

**PROFESSIONAL SERVICES AGREEMENT BETWEEN
CITY OF POMONA AND
FIRST CHOICE REFRESH INC**

1. PARTIES AND DATE.

This Agreement is made and entered into this 1st day of July, 2026, by and between the City of Pomona, a California charter city and municipal corporation, organized under the laws of the State of California, with its principal place of business at 505 South Garey Avenue, Pomona, California 91766 ("City") and First Choice Refresh Inc, a California Corporation, with its principal place of business at 19548 Los Alimos Street, Northridge, California 91326 ("Vendor"). City and Vendor are sometimes individually referred to herein as "Party" and collectively as "Parties."

2. RECITALS.

2.1 Vendor.

Vendor is duly licensed in the State of California and has the necessary qualifications to provide such services. Vendor desires to perform and assume responsibility for the provision of certain professional services required by the City on the terms and conditions set forth in this Agreement. Vendor represents that it is experienced in providing professional services for vending machine services, and possesses the necessary expertise, resources, and personnel to complete the Project in a timely and professional manner as specified herein.

2.2 Project.

City desires to engage Vendor to render such professional vending machine services for the City of Pomona, Community Services Department ("Project") as set forth in this Agreement.

3. TERMS.

3.1 SCOPE OF SERVICES AND TERM.

3.1.1 General Scope of Services. Vendor promises and agrees to furnish to the City all labor, materials, tools, equipment, services, and incidental and customary work necessary to fully and adequately supply the professional Vending Machine services necessary for the Project ("Services"). The Services are more particularly described in Exhibit "A" attached hereto and incorporated herein by reference. All Services shall be subject to, and performed in accordance with, this Agreement, the exhibits attached hereto and incorporated herein by reference, and all applicable local, state and federal laws, rules and regulations.

3.1.2 Term. This Agreement is entered into on July 1, 2026, and continuing through June 30, 2027, for a period of (1) year, with an option to extend up to four (4) additional one (1) year terms. An amendment to extend the term of this Agreement shall require a written amendment fully executed by the Parties at least thirty (30) days prior the date the Agreement expires.

3.2 Responsibilities of Vendor.

3.2.1 Independent Contractor; Control and Payment of Subordinates. Services shall be performed by Vendor or under its supervision. Vendor will determine the means, methods and details of

performing the Services subject to the requirements of this Agreement. City retains Vendor on an independent contractor basis and not as an employee. Vendor retains the right to perform similar or different services for others during the term of this Agreement. Any additional personnel performing the Services under this Agreement on behalf of Vendor shall also not be employees of City and shall at all times be under Vendor's exclusive direction and control. Neither City, nor any of its officials, officers, directors, employees or agents shall have control over the conduct of Vendor or any of Vendor's officers, employees, or agents, except as set forth in this Agreement. Vendor shall pay all wages, salaries, and other amounts due such personnel in connection with their performance of Services under this Agreement and as required by law. Vendor shall be responsible for all reports and obligations respecting such additional personnel, including, but not limited to: social security taxes, income tax withholding, unemployment insurance, disability insurance, and workers' compensation insurance.

3.2.2 Schedule of Services. Vendor shall perform the Services expeditiously, within the term of this Agreement, and in accordance with the Schedule of Services set forth in Exhibit "B" attached hereto and incorporated herein by reference. Vendor represents that it has the professional and technical personnel required to perform the Services in conformance with such conditions. In order to facilitate Vendor's conformance with the Schedule, City shall respond to Vendor's submittals in a timely manner. Upon request of City, Vendor shall provide a more detailed schedule of anticipated performance to meet the Schedule of Services.

3.2.3 Conformance to Applicable Requirements. All work prepared by Vendor shall be subject to the approval of City.

3.2.4 Substitution of Key Personnel. Vendor has represented to City that certain key personnel will perform and coordinate the Services under this Agreement. Should one or more of such personnel become unavailable, Vendor may substitute other personnel of at least equal competence upon written approval of City. In the event that City and Vendor cannot agree as to the substitution of key personnel, City shall be entitled to terminate this Agreement for cause. As discussed below, any personnel who fail or refuse to perform the Services in a manner acceptable to the City, or who are determined by the City to be uncooperative, incompetent, a threat to the adequate or timely completion of the Project or a threat to the safety of persons or property, shall be promptly removed from the Project by the Vendor at the request of the City.

3.2.5 City's Representative. City hereby designates Mike Osoff, Community Services Manager or his/her designee, to act as its representative in all matters pertaining to the administration and performance of this Agreement ("City's Representative"). City's Representative shall have the power to act on behalf of the City for review and approval of all products submitted by Vendor but not the authority to enlarge the Scope of Work or change the total compensation due to Vendor under this Agreement. The City Manager shall be authorized to act on City's behalf and to execute all necessary documents which enlarge the Scope of Work or change the Vendor's total compensation subject to the provisions contained in Section 3.3 of this Agreement. Vendor shall not accept direction or orders from any person other than the City Manager, City's Representative or his/her designee.

3.2.6 Vendor's Representative. Vendor hereby designates Richard Salama, or his/her designee, to act as its representative for the performance of this Agreement ("Vendor's Representative"). Vendor's Representative shall have full authority to represent and act on behalf of the Vendor for all purposes under this Agreement. Vendor's Representative shall supervise and direct the Services, using his/her best skill and attention, and shall be responsible for all means, methods, techniques, sequences, and procedures and for the satisfactory coordination of all portions of the Services under this Agreement.

3.2.7 Coordination of Services. Vendor agrees to work closely with City staff in the performance of Services and shall be available to City's staff, Vendors and other staff at all reasonable times.

3.2.8 Standard of Care; Performance of Employees. Vendor shall perform all Services under this Agreement in a skillful and competent manner, consistent with the standards generally recognized as being employed by professionals in the same discipline in the State of California. Vendor represents and maintains that it is skilled in the professional calling necessary to perform the Services. Vendor warrants that all employees and sub-vendors shall have sufficient skill and experience to perform the Services assigned to them. Finally, Vendor represents that it, its employees and sub-vendors have all licenses, permits, qualifications and approvals of whatever nature that are legally required to perform the Services, and that such licenses and approvals shall be maintained throughout the term of this Agreement. As provided for in the indemnification provisions of this Agreement, Vendor shall perform, at its own cost and expense and without reimbursement from the City, any services necessary to correct errors or omissions which are caused by the Vendor's failure to comply with the standard of care provided for herein. Any employee of the Vendor or its sub-vendors who is determined by the City to be uncooperative, incompetent, a threat to the adequate or timely completion of the Project, a threat to the safety of persons or property, or any employee who fails or refuses to perform the Services in a manner acceptable to the City, shall be promptly removed from the Project by the Vendor and shall not be re-employed to perform any of the Services or to work on the Project.

3.2.9 Laws and Regulations; Employee/Labor Certification. Vendor shall keep itself fully informed of and in compliance with all local, state and federal laws, rules and regulations in any manner affecting the performance of the Project or the Services, including all Cal/OSHA requirements, and shall give all notices required by law. Vendor shall be liable for all violations of such laws and regulations in connection with Services. If Vendor performs any work knowing it to be contrary to such laws, rules and regulations, Vendor shall be solely responsible for all costs arising therefrom. Vendor shall defend, indemnify and hold City, its officials, directors, officers, employees, agents, and volunteers free and harmless, pursuant to the indemnification provisions of this Agreement, from any claim or liability arising out of any failure or alleged failure to comply with such laws, rules or regulations.

3.2.9.1 Employment Eligibility; Vendor. By executing this Agreement, Vendor verifies that it fully complies with all requirements and restrictions of state and federal law respecting the employment of undocumented aliens, including, but not limited to, the Immigration Reform and Control Act of 1986, as may be amended from time to time. Such requirements and restrictions include, but are not limited to, examination and retention of documentation confirming the identity and immigration status of each employee of the Vendor. Vendor also verifies that it has not committed a violation of any such law within the five (5) years immediately preceding the date of execution of this Agreement, and shall not violate any such law at any time during the term of the Agreement. Vendor shall avoid any violation of any such law during the term of this Agreement by participating in an electronic verification of work authorization program operated by the United States Department of Homeland Security, by participating in an equivalent federal work authorization program operated by the United States Department of Homeland Security to verify information of newly hired employees, or by some other legally acceptable method. Vendor shall maintain records of each such verification, and shall make them available to the City or its representatives for inspection and copy at any time during normal business hours. City shall not be responsible for any costs or expenses related to Vendor's compliance with the requirements provided for in this Section and any of its sub-sections.

3.2.9.2 Employment Eligibility; Subcontractors, Vendors, Sub-subcontractors and Sub-vendors. To the same extent and under the same conditions as Vendor, Vendor shall require all of

its subcontractors, sub-subcontractors, and sub-vendors performing any work relating to the Project or this Agreement to make the same verifications and comply with all requirements and restrictions provided for in this Section and any of its subsections.

3.2.9.3 Employment Eligibility; Failure to Comply. Each person executing this Agreement on behalf of Vendor verifies that they are a duly authorized officer of Vendor, and understands that any of the following shall be grounds for the City to terminate the Agreement for cause: (1) failure of Vendor or its subcontractors, Vendors, sub-subcontractors or sub-vendors to meet any of the requirements provided for in this Section and any of its subsections; (2) any misrepresentation or material omission concerning compliance with such requirements (including in those verifications provided to the Vendor under this Agreement); or (3) failure to immediately remove from the Project any person found not to be in compliance with such requirements.

3.2.9.4 Equal Opportunity Employment. Vendor represents that it is an equal opportunity employer and it shall not discriminate against any sub-vendor, employee or applicant for employment because of race, religion, color, national origin, handicap, ancestry, sex or age. Such non-discrimination shall include, but not be limited to, all activities related to initial employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff or termination. Vendor shall also comply with all relevant provisions of City's Minority Business Enterprise program, Affirmative Action Plan or other related programs or guidelines currently in effect or hereinafter enacted.

3.2.9.5 Air Quality. To the extent applicable, Vendor must fully comply with all applicable laws, rules and regulations in furnishing or using equipment and/or providing services, including, but not limited to, emissions limits and permitting requirements imposed by the South Coast Air Quality Management District (SCAQMD) and/or California Air Resources Board (CARB). Although the SCAQMD and CARB limits and requirements are more broad, Vendor shall specifically be aware of their application to "portable equipment", which definition is considered by SCAQMD and CARB to include any item of equipment with a fuel-powered engine. Vendor shall indemnify City against any fines or penalties imposed by SCAQMD, CARB, or any other governmental or regulatory agency for violations of applicable laws, rules and/or regulations by Vendor, its sub-Vendors, or others for whom Vendor is responsible under its indemnity obligations provided for in this Agreement.

3.2.9.6 Safety. Vendor shall execute and maintain its work so as to avoid injury or damage to any person or property. In carrying out its Services, Vendor shall at all times be in compliance with all applicable local, state and federal laws, rules and regulations, and shall exercise all necessary precautions for the safety of employees appropriate to the nature of the work and the conditions under which the work is to be performed. Safety precautions, where applicable, shall include, but shall not be limited to: (A) adequate life protection and lifesaving equipment and procedures; (B) instructions in accident prevention for all employees and sub-vendors, such as safe walkways, scaffolds, fall protection ladders, bridges, gang planks, confined space procedures, trenching and shoring, equipment and other safety devices, equipment and wearing apparel as are necessary or lawfully required to prevent accidents or injuries; and (C) adequate facilities for the proper inspection and maintenance of all safety measures.

3.2.10 Insurance.

3.2.10.1 Time for Compliance. Vendor shall not commence work under this Agreement until it has provided evidence satisfactory to the City that it has secured all insurance required under this section. In addition, Vendor shall not allow any sub-vendor to commence work on any subcontract until it has provided evidence satisfactory to the City that the sub-vendor has secured all

insurance required under this section. Failure to provide and maintain all required insurance shall be grounds for the City to terminate this Agreement for cause.

3.2.10.2 Types of Insurance Required. As a condition precedent to the effectiveness of this Agreement for work to be performed hereunder, and without limiting the indemnity provisions of the Agreement, the Vendor, in partial performance of its obligations under such Agreement, shall procure and maintain in full force and effect during the term of the Agreement the following policies of insurance. If the existing policies do not meet the insurance requirements set forth herein, Vendor agrees to amend, supplement or endorse the policies to do so.

(A) **Commercial General Liability:** Commercial General Liability Insurance which affords coverage at least as broad as Insurance Services Office "occurrence" form CG 00 01, or the exact equivalent, with limits of not less than \$1,000,000 per occurrence and no less than \$2,000,000 in the general aggregate. Defense costs shall be paid in addition to the limits. The policy shall contain no endorsements or provisions (1) limiting coverage for contractual liability; (2) excluding coverage for claims or suits by one insured against another (cross-liability); (3) products/completed operations liability; or (4) containing any other exclusion(s) contrary to the terms or purposes of this Agreement.

(B) **Automobile Liability Insurance:** Automobile Liability Insurance with coverage at least as broad as Insurance Services Office Form CA 00 01 covering "Any Auto" (Symbol 1), or the exact equivalent, covering bodily injury and property damage for all activities with limits of not less than \$1,000,000 combined limit for each occurrence. **Workers' Compensation:** Workers' Compensation Insurance, as required by the State of California and Employer's Liability Insurance with a limit of not less than \$1,000,000 per accident for bodily injury and disease.

3.2.10.3 Insurance Endorsements. Required insurance policies shall contain, or be endorsed to contain, the provisions required by this Section. Commercial General Liability insurance shall name the City, its officials, officers, employees, agents, and volunteers as additional insureds for liability and defense of claims arising out of the performance of this Agreement, using ISO CG 20 10 10 01 and CG 20 37 10 01, or endorsements providing equivalent coverage. Required policies shall not be canceled or materially reduced without thirty (30) days' prior written notice to the City, except ten (10) days for non-payment of premium. Workers' Compensation coverage shall include a waiver of subrogation in favor of the City, its officials, officers, employees, agents, and volunteers.

3.2.10.4 Primary and Non-Contributing Insurance. All policies of Commercial General Liability and Automobile Liability insurance shall be primary and any other insurance, deductible, or self-insurance maintained by the City, its officials, officers, employees, agents, or volunteers shall not contribute with this primary insurance. Policies shall contain or be endorsed to contain such provisions.

3.2.10.5 Waiver of Subrogation. All required insurance coverages, except for the professional liability coverage, shall contain or be endorsed to waiver of subrogation in favor of the City, its officials, officers, employees, agents, and volunteers or shall specifically allow Vendor or others providing insurance evidence in compliance with these specifications to waive their right of recovery prior to a loss. Vendor hereby waives its own right of recovery against City, and shall require similar written express waivers and insurance clauses from each of its sub-vendors.

3.2.10.6 Deductibles and Self-Insured Retentions. Any deductible or self-insured retention must be approved in writing by the City and shall protect the City, its officials, officers, employees, agents, and volunteers in the same manner and to the same extent as they would have been protected had the policy or policies not contained a deductible or self-insured retention.

3.2.10.7 Evidence of Insurance. Vendor, concurrently with the execution of the Agreement, and as a condition precedent to the effectiveness thereof, shall deliver either certified copies of the required policies, or original certificates on forms approved by the City, together with all endorsements affecting each policy. Required insurance policies shall not be in compliance if they include any limiting provision or endorsement that has not been submitted to the City for approval. The certificates and endorsements for each insurance policy shall be signed by a person authorized by that insurer to bind coverage on its behalf. At least fifteen (15 days) prior to the expiration of any such policy, evidence of insurance showing that such insurance coverage has been renewed or extended shall be filed with the City. If such coverage is cancelled or reduced and not replaced immediately so as to avoid a lapse in the required coverage, Vendor shall, within ten (10) days after receipt of written notice of such cancellation or reduction of coverage, file with the City evidence of insurance showing that the required insurance has been reinstated or has been provided through another insurance company or companies.

3.2.10.8 Acceptability of Insurers. Each such policy shall be from a company or companies with a current A.M. Best's rating of no less than A:VII and authorized to transact business of insurance in the State of California, or otherwise allowed to place insurance through surplus line brokers under applicable provisions of the California Insurance Code or any federal law.

3.2.10.9 Enforcement of Agreement Provisions (non estoppel). Vendor acknowledges and agrees that actual or alleged failure on the part of the City to inform Vendor of non-compliance with any requirement imposes no additional obligation on the City nor does it waive any rights hereunder.

3.2.10.10 Requirements Not Limiting. Requirement of specific coverage or minimum limits contained in this Section are not intended as a limitation on coverage, limits, or other requirement, or a waiver of any coverage normally provided by any insurance.

3.2.10.11 Additional Insurance Provisions

(A) The foregoing requirements as to the types and limits of insurance coverage to be maintained by Vendor, and any approval of said insurance by the City, is not intended to and shall not in any manner limit or qualify the liabilities and obligations otherwise assumed by Vendor pursuant to this Agreement, including but not limited to, the provisions concerning indemnification.

(B) If at any time during the life of the Agreement, any policy of insurance required under this Agreement does not comply with these specifications or is canceled and not replaced, City has the right but not the duty to obtain the insurance it deems necessary and any premium paid by City will be promptly reimbursed by Vendor or City will withhold amounts sufficient to pay premium from Vendor payments. In the alternative, City may cancel this Agreement.

(C) City may require Vendor to provide complete copies of all insurance policies in effect for the duration of the Project.

(D) Neither City nor any of its officials, officers, employees, agents or volunteers shall be personally responsible for any liability arising under or by virtue of this Agreement.

(E) The limits set forth herein shall apply separately to each insured against whom claims are made or suits are brought, except with respect to the limits of liability. Further the limits set forth herein shall not be construed to relieve Vendor from liability in excess of such coverage,

nor shall it limit Vendor's indemnification obligations to City and shall not preclude City from taking such other actions available to City under other provisions of the Agreement or law.

(F) Vendor shall report to City, in addition to Vendor's insurer, any and all insurance claims submitted by Vendor in connection with the Services under this Agreement.

3.2.10.12 Insurance for Sub-Vendors. Vendor shall include all sub-vendors engaged in any work for Vendor relating to this Agreement as additional insureds under the Vendor's policies, or the Vendor shall be responsible for causing sub-vendors to purchase the appropriate insurance in compliance with the terms of these Insurance Requirements, including adding the City, its officials, officers, employees, agents, and volunteers as additional insureds to the sub-vendors' policies. All policies of Commercial General Liability insurance provided by Vendor's sub-vendor performing work relating to this Agreement shall be endorsed to name the City, its officials, officers, employees, agents and volunteers as additional insureds using endorsement form ISO CG 20 38 04 13 or an endorsement providing equivalent coverage. Vendor shall not allow any sub-vendor to commence work on any subcontract relating to this Agreement until it has received satisfactory evidence of sub-vendor's compliance with all insurance requirements under this Agreement, to the extent applicable. Vendor shall provide satisfactory evidence of compliance with this section upon request of City.

3.2.11 Water Quality Management and Compliance.

3.2.11.1 Storm Water Management. Storm, surface, nuisance, or other waters may be encountered at various times during the Services. To the extent applicable to the Services, Vendor hereby acknowledges that it has investigated the risk arising from such waters, and assumes any and all risks and liabilities arising therefrom.

3.2.11.2 Compliance with Water Quality Laws, Ordinances and Regulations. To the extent applicable to the Services, Vendor shall keep itself and all subcontractors, staff, and employees fully informed of and in compliance with all local, state and federal laws, rules and regulations that may impact, or be implicated by the performance of the Services including, without limitation, all applicable provisions of the City's ordinances regulating water quality and storm water; the Federal Water Pollution Control Act (33 U.S.C. § 1251, *et seq.*); the California Porter-Cologne Water Quality Control Act (Water Code § 13000 *et seq.*); and any and all regulations, policies, or permits issued pursuant to any such authority. Vendor must additionally comply with the lawful requirements of the City, and any other municipality, drainage district, or other local agency with jurisdiction over the location where the Services are to be conducted, regulating water quality and storm water discharges.

3.3 **Fees and Payments.**

3.3.1 Compensation. Vendor agrees to pay City 30% commission to City for the sale of food and drinks from the vending machines located at Metrolink train station utilized by the Public, as well as future locations, as may be requested by City. No commission shall be paid on machines located at City employee break rooms; however, vending machines at City employee break rooms shall be sold by Vendor at a reduced rate, from 15% to 20%. City shall not provide any compensation to Vendor, but will provide necessary electricity, at no cost to Vendor, for operation of machines.

3.3.2 Reimbursement for Expenses. Vendor shall not be reimbursed for any expenses unless authorized in writing by City, or included in Exhibit "C" of this Agreement.

3.3.3 Extra Work. At any time during the term of this Agreement, City may request that

Vendor perform Extra Work. As used herein, "Extra Work" means any work which is determined by City to be necessary for the proper completion of the Project, but which the Parties did not reasonably anticipate would be necessary at the execution of this Agreement. Vendor shall not perform, nor be compensated for, Extra Work without written authorization from the City.

3.4 [Reserved.]

3.5 Accounting Records.

3.5.1 Maintenance and Inspection. Vendor shall maintain complete and accurate records with respect to all costs and expenses, and sales and revenue under this Agreement. All such records shall be clearly identifiable. Vendor shall allow a representative of City during normal business hours to examine, audit, and make transcripts or copies of such records and any other documents created pursuant to this Agreement. Vendor shall allow inspection of all work, data, documents, proceedings, and activities related to the Agreement for a period of three (3) years from the date of final payment under this Agreement.

3.6 General Provisions.

3.6.1 Termination of Agreement.

3.6.1.1 Grounds for Termination. City may, by written notice to Vendor, terminate the whole or any part of this Agreement at any time and without cause by giving written notice to Vendor of such termination, and specifying the effective date thereof, at least seven (7) days before the effective date of such termination. Upon termination, Vendor shall be compensated only for those services which have been adequately rendered to City, and Vendor shall be entitled to no further compensation. Vendor may not terminate this Agreement except for cause.

3.6.1.2 Effect of Termination. If this Agreement is terminated as provided herein, City may require Vendor to provide all finished or unfinished Documents and Data and other information of any kind prepared by Vendor in connection with the performance of Services under this Agreement. Vendor shall be required to provide such document and other information within fifteen (15) days of the request.

3.6.1.3 Additional Services. In the event this Agreement is terminated in whole or in part as provided herein, City may procure, upon such terms and in such manner as it may determine appropriate, services similar to those terminated.

3.6.2 Delivery of Notices. All notices permitted or required under this Agreement shall be given to the respective parties at the following address, or at such other address as the respective parties may provide in writing for this purpose:

Vendor: First Choice Refresh Inc.
19548 Los Alimos Street
Northridge, CA 91326
ATTN: Richard Salama

City: City of Pomona
505 South Garey Avenue
Pomona, CA 91766
ATTN: Mike Osoff, Community Services Manager

Such notice shall be deemed made when personally delivered or when mailed, forty-eight (48) hours after deposit in the U.S. Mail, first class postage prepaid and addressed to the party at its applicable address. Actual notice shall be deemed adequate notice on the date actual notice occurred, regardless of the method of service.

3.6.3 Ownership of Materials and Confidentiality.

3.6.3.1 Documents & Data; Licensing of Intellectual Property. This Agreement creates a non-exclusive and perpetual license for City to copy, use, modify, reuse, or sublicense any and all copyrights, designs, and other intellectual property embodied in plans, specifications, studies, drawings, estimates, and other documents or works of authorship fixed in any tangible medium of expression, including but not limited to, physical drawings or data magnetically or otherwise recorded on computer diskettes, which are prepared or caused to be prepared by Vendor under this Agreement ("Documents & Data"). All Documents & Data shall be and remain the property of City, and shall not be used in whole or in substantial part by Vendor on other projects without the City's express written permission. Within thirty (30) days following the completion, suspension, abandonment or termination of this Agreement, Vendor shall provide to City reproducible copies of all Documents & Data, in a form and amount required by City. City reserves the right to select the method of document reproduction and to establish where the reproduction will be accomplished. The reproduction expense shall be borne by City at the actual cost of duplication. In the event of a dispute regarding the amount of compensation to which the Vendor is entitled under the termination provisions of this Agreement, Vendor shall provide all Documents & Data to City upon payment of the undisputed amount. Vendor shall have no right to retain or fail to provide to City any such documents pending resolution of the dispute. In addition, Vendor shall retain copies of all Documents & Data on file for a minimum of fifteen (15) years following completion of the Project, and shall make copies available to City upon the payment of actual reasonable duplication costs. Before destroying the Documents & Data following this retention period, Vendor shall make a reasonable effort to notify City and provide City with the opportunity to obtain the documents.

3.6.3.2 Sub-Vendors. Vendor shall require all sub-vendors to agree in writing that City is granted a non-exclusive and perpetual license for any Documents & Data the sub-vendor prepares under this Agreement. Vendor represents and warrants that Vendor has the legal right to license any and all Documents & Data. Vendor makes no such representation and warranty in regard to Documents & Data which were prepared by design professionals other than Vendor or its sub-vendors, or those provided to Vendor by City.

3.6.3.3 Right to Use. City shall not be limited in any way in its use or reuse of the Documents and Data or any part of them at any time for purposes of this Project or another project, provided that any such use not within the purposes intended by this Agreement or on a project other than this Project without employing the services of Vendor shall be at City's sole risk. If City uses or reuses the Documents & Data on any project other than this Project, it shall remove the Vendor's seal from the Documents & Data and indemnify and hold harmless Vendor and its officers, directors, agents and employees from claims arising out of the negligent use or re-use of the Documents & Data on such other project. Vendor shall be responsible and liable for its Documents & Data, pursuant to the terms of this Agreement, only with respect to the condition of the Documents & Data at the time they are provided to the City upon completion, suspension, abandonment or termination. Vendor shall not be responsible or liable for any revisions to the Documents & Data made by any party other than Vendor, a party for whom the Vendor is legally responsible or liable, or anyone approved by the Vendor.

3.6.3.4 Indemnification. Vendor shall defend, indemnify and hold the City, its directors, officials, officers, employees, volunteers and agents free and harmless, pursuant to the

indemnification provisions of this Agreement, for any alleged infringement of any patent, copyright, trade secret, trade name, trademark, or any other proprietary right of any person or entity in consequence of the use on the Project by City of the Documents & Data, including any method, process, product, or concept specified or depicted.

3.6.3.5 Confidentiality. All ideas, memoranda, specifications, plans, procedures, drawings, descriptions, computer program data, input record data, written information, and other Documents & Data either created by or provided to Vendor in connection with the performance of this Agreement shall be held confidential by Vendor. Such materials shall not, without the prior written consent of City, be used by Vendor for any purposes other than the performance of the Services. Nor shall such materials be disclosed to any person or entity not connected with the performance of the Services or the Project. Nothing furnished to Vendor which is otherwise known to Vendor or is generally known, or has become known, to the related industry shall be deemed confidential. Vendor shall not use City's name or insignia, photographs of the Project, or any publicity pertaining to the Services or the Project in any magazine, trade paper, newspaper, television or radio production or other similar medium without the prior written consent of City.

3.6.3.6 Confidential Information. City shall refrain from releasing Vendor's proprietary information ("Proprietary Information") unless the City's legal counsel determines that the release of the Proprietary Information is required by the California Public Records Act or other applicable state or federal law, or order of a court of competent jurisdiction, in which case the City shall notify Vendor of its intention to release Proprietary Information. Vendor shall have five (5) working days after receipt of the Release Notice to give City written notice of Vendor's objection to the City's release of Proprietary Information. Vendor shall indemnify, defend and hold harmless the City, and its officers, directors, employees, and agents from and against all liability, loss, cost or expense (including attorney's fees) arising out of a legal action brought to compel the release of Proprietary Information. City shall not release the Proprietary Information after receipt of the Objection Notice unless either: (1) Vendor fails to fully indemnify, defend (with City's choice of legal counsel), and hold City harmless from any legal action brought to compel such release; and/or (2) a final and non-appealable order by a court of competent jurisdiction requires that City release such information.

3.6.4 Cooperation; Further Acts. The Parties shall fully cooperate with one another, and shall take any additional acts or sign any additional documents as may be necessary, appropriate or convenient to attain the purposes of this Agreement.

3.6.5 [Reserved]

3.6.6 Indemnification.

3.6.6.1 To the fullest extent permitted by law, Vendor shall defend (with counsel of City's choosing), indemnify and hold the City, its officials, officers, employees, volunteers, and agents free and harmless from any and all claims, demands, causes of action, costs, expenses, liability, loss, damage or injury of any kind, in law or equity, to property or persons, including wrongful death, in any manner arising out of, pertaining to, or incident to any acts, errors or omissions, or willful misconduct of Vendor, its officials, officers, employees, sub-vendors or agents in connection with the performance of the Vendor's Services, the Project or this Agreement, including without limitation the payment of all damages, expert witness fees and attorney's fees and other related costs and expenses. Vendor's obligation to indemnify shall not be restricted to insurance proceeds, if any, received by Vendor, the City, its officials, officers, employees, agents, or volunteers.

3.6.6.2 If Vendor's obligation to defend, indemnify, and/or hold harmless arises out of Vendor's performance as a "design professional" (as that term is defined under Civil Code section 2782.8), then, and only to the extent required by Civil Code section 2782.8, which is fully incorporated herein, Vendor's indemnification obligation shall be limited to claims that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the Vendor, and, upon Vendor obtaining a final adjudication by a court of competent jurisdiction, Vendor's liability for such claim, including the cost to defend, shall not exceed the Vendor's proportionate percentage of fault.

3.6.7 Entire Agreement. This Agreement contains the entire Agreement of the parties with respect to the subject matter hereof, and supersedes all prior negotiations, understandings or agreements. This Agreement may only be modified by a writing signed by both parties.

3.6.8 Governing Law; Government Code Claim Compliance. This Agreement shall be governed by the laws of the State of California. Venue shall be in Los Angeles County. In addition to any and all contract requirements pertaining to notices of and requests for compensation or payment for extra work, disputed work, claims and/or changed conditions, Vendor must comply with the claim procedures set forth in Government Code sections 900 et seq. prior to filing any lawsuit against the City. Such Government Code claims and any subsequent lawsuit based upon the Government Code claims shall be limited to those matters that remain unresolved after all procedures pertaining to extra work, disputed work, claims, and/or changed conditions have been followed by Vendor. If no such Government Code claim is submitted, or if any prerequisite contractual requirements are not otherwise satisfied as specified herein, Vendor shall be barred from bringing and maintaining a valid lawsuit against the City.

3.6.9 Time of Essence. Time is of the essence for each and every provision of this Agreement.

3.6.10 City's Right to Employ Other Vendors. City reserves right to employ other Vendors in connection with this Project.

3.6.11 Successors and Assigns. This Agreement shall be binding on the successors and assigns of the parties.

3.6.12 Assignment or Transfer. Vendor shall not assign, hypothecate, or transfer, either directly or by operation of law, this Agreement or any interest herein without the prior written consent of the City. Any attempt to do so shall be null and void, and any assignees, hypothecates or transferees shall acquire no right or interest by reason of such attempted assignment, hypothecation or transfer.

3.6.13 Construction; References; Captions. Since the Parties or their agents have participated fully in the preparation of this Agreement, the language of this Agreement shall be construed simply, according to its fair meaning, and not strictly for or against any Party. Any term referencing time, days or period for performance shall be deemed calendar days and not work days. All references to Vendor include all personnel, employees, agents, and sub-vendors of Vendor, except as otherwise specified in this Agreement. All references to City include its elected officials, officers, employees, agents, and volunteers except as otherwise specified in this Agreement. The captions of the various articles and paragraphs are for convenience and ease of reference only, and do not define, limit, augment, or describe the scope, content, or intent of this Agreement.

3.6.14 Amendment; Modification. No supplement, modification, or amendment of this Agreement shall be binding unless executed in writing and signed by both Parties.

3.6.15 Waiver. No waiver of any default shall constitute a waiver of any other default or breach, whether of the same or other covenant or condition. No waiver, benefit, privilege, or service voluntarily given or performed by a Party shall give the other Party any contractual rights by custom, estoppel, or otherwise.

3.6.16 No Third-Party Beneficiaries. There are no intended third party beneficiaries of any right or obligation assumed by the Parties.

3.6.17 Invalidity; Severability. If any portion of this Agreement is declared invalid, illegal, or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions shall continue in full force and effect.

3.6.18 Prohibited Interests. Vendor maintains and warrants that it has not employed nor retained any company or person, other than a bona fide employee working solely for Vendor, to solicit or secure this Agreement. Further, Vendor warrants that it has not paid nor has it agreed to pay any company or person, other than a bona fide employee working solely for Vendor, any fee, commission, percentage, brokerage fee, gift or other consideration contingent upon or resulting from the award or making of this Agreement. For breach or violation of this warranty, City shall have the right to rescind this Agreement without liability. For the term of this Agreement, no member, officer or employee of City, during the term of his or her service with City, shall have any direct interest in this Agreement, or obtain any present or anticipated material benefit arising therefrom.

3.6.19 Authority to Enter Agreement. Vendor has all requisite power and authority to conduct its business and to execute, deliver, and perform the Agreement. Each Party warrants that the individuals who have signed this Agreement have the legal power, right, and authority to make this Agreement and bind each respective Party.

3.6.20 Counterparts. This Agreement may be signed in counterparts, each of which shall constitute an original.

3.7 Subcontracting.

3.7.1 Prior Approval Required. Vendor shall not subcontract any portion of the work required by this Agreement, except as expressly stated herein, without prior written approval of City. Subcontracts, if any, shall contain a provision making them subject to all provisions stipulated in this Agreement.

[SIGNATURES ON NEXT PAGE]

**SIGNATURE PAGE TO
PROFESSIONAL SERVICES AGREEMENT BETWEEN
CITY OF POMONA AND
FIRST CHOICE REFRESH INC**

CITY OF POMONA

FIRST CHOICE REFRESH INC

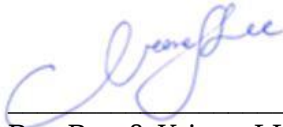
By: _____
Anita D. Scott
City Manager

By: _____
Richard Salama
Owner

Attest:

City Clerk

Approved as to Form:



Best Best & Krieger LLP
City Attorney

EXHIBIT "A"
SCOPE OF SERVICES

A. Locations of Vending Machines

Commissioned Vending Machines

Vendor agrees to pay City a percentage of gross revenues for all commissioned vending machine products sold, and provide security cages at the following locations:

1) Metrolink Train Station, 101 W. First Street, Pomona, CA 91766

- Machines needed: (1) beverage, and (1) snack
- Security cages shall be provided by the vendor

Non-Commissioned Vending Machines

1) Pomona City Hall, 505 S. Garey Ave, 2nd floor break room, Pomona, CA 91766

- Machines needed: (1) beverage, and (1) snack
- No security cages needed

2) Pomona Public Library, 625 S. Garey Ave, basement break room, Pomona, CA 91766

- Machines needed: (1) beverage, and (1) snack
- No security cages needed

3) Pomona City Yard, 636 W. Monterey Ave, Pomona, CA 91768

- Machines needed: (1) beverage and (1) snack
- No security cages needed

4) Pomona Police Department, 490 W. Mission Blvd., First Floor and basement break room, Pomona CA 91766

- Machines needed: (1) beverage and (1) snack on the first floor
- No security cages needed

5) Pomona Police Department Training Center (Daniel Fraembs), 1702 E. 1st St., Pomona, CA 91767

- Machines needed: (1) beverage and (1) snack
- No security cages needed

6) Pomona Police Department, Fairplex (Station 5), 1101 W. McKinley Ave., Pomona, CA 91768

- Machines needed: one (1) combo beverage/snack
- No security cages needed

Requirements

1. Vending Machine Equipment

VENDOR shall operate and maintain all vending machine furnishings, equipment, and security cages at VENDOR'S expense. All vending machine equipment must fit and operate in designated spaces and locations.

2. Utilities Available

The City will provide necessary electrical utilities for operation of vending machines at no cost to VENDOR.

3. Credit Reader Option
VENDOR must provide machines equipped with credit card readers, in addition to coin/bill acceptors. Card readers and any associated fees (e.g. processing, transaction, etc.) are a vendor's expense.
4. Security Cages and Related Equipment
VENDOR shall provide and maintain vending machine security cages, and all related equipment and furnishings at VENDOR'S expense.
5. Vandalism
VENDOR may request to relocate machines, security cage equipment and furnishings due to excessive vandalism, upon consent of the City. CITY shall not be held liable for any damage, vandalism, and/or theft to VENDOR's equipment and/or merchandise.
6. Service Calls
VENDOR must respond to all CITY service calls within 24 hours and publish a phone number on each machine for general public to request assistance.
7. Stocking
Each machine must be stocked no less than once each week, and frequency may be increased dependent upon volume of sales at each location. CITY may request changes in snack or beverage products at any time throughout the term of the contract.
8. Maintenance, Repair and Non-Operational Machines
VENDOR shall perform a maintenance check on each machine at least once a week at each location. VENDOR must repair inoperable machines to a fully operational condition within two (2) calendar days of service call. VENDOR agrees to provide a similar replacement machine, of equal or better condition, within three (3) days after determining a machine cannot be repaired to a condition that is fully operational. If a machine is non-operational, signage must be placed on the card reader/cash/coin acceptor. If possible, card readers/cash accepters should be deactivated accordingly.
9. Site Access
VENDOR must use public or designated delivery entrances when accessing machines within City buildings. VENDORS are not authorized to use City employee entrances to perform services.
10. Snack and Beverage Products
VENDOR must abide by any specific Los Angeles County Health Department requirements for vending machine services for the duration of the contract term. All products must be high quality beverages, pre-packaged snacks, and other items as approved by the CITY.

VENDOR must comply with the CITY's Healthy Eating Active Living (HEAL) Policy (Resolution 2012-156) requirements for vending machine services for the duration of the contract term.

All items shall be marked with an expiration date.

Any products that melt in the sun shall not be placed in vending machines situated outside, unless the machines have an integrated cooling system. Machines with integrated cooling systems are required for all beverage machines; not required for all snack or food machines, unless as noted with products subject to melting or spoilage.

CITY shall reserve the right to make all choices of products offered by VENDOR and reserves the right to make changes in product selections throughout the life of the contract. VENDOR reserves to the right to provide alternative products, but product substitutions must meet all specified requirements.

VENDOR shall be responsible for transporting and delivering all products to stock in vending machines and will dispose of all expired items at no additional cost to CITY.

11. Commission Payment Schedule

VENDOR shall pay commissions to the CITY monthly, no later than the tenth (10th) day of each month for the previous calendar month, and shall provide an accounting of monthly sales for each vending machine. Monthly commission payments and accounting documentation shall be submitted to the Community Services Manager, or designee.

12. Compensation

CITY shall not pay any compensation to VENDOR.

13. Add or Remove Locations

CITY reserves the right to add or remove locations and operations at any site during the life of the contract.

14. Space or Site Relocation

CITY reserves the right to relocate vending machine(s) in order to maximize sales. If CITY determines a machine(s) must be relocated, CITY will notify VENDOR to coordinate the details of the relocation. VENDOR will be responsible for performing the removal and relocation of the machine, as well as all security cage equipment and furnishings, if applicable.

15. Hours of Operation

CITY reserves the right to specify acceptable days and hours for VENDOR to restock and service machines.

16. Compliance

VENDOR shall abide by all City of Pomona Ordinances, Park rules, business licensing, and Public Health food service requirements, including any specific Los Angeles County Health Department requirements for vending machine services. Any modifications or improvements to vending machine service shall be negotiated with the CITY and will require advance written approval.

17. General Conditions

VENDOR understands and agrees that the City of Pomona shall not lease or own the vending machines. VENDOR shall provide vending machines at no cost to the City (excluding electrical costs). Vending machine contract(s) will only confer permission to occupy and use the premises described for vending machine purposes. VENDOR'S expenditure of capital and/or labor in the course of use and occupancy will not confer any interest or estate in the premises by virtue of said use, occupancy and/or expenditure of money thereon. CITY will only grant VENDOR an individual, revocable and non-transferable privilege of use in the premises for the concession granted.

18. Security Requirements

- a. Background Checks: All VENDOR personnel to be employed to perform work under this Contract shall be subject to background checks and clearance prior to working in the Pomona Police Department or its jail facility. VENDOR shall prepare and submit an information form to the City's project manager for all persons who will be working or who will need access to the

facility. These information forms shall be submitted at least five (5) City working days prior to the start of work on the Contract or prior to the use of any person subsequent to the vendor's start of work. These information forms will be provided by the City project manager upon request. These information forms shall be thorough, accurate, and complete. Any omissions or false statements, regardless of the nature or magnitude, may be grounds for denying clearance. No person shall be employed under this Contract who has not received prior clearance from CITY. CITY reserves the right to deny access at its sole discretion and is under no obligation to provide the reason for such denial.

b. Performance Requirements: All VENDORS' vehicles parked on site shall always be locked and thoroughly secured. All tools and materials shall always remain in the VENDORS' possession and shall never be left unattended. VENDOR shall be continuously cleaned up as work progresses. All work areas shall be secured prior to the end of each work period. Workers shall have no contact, either verbal or physical, with inmates in the facilities.

c. VENDOR's employees shall NOT: VENDOR's employees shall not smoke or use profanity or other inappropriate language while on site. Vendor's employees shall not enter the facility while under the influence of alcohol, drugs or other intoxicants and shall not have such materials in their possession. vendor's employees shall plan their activities to minimize the number of times they must enter and exit a facility. They should transport all tools, equipment and materials needed for the day at the start of the work period and restrict all breaks to the absolute minimum.

d. VENDOR's personnel shall: Comply with the written schedule provided by the City which shall clearly show the specific start and end times for each workday. Arrive at the site no more than fifteen (15) minutes prior to the scheduled time or no more than fifteen (15) minutes after the scheduled time.

19. Machine Locations: The City of Pomona does not guarantee usage under this solicitation and resultant Contract; however, the following represents the current list of vending machines and site locations throughout the City. This is an approximation and may vary depending on the needs of City users.

AGENCY / DEPT.	ADDRESS	COMMISSION	FOOD	BEVERAGE	COMBO SNACK/BEV
Hope for Home	1400 E. Mission Blvd., Pomona	NO	1	1	
Metrolink Train Station	101 W. First Street, Pomona	YES	1	1	
Pomona City Hall	505 S. Garey Ave., Pomona	NO	1	1	
Pomona City yard	636 W. Monterey Ave., Pomona	NO	1	1	
Pomona Police Department	490 W. Mission Blvd., Pomona	NO	1	1	
Pomona Police Training Center	1702 E. First Street, Pomona	NO			1
Pomona Police Department Fairplex	1101 W. McKinley Ave., Pomona	NO			1
Pomona	625 S. Garey	NO	1	1	

AMENDMENT NO. 1

Public Library	Ave., Pomona				
Location Count	8			Total Machine Count	14

EXHIBIT "B"
SCHEDULE OF SERVICES

1. Service Calls
VENDOR must respond to all CITY service calls within 24 hours and publish a phone number on each machine for general public to request assistance.
2. Stocking
Each machine must be stocked no less than once each week, and frequency may be increased dependent upon volume of sales at each location. CITY may request changes in snack or beverage products at any time throughout the term of the contract.
3. Maintenance, Repair and Non-Operational Machines
VENDOR shall perform a maintenance check on each machine at least once a week at each location. VENDOR must repair inoperable machines to a fully operational condition within two (2) calendar days of service call. VENDOR agrees to provide a similar replacement machine, of equal or better condition, within three (3) days after determining a machine cannot be repaired to a condition that is fully operational. If a machine is non-operational, signage must be placed on the card reader/cash/coin acceptor. If possible, card readers/cash accepters should be deactivated.
4. Site Access
VENDOR must use public or designated delivery entrances when accessing machines within City buildings. VENDORS are not authorized to use City employee entrances to perform services.
5. Add or Remove Locations
CITY reserves the right to add or remove locations and operations at any site during the life of the contract.
6. Space or Site Relocation
CITY reserves the right to relocate vending machine(s) in order to maximize sales. If the CITY determines a machine(s) must be relocated, the CITY will notify the VENDOR to coordinate the details of the relocation. The VENDOR will be responsible for performing the removal and relocation of the machine, as well as all security cage equipment and furnishings, if applicable.
7. Hours of Operation
CITY reserves the right to specify acceptable days and hours for VENDOR to restock and service machines.

EXHIBIT "C"
COMPENSATION

1. Compensation

VENDOR agrees to pay the CITY 30% commission to CITY for the sale of food and drinks from the vending machines located at Metrolink train station utilized by the Public, as well as future locations, as may be requested by CITY. No commission shall be paid on machines located at City employee break rooms; however, vending machines at City employee break rooms shall be sold by VENDOR at a reduced rate of 15-20%. CITY shall not provide any compensation to the VENDOR, but will provide necessary electricity, at no cost to VENDOR, for operation of machines.