

**RESOLUTION R-2025-32**

**A RESOLUTION AUTHORIZING EXECUTION OF A SERVICE AGREEMENT FOR FOOD AND BEVERAGE CONCESSIONAIRE SERVICES AT THE METRA TRAIN STATION (402 W. FRONT ST.) BETWEEN THE CITY OF WHEATON AND JAVA CONNECTION OF WHEATON, INC.**

**WHEREAS**, the City of Wheaton, Illinois, ("City") is an Illinois home rule municipality pursuant to the provisions of Article VII, Section 6, of the Illinois Constitution of 1970; and as such the City may exercise any power and perform any function pertaining to its government and affairs; and

**WHEREAS**, the City leases the commuter train station located at 402 W. Front Street ("Station") from the Union Pacific Railroad ("UP") and has the authority to enter into agreements for use of portions of the Station; and

**WHEREAS**, the City has previously determined that it is in the best interest of the general public and Metra customers to provide food and beverages for the benefit of commuters, which enhances the attractiveness and utility of the Station; and

**WHEREAS**, the City solicited a Request for Proposal (RFP Number 25-72) for Coffee Shop Concessionaire for the Station and received and reviewed one proposal; and

**WHEREAS**, both parties agree to the terms and conditions set forth in the Agreement; and

**WHEREAS**, the Corporate Authorities of the City of Wheaton find it reasonable and appropriate to enter into an agreement with Java Connection of Wheaton, Inc. to provide food and beverage concessionaire services at the Station.

**NOW THEREFORE, BE IT RESOLVED**, by the Mayor and City Council of the City of Wheaton, Illinois that the Mayor is hereby authorized to sign, and the City Clerk is hereby directed to attest to, the Agreement between the City and Java Connection of Wheaton, Inc. to provide food and beverage concessionaire services at the Metra Train Station (402 W. Front St.); and a copy of that Agreement is on file with the City Clerk's Office and is incorporated herein as if fully set forth as Exhibit A. This Agreement will not go into effect until Java Connection has provided all required items to the City (updated Certificate of Insurance and security deposit).

**ADOPTED** this 5<sup>th</sup> day of May, 2025.

ATTEST:



City Clerk

  
Mayor

**Roll Call Vote:**

Ayes: Councilwoman Robbins  
Councilman Weller  
Councilwoman Bray-Parker  
Councilwoman Brice  
Councilman Brown  
Mayor Suess  
Councilman Clousing

Nays: None  
Absent: None

Motion Carried Unanimously

**SERVICE AGREEMENT FOR FOOD AND BEVERAGE CONCESSIONAIRE  
SERVICES AT THE METRA TRAIN STATION (402 W. FRONT ST.)  
BETWEEN THE CITY OF WHEATON AND JAVA CONNECTION OF WHEATON, INC.**

This Agreement is made this 6th day of May, 2025 by and between the City of Wheaton, an Illinois home-rule municipality and Java Connection of Wheaton, Inc.

**WHEREAS**, the City leases the train station located at 402 W. Front Street, Wheaton ("Station") from the Union Pacific and has the authority to enter into agreements for use of portions of the Station; and

**WHEREAS**, the City has previously determined that it is in the best interest of the general public and Metra customers to have food and beverages available, and as such, has a designated coffee area in the Station; and

**WHEREAS**, the City solicited a Request for Proposal package (RFP Number 25-72) for Train Station Coffee Shop Concessionaire Services and received and reviewed one proposal; and

**WHEREAS**, the City has elected to approve Vendor as the exclusive service provider to manage and operate the concession area in the Station for the sale of food and beverages.

**NOW THEREFORE**, in consideration of the mutual covenants and conditions contained herein and intending to be legally bound hereby, the Parties hereto agree as follows:

**1. Recitals.** The above recitals are hereby incorporated into and made a part of this Agreement as though fully set forth herein.

**2. Definitions.** The following terms as used in this Agreement shall mean the following:

- A. "City" means the City of Wheaton, Illinois.
- B. "Concession" means the contractual right granted, pursuant to this Agreement, by the City to the Vendor to serve food and beverages to the general public and Metra customers from the Concession Area.
- C. "Concession Area" means the portion of the Station as depicted on Exhibit 1 attached hereto and incorporated herein, which shall be capable of being secured during the hours when food and/or beverage concession is not in operation.
- D. "Vendor" means Java Connection of Wheaton, Inc.

**3. Grant of Exclusive Service Agreement.** In consideration of the payments provided for herein, the keeping and performance of the covenants and promises as described herein, the City hereby grants to the Vendor the contractual authority to operate a food and beverage concession in the Concession Area.

**4. Nature of Agreement.** The City and the Vendor agree that this is a service agreement and not a lease notwithstanding any terms, conditions, restrictions or covenants contained herein that may appear

to the contrary. If this provision is declared illegal or void by a court of competent jurisdiction, such declaration shall render this Agreement voidable by the City in its sole discretion.

Nothing in this Agreement shall be interpreted or deemed to result in the conclusion that the City is engaged in a partnership or joint venture with the Vendor. The Vendor understands and agrees that it, including its employees, is not entitled to receive any benefits, including vacation, workers' compensation, sick pay, or other benefits.

**5. Term.**

- A. Initial Term. This Agreement shall become effective on July 1, 2025 and shall remain in effect for three (3) years thereafter.
- B. Renewal. If the Vendor wishes to renew this Agreement, it shall provide written notice to the Director of Planning and Economic Development of its intent to do so, at least sixty (60) days prior to the expiration of the Initial Term.

**6. Vendor Responsibilities.**

- A. The Vendor shall:
  - i. Provide a top-quality food and beverage operation from the Concession Area, which will be available to the general public.
  - ii. Comply with all applicable City, County, state and federal laws, guidelines and regulations associated with the operation of the Concession Area.
  - iii. Employ, train and manage all personnel required to properly operate and maintain the Concession Area.
  - iv. Obtain any and all licenses, permits or certificates required to operate the Concession Area and post them therein.
  - v. Collect the proper sales tax and report to the proper agencies.
  - vi. Comply with all rules and regulations imposed by Metra and/or the Union Pacific.
- B. The Vendor shall not:
  - i. Permit any unlawful practice to be carried on or committed in the Concession Area.
  - ii. Make any use of the Concession Area in any manner for purposes that might invalidate or increase the cost of insurance maintained by the City and/or the Union Pacific, including the storage or use of flammable fluids or toxic materials, except for reasonable quantities of cleaning products to be used by the Vendor.
  - iii. Use the Concession Area for any purpose that creates a nuisance or injures the reputation of the City or the Union Pacific.
  - iv. Permit tobacco products to be used by any person in the Concession Area.
  - v. Conduct or allow gambling in the Concession Area.
  - vi. Sell or allow alcoholic beverages in the Concession Area.
  - vii. The Vendor shall not allow the Concession Area or the Station at any time during the term of this Agreement to become subject to any lien due to any work by the Vendor or due to any circumstance within the Vendor's control.

**7. Operation Standards.** The Vendor shall operate the Concession Area in compliance with the following standards.

- A. Cleaning. The Vendor, at its sole cost and expense, shall keep the Concession Area neat, clean and in good repair so as to comply with all applicable public health, safety and

welfare laws and regulations. All trash receptacles shall conform in appearance with the existing containers in the Station and the Vendor shall periodically empty them, so they do not become over-filled or attract insects.

- B. **Damage to Concession Area.** The Vendor shall repair, or cause to be repaired, any damage to the Concession Area caused by the Vendor or its employees, agents, guests, or patrons.
- C. **Menu.** The Vendor shall provide a menu designed to provide products for sale which are consistent with the operation of this type of concession.
- D. **Days and Hours of Operation.** At a minimum, the Concession Area shall be open during the following times, –
  - 30 minutes prior to the departure of first train until the scheduled departure of the 9:35 am train Monday through Friday, but not including the following holidays:
  - January 1;
  - Memorial Day;
  - July 4;
  - Labor Day;
  - Thanksgiving Day;
  - The day after Thanksgiving Day; and
  - Christmas Day.

In the event of departure delays, the Vendor must stay open until at least 10:00 am.

- 8. **Equipment.** The Vendor, at its sole expense, shall supply all equipment necessary to provide the Services.
- 9. **Security Deposit.** Upon award the Vendor shall deposit with the City a cash bond in the amount of \$1,000.00 guaranteeing performance of the terms and conditions of this Agreement. The City may draw on this cash security deposit for any purpose associated with the operation of the Concession Area, including payment of taxes, if the Vendor materially breaches the terms and conditions of this Agreement or abandons the Concession Area.

**10. Payments and Records.**

- A. **Monthly Concession Fee.** The Vendor shall pay to the City a monthly concession fee of \$600.00 in advance on the first day of each and every month during the initial term of this Agreement. The fee paid shall be without notice or demand and without deduction or offset at City of Wheaton, Attn: Finance Department, 303 W. Wesley St., Wheaton, IL 60187. In the event this Agreement is extended, then for each year thereafter, the Concession Fee shall be equal to the prior year's Concession Fee adjusted by the CPI Index

as hereinafter defined. The "CPI Index" shall mean the Consumer Price Index for All Urban Consumers, U.S. City Average, Subgroup "All Items" (1982-84=100) published by the Department of Labor, Bureau of Labor Statistics. If the Concession Fee as adjusted by the



CPI Index results in a Concession Fee that is not a whole dollar amount, the Concession Fee shall be rounded up to the next whole dollar amount.

- B. Late Payment. If any payment required under this Agreement is not paid on the date it is due, a late payment fee equal to 2% of the sum of the monthly base payment shall be imposed per diem from the due date until the date the payment is made. A late payment shall be considered a material breach of this Agreement and sufficient grounds for termination of this Agreement.
- C. Books and Records. The Vendor shall keep permanent and accurate records of all gross sales derived from the operation of the Concession Area, including tax documentation filed with any government authority that reflect in any manner sales, income or revenue generated in connection with the concessions as may be reasonable in order to ascertain, document or substantiate gross monthly sales. All such records shall be retained for a period of three years after the end of the calendar year for which they relate. The City's Finance Director shall have reasonable access to and the right to inspect such books and record during regular business hours or as otherwise agreed between the City and the Vendor. The records shall be considered proprietary records under the Freedom of Information Act. The City shall not disclose any of the records based upon a FOIA request except as ordered by a court of competent jurisdiction or the Public Access Bureau of the Attorney General's Office.

#### **11. Condition of Concession Area.**

As-is Condition. The Vendor shall accept use of the Concession Area in an "as-is" condition, without any representations or warranties from the City as to the condition of such property and equipment, its code compliance, or fitness for any use, nor will the City make any promises to maintain, alter, remodel, repair, improve or replace such property or equipment.

#### **12. Insurance and Indemnification.**

- A. Insurance. The Vendor shall obtain and maintain during the term of this Agreement the following insurance on an occurrence-made basis.
  - i. General liability coverage with limits no less than \$1,000,000 for each occurrence and \$2,000,000 aggregate, naming the City, its elected officials, employees, trustees, agents, and successors and assigns ("City entities") as additional insureds on a primary and non-contributory basis. A waiver of subrogation shall be included in favor of the City entities.
  - ii. Business and personal property insurance in amounts deemed sufficient by the Vendor to cover loss of business and personal property.
  - iii. Workers' compensation coverage in amounts required by Illinois law. A waiver of subrogation shall be included in favor of the City.
  - iv. Fire insurance in an amount equal to the replacement value of the Concession Area and the improvements thereon, as approved in writing by the City.
  - v. Umbrella liability insurance with a limit of no less than \$2,000,000 for each occurrence and \$2,000,000 aggregate.

The Vendor shall provide a certificate of insurance to the City's Finance Director prior to occupying the Concession Area. The insurance must be AM best rated "A- or better". All policies of insurance shall provide thirty (30) days' notice of termination to the City. All insurance provided by the Vendor shall be primary and non-contributory.

- B. Indemnification. To the fullest extent permitted by law, the Vendor shall indemnify, keep and save harmless the City and its officers, employees, and agents against all injuries, deaths, losses, damages, claims, suits, liabilities, judgments, costs and expenses, which may arise directly or indirectly from any negligence or from the reckless or willful misconduct of the Vendor, its employees, or its subcontractors, and the Vendor shall at its own expense, appear, defend and pay all charges of attorneys and all costs and other expenses arising therefrom or incurred in connection therewith, and, if any judgment shall be rendered against the City in any such action, the Vendor shall, at its own expense, satisfy and discharge the same. This Agreement shall not be construed as requiring the Vendor to indemnify the City for its own negligence respectively. The City retains the right in its sole discretion to use defense counsel of its choice at the Vendor's sole cost. Nothing in this indemnification shall be interpreted to waive or release any and all statutory or common law privileges and immunities available to the City. There are no third-party beneficiaries to this Agreement.

### **13. Termination.**

- A. This Agreement may be terminated in the following circumstances:
- i. Default. If either Party commits a material breach of the terms and conditions of this Agreement, the non-defaulting party shall send written notice to the defaulting party describing such default and providing 15 days to cure the default. If the defaulting party fails to cure the default within said 15 days, then this Agreement shall be terminated without further notice. In the event of any breach of any of the terms or provisions of this Agreement, the City shall have, in addition to any other recourse, the right to terminate this Agreement, to enter and obtain possession of the Concession Area, to remove and exclude any and all persons from the Concession Area, and to remove and exclude all property of the Vendor therefrom, all without service of notice or resort to legal process and without any legal liability on its part.
  - ii. Bankruptcy/Insolvency. If the Vendor, while in possession of the Concession Area, files a petition for bankruptcy or insolvency or for reorganization under the Bankruptcy Act or voluntarily takes advantage of such Act by answer or otherwise makes an assignment for the benefit of creditors; or, if proceedings are instituted against the Vendor under any bankruptcy or insolvency law or if a receiver or trustee is appointed for all or substantially all of the Vendor's property and such proceedings or receivership are not vacated or dismissed within 30 days after the institution or appointment.
  - iii. Without Cause. Either party may terminate this Agreement without cause upon 45 days prior written notice to the other party.
- B. Upon the termination of this Agreement, the Vendor shall peaceably surrender and deliver up to the City possession of the Concession Area, including all improvements or additions thereto, in good order and condition, reasonable wear and tear excepted. The Vendor shall be responsible for all costs of damage or repairs caused by the Vendor upon

- B. Upon the termination of this Agreement, the Vendor shall peaceably surrender and deliver up to the City possession of the Concession Area, including all improvements or additions thereto, in good order and condition, reasonable wear and tear excepted. The Vendor shall be responsible for all costs of damage or repairs caused by the Vendor upon termination and shall reimburse the City for said costs within 30 days of receipt of an invoice.

**14. Miscellaneous.**

- A. Nondiscrimination. The Vendor, as a party to a public contract, shall refrain from unlawful discrimination in employment and assure equality of employment opportunity.
- B. Drug Free Workplace. The Vendor, as a party to a public contract, certifies and agrees that it will provide a drug free workplace.
- C. Subletting of Agreement. The Vendor shall not assign or sublet any part of the Services without the prior written consent of the City.
- D. Cooperation with FOIA Compliance. The Vendor acknowledges that the Freedom of Information Act applies to public records in possession of the Vendor. The Vendor shall cooperate with the City in its efforts to comply with the Freedom of Information Act. (5 ILCS 140/1 *et seq.*)
- E. Governing Law and Venue. This Agreement will be governed by and construed in accordance with the laws of the State of Illinois. Venue is proper only in the Eighteenth Judicial Circuit Court, DuPage County.
- F. Notice. Any notice or communication required by this Agreement shall be given by personal service or USPS certified mail as follows:
- i. To the City: City Clerk, 303 W. Wesley St., Wheaton, IL 60187
  - ii. To the Vendor:
- G. Amendment. No amendment or modification to this Agreement shall be effective unless and until the amendment or modification is in writing, properly approved in accordance with applicable procedures, and executed.
- H. Certifications. The Vendor certifies hereby that it is not barred from entering into this Agreement as a result of violations of either Section 33E-3 or Section 33E-4 of the Illinois Municipal Code and that it has a written sexual harassment policy in place in full compliance with 775 ILCS 5/2-105(A)(4).

IN WITNESS WHEREOF, the Parties have executed this Agreement on the date indicated above.

Java Connection of Wheaton, Inc.

City of Wheaton:

By: Sam Oh (Sam Oh)

By: Philip J. Swann

Title: owner

Title: Mayor

Date: 5/1/2025

Date: 5/6/2025



### Concession Area

Any operational equipment will be the responsibility of the vendor.



