

**AGREEMENT FOR SENIOR MEALS PROGRAM SERVICES BETWEEN CITY OF APACHE
JUNCTION AND COMPASS GROUP USA, INC., BY AND THROUGH ITS BATEMAN
COMMUNITY LIVING DIVISION**

PROJECT NO. PR-17-01

THIS AGREEMENT made and entered into by and between the CITY OF APACHE JUNCTION ("City"), an Arizona municipal corporation, and COMPASS GROUP USA, INC., BY AND THROUGH ITS BATEMAN COMMUNITY LIVING DIVISION, a Delaware corporation ("Contractor"), both whom shall collectively be referred to as the "Parties", or individually as a "Party".

RECITALS

- A. Contractor has responded to City's request for proposal via Request For Proposal ("RFP") No. PR 01-17, in which Contractor asserts its willingness, ability and qualifications to provide this work and service (the "Work").
- B. City and Contractor desire to set forth herein their respective responsibilities and the manner and terms upon which Contractor shall render the services.
- C. City has complied with the public bidding requirements under Arizona Revised Statute Title 34 and Apache Junction City Code, Article 3-7.

AGREEMENT

NOW, THEREFORE, City retains Contractor to perform, and Contractor agrees to render the services in accordance with the terms and conditions set forth as follows:

- 1. **PROJECT DESCRIPTION:** Contractor shall do and perform or cause to be done and performed in a good workmanlike manner, the Work, in accordance with the required specifications and as fully described in the Notice Inviting Bid Proposals for Project No. PR 01-17, (a copy of which is on file with the City's Parks and Recreation Director) as modified by Contractors Proposal dated May 11th, 2017.
- 2. **PRICES:** Prices shall be governed under Exhibit A for the performance of the Work.
- 3. **CONTRACT TERM:** The Term of this Contract shall be from July 1, 2017 to June 30, 2018. Thereafter, this agreement shall automatically be renewed for four additional one-year (1) periods with the final end date of June 30, 2022. The City reserves the right to unilaterally extend any of the one-year (1) periods by thirty-one (31) days.
- 4. **LABOR AND MATERIALS:** Unless otherwise provided in the contract documents, Contractor shall provide, pay and insure under the requisite laws and regulations for all labor, materials, equipment, tools and machinery, utilities, transportation, other facilities and services necessary for the proper execution and completion of the Work whether temporary or permanent, and whether or not incorporated or to be incorporated in the Work.
- 5. **TAXES:** Contractor shall pay all license, sales, consumer, use and other similar taxes

for the Work or portions thereof provided by Contractor which are legally enacted at the time bids are received whether or not yet effective or subsequently applicable due to acts of jurisdictions or bodies other than City. Further, contractor agrees to pay all applicable privilege and use taxes that are applicable to the Work under the Agreement.

6. PERMITS & FEES: Unless otherwise provided in the contract documents, Contractor shall secure and pay for all permits, governmental fees, licenses and inspections necessary for the proper execution and completion of Work which are customarily secured after execution of the contract and which are legally required. Contractor shall give all notices and comply with all laws, ordinances, rules, regulations and lawful orders of any public authority bearing on the performance of the Work. Contractor represents and warrants that any license necessary to perform the Work under this Agreement is current and valid. Contractor understands that the activity described herein constitutes "doing business in the City of Apache Junction" and Contractor agrees to obtain a business license pursuant to Article 8-2 of the Apache Junction City Code, Vol. I, and keep such license current during the term of this Agreement. Contractor also acknowledges that the tax provision of the Apache Junction Tax Code, Chapter 8A, may also apply and if so, shall obtain a privilege license. Any activity by subcontractors within the corporate city limits will invoke the same business and privilege license regulations on any subcontractors, and Contractor ensures its subcontractors will obtain any required licenses. If there are taxable activities, a business license shall be converted to a privilege license by the Contractor and any subcontractors through the City Clerk's Office.

7. INDEPENDENT CONTRACTOR: Contractor shall at all times during Contractor's performance of the services retain Contractor's status as an independent Contractor. Contractor's employees shall under no circumstances be considered or held to be employees or agents of City, and City shall have no obligation to pay or withhold state or federal taxes, or provide workers compensation or unemployment insurance for or on behalf of them or Contractor. Contractor shall supervise and direct the delivery of the materials using its best skill and attention. Except as provided in this Agreement, Contractor shall be solely responsible for all means, methods, techniques, sequences and procedures, and for coordinating all portions of the Work required by the contract documents. Contractor shall be responsible to City for the acts and omissions of its employees within the scope of their employment with Contractor.

8. INDEMNIFICATION: To the fullest extent permitted by law, Contractor shall defend, indemnify and hold harmless City, its elected officials, agents, and employees from and against any and all liability including but not limited to demands, claims, actions, fees, costs and expenses, including attorney and expert witness fees, arising from or connected with or alleged to have arisen from or connected with, relating to, arising out of, or alleged to have resulted from Contractor's negligent acts or omissions. Contractor's duty to defend, hold harmless and indemnify City, elected officials, appointees, agents, and employees shall arise in connection with any tortious claim, damage, loss or expense that is attributable to bodily injury, sickness, disease, death, or injury to, impairment, or destruction of property including loss of use resulting therefrom, caused by an Contractor's negligent acts or omissions or the negligent acts or omissions of any other person for whose actor omissions, Contractor may be legally liable.

9. ENFORCED DELAYS (FORCE MAJEURE): Neither City nor Contractor, as the case may be, shall be considered not to have performed its obligations under this Agreement in the event of enforced delay (an "Enforced Delay") due to causes beyond its control and without its fault or negligence or failure to comply with Applicable Laws, including, but not restricted to, acts of God, fires, floods, epidemics, pandemics, quarantine, restrictions, embargoes, labor disputes, and unusually severe weather or the delays of subcontractors or materialmen due to such

causes, acts of a public enemy, war, terrorism or act of terror (including but not limited to bio-terrorism or eco-terrorism), nuclear radiation, blockade, insurrection, riot, labor strike or interruption, extortion, sabotage, or similar occurrence or any exercise of the power of eminent domain of any governmental body on behalf of any public entity, or a declaration of moratorium or similar hiatus (whether permanent or temporary) by any public entity directly affecting the Work. In no event will Enforced Delay include any delay resulting from unavailability for any reason of labor shortages, or the unavailability for any reason of particular consultants, subcontractors, vendors or investors desired by Contractor in connection with the Work. In the event of the occurrence of any such Enforced Delay, the time or times for performance of the obligations of the Party claiming delay shall be extended for a period of the Enforced Delay; provided, however, that the Party seeking the benefit of the provisions of this Section shall, within thirty (30) calendar days after such Party knows or should know of any such Enforced Delay, first notify the other Party of the specific delay in writing and claim the right to an extension for the period of the Enforced Delay; and provided further that in no event shall a period of Enforced Delay exceed ninety (90) calendar days.

10. GOVERNING LAW AND VENUE: The terms and conditions of this Agreement shall be governed by and interpreted in accordance with the laws of the State of Arizona. Any action at law or in equity brought by either Party for the purpose of enforcing a right or rights provided for in this Agreement, shall be tried in a court of competent jurisdiction in Pinal County, State of Arizona. The Parties hereby waive all provisions of law providing for a change of venue in such proceeding to any other county. In the event either Party shall bring suit to enforce any term of this Agreement or to recover any damages for and on account of the breach of any term or condition in this Agreement, it is mutually agreed that the prevailing party in such action shall recover all costs including: all litigation and appeal expenses, collection expenses, reasonable attorneys' fees, necessary witness fees and court costs to be determined by the court in such action.

11. INSURANCE: Contractor, at its own expense, shall purchase and maintain the minimum insurance and other additional requirements set forth herein.

All insurance required herein shall be maintained in full force and effect until all Work or service required to be performed under the terms of the Agreement is satisfactorily completed and formally accepted; failure to do so may, at the sole discretion of the City constitute a material breach of this Agreement.

Contractor's insurance shall be primary insurance as respect to City, and any insurance or self-insurance maintained by City shall not contribute to it.

Any failure to comply with the claim reporting provisions of the insurance policies or any breach of an insurance policy warranty shall not affect coverage afforded under the insurance policies to protect City.

The insurance policies, except Workers Compensation, shall contain waiver of transfer rights of recovery (subrogation) against City, its agents, officers, officials and employees for any claims arising out of Contractor's acts, errors, mistakes, omissions, Work or services.

The insurance policies may provide coverage which contains deductibles or self-insured retentions. Such deductible and/or self-insured retentions shall not be applicable with respect to the coverage provided to City under such policies. Contractor shall be solely responsible for the deductible and/or self-insured retention and City, at its option, may require Contractor to secure

payment of such deductibles or self-insured retentions by a Surety Bond or an irrevocable and unconditional letter of credit.

The insurance policies, except Workers Compensation, required by this Agreement, shall name City, its agent, officers, officials and employees as additional insured parties.

REQUIRED COVERAGE

Commercial General Liability

Contractor shall maintain Commercial General Liability insurance with a limit of not less than \$1,000,000 for each occurrence with a \$2,000,000 Products/Completed Operations Aggregate and a \$2,000,000 General Aggregate Limit. The policy shall include coverage for bodily injury, broad form property damage, personal injury, products and completed operations and blanket contractual coverage including, but not limited to, the liability assumed under the indemnification provisions of this Agreement which coverage will be at least as broad as Insurance Service Office, Inc. Policy Form CG 00011-93 or any replacement thereof. In addition, automobile liability coverage of at least \$1 million per occurrence or a combined single limit of at least \$1,000,000 is required. The auto liability policy should contain endorsements for hired autos, non-owned autos and scheduled vehicles, as applicable to the Contractor's business.

Such policy shall contain a severability of interest provision, and shall not contain a sunset provision or commutation clause, nor any provision which would serve to limit third party action over claims.

The Commercial General Liability additional insured endorsement shall be at least as broad as the Insurance Service Office Inc.'s Additional Insured, Form CG 20101185, and shall include coverage for Contractor's operations and products and completed operations.

In case any Work is subcontracted, Contractor will require subcontractor to provide General Liability coverage to at least the same extent as required of Contractor.

Workers Compensation

Contractor shall carry Workers Compensation insurance to cover obligations imposed by federal and state statutes having jurisdiction of Contractor's employees engaged in the performance of the Work; and Employer's Liability insurance of not less than \$100,000 for each accident, \$100,000 disease for each employee, and \$500,000 disease policy limit.

In case any Work is subcontracted, Contractor will require subcontractor to provide Workers Compensation and Employer's Liability to at least the same extent as required of Contractor.

CERTIFICATE OF INSURANCE

Prior to commencing Work under this Agreement, Contractor shall furnish the City with Certificates of Insurance, and formal endorsements as required by Agreement, issued by Contractor's insurer(s), as evidence that policies providing the required coverages, conditions and limits required by this Agreement are in full force and effect.

In the event any insurance policies required by this Agreement are written on a "claims made"

of the covenants, agreements, or stipulations of the contract, the City shall thereupon have the right to terminate the contract by giving written notice to the Contractor of such termination and specifying the effective date thereof.

Notwithstanding the above, the Contractor shall not be relieved of liability to the City for damages sustained by the City by virtue of any breach of the contract by the Contractor.

The Parties may terminate the contract at any time by giving at least ninety (90) days Notice of Intent to Terminate. If the contract is terminated by the City as provided herein, the Contractor will be paid for the time expended and expenses incurred up to the termination date.

The Termination of this Agreement shall not affect the rights, privileges, liabilities and/or responsibilities of the Parties as they exist as of the effective date of Termination and the Parties shall cooperate fully with each other during the term of the contract and subsequent to the Termination in order to ascertain and satisfy the liabilities of either Party to the other.

17. APPEALS: All contractual grievances shall be submitted in writing to the City Manager within five (5) calendar days after the difference of opinion or grievance occurs relating to any of the provisions of the terms of this Agreement. Within five (5) calendar days of receiving a written grievance, the City Manager shall respond in writing. The City Manager's decision shall be final and binding, subject only to a further appeal in the Pinal County Superior Court pursuant to A.R.S. § 12-901, *et seq.*

18. RECORDS: Records of Contractor's labor, payroll and other costs pertaining to this Agreement shall be kept on a generally recognized accounting basis and made available to City for inspection on request. Contractor shall maintain records for a period of at least three (3) years after termination of this Agreement, and shall make such records available during that retention period for examination or audit by City personnel during regular business hours.

19. AMENDMENT: It is mutually understood and agreed that no alteration or variation of the terms and conditions of this Agreement shall be valid unless made in writing and signed by the parties hereto, and that oral understandings or agreements not incorporated herein shall not be binding on the parties.

20. SEVERABILITY: City and Contractor each believe that the execution, delivery and performance of this Agreement are in compliance with all applicable laws. However, in the unlikely event that any provision of this Agreement is declared void or unenforceable (or is construed as requiring City to do any act in violation of any applicable laws, including any constitutional provision, law, regulation, or city code), such provision shall be deemed severed from this Agreement and this Agreement shall otherwise remain in full force and effect; provided that this Agreement shall retroactively be deemed reformed to the extent reasonably possible in such a manner so that the reformed agreement (and any related agreements effective as of the same date) provide essentially the same rights and benefits (economic and otherwise) to the Parties as if such severance and reformation were not required. Unless prohibited by applicable laws, the Parties further shall perform all acts and execute, acknowledge and/or deliver all amendments, instruments and consents necessary to accomplish and to give effect to the purposes of this Agreement, as reformed.

21. CONFLICT OF INTEREST: This Agreement is subject to, and may be terminated by City in accordance with, the provisions of A.R.S. § 38-511.

22. TIME IS OF THE ESSENCE: Time is of the essence with respect to all provisions in this Agreement. Any delay in performance by either Party shall constitute a material breach of this Agreement.

23. PROHIBITION TO CONTRACT WITH CONTRACTORS WHO ENGAGE IN BOYCOTT OF THE STATE OF ISRAEL: The Parties acknowledge A.R.S. § 35-393 through 35-393.03, as amended, which forbids public entities from contracting with Contractors who engage in boycotts of the State of Israel. Should Contractor, or its subcontractors, under this Agreement engage in any such boycott against the State of Israel, this Agreement is automatically terminated. Any such boycott is a material breach of contract and will subject Contractor to monetary damages.

24. COMPLIANCE WITH FEDERAL AND STATE LAWS: Contractor understands and acknowledges the applicability of the American with Disabilities Act, the Immigration Reform and Control Act of 1986 and the Drug Free Workplace Act of 1989 to the services performed under this Agreement.

As required by A.R.S. § 41-4401, Contractor hereby warrants its compliance with all federal immigration laws and regulations that relate to its employees and A.R.S. § 23-214(A). Contractor further warrants that after hiring an employee, Contractor will verify the employment eligibility of the employee through the E-Verify program. If Contractor uses any subcontractors in performance of services, subcontractors shall warrant their compliance with all federal immigration laws and regulations that relate to its employees and A.R.S. § 23-214(A), and subcontractors shall further warrant that after hiring an employee, such subcontractor verifies the employment eligibility of the employee through the E-Verify program. A breach of this warranty shall be deemed a material breach of the Agreement that is subject to penalties up to and including termination of this Agreement. Contractor is subject to a penalty of \$100 per day for the first violation, \$500 per day for the second violation, and \$1,000 per day for the third violation. City at its option may terminate this Agreement after the third violation. Contractor shall not be deemed in material breach of this Agreement if the Contractor and/or subcontractors establish compliance with the employment verification provisions of Sections 274A and 274B of the federal Immigration and Nationality Act and the E-Verify requirements contained in A.R.S. § 23-214(A). City retains the legal right to inspect the papers of any Contractor or subcontractor employee who works under this Agreement to ensure that the Contractor or subcontractor is complying with the warranty. Any inspection will be conducted after reasonable notice and at reasonable times. If state law is amended, the Parties may modify this paragraph consistent with state law.

25. PROPRIETARY AND CONFIDENTIAL INFORMATION: During the term of this Agreement, City may have access to or acquire proprietary and confidential information relating to Contractor's business, including, but not limited to, information on Contractor's finances, pricing, potential and present customers, policy manuals, proprietary trade secrets, menus, recipes, guidelines and procedures, surveys, other data, compilations, techniques, financial data, trade secrets that are not generally known to the public, as well as computer software and programs relating to the provision of the services and finances of Contractor (collectively, the "Proprietary and Confidential Information"). City acknowledges that the Proprietary and Confidential Information is solely the property of Contractor and constitutes trade secrets and confidential information of Contractor. City shall not use or appropriate for its own behalf or disclose or communicate, directly or indirectly, any Proprietary and Confidential Information to any individual, firm, or other entity or person in any manner whatsoever, except as required under

Arizona law or by judicial decree. City or its employees shall not copy or reproduce in any media any Proprietary and Confidential Information, and City shall take all steps required by Contractor to protect such Proprietary and Confidential Information. The terms and provisions of this section shall survive the Termination of the Agreement. Upon the Termination of the Agreement, City shall immediately terminate the use of any and all Proprietary and Confidential Information, including any computer software programs, and City shall return any and all Proprietary and Confidential Information to Contractor immediately upon the Termination.

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STATE OF _____)
) ss.
County of _____)

The foregoing was subscribed and sworn to before me this _____ day of _____, 20____, by _____ as _____ of COMPASS GROUP USA, INC., BY AND THROUGH ITS BATEMAN COMMUNITY LIVING DIVISION a Delaware corporation.

Notary Public

My Commission Expires:

(seal)

STATE OF ARIZONA)
) ss.
COUNTY OF _____)

The foregoing was subscribed and sworn to before me this _____ day of _____, 20____, by Jeff Serdy, as Mayor of the City of Apache Junction, Arizona, an Arizona municipal corporation.

Notary Public

My Commission Expires:

(seal)

EXHIBIT A

Meal Prices

1. **TOTAL COST OF SERVICES:** In accordance with the terms and conditions of this Agreement, City shall compensate Contractor for senior meals services in an amount not to exceed \$270,000 per year (subject to Section 4 below). This total is reliant on receiving all anticipated grant funds and program revenues to supplement the City's expenses.
2. **CONGREGATE MEAL PRICES:** Congregate Meal prices shall be charged at a rate of \$8.83 per meal. Per the request for proposal, Contractor will serve an estimated average of 50 congregate meals per day with a fluctuating amount that ranges from 30 in the summer time to 75 in the winter time per day. In the event that the actual meal count varies by five percent (5%) above or below the projected seasonal meal count over a three (3) month period, then the parties will renegotiate the Congregate Meal price.
3. **HOME DELIVERED MEAL PRICES:** Home Delivered Meal prices shall be charged at a rate of \$8.83 per meal. Per the request for proposal, Contractor will deliver approximately 240 meals to 45 participants on a weekly basis. In the event that the actual meal count varies by five percent (5%) above or below the projected meal count over a three (3) month period, then the parties will renegotiate the Home Delivered Meal price.
4. **ANNUAL PRICE ADJUSTMENT:** In the event of an annual renewal, Contractor reserves the right to charge an annual increase which will not exceed the percentage reflected in the Phoenix/Mesa Consumer Price Index – Food Away From Home, as measured for the most recent month available of the current year as listed on the United States Bureau of Labor Statistics' website.
5. **CITY CATERING PRICES:** Upon request, Contractor may provide meal prices for additional event catering outside of this Agreement (i.e. for special employee events, City functions, etc.) The quantities, meal choices, and prices shall be negotiated on a case-by-case basis and nothing in the Agreement shall require the City to utilize Contractor for these types of events.
6. **NON-CITY CATERING COMMISSION:** With City permission, Contractor may utilize the kitchen for non-City catered activities outside of this Agreement. A commission shall be decided on a case-by-case basis. The meal preparation shall not interfere with regular senior meal operations.
7. **BILLING:** Contractor shall submit to City within a reasonable time after the end of each accounting period an invoice showing the number of meals served and the total amount due Contractor. City shall pay said invoice amount to Contractor within

thirty (30) days of the date of the invoice. All past-due amounts due to Contractor will be subject to a service charge of up to 1 1/2% per month of the unpaid balance.