

## AMENDATORY AGREEMENT

THIS AMENDATORY AGREEMENT is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2011, by and between the **CITY AND COUNTY OF DENVER**, a municipal corporation of the State of Colorado (the "City"), and **VENDONE, INC.** a Delaware corporation, doing business at 6723 E. 50<sup>th</sup> Avenue, Commerce City, Colorado 80022 (the "Vendor" or "Contractor").

### WITNESSETH:

**WHEREAS**, the City and the Vendor entered into an Agreement dated May 18, 2010 to provide beverage vending machines at the Denver County Jail and the Downtown Detention Center (the "Agreement"); and

**WHEREAS**, the City and the Vendor wish to amend the Agreement to increase the term and update other contract language as follows; and

**NOW, THEREFORE**, in consideration of the premises and the mutual covenants and obligations herein set forth, the parties agree as follows:

1. This Amendatory Agreement may be executed in two (2) counterparts, each of which shall be deemed to be an original, and all of which, taken together, shall constitute one and the same instrument.

2. All references in the Agreement to Exhibit A are amended to read Exhibit A-1.

3. Article 2(A) of the agreement entitled "**SERVICES TO BE PERFORMED**" is amended to reads as follows:

**"2. SERVICES TO BE PERFORMED:**

**A.** Vendor shall have the exclusive right to install vending machines at the specific locations and in the numbers set forth in the *Exhibit A-1* attached hereto and incorporated herein ("Vending Machines"). Deviations from the list of approved Vending Machines, including without limitation the addition of new locations or new machines at existing locations, shall be approved in writing by the Director. The Vending Machines shall be installed and operated in accordance with the Scope of Work attached hereto and incorporated herein as *Exhibit A-1*. Vendor shall not charge City for the adding or removal of any vending machines under this Agreement."

4. Article 3 of the Agreement entitled "**TERM**" is hereby amended to read as follows:

10-504-A

“3. **TERM:** The Agreement will commence on April 1, 2010 and will expire March 31, 2012 (the “Term”).”

5. Article 21 of the Agreement entitled “**NO EMPLOYMENT OF ILLEGAL ALIENS TO PERFORM WORK UNDER THE AGREEMENT**” is amended to read as follows:

**“21. NO EMPLOYMENT OF ILLEGAL ALIENS TO PERFORM WORK UNDER THE AGREEMENT:**

a. This Agreement is subject to Division 5 of Article IV of Chapter 20 of the Denver Revised Municipal Code, and any amendments (the “Certification Ordinance”).

b. The Vendor certifies that:

(1) At the time of its execution of this Agreement, it does not knowingly employ or contract with an illegal alien who will perform work under this Agreement.

(2) It will participate in the E-Verify Program, as defined in § 8-17.5-101(3.7), C.R.S., to confirm the employment eligibility of all employees who are newly hired for employment to perform work under this Agreement.

c. The Vendor also agrees and represents that:

(1) It shall not knowingly employ or contract with an illegal alien to perform work under the Agreement.

(2) It shall not enter into a contract with a subcontractor or subcontractor that fails to certify to the Vendor that it shall not knowingly employ or contract with an illegal alien to perform work under the Agreement.

(3) It has confirmed the employment eligibility of all employees who are newly hired for employment to perform work under this Agreement, through participation in the E-Verify Program.

(4) It is prohibited from using the E-Verify Program procedures to undertake pre-employment screening of job applicants while performing its obligations under the Agreement, and that otherwise requires the Vendor to comply with any and all federal requirements related to use of the E-Verify Program including, by way of example, all program requirements related to employee notification and preservation of employee rights.

(5) If it obtains actual knowledge that a subcontractor or subcontractor performing work under the Agreement knowingly employs or contracts with an illegal alien, it will notify such subcontractor or subcontractor and the City within three (3) days. The Vendor will also then terminate such subcontractor or subcontractor if within three (3) days after such notice the subcontractor or subcontractor does not stop employing or contracting with the illegal alien, unless during such three-day period the subcontractor or subcontractor provides information to establish that the subcontractor or subcontractor has not knowingly employed or contracted with an illegal alien.

(6) It will comply with any reasonable request made in the course

of an investigation by the Colorado Department of Labor and Employment under authority of § 8-17.5-102(5), C.R.S, or the City Auditor, under authority of D.R.M.C. 20-90.3.

d. The Vendor is liable for any violations as provided in the Certification Ordinance. If Vendor violates any provision of this section or the Certification Ordinance, the City may terminate this Agreement for a breach of the Agreement. If the Agreement is so terminated, the Vendor shall be liable for actual and consequential damages to the City. Any such termination of a contract due to a violation of this section or the Certification Ordinance may also, at the discretion of the City, constitute grounds for disqualifying Vendor from submitting bids or proposals for future contracts with the City."

6. The parties agree to include article 35 entitled "**ELECTRONIC SIGNATURES AND ELECTRONIC RECORDS**" to read as follows:

**35. ELECTRONIC SIGNATURES AND ELECTRONIC RECORDS**

Vendor consents to the use of electronic signatures by the City. The Agreement, and any other documents requiring a signature hereunder, may be signed electronically by the City in the manner specified by the City. The Parties agree not to deny the legal effect or enforceability of the Agreement solely because it is in electronic form or because an electronic record was used in its formation. The Parties agree not to object to the admissibility of the Agreement in the form of an electronic record, or a paper copy of an electronic document, or a paper copy of a document bearing an electronic signature, on the ground that it is an electronic record or electronic signature or that it is not in its original form or is not an original.

7. Except as herein amended, the Agreement is revived, affirmed and ratified in each and every particular.

**[SIGNATURE PAGE FOLLOWS]**

**IN WITNESS WHEREOF**, the parties hereto have executed this Amendatory Agreement as of the day and year first written above.

**ATTEST:**

**CITY AND COUNTY OF DENVER:**

By: \_\_\_\_\_  
STEPHANIE Y. O'MALLEY,  
Clerk and Recorder, Ex-Officio  
Clerk of the City and County of Denver

By: \_\_\_\_\_  
MAYOR

**RECOMMENDED AND APPROVED:**

By: \_\_\_\_\_  
Manager of Safety

By: \_\_\_\_\_  
Undersheriff

**APPROVED AS TO FORM:**

DAVID R. FINE, Attorney for the  
City and County of Denver

**REGISTERED AND COUNTERSIGNED:**

By: \_\_\_\_\_  
Manager of Finance  
Contract Control No. **RC01013(1)**

By: \_\_\_\_\_  
Assistant City Attorney

By: \_\_\_\_\_  
Auditor

**"CITY"**

**VENDONE, INC.**  
Taxpayer (IRS) I.D. No. 84-1131292

By: \_\_\_\_\_

Name: Larry Anderson  
(please print)

Title: CEO

**"VENDOR"**

**EXHIBIT A-1 – SCOPE OF WORK**

**EXHIBIT A-1**  
**Scope of Work**

**Overview**

a) Vendor shall provide vending machines at both DSD facilities, Denver County Jail and Downtown Detention Center.

b) There are two kinds of vending machines that the Vendor shall be responsible for, cash vending machines and token vending machines. Machines that inmates may operate will require special tokens in order to purchase items. Vendor shall also operate a "Bill Changer." Based on all after tax vending machine and bill changer transactions, Vendor will pay the Inmate Welfare & Recreation Fund ("Fund") a 20% commission on those sales and transactions on a monthly basis.

c) The Vendor shall provide tokens for use in the Keefe token dispensing system. The City will pay sixty-two and a half cents (\$0.625) to the Vendor for every token purchased by inmates through the Keefe system.

**Vending Services**

a) Vendor shall install vending machines at the specific locations and in the numbers set forth herein, or as otherwise proposed and approved by the City. All vending machines shall be installed within thirty (30) days of execution of this Agreement. Vendor shall have the right to request additions, deletions and/or alternate locations for its machines, however, all modifications or deviations from the list of approved locations shall be approved in writing by the City and be partially based upon average productivity. There will be no charge to the City for the adding or removal of vending machines.

**Maintenance/Service/Restocking**

- a) The Vendor agrees to properly install, service, and maintain the equipment in good operating condition, to keep equipment in good repair, and shall keep the equipment stocked with standard brands of merchandise.
- b) The Vendor shall be required to provide service 24 hours, 7 days per week.
- c) Vendor shall insure service phone numbers visible on all vending machines

**Compensation**

- a) Vendor will pay a 20% commission to the Fund on the gross total of all transactions from the Bill Changer machines and the cash vending machines.
- b) The commission amount is to be paid on a monthly basis within 15 days of the end of the prior month to:

Inmate Welfare Fund  
5440 Roslyn Street, Bldg 5, Suite 303  
Denver, CO 80216

## **Machines and Pricing**

- a) At both DSD facilities, Vendor shall provide multiple vending machines that will require tokens. These machines shall be placed throughout the facilities where inmates will have access to purchase a snack/beverage of their choice. Tokens are purchased by the inmates through the Keefe Commissary Network (DSD's commissary vendor). Additionally, Keefe Commissary Network keeps and accounts for these tokens. Keefe supplies the City with an inventory of tokens purchased in order that the City can compensate Vendor for tokens purchased on the basis of \$0.625 per token.
- b) Two tokens (\$1.50) are required to vend a 20oz. bottle and one or two tokens (\$0.75 - \$1.50) are required to vend products from the snack machines. All chip and pastry items require 2 tokens (\$1.50) while candy and mints vend for one token (\$0.75).
- c) Vendor shall provide a "Bill Changer" machine, which converts currency into special tokens. This machine will be placed in the Work Release Building. When a one dollar bill is put in, one token (a retail value of 75 cents) and one quarter are dispensed. The token can then be used in any one of the token accepting vending machines in the work release area. When a five dollar bill is put into the changer, 6 tokens (a total retail value of \$4.50) and two quarters are dispensed. Vendor shall pay a 20% commission on all Bill Changer transactions to the Trust on a monthly basis as part of the other payments to the Trust.
- d) Vendor shall place a Pepsi beverage vending machine in the Unit 7 building, which will accept cash instead of tokens. The vend price in this machine is \$1.25 for all items, which are 20oz. beverage bottles. Vendor will pay a 20% commission to the Trust on all sales (after sales tax) from the Unit 7 cash-accepting Pepsi machine on a monthly basis as part of the other payments to the Trust.
- e) Each vending machine shall be clearly marked with the Vendor's name, address and phone number for requests for repairs or refunds.

## **Payments and Compensation**

- a) Tokens are held and accounted through Keefe Commissary Network (DSD's commissary vendor). Based on the Keefe Commissary Sales reports, DSD (Inmate Welfare Fund) will compensate Vendor \$0.625 for each token sold to inmates on a monthly basis.
- b) The Staff Accountant will run a report from the Keefe Commissary Network software, on a monthly basis, of the amount of tokens sold to inmates. The accountant will subtract the total returned tokens from the total tokens sold. The final amount, after the previous calculation, will be sent to Vendor to invoice DSD (Inmate Welfare Fund) for that amount.

**Refunds:** The City will not be responsible for disputes over refunds

## **Examination of Records**

- a) The Comptroller General of the United States of America or his authorized representative, or any authorized agent of the City, including the City Auditor or his representative, or any authorized representative of the State of Colorado, has the right to access and the right to examine any pertinent books, documents, papers and records of the Contractor, involving transactions related to the

Agreement until the latter of three (3) years after the final payment under the Agreement or expiration of the applicable statute of limitations. The Contractor shall keep true and complete records, and shall annually furnish an accurate statement for the preceding calendar year, of all business transactions under this Agreement, which statement shall be certified by an authorized representative of the Contractor to be correct. The Contractor agrees to establish and maintain a system of bookkeeping satisfactory to the Manager or the City's Auditor and to give any authorized representatives of the State or the City access during reasonable hours to such books and records. The State of Colorado or the City's Auditor shall have the right at any time, and from time to time, to audit all of the books of account, bank statements, documents, records, returns, papers and files of the Contractor related to this Agreement, whether prepared manually or electronically, and the Contractor, upon request, shall make all such matters available for such examination. If said records exist in electronic form, the Contractor shall maintain a means of transferring said records to hardcopy form. The Contractor's obligation to retain the above records shall expire three (3) years after the Contractor's statement for any period has been delivered to the City.

### **Equipment Placement**

#### Denver Justice Center:

Denver County Jail [New Down Town Jail]	Pop B Pepsi / 3 B
Denver County Jail [New Down Town Jail]	Pop B Pepsi / 4 A
Denver County Jail [New Down Town Jail]	Pop B Pepsi / 4 G
Denver County Jail [New Down Town Jail]	Pop B Pepsi / 5 G
Denver County Jail [New Down Town Jail]	Pop B Pepsi / 4 B
Denver County Jail [New Down Town Jail]	Pop B Pepsi / 3 E
Denver County Jail [New Down Town Jail]	Pop B Pepsi / 5 C
Denver County Jail [New Down Town Jail]	Pop B Pepsi / 5D
Denver County Jail [New Down Town Jail]	Pop B Pepsi / 4 H
Denver County Jail [New Down Town Jail]	Pop B Pepsi / 3 F
Denver County Jail [New Down Town Jail]	Pop B Pepsi / 4 F
Denver County Jail [New Down Town Jail]	Pop B Pepsi / 4C
Denver County Jail [New Down Town Jail]	Pop B Pepsi / 4 E
Denver County Jail [New Down Town Jail]	Pop B Pepsi / 3C
Denver County Jail [New Down Town Jail]	Pop B Pepsi / 3 A
Denver County Jail [New Down Town Jail]	Pop B Pepsi / 5 H

#### Denver County Jail:

Denver County Jail [Unit 20]	Pop B Pepsi Unit 20 2nd Fl.
Denver County Jail [Unit 20]	Pop B PEPSI Bldg. 20 first floor
Denver County Jail [Unit 21 Bldg.]	Pop B PEPSI unit 21 Second Floor
Denver County Jail [Unit 21 Women's]	Pop B PEPSI Unit 21 women 1st fl
Denver County Jail [Unit 22A]	Pop C Unit 22A
Denver County Jail [Unit 22B]	Pop B Pepsi Unit 22B
Denver County Jail [Unit 22C]	Pop B PEPSI Unit 22C
Denver County Jail [Unit 22D]	Pop B PEPSI Unit 22D
Denver County Jail [Unit 7]	Pop B Pepsi Unit 7
Denver County Jail [New Kitchen Area]	Snack AP 113 Mess Hall
Denver County Jail [New Kitchen Area]	Pop B Pepsi Mess Hall
Denver County Jail [Work Release Building]	Snack AP 113 Work Release Token

Denver County Jail [Work Release Building]

Pop B PEPSI Bldg 19/VM1554 Token

Cash Machines:

Denver County Jail [Work Release Building]

Bill Changer Work Release

Denver County Jail [Unit 7]

Pop B Pepsi Unit 7