AGREEMENT
BETWEEN THE CITY OF SAN JOSE
AND
COMPASS GROUP USA, INC. BY AND THROUGH ITS BATEMAN DIVISION
FOR SENIOR NUTRITION SERVICES AT MULTIPLE CITY OWNED
COMMUNITY CENTERS

This Agreement is made and entered into this _____ day of _____ 2012, by and between
the CITY OF SAN JOSE, a municipal corporation of the State of California (“City”) and
COMPASS GROUP USA, INC. by and through its BATEMAN DIVISION, a Delaware
corporation (“Contractor”), authorized to do business in the State of California.

RECITALS

A. In order to meet budgetary requirements and after issuing a Request for Interest,
City desires to enter into an agreement with Contractor for Senior Nutritional
Services.

B. Contractor shall operate the Senior Nutrition Program for low-income seniors at
City community centers as listed in Exhibit A, entitled “Scope of Services”, which is
attached hereto and incorporated herein.

THE PARTIES HEREBY AGREE AS FOLLOWS:

Section 1. Scope of Services

Contractor shall perform those services specified in detail in Exhibit A.

Section 2. Term of Agreement

A. The term of this Agreement shall be from November 1, 2011, to June 30, 2012,
inclusive (“Initial Term”), subject to the provisions of Subsections 2B, 2C and 2D
of this Section.

B. The parties shall have the option to extend the term of this Agreement for two (2)
additional terms of one (1) year (“Extension Terms”), upon the same terms and
conditions set forth in this Agreement subject to City Council appropriation of
funds.

C. The parties shall exercise this option by written notice by either party at least
thirty (30) days prior to the expiration of the Initial Term and both parties shall
sign a letter indicating the extension of the Agreement. Contractor shall have
current insurance and be up-to-date for all service sites as required under Exhibit

DRAFT--Contact the Office of the City Clerk at (408) 535-1260 or CityClerk@sanjoseca.gov for final document.
C, entitled “Insurance Requirements”, which is attached hereto and incorporated herein. All terms and conditions of this Agreement shall remain in full force and effect during the Extension Terms, except as otherwise agreed through a formal Amendment.

D. City or Contractor shall have the right to terminate this Agreement, without cause, by giving not less than thirty (30) days’ written notice of termination.

Section 3. Labor Compliance

This Agreement is subject to City’s Prevailing/Living Wage Policy and the applicable implementing regulations (collectively, the “Policy”). Contractor shall comply with the provisions as set forth in Exhibit D, entitled “Labor Compliance Addendum”, which is attached hereto and incorporated herein.

Section 4. Duties of the Contractor

A. The Contractor will use the specified room in each community center during the times indicated in this Agreement.

B. The Contractor’s will be responsible for cleaning the kitchen room when finished with the daily distribution.

C. Contractor staff will monitor the contracted sites’ activities as specified in Exhibit A on a regular basis.

Section 5. Duties of the City:

A room at each site listed in Exhibit B, entitled “Senior Nutrition Program Sites”, which is attached hereto and incorporated herein, will be made available, at no charge to the Contractor for the Senior Nutrition Program on the days and times described in Exhibit B.

Section 6. Relationship of Parties

Under no circumstances shall this Agreement be construed as one of agency, partnership, joint venture or employment between City and Contractor. Each party acknowledges and agrees that it neither has, nor will give the appearance or impression of having, any legal authority to bind or commit the other party in any way except as specifically provided in this Agreement.

Section 7. Notices

Any communication or notice which either party is required to send to the other or which either party desires to send to the other, shall be in writing and shall be either personally
delivered or mailed in the United States mail, postage prepaid, to the respective parties addressed as follows:

To City: City of San José
Parks, Recreation and Neighborhood Services
200 East Santa Clara Street, 9th Floor
San José, CA 95113-1905

To Contractor: Compass Group USA, Inc. – Bateman Division
Attn: General Counsel
2400 Yorkmont Road
Charlotte, NC 28217

AND

Compass Group USA, Inc. – Bateman Senior Meals
3110 West Pinhook Road, suite 201
Lafayette, LA 70508
Via fax -225-208-1504

Each party may change its address or designated agent by sending notice of the new address or designated agent to the other party pursuant to this Section.

**Section 8. Indemnification**

Contractor shall protect, defend, indemnify and hold harmless City, its officers, employees, agents, and volunteers against any action, demand, claim, loss or liability arising out of or resulting in any way from this Agreement or any actions taken, work performed or service provided under this Agreement. Contractor’s obligations to indemnify and hold harmless exclude only such action, demand, claim, loss or liability which is due to the sole negligence or willful misconduct of City and/or its employees. All of Contractor’s obligations under this Section are intended to apply to the fullest extent permitted by law and shall survive the expiration, completion or sooner termination of this Agreement. In any action or claim against City in which Agency is defending City, City shall have the right to approve legal counsel providing City’s defense.

**Section 9. Insurance**

Contractor agrees to have the policies set forth in the attached Exhibit C, entitled “Insurance Requirements”, which is attached hereto and incorporated herein, not later than the date of execution of this Agreement and to maintain such policies throughout the term of this Agreement. All policies, endorsements, certificates and/or binders shall be subject to approval by the City’s Director of Finance or the Director’s authorized designee (“Risk Manager”) as to form and content. These requirements may not be
amended or waived unless approved in writing by the Risk Manager. Contractor agrees to provide City with a copy of, certificates upon execution of this Agreement.

Section 10. Compliance with Laws/ Nondiscrimination

A. Contractor shall comply with all applicable laws, ordinances, codes and regulations of the federal, state and local governments and with applicable City policies.

B. Contractor shall not discriminate, in any way, against any person on the basis of race, sex, color, age, religion, actual or perceived gender identity, sexual orientation, disability, ethnicity or national origin in connection with or related to the performance of this Agreement.

Section 11. Venue

The parties agree that this Agreement shall be governed and construed in accordance with the laws of the State of California. In the event that suit shall be brought by either party to this Agreement, the parties agree that venue shall be exclusively vested in the state courts of the County of Santa Clara, or if federal jurisdiction is appropriate, exclusively in the United States District Court, Northern District of California, San José, California.

Section 12. Conflict of Interest

Contractor shall avoid all conflict of interest or appearance of conflict of interest in performance of this Agreement. As of the date of entering into this Agreement, Contractor’s employees assigned to perform services as specified in Exhibit A of this Agreement (“Contractor’s Assigned Employees”) shall not be required to complete and file a Form 700 with City’s Clerk. In the event that the City subsequently determines to require Contractor’s Assigned Employees to complete and file a Form 700 with City’s Clerk, City will notify Contractor in writing of such requirement, including without limitation, instructions regarding the categories of economic interests subject to disclosure on the Form 700 (“Form 700 Notice”). Contractor shall cause Contractor’s Assigned Employees to complete and file the Form 700 with City’s Clerk and to submit a copy to City, in accordance with the instructions specified in the Form 700 Notice, no later than thirty (30) days of the date of the Form 700 Notice.

Section 13. No Religious or Political Advocacy

Contractor agrees that it shall not use the space that is provided to Contractor under this Agreement and which is not subject to normal City fees and charges, to inhibit or promote religion and the services funded by this Agreement must not be used to convey a religious message. Nor shall Contractor use the space for political advocacy efforts, whether for or against a political candidate, ballot measure or bill. Any use of the space
in contradiction to the provisions of this Section, shall be deemed a disallowed use and subject to termination.

Section 14. Subcontracts

A. No subcontract will alter in any way any legal responsibility of Contractor to provide services under this Agreement.

B. Contractor will monitor the subcontractor to ensure compliance with the terms and conditions of this Agreement and provide records of their compliance as requested.

C. Contractor assures that the subcontractor(s) maintain(s) current licensure and indemnity insurance appropriate for obligations undertaken by subcontractor(s) and provides copies of such to City.

Section 15. Assignability

The parties agree that the expertise and experience of Contractor are material considerations for this Agreement. Unless specifically authorized by this Agreement, Contractor may not assign the performance of any obligation or interest under this Agreement without the prior written consent of City. Any attempt by Contractor to assign this Agreement, in violation of this Section, will be voidable at City's sole option.

Section 16. Severability

Should any part, term, or provision of this Agreement be decided by the courts to be illegal or in conflict with any law of the State of California or otherwise be rendered unenforceable or ineffectual, the validity of the remaining portions or provisions shall not be affected thereby.

Section 17. Employees of Contractor/Volunteers

A. Any and all personnel employed or volunteers retained by Contractor in conducting the operations of the Senior Nutrition Program shall be qualified to perform the duties assigned to them by Contractor.

B. Contractor shall not hire employees or volunteers who will have supervisory or disciplinary authority over minors who have been convicted of any offense identified in California Public Resources Code Sections 5164. Contractor shall fully indemnify, defend, and hold harmless City for any such hiring. Contractor shall notify City in writing of any violation of this provision as soon as is reasonably practicable.
C. Contractor shall also not employ any person who is permitted to provide services requiring contact with children or providing food concessionaire services or other licensed concessionaire services in that area, unless Contractor has complied with the TB testing requirements set forth in Section 5163 of the California Public Resources Code.

D. Regardless of whether services have been provided prior to full execution of this Agreement, Contractor certifies to the City that all services were provided in full compliance with the terms and provisions of this Agreement.

E. To give effect to California Public Resources Code Section 5163 and 5164, Contractor shall follow the procedures contained in Exhibit E, entitled “Employee/Volunteer Clearance Verification and Compliance with the Child Abuse and Neglect Reporting Act”, which is attached hereto and incorporated herein. In the event Contractor chooses a different national criminal database for complying with the FBI requirement for background checks, then such alternative database shall be subject to the City’s prior written approval.

F. City and Contractor hereby agree that the City shall be responsible for recruiting any volunteers needed to operate the Senior Nutrition Program to provide the services set forth in Table 1 below and Exhibit A Table 1 Nutrition Sites except for Alviso and Billy DeFrank.

G. If at any time during the term of the Agreement the volunteers outlined in Table 1 below are not available in a sufficient enough supply so as provide the specific service level outlined in Table 1 or as modified to meet the level of services required, Contractor shall notify the City and the City will mobilize staff or volunteers to fill the void within 48 hours of being notified the shortfall exists.

H. Changes to the volunteer schedule shall be discussed with the City Volunteer Coordinator.

I. In the event paper service is the alternative to china service, the City shall ensure the paper supplies are provided at no cost to Contractor.
### Section 18. Volunteers of the City

A. Contractor is responsible for all services in Exhibit A with the exception of those services to be performed by City and City volunteers listed in Section 8.a of Exhibit A.

### Section 19. Environmentally Preferable Procurement Policy

A. Contractor agrees that, in the performance of this Agreement, Contractor shall perform its obligations under the agreement in conformance with City Council Policy 4-6, Environmentally Preferable Procurement Policy. A description for environmentally preferable procurement and the policy can be found on the City’s website at the following link: [http://www.sanjoseca.gov/esd/natural-energy-resources/epp.htm](http://www.sanjoseca.gov/esd/natural-energy-resources/epp.htm)

B. Environmental procurement policies and activities related to the completion of work will include wherever practicable, but are not limited to:

1. Use of recycled and/or recyclable products in daily operations (i.e. 30, 50, 100% PCW paper, chlorine process free; triclosan free hand cleaner, etc.)

2. Use of Energy Star Compliant equipment.

3. Vehicles and vehicle operations (i.e. Alternative Fuel, Hybrid, etc.)

4. Internal waste reduction and reuse protocol(s).
5. Water and resource conservation activities within facilities, including bans on individual serving bottled water and the use of compostable food service products, etc.

Section 20. Prior Agreements and Amendments.

This Agreement, including all Exhibits and Attachments attached hereto, represents the entire understanding of the parties as to those matters contained herein. No prior oral or written understanding shall be of any force or effect with respect to those matters covered hereunder. This Agreement may be modified only by a written amendment duly executed by the parties to this Agreement.
WITNESS THE EXECUTION HEREOF on the day and year first hereinabove written.

“CITY”

APPROVED AS TO FORM:

CITY OF SAN JOSE, a municipal corporation

VERA TODOROV
Senior Deputy City Attorney

By ____________________________

NORBERTO DUENAS
Deputy City Manager

“Contractor”

COMPASS GROUP USA, INC. by and through its BATEMAN DIVISION, a Delaware corporation, authorized to do business in the State of California.

By ____________________________

Name:
Title:
EXHIBIT A

SCOPE OF SERVICES

Contractor will provide nutritional meal services to San Jose seniors age 60 and older at up to fifteen (15) Community Center sites and up to four (4) regional cooking sites located in the ten (10) City Council Districts within the City of San Jose. Meals may be made available to handicapped or disabled individuals who have not attained 60 years of age but who reside in housing facilities occupied primarily by the elderly at which congregate nutrition services are provided. Contractor will provide hot meals to the sites specified in Table 1 of Exhibit A 3.

1. Eligible Individuals

- Persons who are 60 years of age or older who are spouses of persons who are 60 years of age or older; and
- Handicapped or disabled individuals who have not attained 60 years of age but reside in housing facilities occupied primarily by the elderly at which congregate nutrition services are provided, or individuals with disabilities who reside at home with and accompany older individuals who are eligible for services; and
- Priority will be given to those older persons in greatest economic or greatest social need as defined by the Older Americans Act of 1965 as amended.

2. Meals

- Meals served by Contractor must provide at least one-third of the current recommended dietary allowance specified by the Food and Nutrition Board of the National Academy of Science – National Research Council.
- Menus will be planned by Contractor in cycles, the minimum period being four (4) weeks. Menus will be planned in accordance with COUNTY requirements and submitted to City three weeks prior to initial use.
- Menus will be posted in a conspicuous location at meal sites at least one (1) week in advance.
- Table settings will be of reasonable quality. If disposable dinnerware used, it will be of sturdy quality.
- Lunch will be served no later than 12:00 each day and will be available for a 30-minute window time.
3. **Nutrition Sites**

Table 1

<table>
<thead>
<tr>
<th>Council District</th>
<th>Site</th>
<th>Address</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Cypress</td>
<td>403 S. Cypress Avenue, 95117</td>
</tr>
<tr>
<td>2</td>
<td>Southside</td>
<td>5585 Cottle Rd, 95123</td>
</tr>
<tr>
<td>3</td>
<td>Northside</td>
<td>488 N. 6th St., 95112</td>
</tr>
<tr>
<td>3</td>
<td>Gardner</td>
<td>520 W. Virginia St., 95125</td>
</tr>
<tr>
<td>3</td>
<td>Roosevelt</td>
<td>901 E. Santa Clara St., 95116</td>
</tr>
<tr>
<td>4</td>
<td>Alviso</td>
<td>5050 N. 1st Street, 95116</td>
</tr>
<tr>
<td>4</td>
<td>Berryessa</td>
<td>3050 Berryessa Avenue, 95132</td>
</tr>
<tr>
<td>5</td>
<td>Mayfair</td>
<td>2039 Kammerer Ave., 95116</td>
</tr>
<tr>
<td>6</td>
<td>Billy De Frank</td>
<td>938 The Alameda, 95126</td>
</tr>
<tr>
<td>6</td>
<td>Willow Glen</td>
<td>2175 Lincoln Avenue., 95125</td>
</tr>
<tr>
<td>7</td>
<td>Alma</td>
<td>136 W. Alma Ave., 95110</td>
</tr>
<tr>
<td>7</td>
<td>Seven Trees</td>
<td>3590 Cas Dr., 95111</td>
</tr>
<tr>
<td>9</td>
<td>Camden</td>
<td>3369 Union Ave., 95124</td>
</tr>
<tr>
<td>10</td>
<td>Almaden</td>
<td>6445 Camden Ave., 95120</td>
</tr>
</tbody>
</table>

4. **Donation Policy**

Contractor may request a voluntary contribution to offset costs of the meals. Suggested contribution is $2.50 per meal and a $5.00 guest fee for persons under 60 years of age. Contributor’s names and amounts are confidential and may not be disclosed without written permission of the contributor.

5. **Menu Planning**

Menus must follow the menu guidelines as described in Appendix A: Menu Planning Requirements and Appendix B: Summary of New Menu Requirements 2009.

a. Menus for hot meals must be submitted and completed using the component methods as described in the Senior Nutrition Policy Manual to determine nutritional content.

b. Each meal must contain one-third (1/3) of the current daily Recommended Dietary Allowance (RDA) for persons 51 years of age or older as determined by the National Academy of Science-National Research Council.

c. Moderate amounts of salt will be used in the preparation of food. Menus are to be prepared with as low in fat content as possible.

d. Oil used in food prepared will be liquid and polyunsaturated fat and/or monosaturated fat in the preparation of all meals.

e. Food must be attractive, palatable, and appealing.
f. Ethnic and holiday menus should be incorporated under advisement by the County Nutrition Services Manager or Staff Dieticians.

6. Food Inventory

1. Contractor must provide City with a written plan for conducting food inventories including:
   a. Procedures for conducting food inventories and a schedule for completing inventories for the term of the contract.
   b. A description of “First-in-First-Out” food rotation system to ensure stored goods are rotated to prevent deterioration

2. Contractor will provide City with the food inventory plan and completed food inventories on request.

7. Payment for Services

Contractor agrees that payment for services is based on actual meals served up to the cost listed in Table 2 by nutrition site. Contractor will be reimbursed on a monthly basis for expenses made in the previous month. City will provide Contractor with a monthly cost reimbursement form that specifies the line item allocations as defined by the County Senior Nutrition Program. Contractor will submit monthly reimbursement forms with receipts by the 10th business day of the month for the month just preceding in which services are performed. Line Item allocations may include:

1. Personnel
2. Fringe
3. Sick Leave
4. Medical
5. Staff mileage
6. Food Costs
7. Non-Food Items

Contractor’s reimbursement shall not exceed $940,452 for services provided at the sites listed below:
### Table 2

<table>
<thead>
<tr>
<th>Nutrition Sites</th>
<th>Program Schedule</th>
<th>Average Meal Cost</th>
</tr>
</thead>
<tbody>
<tr>
<td>Northside, Alma, Gardner, &amp; Mayfair</td>
<td>Monday-Friday</td>
<td>$6.25</td>
</tr>
<tr>
<td>Seven Trees, Almaden &amp; Southside</td>
<td>Monday-Friday</td>
<td>$6.31</td>
</tr>
<tr>
<td>Willow Glen, Camden &amp; Cypress</td>
<td>Monday-Friday</td>
<td>$6.31</td>
</tr>
<tr>
<td>Roosevelt, Berryessa, Evergreen</td>
<td>Monday-Friday Saturday – Roosevelt only</td>
<td>$5.51</td>
</tr>
<tr>
<td>Alviso &amp; Billy De Frank</td>
<td>Monday &amp; Wednesday Alviso; Wednesday Billy De Frank</td>
<td>$4.74</td>
</tr>
</tbody>
</table>

Bateman shall reimburse the City for staff meals at the rate of $2.50 per meal.

Contractor shall perform staff background checks as specified in Exhibit E and TB testing per California Public Resources Code Sections 5163 and 5164. City shall reimburse for such services in an amount not to exceed two thousand three hundred thirty-two dollars ($2,332) for the November 1, 2011 to June 30, 2012 term period.

8. **Service Task**

a. Contractor is not responsible for those tasks to be provided by City or its volunteers including:
   (i) Collection, final count and deposit of donations;
   (ii) Coordination of Outreach paratransit services and submission of associated numbers for Santa Clara County report;
   (iii) Facilitating access to IT equipment as needed to conduct general senior nutrition operations;
   (iv) Mass printing of menus as part of monthly brochures;
   (v) Table and chair set up per nutrient site listed on Exhibit B;
   (vi) General clean up per nutrient site listed on Exhibit B; and
   (vii) Dish cleaning per nutrient site listed on Exhibit B.
   (viii) Administering fire and earthquake drills

b. Contractor shall coordinate with designated City representative(s) for services to be performed by City volunteers.

c. With the exception of those items listed in Section 8.a above, City is not responsible for those tasks to be provided by Contractor or its volunteers pursuant to this Scope of Services (Exhibit A) including but not limited to:
(i) Collection of dining counts via telephone reservation system;
(ii) Collection and maintenance of participant intake forms; and associated reporting;
(iii) Generate bi-annual menus;
(iv) Generate food/cleaning supply orders and receiving shipments;
(v) Generate monthly reports and invoices to the City and Santa Clara County;
(vi) Leaving kitchen facilities in a clean, orderly, sanitary fashion at the end of each serving day;
(vii) Maintaining environmental and health permits; and
(viii) Supplying meal services for the Senior Nutrition Program
EXHIBIT B

SENIOR NUTRITION PROGRAM SITES

Contractor will provide a weekly food distribution program to low-income seniors age 60 years and older at the City of San José sites and times listed in this Exhibit. City shall provide a room at each center at the following addresses and to be available on the following days listed below:

<table>
<thead>
<tr>
<th>Council District</th>
<th>Site</th>
<th>Address</th>
<th>Program Schedule</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Cypress</td>
<td>403 S. Cypress Avenue, 95117</td>
<td>Monday -Friday</td>
</tr>
<tr>
<td>2</td>
<td>Southside</td>
<td>5585 Cottle Rd, 95123</td>
<td>Monday -Friday</td>
</tr>
<tr>
<td>3</td>
<td>Northside</td>
<td>488 N. 6th St., 95112</td>
<td>Monday -Friday</td>
</tr>
<tr>
<td>3</td>
<td>Gardner</td>
<td>520 W. Virginia St., 95125</td>
<td>Monday -Friday</td>
</tr>
<tr>
<td>3</td>
<td>Roosevelt</td>
<td>901 E. Santa Clara St., 95116</td>
<td>Monday –Friday</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Saturday</td>
</tr>
<tr>
<td>4</td>
<td>Berryessa</td>
<td>3050 Berryessa Avenue, 95132</td>
<td>Monday -Friday</td>
</tr>
<tr>
<td>5</td>
<td>Mayfair</td>
<td>2039 Kammerer Ave., 95116</td>
<td>Monday -Friday</td>
</tr>
<tr>
<td>6</td>
<td>Willow Glen</td>
<td>2175 Lincoln Avenue., 95125</td>
<td>Monday -Friday</td>
</tr>
<tr>
<td>7</td>
<td>Alma</td>
<td>136 W. Alma Ave., 95110</td>
<td>Monday -Friday</td>
</tr>
<tr>
<td>7</td>
<td>Seven Trees</td>
<td>3590 Cas Dr., 95111</td>
<td>Monday -Friday</td>
</tr>
<tr>
<td>8</td>
<td>Evergreen</td>
<td>4860 San Felipe Rd., 95135</td>
<td>Monday -Friday</td>
</tr>
<tr>
<td>9</td>
<td>Camden</td>
<td>3369 Union Ave., 95124</td>
<td>Monday -Friday</td>
</tr>
<tr>
<td>10</td>
<td>Almaden</td>
<td>6445 Camden Ave., 95120</td>
<td>Monday -Friday</td>
</tr>
</tbody>
</table>
EXHIBIT C

INSURANCE REQUIREMENTS

Contractor, at Contractor’s sole cost and expense, shall procure and maintain for the duration of this Agreement insurance against claims for injuries to persons or damages to property which may arise from, or in connection with, the performance of the services hereunder by Instructor, its agents, representatives, employees or sub-Contractors.

A. MINIMUM SCOPE OF INSURANCE.

Coverage shall be at least as broad as:

1. The coverage provided by Insurance Services Office Commercial General Liability coverage ("occurrence") Form Number CG 0001, including products and completed operations; and

2. Applicable only if vehicles used in the course of training and/or for transporting of students -

   The coverage provided by Insurance Services Office Form Number CA 0001 covering Automobile Liability. Coverage shall include all owned, non-owned and hired automobile; and

3. If Contractor does not have any employees and does not wish to cover themselves for Worker’s Compensation, Contractor is to sign the Worker’s Compensation Waiver Form (Page D-4) –

   Workers’ Compensation insurance as required by the California Labor Code and Employers Liability insurance; and

4. Applicable only if Professional training is being provided such as, but not limited to: Medical, Cosmetology (Beauty Shop or Barber Shop), Massage Therapy, Scientific, Legal, Real Estate, Accounting or other licensed training as necessary –

   Professional Liability Errors and Omissions.

B. MINIMUM LIMITS OF INSURANCE.

Contractor shall maintain limits no less than:

1. Commercial General Liability: $1,000,000 per occurrence for bodily injury,
personal injury and property damage. If Commercial Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit; and

2. Automobile Liability: $1,000,000 combined single limit per accident for bodily injury and property damage; and

3. Workers’ Compensation and Employers’ Liability: Workers’ Compensation limits as required by the California Labor and Employers Liability limits of $1,000,000 per accident; and

4. Professional Liability Errors and Omissions $1,000,000 Aggregate Limit.

C. DEDUCTIBLES AND SELF-INSURED RETENTIONS.

Any deductibles or self-insured retentions must be declared to, and approved by City's Risk Manager. At the option of City, either; the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects City, its officer, employees, agents and Contractors; or Contractor shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses in an amount specified by the City's Risk Manager.

D. OTHER INSURANCE PROVISIONS.

The policies are to contain, or be endorsed to contain, the following provisions:

1. Commercial General Liability and Automobile Liability Coverages

   a. The City of San José, its officers, employees, agents and Contractors are to be covered as additional insureds as respects: Liability arising out of activities performed by or on behalf of, Contractor; products and completed operations of Contractor; premises owned, leased or used by Contractor; and automobiles owned, leased, hired or borrowed by Contractor.

   b. Contractor’s insurance coverage shall be primary insurance as respects City, its officers, employees, agents and Contractors. Any insurance or self-insurance maintained by City, its officers, employees, agents or Contractors shall be excess of Contractor's insurance and shall not contribute with it.

   c. Any failure to comply with reporting provisions of the policies by Instructor shall not affect coverage provided City, its officers, employees, agents, or Contractors.
d. Coverage shall state that Instructor's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

e. Coverage shall contain waiver of subrogation in favor of the City its officials, employees, agents and Contractors.

2. Workers’ Compensation and Employers Liability

Coverage shall be endorsed to state carrier waives its rights of subrogation against the City its officials, employees, agents and Contractors

3. All Coverages

Each insurance policy required by this Agreement shall be endorsed to state that coverage shall not be suspended, voided, canceled, or reduced in limits except after thirty (30) days' prior written notice has been given to City.

E. ACCEPTABILITY OF INSURERS.

Insurance is to be placed with insurers acceptable to City’s Risk Manager.

F. VERIFICATION OF COVERAGE.

Contractor shall furnish City with certificates of insurance and with original endorsements affecting coverage required by this Agreement. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf.

Proof of insurance shall be either emailed in pdf format to: Riskmgmt@sanjoseca.gov, or mailed to the following postal address (or any subsequent email or postal address as may be directed in writing by the Risk Manager):

City of San José – Finance
Risk Management
200 East Santa Clara Street, 13th Floor Tower
San José, CA 95113-1905

G. SUBCONTRACTORS.

Contractor shall include all subcontractors as insured under its policies or shall obtain separate certificates and endorsements for each subContractor.
H. EXCEPTION.

If, however, Contractor does not have any employees, Contractor shall sign the following statement as well as the contract itself to affect a fully executed contract:

I, as the designated representative of Contractor, represent and warrant that Contractor does not have, nor intends to have for the full term of this Agreement, any employees. Therefore, as the representative of Contractor, I am signing this statement in lieu of providing the above required Workers’ Compensation Coverage.

__________________________________________  __________________________
Signature                                      Date

(Please print or type name of business/organization)
This Labor Compliance Addendum ("Addendum") applies to services provided at all City of San Jose ("City") facilities other than the Norman Y. Mineta San Jose International Airport.

By executing this Addendum, Contractor acknowledges and agrees that the work performed pursuant to the above referenced Agreement or Service Order is subject to all applicable provisions.

**Payment of Minimum Compensation to Employees.** Contractor shall be obligated to pay not less than the General Prevailing Wage Rate and/or Living Wage Rate as indicated in the attached City Living Wage Determination.

A. **Prevailing Wage Requirements.** California Labor Code and/or Resolutions of the San Jose City Council require the payment of not less than the general prevailing rate of per diem wages and rates for holiday and overtime and adherence to all labor standards and regulations. The General Prevailing Wage Rates may be adjusted throughout the term of this Agreement. Notwithstanding any other provision of this Agreement, Contractor shall not be entitled to any adjustment in compensation rates in the event there are adjustments to the General Prevailing Wage Rates.

B. **Living Wage Requirements.** Any person employed by Contractor or subcontractor or City financial recipient or any sub recipient whose compensation is attributable to the City’s financial assistance, who meets the following requirements is considered a covered employee. The employee: 1) is not a person who provides volunteer services, that are uncompensated except for reimbursement of expenses such as meals, parking or transportation; 2) spends at least half of his or her time on work for the City [4 hours a day or 20 hours a week]; 3) is at least eighteen (18) years of age; and 4) is not in training for the period of training specified under training standards approved by the City.
C. **Reports.** Contractor shall file a completed and executed copy of this Addendum with the Department of Finance. Upon award the Department of Finance shall provide the Contractor with compliance documents to be completed and returned (with supporting documentation) to the Office of Equality Assurance. **These documents must be returned within 10 days of receipt.** Contractor shall not perform on site work on this contract until labor compliance documents are filed with the Office of Equality Assurance. Contractor shall also report additional information, including certified payrolls, as requested by Director of Equality Assurance to assure adherence to the Prevailing Wage and/or Living Wage Policy.

D. **Coexistence with Any Other Employee Rights.** These provisions shall not be construed to limit an employee’s ability to bring any legal action for violation of any rights of the employee.

E. **Audit Rights.** All records or documents required to be kept pursuant to this Agreement to verify compliance with the Wage Requirement shall be made available for audit at no cost to City, at any time during regular business hours, upon written request by the City Attorney, City Auditor, City Manager, or a designated representative of any of these officers. Copies of such records or documents shall be provided to City for audit at City Hall when it is practical to do so. Otherwise, unless an alternative is mutually agreed upon, the records or documents shall be available at Contractor’s address indicated for receipt of notices in this Contract.

F. **Enforcement.**

1. **General.** Contractor acknowledges it has read and understands that, pursuant to the terms and conditions of this Agreement, it is required to comply with the Wage Requirement and to submit certain documentation to the City establishing its compliance with such requirement. (“Documentation Provision.”) Contractor further acknowledges the City has determined that the Wage Requirement promotes each of the following (collectively “Goals”):
   a. It protects City job opportunities and stimulates the City’s economy by reducing the incentive to recruit and pay a substandard wage to labor from distant, cheap-labor areas.
   b. It benefits the public through the superior efficiency of well-paid employees, whereas the payment of inadequate compensation tends to negatively affect the quality of services to the City by fostering high turnover and instability in the workplace.
   c. Paying workers a wage that enables them not to live in poverty is beneficial to the health and welfare of all citizens of San Jose because it increases the ability of such workers to attain sustenance, decreases the amount of poverty and reduces the amount of taxpayer funded social services in San Jose.
   d. It increases competition by promoting a more level playing field among contractors with regard to the wages paid to workers.

2. **Remedies for Contractor’s Breach of Prevailing Wage/Living Wage Provisions.**
a. **WITHHOLDING OF PAYMENT:** Contractor agrees that the Documentation Provision is critical to the City’s ability to monitor Contractor’s compliance with the Wage Requirement and to ultimately achieve the Goals. Contractor further agrees its breach of the Documentation Provision results in the need for additional enforcement action to verify compliance with the Wage Requirement. In light of the critical importance of the Documentation Provision, the City and Contractor agree that Contractor’s compliance with this Provision, as well as the Wage Requirement, is an express condition of City’s obligation to make each payment due to the Contractor pursuant to this Agreement. **THE CITY IS NOT OBLIGATED TO MAKE ANY PAYMENT DUE THE CONTRACTOR UNTIL CONTRACTOR HAS PERFORMED ALL OF ITS OBLIGATIONS UNDER THESE PROVISIONS. THIS PROVISION MEANS THAT CITY CAN WITHOLD ALL OR PART OF A PAYMENT TO CONTRACTOR UNTIL ALL REQUIRED DOCUMENTATION IS SUBMITTED.** Any payment by the City despite Contractor’s failure to fully perform its obligations under these provisions shall not be deemed to be a waiver of any other term or condition contained in this Agreement or a waiver of the right to withhold payment for any subsequent breach of the Wage Requirement or the Documentation Provision.

b. **RESTITUTION:** Require the employer to pay any amounts underpaid in violation of the required payments and City’s administrative costs and liquidated damages and, in the case of financial assistance, to refund any sums disbursed by the City.

c. **SUSPENSION OR TERMINATION:** Suspend and/or terminate Agreement for cause;

d. **DEBARMENT:** Debar Contractor or subcontractor from future City contracts and/or deem the recipient ineligible for future financial assistance.

e. **LIQUIDATED DAMAGES FOR BREACH OF WAGE PROVISION:** Contractor agrees its breach of the Wage Requirement would cause the City damage by undermining the Goals, and City’s damage would not be remedied by Contractor’s payment of restitution to the workers who were paid a substandard wage. Contractor further agrees that such damage would increase the greater the number of employees not paid the applicable prevailing wage and the longer the amount of time over which such wages were not paid. The City and Contractor mutually agree that making a precise determination of the amount of City’s damages as a result of Contractor’s breach of the Wage Requirement would be impracticable and/or extremely difficult. **THEREFORE, THE PARTIES AGREE THAT, IN THE EVENT OF SUCH A BREACH, CONTRACTOR SHALL PAY TO THE CITY AS LIQUIDATED DAMAGES THE SUM OF THREE (3) TIMES THE DIFFERENCE BETWEEN THE ACTUAL AMOUNT OF WAGES PAID AND THE AMOUNT OF WAGES THAT SHOULD HAVE BEEN PAID.**
COMPASS GROUP USA INC.
BY AND THROUGH ITS BATEMAN DIVISION

Contractor

By _____________________________
Name:___________________________

Title:___________________________

Date:___________________________
ATTACHMENT I

CITY OF SAN JOSE WAGE DETERMINATION

CONTRACT SCOPE: Senior Nutrition Program
ISSUE DATE: August 3, 2011

Contracts governed by both the City of San José’s Living Wage Policy (Resolution No. 68900) and its Prevailing Wage Policy (Resolution No. 61144) are subject to the Policy with the higher wage requirements.

SENIOR NUTRITION CLASSIFICATIONS SUBJECT TO PREVAILING WAGE POLICY

<table>
<thead>
<tr>
<th>Classification</th>
<th>Basic Hourly Pay Rate</th>
<th>Health, Welfare &amp; Pension</th>
<th>Vacation Minimum (5 Days)</th>
<th>Paid Sick Leave (6 Days)</th>
<th>Total Hourly Pay Rate*</th>
</tr>
</thead>
<tbody>
<tr>
<td>Food Service Coordinator</td>
<td>$16.71</td>
<td>$2.71</td>
<td>$.32</td>
<td>$.39</td>
<td>$20.13</td>
</tr>
<tr>
<td>Cook</td>
<td>$14.17</td>
<td>$2.71</td>
<td>$.27</td>
<td>$.32</td>
<td>$17.47</td>
</tr>
</tbody>
</table>

Breakdown of Benefits

<table>
<thead>
<tr>
<th>Benefit</th>
<th>After 1 year</th>
<th>5 Days - 40 Hours</th>
<th>After 2 years</th>
<th>10 Days - 80 Hours</th>
<th>After 10 years</th>
<th>15 Days - 120 Hours</th>
</tr>
</thead>
<tbody>
<tr>
<td>Paid Vacation (Calculate at applicable hourly pay rate)</td>
<td>5 Days - 40 Hours</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Health &amp; Welfare</td>
<td>$2.26 per hour</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Pension</td>
<td>$0.31 per hour</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Paid Sick Leave</td>
<td>Six (6) paid sick days</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Holidays</td>
<td>No Paid Holidays. See Hours and Days of Work on next page</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

*The full amount of the total hourly pay rate must be paid directly to the worker, UNLESS the Contractor is making payments to a benefit plan. If the Contractor is making payments to a benefit plan but the benefits being paid do not add up to the full amount of benefits listed above, the Contractor must pay the difference directly to the worker.
SENIOR NUTRITION CLASSIFICATIONS SUBJECT TO LIVING WAGE POLICY

<table>
<thead>
<tr>
<th>Classification</th>
<th>Basic Hourly Pay Rate</th>
<th>Medical Benefit</th>
<th>Total Hourly Pay Rate*</th>
</tr>
</thead>
<tbody>
<tr>
<td>Kitchen Aide</td>
<td>$13.59</td>
<td>$1.25</td>
<td>$14.84</td>
</tr>
</tbody>
</table>

*The full amount of the total hourly pay rate must be paid directly to the worker, unless the Contractor is making payments to a medical benefit plan.

Hours and Days of Work

(Industrial Welfare Commission Order No. 16-2001)

Employees shall not be employed more than eight (8) hours in any workday or more than 40 hours in any workweek unless the employee receives one and one-half (1 ½) times such employee’s regular rate of pay for all hours worked over 40 hours in the workweek. Employment beyond eight (8) hours in any workday or more than six (6) days in any workweek is permissible provided the employee is compensated for such overtime at not less than:

(a) One and one-half (1 ½) times the employee’s regular rate of pay for all hours worked in excess of eight (8) hours up to and including 12 hours in any workday, and for the first eight (8) hours worked on the seventh (7th) consecutive day of work in a workweek; and
(b) Double the employee’s regular rate of pay for all hours worked in excess of 12 hours in any workday and for all hours worked in excess of eight (8) on the seventh (7th) consecutive day of work in a workweek.

WAGE RATES ARE SUBJECT TO ANNUAL ADJUSTMENT ON THE ANNIVERSARY DATE OF THE CONTRACT.
ATTACHMENT II

WAGE REQUIREMENTS AND INFORMATION

Pursuant to City of San Jose Prevailing Wage and Living Wage Policies, Contractor and any subcontractor shall be obligated to pay not less than the prevailing wage or living wage in accordance with the requirements of this policy document, and the Wage Determination as indicated in Attachment I, above.

I. CITY COUNCIL WAGE POLICIES

A. Living Wage Policy

Under City Council Resolution No. 68900, contractors who are awarded certain City service and labor contracts are required to pay a minimum level of compensation to covered employees who work on these projects.

Living wages shall mean the wages paid under a collective bargaining agreement between the Contractor and a recognized union representing employees who will perform services pursuant to the Agreement.

If the wage rates set forth in the collective bargaining agreement fall below the then current Living Wage Rate set by the City of San Jose, the required rate of pay shall be the City’s Living Wage Rate unless the collective bargaining agreement expressly provides that the agreement shall supersede the requirements of the Living Wage Policy.

If there is no collective bargaining agreement as described above, not less than the following Living Wage Rate must be paid to covered employees performing work identified in the applicable wage determination issued by the City of San Jose’s Office of Equality Assurance.

1. If health insurance benefits are provided, a wage of not less than Thirteen Dollars and Fifty-Nine Cents ($13.59) per hour.

2. If health insurance benefits are not provided, a wage of not less than Fourteen Dollars and Eighty-Four Cents ($14.84) per hour.

Please see Attachment 1 for Living Wage Determination.
B. Prevailing Wage Policy

California Labor Code and/or Resolutions of the City of San Jose require the payment of not less than the general rate of per diem wages and rates for holiday and overtime and adherence to all labor standards and regulations.

Prevailing Wages established by the California Department of Industrial Relations shall be the General Prevailing Wage Determination made by the Director of Industrial Relations pursuant to California Labor Code Part 7, Chapter 1, Article 2, Sections 1770, 1773 and 1773.1. The General Prevailing Wage Rates may be adjusted throughout the term of this Agreement.

Prevailing Wages established by the City of San Jose shall mean the wages paid under a collective bargaining agreement between the Contractor and a recognized union representing workers who perform services pursuant to this agreement; or

If there is no collective bargaining agreement as described above, not less than the prevailing rate of per diem wages for the employee craft/classification as determined by the City of San Jose’s Office of Equality Assurance.

The City’s Prevailing Wage will be subject to annual adjustment on the anniversary date of the agreement. Adjustment will be based on the U.S. Department of Labor/Bureau of Labor Statistics Consumer Price Index, All Items, for all Urban Consumers [CPI-U] for San Francisco-Oakland-San Jose.

Please see Attachment I for Prevailing Wage Determination.

C. Reports

The Office of Equality Assurance will monitor the payment of prevailing and living wages by requiring the awarded Contractor and all Subcontractors to file a LABOR COMPLIANCE WORKFORCE STATEMENT and LABOR COMPLIANCE FRINGE BENEFIT STATEMENT with supporting documentation.

The awarded Contractor and Subcontractors shall also report such other additional information, including certified payrolls, as requested by the Director of Equality Assurance to ensure adherence to the Policies.

Labor compliance statements must be filed in the Office of Equality Assurance within 10 days of execution of this Agreement at the address below.
II. LIVING WAGE POLICY PROVISIONS

On November 17, 1989, by Resolution No. 68554 and amended on June 8, 1999 by Resolution No. 68900, the San Jose City Council adopted its Living Wage Policy to meet the employment and economic development needs of low wage workers by mandating:

1. A minimum level of compensation for workers employed by contractors and subcontractors who are awarded certain City of San Jose service and labor contracts with an expenditure in excess of $20,000 and recipients who receive direct monetary financial assistance from the City in the amount of $100,000 or more in any twelve month period, excluding non-profit corporations;

2. The provision of health insurance benefits or the ability to afford health insurance;

3. Retention of employees when certain new contractors take over a continuing City service;

4. An environment of labor peace; and

5. Employee Work Environment Evaluation (Third Tier Review)

A. WAGE REQUIREMENTS

1. Covered Employees Defined:

For the purpose of this provision, Covered Employees means any person employed by the Contractor or Subcontractor who meets the following conditions:

a) The person does not provide volunteer services that are uncompensated except for reimbursement of expenses such as meals, parking or transportation;
b) The person expends at least half of his/her time on work for the City;

c) The person is at least eighteen (18) years of age; and

d) The person is not in training for the period of training specified under training standards approved by the City of San Jose.

B. EMPLOYEE RETENTION REQUIREMENTS

One of the provisions of the Living Wage Policy is a requirement that on certain agreements over $50,000, the new Contractor must retain the workers who have been performing the services under the previous contractor. Employee retention is applicable to the Contractor and all Subcontractors under the Agreement in two respects: (1) the Contractor will be obligated to adhere to these requirements in hiring; and (2) the Contractor will also be obligated to cooperate with the City in transitioning to a new contractor at the end of the term of the Agreement.

The following provisions are applicable to this Agreement and will become a part of the Agreement:

1. Qualified Retention Employee Defined

Qualified Retention Employee means any person employed by the predecessor contractor or any subcontractor to the predecessor contractor who meets the following requirements:

a) The person provides direct labor or service on the Agreement;

b) The person is not an “exempt” employee under the Fair Labor Standards Act (FSLA); and

c) The person has been employed on the City contract by the predecessor service contractor or subcontractor for at least six months prior to the date of the new Agreement.

2. Current Eligible Retention Employee Defined

Current Eligible Retention Employee means a current employee of the new Contractor who meets the following requirements:

a) The person has been employed by the Contractor for at least six months prior to the date of the new service or labor agreement;
b) The person would otherwise need to be terminated as a result of the implementation of the City of San Jose Living Wage Policy; and

c) The Contractor chooses to designate the person as a Current Eligible Retention Employee.

The Contractor must establish requirements i. and ii., above by submitting payroll records or other reliable evidence satisfactory to the Director of Equality Assurance. If the Contractor cannot submit such evidence, the employee cannot be designated a Current Eligible Retention Employee.

C. EMPLOYMENT OF QUALIFIED RETENTION EMPLOYEES

The new Contractor shall offer continued employment to all Qualified Retention Employees who are interested in such continued employment.

The City’s Office of Equality Assurance will provide the new Contractor with information regarding which employees of the predecessor contractor are Qualified Retention Employees to the extent such information is available to the City of San Jose.

Notwithstanding anything to the contrary in this provision, the new Contractor may deem an employee not to be a Qualified Retention Employee if, and only if:

1. The employee has been convicted of a crime that is related to the job or to his/her job performance; or

2. The Contractor can demonstrate to the City that the employee presents a significant danger to customers, co-workers or City staff.

In the event that the new Contractor does not have enough positions available to hire all Qualified Retention Employees desiring continued employment and to retain its Current Eligible Retention Employees, the new Contractor shall hire Qualified Retention Employees and retain Current Eligible Retention Employees by seniority within each employment classification. For any positions that become available during the initial ninety (90) day period of the contract, the new Contractor shall Qualified Retention Employees and rehire its Current Eligible Retention Employees by seniority within each employment classification.

1. Retention Requirements
a) Qualified Retention Employees hired by the new Contractor may not be discharged without cause during the initial ninety (90) day period of their employment.

b) The new Contractor shall offer continued employment to each Qualified Retention Employee who received a satisfactory performance evaluation at the end of the initial ninety (90) day period of employment. Such employment shall be offered under the same terms and conditions established by the new Contractor for all of its employees.

2. Third Part Beneficiary

Qualified Retention Employees are third party beneficiaries of this Agreement which means that the employee has the right to enforce the provisions of the Agreement independent of the City’s right to enforce the provisions of the Agreement. The third party rights will become effective only when the Agreement becomes effective. No third party rights are intended to apply to any employee regarding the RFP process.

3. Obligations Upon Termination

Upon termination of this Agreement, Contractor shall fully cooperate with all City requests regarding contacts with Contractor’s employees to enable a transition in the workforce to a new Contractor.

D. EMPLOYEE WORK ENVIRONMENT EVALUATION AND LABOR PEACE ASSURANCE

An Employee Work Environment Evaluation looks into a Proposer’s history as an employer and work condition commitments. Additionally, the City has determined that labor peace is essential to the proprietary interests of the City to ensure that contractors conducting business on City property are good employers, provide a good work environment without encroaching on the contractor’s ability to conduct business and comply with federal, state and City employment policies.

Proposers are required to complete the Employee Work Environment and Labor Peace Questionnaire (Questionnaire) (Exhibit 5) and attach documents to show how it will prevent labor disputes or unrest from occurring during the term of the City Agreement. If the Questionnaire is incomplete or inadvertently omitted from your proposal, it will not result in immediate disqualification of your proposal. However, failure to submit these forms with your proposal or incomplete submittals may result in a lower overall score.
As explained in the Questionnaire, Proposers are free to submit any plan or program that demonstrates a good work environment and prevents disruption in services due to disputes with its employees. The following examples are provided solely for purpose of example. They are not intended to limit a Proposer in any way from submitting any plan or program than assures labor peace.

1. Any existing or proposed plans, benefits or programs undertaken by the employer to attract and retain qualified employees and assist in providing uninterrupted service through the employer’s workplace condition and practices (Example: Company’s Employee Handbook);
2. A written dispute resolution policy or procedure (Example: Company’s Employee Handbook);
3. A written grievance policy or procedure (Example: Company’s Employee Handbook);
4. The formation of a joint labor-management committee – A committee comprised of employees from both labor and management to discuss issues of mutual concern;
5. A collective bargaining agreement between a firm and a recognized union;
6. Labor neutrality provisions – A labor neutrality provision means the proposer, as employer, will accept a union’s campaign to convince the employer’s employees about the merits of unionization and also refrain from offering arguments against unionization;
7. “Card check” provision – A “card check” provision means the proposer/employer would agree to allow representatives from a labor union to come on company property during work hours for the purposes of organizing its workforce and collecting union authorization cards. The proposed/employer pledges to recognize the union if a certain number of signed union authorization cards are collected. This type of provision is typically coupled with a Labor Neutrality provision; or
8. Any other information, plan or program regarding how the Proposer will protect against disruptions in service due to disputes with its employees during the Term and any Option period of the Agreement.

The Agreement with the successful Proposer will include provisions regarding Labor Peace based on the Proposer’s responses to this RFP requirement.

E. ENFORCEMENT

1. General
Contractor acknowledges it has read and understands that, pursuant to the terms and conditions of this Contract, it is required to pay workers either a prevailing or living wage ("Wage Provision") and to submit certain documentation to the City establishing its compliance with such requirement. ("Documentation Provision.") Contractor further acknowledges the City has determined that the Wage Provision promotes each of the following (collectively "Goals"):

a) It protects City job opportunities and stimulates the City’s economy by reducing the incentive to recruit and pay a substandard wage to labor from distant, cheap-labor areas.

b) It benefits the public through the superior efficiency of well-paid employees, whereas the payment of inadequate compensation tends to negatively affect the quality of services to the City by fostering high turnover and instability in the workplace.

c) Paying workers a wage that enables them not to live in poverty is beneficial to the health and welfare of all citizens of San Jose because it increases the ability of such workers to attain sustenance, decreases the amount of poverty and reduces the amount of taxpayer funded social services in San Jose.

d) It increases competition by promoting a more level playing field among contractors with regard to the wages paid to workers.


a) **Withholding Of Payment:** Contractor agrees that the Documentation Provision is critical to the City’s ability to monitor Contractor’s compliance with the Wage Requirement and to ultimately achieve the Goals. Contractor further agrees its breach of the Documentation Provision results in the need for additional enforcement action to verify compliance with the Wage Requirement. In light of the critical importance of the Documentation Provision, the City and Contractor agree that Contractor’s compliance with this Provision, as well as the Wage Requirement, is an express condition of City’s obligation to make each payment due to the Contractor pursuant to this Agreement. The City is not obligated to make any payment due the Contractor until all required documentation is submitted. Any payment by the City despite Contractor’s failure to fully perform its obligations under these provisions shall not be...
deemed to be a waiver of any other term or condition contained in this Agreement or a waiver of the right to withhold payment for any subsequent breach of the Wage Provision or the Documentation Provision.

b) **Restitution:** Contractor agrees that in the event of a breach of its obligations it will pay any amounts underpaid in violation of the required payments and City’s administrative costs and liquidated damages and, in the case of financial assistance, to refund any sums disbursed by the City.

c) **Liquidated Damages For Breach Of Wage Provision:** Contractor agrees its breach of the Wage Requirement would cause the City damage by undermining the Goals, and City’s damage would not be remedied by Contractor’s payment of restitution to the workers who were paid a substandard wage. Contractor further agrees that such damage would increase the greater the number of employees not paid the applicable prevailing/living wage and the longer the amount of time over which such wages were not paid. The City and Contractor mutually agree that making a precise determination of the amount of City’s damages as a result of Contractor’s breach of the Wage Requirement would be impractical and/or extremely difficult. Therefore, the parties agree that, in the event of such a breach, Contractor shall pay to the City as liquidated damages the sum of three (3) times the difference between the actual amount of wages paid and the amount of wages that should have been paid.

d) **Additional Remedies:** Contractor agrees that in addition to the remedies set forth above City retains the right to suspend or terminate the Agreement for cause and to debar Contractor or subcontractors from future City contracts and/or deem the recipient ineligible for future financial assistance.

### F. AUDIT RIGHTS

All records or documents required to be kept pursuant to this Contract to verify compliance with the Wage Provision shall be made available for audit at no cost to City, at any time during regular business hours, upon written request by the City Attorney, City Auditor, City Manager, or a designated representative of any of these officers. Copies of such records or documents shall be provided to City for audit at City Hall when it is practical to do so. Otherwise, unless an alternative is mutually agreed upon, the records or documents shall be available at Contractor’s address indicated for receipt of notices in this Contract.
G. COEXISTENCE WITH ANY OTHER EMPLOYEE RIGHTS

These provisions shall not be construed to limit an employee’s ability to bring any legal action for violation of any rights of the employee.
EXHIBIT E

EMPLOYEE/VOLUNTEER CLEARANCE VERIFICATION AND COMPLIANCE
WITH THE CHILD ABUSE AND NEGLECT REPORTING ACT

If Vendor provides services involving minors, and as a City-approved method of complying with the provisions contained in this Agreement, Vendor shall conduct a criminal background check through the database of the California Department of Justice, and an FBI criminal database or equivalent national database as approved in writing by Vendor’s liability insurance provider, on each of its employees and volunteers who have supervisory or disciplinary authority over minors.

1. Vendor shall also comply with the provisions of the Child Abuse and Neglect Reporting Act, California Penal Code Section 11164 et. seq. Additionally, Vendor certifies to the following:

Any and all personnel employed or retained by Vendor in conducting the operations of Vendor's program shall be qualified to perform the duties assigned to them by Vendor. Vendor agrees that Vendor shall not at any time allow its employees or volunteers to be in any position with supervisory or disciplinary authority over minors, if they have been convicted of any offense identified in California Public Resources Code Section 5164 (copy attached).

City and Vendor understand that results of background checks on minors may be confidential under state law. Therefore, all employees or volunteers must be at least 18 years of age if they are to be in a position having supervisory or disciplinary authority over any minor.

If Vendor intends to have employees or volunteers under the age of 18 providing services under this Agreement, Vendor shall maintain and make available to City, if requested, guidelines, procedures or policies, that safeguard and ensure that no employees or volunteers under the age of 18 will be providing services under this Agreement unsupervised, and further, Vendor shall ensure that none of its employees or volunteers under 18 years of age have any supervisory or disciplinary authority over any minor, as such term is used in California Public Resources Code Section 5164.

2. Vendor shall be responsible for ensuring that no person who has supervisory or disciplinary authority over minors, who is paid or unpaid by Vendor shall be permitted to provide services unless appropriate background checks, including fingerprints, have been performed prior to the beginning of services under this Agreement, and the person meets the standards set forth above. If requested by City, and to the extent allowed by law, Vendor shall promptly provide documentation listing each person that has provided or is providing services hereunder involving supervision or disciplinary authority over minors, and certifying that the Vendor has conducted the
proper background check on such person or persons, and each of the named persons is legally permitted to perform the services described in this Agreement. Regardless of whether such documentation is requested or delivered by Vendor, Vendor shall be solely responsible for compliance with the provisions of this Section.

3. That no person paid or unpaid by Vendor shall be permitted to provide services requiring contact with children or providing food concessionaire services or other licensed concessionaire services in that area, unless Vendor has complied with the TB testing requirements set forth in Section 5163 of the California Public Resources Code (copy attached, page F-3), verifying that the person or persons has provided evidence/verification of a negative TB skin test reading less than two (2) years old (if newly hired) or within four (4) years (if current employee) of the date of execution of this agreement and every 4 years thereafter, if the term of this Agreement exceeds 4 years. For persons with a positive TB skin test reading, a physician’s medical clearance must be obtained prior to services being provided as specified above. Vendor shall keep on file each “Certificate” of clearance for the persons described above, and shall also make available a copy of each Certificate to City, if requested and allowed by law.

“Certificate” means a document signed by a licensed examining physician and surgeon or a notice from a public health agency or unit of the tuberculosis association which indicates freedom from active tuberculosis.

4. Vendor understands that if services are rendered on a school site, there may be additional requirements that may apply including without limitation, requirements under the California Education Code. Vendor acknowledges that it is Vendor’s sole responsibility to comply with all applicable laws, regulations and licensing requirements in Vendor’s provision of services hereunder.

I, the Vendor by signing below verify that I have read and agree to the above:

_________________________  ______________________
Signature                              Date

(Please print or type name of organization)
CALIFORNIA PUBLIC RESOURCES CODE SECTION 5164

5164. (a) (1) A county or city or city and county or special district shall not hire a person for employment, or hire a volunteer to perform services, at a county or city or city and county or special district operated park, playground, recreational center, or beach used for recreational purposes, in a position having supervisory or disciplinary authority over any minor, if that person has been convicted of any offense specified in paragraph (2).

(2) (A) Violations or attempted violations of Section 220, 261.5, 262, 273a, 273d, or 273.5 of the Penal Code, or any sex offense listed in Section 290 of the Penal Code, except for the offense specified in subdivision (d) of Section 243.4 of the Penal Code.

(B) Any felony or misdemeanor conviction specified in subparagraph (C) within 10 years of the date of the employer's request.

(C) Any felony conviction that is over 10 years old, if the subject of the request was incarcerated within 10 years of the employer's request, for a violation or attempted violation of any of the offenses specified in Chapter 3 (commencing with Section 207) of Title 8 of Part 1 of the Penal Code, Section 211 or 215 of the Penal Code, wherein it is charged and proved that the defendant personally used a deadly or dangerous weapon, as provided in subdivision (b) of Section 12022 of the Penal Code, in the commission of that offense, Section 217.1 of the Penal Code, Section 236 of the Penal Code, any of the offenses specified in Chapter 9 (commencing with Section 240) of Title 8 of Part 1 of the Penal Code, or any of the offenses specified in subdivision (c) of Section 667.5 of the Penal Code, provided that no record of a misdemeanor conviction shall be transmitted to the requester unless the subject of the request has a total of three or more misdemeanor convictions, or a combined total of three or more misdemeanor and felony convictions, for violations listed in this section within the 10-year period immediately preceding the employer's request or has been incarcerated for any of those convictions within the preceding 10 years.

(b) (1) To give effect to this section, a county or city or city and county or special district shall require each such prospective employee or volunteer to complete an application that inquires as to whether or not that individual has been convicted of any offense specified in subdivision (a). The county or city or city and county or special district shall screen, pursuant to Section 11105.3 of the Penal Code, any such prospective employee or volunteer, having supervisory or disciplinary authority over any minor, for that person's criminal background.

(2) Any local agency requests for Department of Justice records pursuant to this subdivision shall include the prospective employee's or volunteer's fingerprints, which may be taken by the local agency, and any other data specified by the Department of Justice. The request shall be made on a form approved by the Department of Justice. No fee shall be charged to the local agency for requesting the records of a prospective volunteer pursuant to this subdivision.
CALIFORNIA PUBLIC RESOURCES CODE SECTION 5163

5163. (a) No person shall initially be employed in connection with a park, playground, recreational center, or beach used for recreational purposes by a city or county in a position requiring contact with children, or as a food concessionaire or other licensed concessionaire in that area, unless the person produces or has on file with the City or county a certificate showing that within the last two years the person has been examined and has been found to be free of communicable tuberculosis.

(b) Thereafter, those employees who are skin test negative shall be required to undergo the foregoing examination at least once each four years for so long as the employee remains skin test negative. Once an employee has a documented positive skin test which has been followed by an X-ray, the foregoing examination is no longer required and a referral shall be made within 30 days of the examination to the local health officer to determine the need for follow-up care.

"Certificate" means a document signed by the examining physician and surgeon who is licensed under Chapter 5 (commencing with Section 2000) of Division 2 of the Business and Professions Code, or a notice from a public health agency or unit of the tuberculosis association which indicates freedom from active tuberculosis.

5163.1. The examination shall consist of an approved intradermal tuberculosis test, which, if positive, shall be followed by an X-ray of the lungs.

Nothing in Sections 5163 to 5163.2, inclusive, shall prevent the governing body of any city or county, upon recommendation of the local health officer, from establishing a rule requiring a more extensive or more frequent examination than required by Section 5163 and this section.

5163.2. The X-ray film may be taken by a competent and qualified X-ray technician if the X-ray film is subsequently interpreted by a licensed physician and surgeon.

5163.3. The city or county shall maintain a file containing an up-to-date certificate for each person covered by Section 5163.

5163.4. Nothing in Sections 5163 to 5163.3, inclusive, shall prevent the city or county from requiring more extensive or more frequent examinations.