilities to accept bills and coins and give appropriate change. A program of preventive maintenance and regular replacement of worn, damaged, obsolete, or malfunctioning equipment shall be instituted and carried out by Contractor. The College shall not perform maintenance or repair on any equipment owned by Contractor. Any damage to College property resulting from replacing machines, or conducting the vending operation, will be repaired or replaced at Contractor's expense.

3.2 College's Requirements. The College will: (i) provide such heat and utilities services as may be reasonably required for efficient operation of the vending service facilities operated by the Contractor hereunder; (ii) provide on-campus, indoor, storage facilities in a location designated by the College; (iii) provide an exterior receptacle for trash and garbage removal services; (iv) provide pest extermination services; (v) provide parking in designated parking lots; and (vi) allow contractor to utilize designated loading docks.

3.3 Contractor Requirements. The Contractor will: (i) keep machines stocked at all times that the buildings are open and will provide all management and labor necessary for the efficient, sanitary operation of the vending service; (ii) adhere to standards of cleanliness and sanitary practices, and maintain the vending storage area, the floor underneath machines and wall areas around the vending equipment, as well as the interior and exterior surfaces of the vending equipment; (iii) remove trash from servicing and cleaning the vending operation to exterior dumpsters of the College; (iv) have a management representative of Contractor conduct equipment and facilities maintenance and sanitation inspections periodically.

4. FOOD SERVICE

The Contractor agrees that it will require its licensed blind operator to offer for sale only prepackaged candy, snacks, and beverages in specified vending areas from vending machines only. Any items supplied in the Contractor's vending machines shall not extend beyond the freshness expiration dates. The Contractor shall service its vending machines as business dictates and shall remove any damaged or past dated items. The College agrees that it will not sell prepackaged food items in the cafeteria. By limiting the items that the cafeteria and vending machines can sell, the parties agree not to directly compete against each other by each selling prepackaged food items. The Contractor acknowledges that the College may negotiate and enter into an exclusive pouring rights agreement with a beverage vendor selected by the College (the "Pouring Rights Agreement"). If the College enters into a Pouring Rights Agreement, the College, shall provide the Contractor with 30 days written notice of any requirement to supply or exclude a specific product and to purchase any product from a specific vendor. If the College enters into a Pouring Rights Agreement, such Agreement shall not negatively

impact the Contractor's revenue by increasing the per unit cost paid by the Contractor solely because of the Agreement.

5. PRICES

Prices may be adjusted once each year prior to the beginning of the Fall Quarter. If Contractor's licensed blind operator experiences extra ordinary price increases during any contract year, Contractor or designee may, in writing, propose to the College that an additional price adjustment be allowed during that contract year. The parties shall negotiate in good faith to come to an agreement on any additional price adjustments. If the College takes no action regarding price increases within 10 business days of the submittal, the Contractor will construe this non-action as acceptance of the request.

6. REFUND POLICY

A voucher refund system shall be required and shall involve dispersing of funds through representatives of the College at a designated location(s). The voucher system shall include a form supplied by Contractor and approved by the College to be filled out by the person making refund claim. Contractor shall have a \$50.00 change fund at the desk, if there is only one desk. If there is more than one desk, Contractor shall have \$20.00 change fund at each desk. Contractor shall be responsible for collecting vouchers and replenishing the change fund. All locations of vending machines shall be provided with instructions where refunds may be obtained. All such signs shall be professionally made.

7. PERSONNEL

7.1 The Contractor agrees that during the term hereof in providing vending services hereunder, it shall provide a licensed blind operator designated to work exclusively with the College. Licensees shall be selected to operate vending services at the College in compliance with the Ohio Revised Code and the Ohio Administrative Code. The Contractor certifies that throughout the term hereof no fewer than one-half of such licensed blind operator's employees shall be blind as required under Ohio Revised Code Section 3304.28 and the Ohio Administrative Code Section 3304-1-21-01, et seq. Contractor, the Blind Vendor, and their respective employees shall adhere to the College's campus regulations regarding personal behavior.

7.2 Contractor shall comply with all applicable federal, state and local laws regarding smoke-free and drug-free work places and shall ensure that any of its employees or licensed blind operator's employees engaged in the work being performed hereunder do not purchase, transfer, use or possess illegal drugs or alcohol or abuse prescription drugs in any way nor shall such persons bring a firearm or any

other weapon on the College's campus. Any violation of this Section 7.2 shall be grounds for immediate termination of this Agreement by the College.

- 7.3 All persons employed by the licensed blind operator under its agreement with Contractor who will perform work hereunder shall be employees of the licensed blind operator or the Contractor, not the College, and shall not be eligible for or receive any College benefits.
- 7.4 Except for preferences in employment given to legally blind individuals as permitted under Ohio Revised Code Section 3304.28 et seq., pursuant to Ohio Revised Code Section 125.11, Contractor agrees that Contractor, any licensed blind operator, and any person acting on behalf of Contractor or licensed blind operator, will not discriminate, by reason of race, creed, color, religion, sex, age, handicap, national origin, or ancestry against any citizen of this state in the employment of any person qualified and available to perform the work under this Agreement. Contractor further agrees that Contractor, and its licensed blind operator, and any person acting on behalf of Contractor or its licensed blind operator shall not, in any manner, discriminate against, intimidate, or retaliate against any employee hired for the performance of work under this Agreement on account of race, creed, color, religion, sex, age, handicap, national origin, or ancestry.
- 7.5 The Contractor shall ensure that its licensed blind operator's employees assigned to the College wear uniforms and/or other forms of appropriate, well displayed, identification so that they can be readily identified as employees of the licensed blind operator. The personnel shall be neat and clean in appearance.
- 7.6 The Contractor shall ensure that its licensed blind operator and his or her employees shall observe all College policies with respect to parking, security and traffic regulations.

Contractor will be responsible for control of all keys obtained from the College. All requests for keys and reports of any lost keys will be made through the College's Director of Facilities.

Contractor will obtain any necessary traffic and parking permits from the College Security Office. Contractor will provide any necessary transportation and will abide by ODOT laws and College policy.

8. INSURANCE

Contractor shall provide at all times during the contract period the following insurance coverage:

- 1) Workers Compensation as required by law.

- 2) Public liability insurance, in occurrence form, under a comprehensive coverage form of policy, consumption or use of products, in amounts of not less than \$1,000,000 for bodily injury, including death, to any one person and not less than \$2,000,000 for any one occurrence.
- 3) Property damage insurance, in occurrence form, under a comprehensive form of policy in amount not less than \$2,000,000 for each accident and aggregate.
- 4) Automobile liability insurance with basic limits \$300,000/\$500,000 and \$50,000 each occurrence and \$50,000 property damage, including personal injury.
- 5) Contractor agrees to supply a current certificate of insurance to the College with 21 working days after acceptance of a contract and name Zane State College and Ohio University as additional insureds.
- 6) College must have ten (10) days notice of cancellation or change in insurance coverage and give its approval.

9. LICENSES, PERMITS, AND TAXES

The Contractor shall, itself or if necessary cause its licensed blind operator to secure in its name and at its expense all federal, state and local licenses and permits required for operation of the vending service provided for herein, as well as pay all applicable sales and excise taxes attributable to the vending services provided for herein. The cost of all such items shall be a direct cost of operation of the Contractor.

10. COMPENSATION TO CONTRACTOR FOR FOOD SERVICE OPERATION

- 10.1 Ownership to Campus – Contractor will transfer ownership to the College of all kitchen and cafeteria food service equipment and furnishings that is owned by Contractor, that is currently located at College. Any ownership certificates, owner’s manuals or other documentation related to the equipment will be provided to College within twenty (20) days after this agreement is signed.
- 10.2 Commission Waiver Period – To compensate for the aforementioned equipment, the College agrees to forego receiving any commission payment from vending sales from February 1, 2007 through June 30, 2009.
- 10.3 Coffee-cart Commissions – In lieu of Contractor operating coffee carts, College will pay 50% of any coffee cart commissions received by the 20th of each month on sales for the previous month beginning on the date the agreement is signed.

11. SERVICE REIMBURSEMENT FEE, PAYMENTS, AND ACCOUNTING

11.1 Service Reimbursement Fee – In order to partially reimburse the College for utilities, storage spaces and other amenities it provides to the Contractor in connection with the vending services Contractor is providing hereunder, the Contractor shall pay the College, after the Commission Waiver Period, a ten percent (10%) service reimbursement fee on all of the vending revenues it obtains on the College's campus. This service reimbursement fee shall be paid to the Campus based upon the previous months adjusted gross vending revenues (gross sales less sales tax).

11.2 Payments – Contractor shall furnish by the 20th of each month the commission check and a detailed report of the sales of the previous calendar month. The sales report shall be subtotaled for each vending location and include its gross receipts, and commission return. Sales reports shall be submitted, even during the commission waiver period. Commission checks are to be made payable to Zane State College and sent along with the monthly reports to:

Business Office
Zane State College
1555 Newark Road
Zanesville, OH 43701

11.3 Accounting – Contractor shall maintain complete and accurate records of vending transactions for each machine in accordance with accepted industry accounting practices, and shall keep in a safe place all such financial records and statements pertaining to the operations of the College for a period of five (5) years from the close of each year's operation. All records shall be open for inspection and/or audit by the College at any reasonable time.

12. TERMINATION

If either party hereto does not meet any of its obligations set forth herein, the non-breaching party shall provide the other party with a written notice to cure to the individual named within Section 20 to receive such notice. If the breaching party does not correct the breach within thirty (30) days of the date such notice was issued or immediately if it applies to an employee of Contractor or its licensed blind operator if such notice is provided based upon a violation of Section 7.2, the non-breaching party shall have the immediate right to terminate its obligations under the Agreement without penalty. If contract is not to be renewed, College will give Contractor 60 days written notice.

13. SECURITY

The College shall provide reasonable assistance to the Contractor to maintain the security of the premises, equipment and inventories assigned to or owned by the

Contractor. The foregoing notwithstanding, the College shall not be responsible in any way to the Contractor for said losses, if any.

14. APPLICABLE LAWS AND REGULATIONS

The Contractor shall operate its business at the College's facilities in compliance with all applicable federal, state, and local laws, rules, and regulations.

15. EVALUATION

The Contractor and the Contractor's licensed blind operator shall, on an as needed basis, send management representatives to meet with such appropriate persons as are designated by the College to discuss the vending services so that, through mutual cooperation, good relationships will be maintained with those who use the Contractor's services and so that any service issues can be promptly resolved.

16. FACILITY USE

It is specifically understood that the College may, with minimal interference to Contractor's normal vending services, use the vending service areas from time-to-time for such purposes (student testing, special activities, etc.) as may be required. Appropriate setup and cleanup shall be undertaken by College personnel. The College shall make every effort to not block or hinder access to the vending areas during these times unless the College has previously communicated specific instructions to Contractor that Contractor will not have access to its machines at the times specified by the College. All such use by the College under this paragraph will be at a minimum so as to not affect Contractor's performance or ability to operate under this Agreement.

17. CHANGE IN LAWS OR INTERPRETATION OF LAWS

The parties hereto agree that this Agreement is voidable by the College or Contractor if during any Term there is any change in the laws or interpretation of the laws related to a state college's obligation to utilize the services of the Contractor or another similar entity providing vending machine services at the College. The laws and interpretation thereof shall include, but shall not be limited to Section 3304.28 et seq. of the Ohio Revised Code, Section 3304 et seq. of the Ohio Administrative Code, related Attorney General Opinions, case law and the outcome of any fully adjudicated Ohio Revised Code Section 119 hearings and appeals.

18. GOVERNING LAW

This Agreement and the rights of the parties hereunder shall be governed, construed, and interpreted in accordance with the laws of the State of Ohio and only Ohio courts shall have jurisdiction over any action or proceeding concerning the Agreement and/or performance thereunder.

19. ENTIRE AGREEMENT AND MODIFICATION

This Agreement represents the entire agreement and understanding between the parties. No oral or other agreements, not specifically contained within this Agreement, are valid or binding and have any legal effect. No modification to this Agreement shall be valid or binding, unless such is reduced in writing, executed by the parties hereto and attached and titled as an Addendum. The provisions of this Agreement are severable and independent, and if any such provision shall be determined to be unenforceable in whole or in part, the remaining provisions and any partially enforceable provision shall, to the extent enforceable in any jurisdiction, nevertheless be binding and enforceable.

20. NOTICES

All notices from one party to the other under the terms of this Agreement, unless otherwise directed, shall be in writing, hand delivered, sent by fax (with retention of confirmation), certified mail or by a responsible overnight courier, addressed to the parties at the addresses indicated below and shall be deemed delivered on the date of receipt.

To the College: Vice President, Business Services
Zane State College
1555 Newark Road
Zanesville, OH 43701

To the Contractor: Rehabilitation Services Commission
Director, Bureau of Services for Visually Impaired
400 E. Campus View Blvd., SW3 A
Columbus, OH 43235-4604

21. WAIVERS

Each party acknowledges and agrees that any failure on the part of another party to enforce at any time, or for any period of time, any of the provisions of this Agreement shall not be deemed or construed to be a waiver of such provisions or of the right of such other party thereafter to enforce each and every such provision.

22. CAPTIONS AND REFERENCES

The captions in this Agreement are for convenience of reference only and shall not define or limit any of the terms or provisions hereof. Reference herein to sections and subsections without reference to the document in which they are contained are references to this Agreement.

IN WITNESS WHEREOF, each of the parties has caused this Agreement to be executed by its duly authorized representative on the day and year first set forth above.

ZANE STATE COLLEGE

OHIO REHABILITATION SERVICES
COMMISSION BUREAU OF SERVICES
FOR VISUALLY IMPAIRED

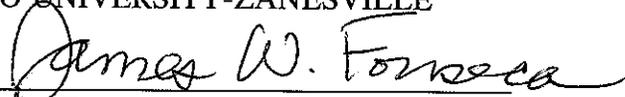
By 
Albert Brown
Vice President, Business Services

By 
S. Michael Hanes
Director, Bureau of Services for the
Visually Impaired

Date 12/23/08

Date: 1/6/09

OHIO UNIVERSITY-ZANESVILLE

By 
Jim Fonseca
Dean

Date: 12/24/08