

040615-13

**VENDING MACHINE PLACEMENT AGREEMENT
LARAMIE COUNTY, WYOMING /STEWART S. MCALISTER
d/b/a S & H INDUSTRIES**

THIS AGREEMENT is made and entered into by and between Laramie County, Wyoming, P.O. Box 608, Cheyenne, Wyoming 82003-0608, ("COUNTY") and Stewart S. McAlister d/b/a S & H Industries, 958 Torrey Street, Golden, CO 80401-3754 ("CONTRACTOR"). The parties agree as follows:

I. PURPOSE

The purpose of this Agreement is to allow for the placement of CONTRACTOR's vending machines in Laramie County Government buildings and for payment of commissions from the sales from these machines to COUNTY.

II. TERM

This Agreement shall commence on July 1st, 2004, and shall remain in full force and effect until June 30, 2005. This Agreement may be renewed, with or without modification, upon the mutual written Agreement of the parties.

III. RESPONSIBILITIES OF COUNTY

COUNTY shall allow CONTRACTOR, subject to the terms of this Agreement, to place and maintain vending machines in the Laramie County Buildings described in Attachment 'A' to this Agreement.

IV. RESPONSIBILITIES OF CONTRACTOR

A. CONTRACTOR shall place vending machines in the locations listed in Attachment 'A' attached hereto and fully incorporated herein.

B. Pursuant to the terms of this Agreement, the CONTRACTOR shall manage the vending machines by providing the machines, products and related services, to include:

- 1. Placement
- 2. Loading/filling
- 3. Servicing
- 4. Cleaning and maintenance
- 5. Pricing
- 6. Customer relations
- 7. Accounting

C. Vending machines placed pursuant to this Agreement shall vend those goods and/or

*Contractor
Stewart S. McAlister
d/b/a S & H Industries*

COPY OF RECORD

services named in Attachment 'A'. Product substitutions may be made at any time based on customer requests.

D. All vending machines shall remain the sole exclusive property of CONTRACTOR.

E. CONTRACTOR shall pay for all costs related to installation or removal of machines and agrees to indemnify and recompense COUNTY for any damage to COUNTY property, equipment or loss of COUNTY services resulting from the actions of CONTRACTOR's employees or agents from said installation or removal. Machines shall be installed no later than five (5) days from the effective date of this Agreement.

F. All vending machines shall bear the name, address and telephone number of the CONTRACTOR and shall state that the machine is the sole property of the CONTRACTOR.

G. All vending machines shall prominently display any permit stickers or labels required by any applicable ordinance or regulation.

H. CONTRACTOR shall, at CONTRACTOR'S expense, obtain all necessary permits, give all notices, pay all license fees and comply with all applicable laws, rules, ordinances and/or regulations, including but not limited to those relating to public health and hygiene or the business conducted pursuant to this Agreement. The burden of determining applicability of licensing requirements, laws, ordinance and/or regulations for the CONTRACTOR and CONTRACTOR's employees or agents rests with CONTRACTOR.

I. CONTRACTOR may replace machines as necessary with similar machines upon prior notification to COUNTY. Replacement machines shall be subject to the terms and conditions of this Agreement.

J. Machines may be removed permanently upon mutual written agreement between CONTRACTOR and COUNTY.

K. CONTRACTOR shall provide proof of insurance for at least \$500,000 in liability upon signature of this Agreement. This certificate of insurance shall be affixed hereto and fully incorporated herein as Attachment 'B'. CONTRACTOR agrees and warrants to provide notice, in writing, in advance should any change or termination occur in the insurance maintained by CONTRACTOR pursuant to this Agreement.

L. CONTRACTOR shall service the vending machines as follows:

1. Machines shall be kept clean inside and out.
2. CONTRACTOR shall make arrangements for refund of money to customers due to equipment malfunction, including but not limited to, non-delivery of merchandise, spoiled product or incorrect change. The phone number for contact with CONTRACTOR indicated on the machine shall be available for referral of customer complaints.

3. CONTRACTOR shall provide written advance notice to COUNTY when or if the name and contact information for the individual responsible for maintenance, service customer relations or complaints for the machines changes. Nothing in this provision shall serve to abrogate or modify Section V(E) "Assignment" of this Agreement.
4. CONTRACTOR shall repair or replace vending machines and other ancillary equipment which are damaged, destroyed, or rendered inoperable by any cause.
5. CONTRACTOR shall assure that all food complies with any requirements of the Wyoming State Department of Agriculture or any applicable federal guidelines and assure that storage and transportation of food, containers, and supplies shall be maintained in a sanitary manner and at applicable safe temperatures as required by the State Department of Agriculture or applicable local ordinances or regulations.

M. CONTRACTOR shall be responsible for establishing prices to be charged for the merchandise. CONTRACTOR further agrees that all prices so established and charged will be comparable to the prevailing prices for similar merchandise soled in the community.

N. Commissions:

1. Commissions shall be based on the gross amount of money collected from each machine, less sales tax.
2. Vending machine commissions shall be paid at least quarterly (every three months) on or before the following dates for the three months, or other time period, preceding the date: January 1st, April 1st, July 1st and October 1st.
3. Commissions shall be paid by check or money order to the Laramie County Treasurers's Office.
4. CONTRACTOR shall document and maintain verifiable vending machine sales records. These sales records must be maintained according to generally accepted accounting procedures. CONTRACTOR will make these records available to COUNTY upon request.
5. Vending reports shall accompany the commission payments. The reports shall specify:
 - a. The period of time the payment covers
 - b. The location of each machine
 - c. The gross sales of each machine: and
 - d. The total commission for each machine
6. The percentage of commission due for each machine is listed in Attachment 'A'
7. Failure to remit commissions to COUNTY within fifteen (15) business days from the end of a quarter shall be deemed a default of this Agreement and COUNTY may, in its discretion, terminate this Agreement or avail itself of any available legal remedies or both.

O. CONTRACTOR shall maintain, through cleaning and upkeep, the areas of the Laramie County Government Complex used in the operation of the vending machines in a manner consistent with and in accord with the directions of the Laramie County Director of Maintenance (hereinafter

“Director”). A failure to conform to the requirements of this provision may result in the immediate termination, at the discretion of the Director, of this Agreement. This provision operates in addition to Section V(C) “Termination.”

P. CONTRACTOR understands, agrees and warrants that nothing in this Agreement operates as a continuing license or agreement for CONTRACTOR to continue providing vending machine services in any COUNTY building or property except as specified in this agreement. Nor does this Agreement prevent COUNTY from seeking or employing the services of other providers for the same or similar services.

Q. CONTRACTOR agrees to retain all required records for three (3) years after termination of this Agreement and all other matters relating to the Agreement are concluded. CONTRACTOR agrees to permit access by the COUNTY or any of its duly authorized representatives to any books, documents, papers and records of the CONTRACTOR which are directly pertinent to this specific Agreement for purposes including but not limited to audit, examination, excerpts, copying and transcriptions.

R. Upon termination of this Agreement, CONTRACTOR agrees and warrants that it shall remove all machines covered by this Agreement within five (5) business days of the date of termination.

V. GENERAL PROVISIONS

A. Independent Contractor: The services to be performed by CONTRACTOR are those of an independent contractor and not as an employee of COUNTY. CONTRACTOR is not eligible for Laramie County Employee benefits and will be treated as an independent contractor for federal tax filing purposes. CONTRACTOR assumes responsibility for its personnel who provide services pursuant to this contract and will make all deductions required of employers by state, federal and local laws and shall maintain liability insurance for each of them. CONTRACTOR is free to perform the same or similar services for others.

B. Acceptance Not Waiver: COUNTY acceptance of the services or materials furnished hereunder shall not in any way relieve CONTRACTOR of responsibility for adherence to the terms of this Agreement. COUNTY approval or acceptance of payment for, any of the vending services shall not be construed to operate as a waiver of any rights under this Agreement or of any cause of action arising out of the performance of this Agreement.

C. Termination: This Agreement may be terminated (a) by either party at any time for failure of the other party to comply with the terms and conditions of this agreement; (b) by either party, with thirty (30) days' prior written notice to the other party; or (c) upon mutual written agreement by both parties.

D. Entire Agreement: This Agreement (7 pages), Attachment ‘A’ (1 page) and Attachment ‘B’ (1 page) represent the entire and integrated agreement and understanding between the parties and supersedes all prior negotiations, statements, representations and agreements, whether

written or oral.

E. Assignment: Neither this Agreement, nor any rights or obligations hereunder shall be assigned or delegated by a party without the prior written consent of the other party.

F. Modification: This Agreement shall be modified only by a written agreement, duly executed by all parties hereto.

G. Invalidity: If any provision of this Agreement is held invalid or unenforceable by any court of competent jurisdiction, or if the COUNTY is advised of any such actual or potential invalidity or unenforceability, such holding or advice shall not invalidate or render unenforceable any other provision hereof. It is the express intent of the parties that the provisions of this Agreement are fully severable.

H. Applicable Law and Venue: The parties mutually understand and agree this Agreement shall be governed by and interpreted pursuant to the laws of the State of Wyoming. If any dispute arises between the parties from or concerning this Agreement or the subject matter hereof, any suit or proceeding at law or in equity shall be brought in the District Court of the State of Wyoming, First Judicial District, sitting at Cheyenne, Wyoming. The foregoing provisions of this paragraph are agreed by the parties to be a material inducement to CONTRACTOR and to COUNTY in executing this Agreement. This provision is not intended nor shall it be construed to waive COUNTY's governmental immunity as provided in this Agreement.

I. Contingencies: CONTRACTOR certifies and warrants no gratuities, kick-backs or contingency fees were paid in connection with this Agreement, nor were any fees, commissions, gifts or other considerations made contingent upon the award of this Agreement.

J. Discrimination: All parties agree they will not discriminate against any person who performs work under the terms and conditions of this Agreement because of race, color, gender, creed, handicapping condition, or national origin.

K. ADA Compliance: All parties agree they will not discriminate against a qualified individual with disability, pursuant to a law as set forth in the Americans With Disabilities Act, P.L. 101-336, 42 U.S.C. § 12101, *et seq.*, and/or any properly promulgated rules and regulations relating thereto, and each party further agrees to indemnify, release, save and hold harmless the other and their officers, agents and employees from any causes of action or claims or demands arising out of the failure of that party in performing this Agreement to comply with the requirements, responsibilities and/or duties as such are set forth in the Americans With Disabilities Act and/or properly promulgated rules and regulations related thereto.

L. Governmental/Sovereign Immunity: COUNTY does not waive its Governmental/Sovereign Immunity, as provided by any applicable law including W.S. § 1-39-101 *et seq.*, by entering into this Agreement. Further, COUNTY fully retains all immunities and defenses provided by law with regard to any action, whether in tort, contract or any other theory of law, based on this Agreement.

M. Indemnification: To the fullest extent permitted by law, CONTRACTOR agrees to indemnify and hold harmless COUNTY, its elected and appointed officials, employees and volunteers from any and all liability for injuries, damages, claims, penalties, actions, demands or expenses arising from or in connection with work performed by or on behalf of CONTRACTOR pursuant to this Agreement. CONTRACTOR shall carry liability insurance sufficient to cover its obligations under this provision and provide COUNTY with proof of such insurance.

N. Third Parties: The parties do not intend to create in any other individual or entity the status of third party beneficiary, and this Agreement shall not be construed so as to create such status. The rights, duties and obligations contained in this Agreement shall operate only between the parties to the Agreement, and shall inure solely to the benefit of the parties to this Agreement.

O. Conflict of Interest: COUNTY and CONTRACTOR affirm, to their knowledge, no CONTRACTOR employee has any personal beneficial interest whatsoever in the agreement described herein. No staff member of CONTRACTOR, compensated either partially or wholly with funds from this Agreement, shall engage in any conduct or activity which would constitute a conflict of interest relative to this Agreement.

P. Force Majeure: Neither party shall be liable to perform under this Agreement if such failure arises out of causes beyond control, and without the fault or the negligence of said party. Such causes may include, but are not restricted to, Act of God or the public enemy, fires, floods, epidemics, quarantine restrictions, freight embargoes, and unusually severe weather. In every case, however, a failure to perform must be beyond the control and without the fault or the negligence of said party.

Q. Limitation on Payment: COUNTY's obligations under this Agreement are conditioned upon the availability of funds which are appropriated or allocated for the continuance of any obligation under this Agreement. If funds are not allocated and available for the continuance of this Agreement, the Agreement may be terminated by COUNTY at the end of the period for which funds are available. COUNTY shall notify CONTRACTOR at the earliest possible time if continuance of this Agreement will or may be effected by a shortage of funds. At the earliest possible time means at least thirty (30) days before the shortage will affect payment of claims, if COUNTY knows of the shortage at least thirty (30) days in advance. No penalty shall accrue to COUNTY in the event this provision is exercised, and COUNTY shall not be obligated or liable for any damages as a result of termination under this provision.


R. Notices: All notices required and permitted under this Agreement shall be deemed to have been given, if and when deposited in the U.S. Mail, properly stamped and addressed to the party for whom intended at such parties' address listed herein, or when personally delivered personally to such party. A party may change its address for notice hereunder by giving written notice to the other party.

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VENDING MACHINE PLACEMENT AGREEMENT
LARAMIE COUNTY, WYOMING /STEWART S. MCALISTER
d/b/a S & H INDUSTRIES

Signature Page

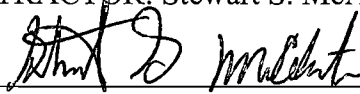
LARAMIE COUNTY, WYOMING

By:  Date 6-16-04
Jack Knudson, Chairman
Laramie County Commissioners

ATTEST:

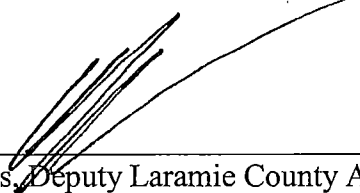
By:  Date 6-16-04
Debbye Lathrop
Laramie County Clerk

CONTRACTOR: Stewart S. McAlister d/b/a S & H Industries

By:  Date 5/24/04
Stewart S. McAlister, Owner/Operator

This Agreement is effective the date of the last signature affixed to this page.

REVIEWED AND APPROVED AS TO FORM ONLY:

By:  Date 5/18/04
Mark Voss, Deputy Laramie County Attorney

Mark T. Voss
Deputy County Attorney
310 West 19th Street, Suite 320
Cheyenne WY 82001

May 17, 2004

Dear Mr. Voss,

Per your letter dated April 4, 2004, this response will hopefully fulfill the requirements to continue serve the Bulk Vending needs of Laramie County. First off, I am the new owner of the company serving Laramie County. The previous company was J & C Enterprises, and my company is named S & H Industries.

I currently have bulk vending machines located in three Laramie County buildings:

Building	Description	Product	Commission	Service Int.
#1 Laramie County Gov Bldg	Northwestern on Chrome Stand	Cashew-.25	37%	Weekly
		Almond-.25		
		MM - .25		
		Licorice-.25		
		Gum - .25		
		Asst Sour-.25		
#2 Laramie Sheriff	Machine on Chrome Stand	Cashew-.25	37%	Weekly
		Almond-.25		
		Gorp - .25		
		Gum - .25		
#3 Public Works	Machines on Pipe Stand	Almond-.25	37%	Weekly
		Cashew-.25		
		MM - .25		
		Hot Tamale-.25		

Enclosed also are current copies of my insurance documentation.

If you need any other information please give me a call at (303)917-5307.

If Laramie County would like additional machines placed with in any of your facilities, please let me know.

Thank you,



Stewart S. McAlister
Owner/Operator S & H Industries

**LARAMIE COUNTY CLERK
BOARD OF COUNTY COMMISSIONERS
AGENDA ITEM PROCESSING FORM**

1. DATE OF PROPOSED ACTION: June 15, 2004

2. AGENDA ITEM: <input type="checkbox"/> Appointments <input type="checkbox"/> Bids/Purchases <input type="checkbox"/> Claims <input checked="" type="checkbox"/> Contracts/agreements/leases <input type="checkbox"/> Grants <input type="checkbox"/> Land Use: Variances/Board App/Plats <input type="checkbox"/> Proclamations <input type="checkbox"/> Public Hearings/Rules & Reg's <input type="checkbox"/> Reports & Public Petitions <input type="checkbox"/> Resolutions <input type="checkbox"/> Other
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3. DEPARTMENT: Building Maintenance

APPLICANT: S & H Industries

AGENT: Chris Wegner

4. DESCRIPTION: Consideration of a agreement to allow for placement of contractor's vending machines in Laramie County buildings.

Amount \$

From **July 1, 2004**

To **June 30, 2005**

5. DOCUMENTATION: 2 Originals and (4) four copies

one original to S+H 6-17-04

<u>Clerks Use Only:</u>	
<u>Commissioner</u>	<u>Signatures</u>
Humphrey _____	Co Attny _____
Knudson _____	Assist Co Attny _____
Ketcham _____	Grants Manager _____
Action _____	Outside Agency _____
Postponed/Tabled _____	