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City Council Document Tracking Sheet

Meeting Date: 11/15/2012

Sponsor(s): Emanuel, Rahm (Mayor)

Type: Ordinance

Title: Services Agreement with City of Chicago and Compass Group, USA, Inc., dba Canteen Vending Services for installation, operation, repair and maintenance of vending machines at various buildings operated by City

Committee(s) Assignment: Committee on Budget and Government Operations

BUDG.



OFFICE OF THE MAYOR
CITY OF CHICAGO

RAHM EMANUEL
MAYOR

November 15, 2012

TO THE HONORABLE, THE CITY COUNCIL
OF THE CITY OF CHICAGO

Ladies and Gentlemen:

At the request of the Commissioner of Fleet and Facility Management, I transmit herewith an ordinance authorizing the execution of a Services Agreement with Compass Group, USA.

Your favorable consideration of this ordinance will be appreciated.

Very truly yours,

A handwritten signature in cursive script that reads "Rahm Emanuel".

Mayor



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ORDINANCE

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF CHICAGO:

SECTION 1: The Commissioner of the Department of Fleet and Facility Management is authorized to execute, on behalf of the City, a City-wide Vending Machine Services Agreement with Compass Group, USA, Inc. d/b/a Canteen Vending Services; such agreement to be approved as to form and legality by the Corporation Counsel in substantially the following form:

**CITY-WIDE VENDING MACHINE
SERVICES AGREEMENT**

between

Compass Group USA, Inc. dba Canteen Vending Services

and

**CITY OF CHICAGO
(Department of Fleet and Facility Management)**

Entered into as of _____, 2012

**CITY-WIDE VENDING MACHINE
SERVICES AGREEMENT**

This City-Wide Vending Machine Services Agreement ("Agreement") is entered into as of the ____ day of _____, 2012 ("Effective Date"), by and between, Compass Group USA, Inc. dba Canteen Vending Services a Delaware corporation authorized to do business in the State of Illinois ("Contractor") and the City of Chicago, a municipal corporation and home rule unit of local government existing under the Constitution of the State of Illinois, acting through its Department of Fleet and Facility Management ("City").

WHEREAS, the City desires to enter into an agreement for the installation, operation, repair and maintenance of vending machines and certain ancillary or related equipment at various buildings operated by the City; and

WHEREAS, the City solicited proposals for the installation, operation, repair and maintenance of Vending Machines and certain ancillary or related equipment (collectively, "Vending Machines") pursuant to the City's Request for Proposal for City-Wide Vending Machine Services, Specification No. 86703 ("RFP"); and

WHEREAS, the City has determined the Contractor's proposal is most advantageous to the City and has selected the Contractor to install, operate, repair and maintain the Vending Machines in certain City-operated facilities; and

WHEREAS, the Contractor represents that it has the expertise necessary to perform the services and that it is ready, willing and able to perform under this Agreement to the full and reasonable satisfaction of the City.

NOW THEREFORE, in consideration of the mutual promises contained in this Agreement, the City and the Contractor agree as follows:

TERMS AND CONDITIONS

ARTICLE 1. INCORPORATION OF RECITALS

The recitals set forth above are incorporated by reference as if fully set forth here.

ARTICLE 2. DEFINITIONS

2.01 Definitions

In addition to terms defined in the recitals and elsewhere in this Agreement, the following words and phrases will have the following meanings for purposes of this Agreement:

"Agreement" means this City-Wide Vending Machine Services Agreement, including all

exhibits attached to it and incorporated in it by reference, and all amendments, modifications or revisions made in accordance with its terms.

"Chief Procurement Officer" means the Chief Procurement Officer of the City and any representative duly authorized in writing to act on his or her behalf.

"Commissioner" means the Commissioner of the Department of Fleet and Facility Management of the City and any representative duly authorized in writing to act on his or her behalf.

"Commissions" means the amounts required to be paid by Contractor to the City as compensation for the privileges granted under this Agreement, as set forth in Section 7.01.

"Contract Documents" means collectively this Agreement including the exhibits and attachments hereto.

"Contract Execution" means the latest date by which both parties have executed this Agreement.

"Department" means the Department of Fleet and Facility Management of the City of Chicago.

"EDS" means the City's Economic Disclosure Statement and Affidavit.

"Gross Revenues" or "Gross Sales" means the sum of all amounts collected in cash or credit card receipts. Gross Revenues will be determined without any deduction on account of the cost of furnishing the Vending Machines or the Services, the cost of materials used, labor or service costs or any other expense whatsoever. Gross Revenues will include taxes billed to or paid by the users of the Vending Machines. No other expenses or allowances will be deducted from Gross Revenues.

"Locations" means the locations where one or more Vending Machines will be installed and operated by the Contractor under this Agreement.

"Merchandise" means, collectively, all food products and beverages that are sold from the Vending Machines.

"Program Manager" means the individual within the Department of Fleet and Facility Management who will serve as principal liaison between the parties and who will execute, give, and receive all notices and other communications required under this Agreement and who will attend to administrative matters. The Department of Fleet and Facility Management and the Contractor will each appoint one individual to serve as Program Manager.

"Response" means Contractor's response to the RFP submitted to the City on or around September 8, 2011.

"Risk Management Office" means the Risk Management Office in the Department of

Finance of the City which is under the direction of the City Comptroller of the City and is charged with reviewing and analyzing insurance and related liability matters for the City.

"Services" means the services necessary to carry out the responsibilities of the Contractor under this Agreement and includes the installation, operation, maintenance, and repair of Vending Machines furnished to any Location in accordance with this Agreement.

"Subcontractor" means any person or entity with whom the Contractor contracts to provide any part of the Services. The term "Subcontractor" also includes subconsultants of any tier, subcontractors of any tier, suppliers and materialmen, whether or not in privity with the Contractor.

2.02 Interpretation

(a) The term "include" (in all its forms) means "include, without limitation" unless the context clearly states otherwise.

(b) All references in this Agreement to Articles, Sections or Exhibits, unless otherwise expressed or indicated are to the Articles, Sections or Exhibits of this Agreement.

(c) Words importing persons include firms, associations, partnerships, trusts, corporations and other legal entities, including public bodies, as well as natural persons.

(d) Any headings preceding the text of the Articles and Sections of this Agreement, and any table of contents or marginal notes appended to it, are solely for convenience or reference and do not constitute a part of this Agreement, nor do they affect the meaning, construction or effect of this Agreement.

(e) Words importing the singular include the plural and vice versa. Words of the masculine gender include the correlative words of the feminine and neuter genders.

(f) All references to a number of days mean calendar days, unless expressly indicated otherwise.

2.03 Incorporation of Exhibits

The following attached Exhibits are made a part of this Agreement:

Exhibit 1	Vending Machine Locations, Merchandise, and Pricing
Exhibit 2	City's Request for Proposals
Exhibit 3	MBE/WBE Special Conditions and Schedules
Exhibit 4	Disclosure Affidavit/Disclosure of Retained Parties
Exhibit 5	EDS

ARTICLE 3. DUTIES AND RESPONSIBILITIES OF CONTRACTOR

3.01 Nature of Agreement

The City grants to the Contractor permission to provide the Services to the City at all Locations as described in Exhibit 1 attached hereto and any other future sites as may be mutually agreed upon from time to time by the parties and as set forth in an amendment to this Agreement. The Contractor's obligation to provide the Services, including the installation, operation, stocking, repair, and maintenance of the Vending Machines will be at its own expense, unless as otherwise set forth herein as a City obligation.

The Contractor acknowledges that a major goal, objective, and purpose of the City in entering into this Agreement is to benefit the City by providing additional beverages and snacks at various City-operated facilities.

Notwithstanding any other language in this Agreement, Contractor may not display any advertising on the vending machines operated pursuant to this Agreement.

3.02 Scope of Services

The Contractor must perform all necessary services required in connection with the following:

(a) Vending Services: The Contractor is responsible for the installation, service, stocking, maintenance, repair and replacement of all Vending Machines and must provide supervision necessary to operate and maintain the Vending Machines in a clean, environmentally sound condition. The Contractor will provide fresh Merchandise for consumption at City-operated facilities at competitive prices. The Merchandise and prices charged by the Contractor are subject to the approval of the Commissioner. All Vending Machines are subject to inspection and approval by the Department prior to final installation and on an ongoing basis. The Contractor must provide easily understood, straightforward, operating instructions relating to BV Fusion for all Vending Machines at all Locations.

(b) Reimbursement Funds; Refunds: The Contractor must cooperate with the Department in establishing and following such procedures as the Commissioner deems appropriate to reimburse Vending Machine users for monetary losses arising from malfunctions of Vending Machines.

At each Location, the Contractor must provide users with an explicit explanation of where and how malfunction reports and refund requests may be made. The Contractor must supply refund claim slips at all Locations in a convenient and accessible place.

(c) Maintenance: The Contractor must regularly service all Vending Machines. Maintenance schedules must be adjusted in accordance with maintenance demands, but at a minimum, the Contractor must service Vending Machines on a weekly basis.

As part of the regular maintenance services, the Contractor must thoroughly clean (inside

and out) all Vending Machines as often as is reasonably necessary, but not less than twice per calendar year. If the Program Manager learns that any particular Vending Machine requires cleaning outside of the regularly scheduled cleaning, he will inform the Contractor and the Contractor must clean the Vending Machine as promptly as possible, but in any event within 14 days of the notification. Cleaning schedules will be primarily during non-business hours as mutually agreed unless otherwise approved by the Program Manager.

(d) Repairs and Replacement: If any Vending Machine is damaged or is inoperable or for any reason, the Contractor must repair or replace such Vending Machine, in a manner acceptable to the Commissioner, as promptly as possible. Repairs must take place by the end of the business day following the date that the Contractor is notified or becomes aware of such damage or inoperability. Alternatively, replacement Vending Machines must be installed and fully operable within five (5) days of the time the Contractor was notified of or became aware of the damage or inoperability. The replacement Vending Machine must be a new or like new Vending Machine, carrying the same type of Merchandise as the damaged Vending Machine, and meeting all other requirements set forth in this Agreement. The time for repair or replacement may be extended at the discretion of the Commissioner. All of the Contractor's repair, replacement, and maintenance responsibilities must be fulfilled by local service personnel operating from a local service center.

The repair person dispatched by the Contractor must be well-trained and knowledgeable about vending equipment and must be able to efficiently and effectively repair vending equipment. The Contractor must ensure that all repair persons carry photo identification whenever making a service call to a Location. Contractor will maintain crime insurance in connection with employees handling money and/or repairing the Vending Machines. In the event that subcontractors are used by Contractor to repair Vending Machines, Contractor will ensure that such subcontractors maintain appropriate insurance coverages as may be reasonably required by the City for similar access by other contractors.

(e) Reports: The Contractor must produce and provide to the City a detailed Commission report ("Detail Report") showing a summary by Vending Machine for each monthly payment period, at no cost, by the 20th day of the calendar month succeeding the applicable monthly payment period. The Detail Report will be in a form approved by the City's Program Manager and will reflect all Gross Sales and revenues earned or accrued by the Contractor during the applicable monthly payment period. The Detail Report will detail the volume and dollar amount of all Merchandise sold and corresponding Commissions related to each Vending Machine at each Location during the applicable monthly payment period. The City may divide the Vending Machines at one or more Locations into different accounts and receive one Detail Report and Commission check. Additional or customized reports must be provided to the City at no extra cost upon request of the City's Program Manager. Subject to the terms of Section 7.01 herein, Commissions will be paid in accordance with Contractor's fiscal calendar, within thirty (30) days after the end of the month in which the commission is earned but in no event later than sixty (60) days after the end of Contractor's fiscal month.

Monthly Detail Reports must include, but not be limited to:

(1) The month's volume of sales in dollars and units broken down by each item of

Merchandise at each Vending Machine at each Location;

- (2) The monthly volume of sales in dollars generated by each type of product (i.e., soda, candy, snacks etc.) dispensed by each Vending Machine at each Location; and
- (3) The total Commissions owed the City broken down by each item of Merchandise at each Vending Machine at each Location.

All monthly reports and related records must be maintained by the Contractor for at least three (3) years, and will be subject to inspection and audit by the City. Representatives of the Department that are not competitors of Contractor may, at their discretion, examine the reports and records that solely and directly pertain to this Agreement at the offices of the Contractor upon reasonable notice to the Contractor.

The Contractor will provide to the Commissioner at no cost, the monthly Detail Reports, through computer transmission or delivery. A reasonable number of additional reports must be provided by the Contractor to the City at no extra cost upon request of the City's Program Manager.

(f) Records and Audit: The Contractor must maintain books and records of the operations of the Vending Machines, including cash and non-cash revenues generated and unit sales of each product sold on a monthly basis, with a separate account for each Location. All books and records must be maintained in a manner consistent with generally accepted accounting principles and practice.

Annually, but no later than thirty (30) days following the end of Contractor's fiscal year during which this Agreement remains in force, the Contractor must supply to the Commissioner a copy of the financial statements and a statement from its Division Controller attesting to an audit and verifying that to the best of its knowledge the Commissions paid to the City for the Contractor's prior fiscal year were in compliance with the provisions of this Agreement. The City, upon ten (10) days' written notice to the Contractor, may perform or have performed by a City consultant that is not a competitor of Contractor, an audit and review of the records solely and directly relating to this Agreement and serving as the basis for the Contractor's annual statement pertaining to the amounts paid to the City hereunder. If the City's independent audit determines that the compensation paid to the City was underpaid in the Contractor's prior fiscal year by 5% or more, the Contractor will bear the reasonable cost of the City's audit, equal to the greater of 50% of the audit cost or \$5,000, in addition to paying the City the underpayment, plus interest as set forth in Section 7.02. In the event that the City's independent audit determines that the compensation paid to the City was underpaid to the City by an amount equal to or less than 5%, the City shall bear the cost of the City's audit and the Contractor shall pay the City the underpayment, plus interest as set forth in Section 7.02 This provision survives the termination or expiration of this Agreement. Prior to any money being paid to the City by Contractor in connection with an audit, Contractor will have the right to verify the audit results.

(g) Collections: Within six (6) weeks after the complete installation of the Vending

Machines at all City Locations, Contractor will establish a servicing schedule based upon product usage and sales (“Initial Service Schedule”). Those City Locations with Vending Machines generating a larger volume of sales and/or product usage will be serviced at least one (1) time per week, or as otherwise may be reasonably requested by City. Other City Locations with Vending Machines generating lower volume of sales and/or product usage will be serviced at least one (1) time per month. City will be given a copy of the Initial Service Schedule. The parties will review the Initial Service Schedule on a quarterly basis and any adjustments thereto based upon sales and/or product usage will be mutually agreed upon.

(h) Location of Vending Machines: The Vending Machines must be located in all of the Locations set forth in Exhibit 1 or other locations as mutually agreed upon by the parties.

At any time during the term of this Agreement, the Contractor may propose adding Vending Machines at existing or new Locations if the Contractor and City determine that such additions are in the best interests of the Contractor and City. The Commissioner has sole authority to grant or deny any such request. If the Commissioner proposes adding additional Vending Machines at existing or new Locations at any time during the term of this Agreement, the Contractor must evaluate the feasibility of such proposal and respond to the Commissioner within two (2) weeks after the request is made.

The City reserves the right to ask the Contractor to remove or relocate Vending Machines and to install additional Vending Machines at additional locations other than those set forth in Exhibit 1, all as mutually agreed upon by the parties.

(i) Additional Requirements:

The Contractor shall work with the current vendor, ACE Coffee Bar, in transitioning all existing ACE Coffee Bar machines to machines operated by Contractor.

Contractor shall install energy efficient Vending Machines that shall comply with Energy Star requirements.

Contractor shall assume operations at all existing ACE Coffee Bar operations at City-owned or City-leased facilities as set forth in Exhibit 1, within sixty (60) days from the date of Contract Execution.

Within sixty (60) days from the date of Contract Execution, the Contractor shall train designated City staff on the Contractor’s applicable inventory, tracking, and financial systems through its BV Fusion program that shall allow the designated City staff to monitor the activity of the Vending Machines.

The Contractor shall meet with designated City staff every six (6) months to coordinate any service issues.

(j) Except and unless as otherwise specified in this Agreement, the Contractor must perform all Services and meet all requirements described in the City’s Request for Proposals, which is attached as Exhibit 2.

(k) Contractor has advised City that it can fulfill and satisfy City's requirements for Snack and Beverage Vending Machine Services as are described in this Agreement, and has set forth various representations as to its credentials, experience, and ability to do so in its Response to the City's RFP, which are set forth in Exhibit 4.

3.03 Equipment Requirements

The Contractor must supply, at its own expense, all of the Vending Machines and any related equipment required by this Agreement. All Vending Machines must be current generation, new or like new, and of the highest quality. All Vending Machines that dispense soda, milk, juice, hot beverages, candies, food items, or similar products must be equipped with non-resettable meters. All Locations must have dollar bill converters to produce change or, alternatively, all Vending Machines at a Location without a dollar bill converter must accept dollar bills.

All Vending Machines are subject to inspection by the Program Manager. The Program Manager may reject any Vending Machine supplied pursuant to this Agreement that he or she believes would not operate efficiently or satisfy the purposes of this Agreement. Grounds for rejecting a Vending Machine include but are not limited to the following: (1) the Vending Machine has obvious external damage, is unattractive or does not reasonably appear to be "new" or "like-new"; (2) the model of Vending Machine is outdated or is not of the highest standard of quality; (3) the Vending Machine dispenses beverages and lacks a non-resettable meter; or (4) the Vending Machine does not meet any other requirement set forth in this Agreement. The Department may require the Contractor to replace any Vending Machine at any time during this Agreement if the Department learns that the Vending Machine is or becomes deficient in any of the respects set forth above.

3.04 Merchandise

(a) General Merchandise Requirements. The Contractor must keep the Vending Machines stocked with fresh, high-quality Merchandise consistent with the Contractor's Plan-O-Gram.

(b) Pricing. The prices of all Merchandise are set forth in Exhibit 1 and may be modified from time to time by the written mutual agreement of the Contractor and the Department. The Department will continuously monitor and review the Contractor's pricing schedule and the Department may, in its discretion, request the Contractor to make pricing adjustments as mutually agreed upon. The parties agree that prices may be adjusted by mutual agreement on an annual basis at a rate equal to the then-current rate published for the Employment Cost Index. In addition, the parties agree that the prices are based, in part, on assumptions regarding population, hours of operation, other conditions, labor costs (including, but not limited to benefits and insurance), product costs, fuel costs, Federal, state and local tax structure, any change in Federal, state or local law including regulatory or legislative mandates, and any other levy or tax that impacts the Contractor's Services ("Factors") and in the event of a change in

Factors, pricing may be adjusted upon prior written notice to the City; provided however that Contractor has given the City reasonable documentation evidencing the necessity for the price adjustment.

(c) Nutritional Standards. With respect to Merchandise, Contractor must adhere to the following standards:

For snacks, the Contractor shall provide products that include a variety of snacks including, but not limited to, snack bars, cookies, chips, candy, gum, and other products customarily dispensed through such equipment, subject to the terms and restrictions of this Agreement. For beverages, the Contractor shall provide beverages including, but not limited to, a variety of carbonated soft drinks and non-carbonated beverages including, but not limited to, fruit juice drinks or fruit juice based products, bottled water, tea-based products, milk, pre-packaged coffee products, and sports drinks, subject to the terms and restrictions of this section.

Once the City has approved the initial product line offered, the Contractor will be allowed to add or delete products with the Commissioner's prior written approval, subject to the terms and restrictions of this section. Such consent shall not be unreasonably withheld. The City reserves the right to request that a product, or products, be replaced at any time and for any reason.

Product inventory may vary, within the initial product line offered, by vending location, subject to the terms and restrictions of this section.

A. Definitions

Contractor Plan-O-Gram: Consistent with Contractor's corporate practice and its experience and knowledge in the vending services industry, prior to the commencement of the Services, Contractor will develop a Plan-O-Gram that identifies products with higher selling potential versus those products with lower selling potential ("Initial Plan-O-Gram").

After the first three (3) months of Services hereunder, the parties will meet to review and evaluate sales trends and other pertinent information relating to the provision of Services (utilizing data available to it from the BV Fusion program) and adjustments to the Initial Plan-O-Gram may be agreed upon and implemented. Thereafter and on a quarterly basis during the term hereof, the parties will meet to monitor the continued performance of the Services and may from time to time mutually agree upon adjustments to the then-current Plan-O-Gram or other adjustments to the Services as the case may be, by way of example, removing and/or relocating poor performing Vending Machines to achieve sales goals, etc. Notwithstanding the foregoing, the Merchandise shall continue to conform to the Standards for Beverages and Standards for food items as delineated hereunder.

Contractor will use good faith efforts to ensure that the Vending Machines are stocked in a manner that is conducive to encourage the highest sales volume potential based upon its Plan-O-Gram and in compliance with the Standards for Beverages and Standards for food items as delineated hereunder.

High Calorie Beverage: Any beverage with more than 25 calories per each 8 ounces of beverage.

B. Standards for Beverages

Cold Beverages

The following four criteria must be met for all vended cold beverages:

1. Specifications regarding the product mix:
 - A) No more than 25% of the product options in a vending machine may be High Calorie Beverages.
 - B) Unsweetened water is required to be stocked for a minimum of 25% of the product options in a vending machine.
 - C) All remaining product options must be beverages containing less than or equal to 25 calories per each 8 ounces of beverage.
2. Specifications regarding product display placement:
 - A) Unsweetened water must be placed in the positions with high selling potential based upon the Plan-O-Gram.
 - B) High Calorie Beverages must be placed in the positions with low selling potential based upon the Plan-O-Gram.
3. Specifications regarding size:
 - A) All beverage selections with the exception of water and seltzer are limited to 12 ounces.
 - B) All unsweetened water and seltzer selections must be at least 12 ounces.
 - C) Portion sizes smaller than 12 ounces are encouraged for High Calorie Beverages.
4. Specifications regarding price:
 - A) Prices charged for beverages other than High Calorie Beverages cannot exceed the prices charged for High Calorie Beverages.

- B) Pricing models that encourage the purchase of beverages other than High Calorie Beverages are recommended.

Hot Beverages

The following criteria must be met for all vended hot beverages, including but not limited to coffee and hot chocolate:

- 1. Specifications regarding the product mix:
 - A) All product options must be beverages containing less than or equal to 25 calories per each 8 ounces of beverage.
 - B) If condiments are separately stocked or offered, they must meet the following criteria:
 - i) Milk and creamer products (including non-dairy creamer) must be either 1% or non-fat.
 - ii) Sugar and sugar-substitutes are acceptable.
 - C) All beverages and condiments must contain less than 0.5 grams of trans fat per serving.

C. Standards for Food Items

The following four criteria must be met for all vended food items:

- 1. Specifications regarding the product mix:
 - A) At least 75% of the food items in a vending machine must meet the following criteria. Nuts, seeds, dairy products, fresh fruits and vegetables, dried fruits and vegetables, and packaged fruit packed in its own juice or water need not meet these criteria due to their healthy fats and natural sugars, and may be included in the 75% of food items that meet these criteria. Gum may not be included in the 75% of food items that meet these criteria:
 - i) Have no more than 250 total calories, and no more than two servings per package.
 - ii) Have no more than 42 grams of added sweetener per 20 ounce serving.
 - iii) Have no more than 35% of total calories from fat, and not

more than 10% of calories from saturated fat.

- iv) Have no more than 35% sugar by weight.
- v) Have no more than 400 mg of sodium per serving.
- B) At least five food items must be offered in a vending machine containing less than 250 mg of sodium per serving.
- C) At least one food item must be offered in a vending machine that is both gluten- and nut-free.

2. Specifications regarding product display placement:

- A) Food items meeting the nutritional requirements set forth in Paragraph 1, above, must be placed in the positions with a high selling potential based upon the Plan-O-Gram.
- B) Food items that do not meet the nutritional requirements set forth in Paragraph 1, above, must be placed in the positions with a low selling potential based upon the Plan-O-Gram.

3. Specifications regarding price:

- A) Prices charged for food items that meet the nutritional requirements set forth in Paragraph 1, above, cannot exceed the prices charged for food items that do not meet those requirements.
- B) Pricing models that encourage the purchase of food items that meet the nutritional requirements set forth in Paragraph 1, above, are recommended.

D. Calorie Posting

In addition to the standards set forth above, in the case of a beverage or food item sold from a vending machine that does not permit a prospective purchaser to examine the Nutrition Facts Panel before purchasing the article or does not otherwise provide visible nutrition information at the point of purchase, the vending machine operator shall provide signage in close proximity, a logo on or adjacent to the selection button, or establish some other mutually agreed upon method in close proximity to each beverage or article of food or selection button that includes a clear and conspicuous statement disclosing the number of calories contained in the beverage or food item.

Nothing in this section is intended to preempt or contradict federal law.

E. Compliance Hotline

Each vending machine shall have affixed to its face, in a prominent position, a sign indicating a phone number which prospective purchasers may call to alert the City that a vending machine is not in compliance with the terms of this section. The phone number shall be a City extension, manned by City personnel, and shall be supplied to the vendor by the City.

3.05 Installation Procedures

(a) General Requirements. No Vending Machines or related equipment may be installed in, or removed or relocated from, any Location without prior approval of the Program Manager and the issuance of the required permits, if any. The Contractor must submit to the Program Manager the specifications, standards and procedures for installation of the Vending Machines for review and approval prior to commencement of any installation. Except as otherwise expressly set forth in this Agreement, the Contractor must pay all direct and indirect costs of installing the Vending Machines, which installation will be limited to installing the Vending Machines to the point of connection to existing utilities as provided by the City.

(b) Use of Existing Piping and Wiring. To the extent that may be applicable, the Contractor must use existing piping, wiring and other facilities whenever feasible and may not construct or install any new, different or additional piping or wiring at the Locations. The intent of the parties is to replace the Ace Coffee Bar Vending Machines in existing Locations with like-for-like Vending Machines, unless as otherwise mutually agreed upon.

(c) Duty of Care. The Contractor must take all reasonably necessary safety precautions and must comply with all applicable provisions of federal, state and local laws and regulations to prevent accidents or injury to persons on, about or adjacent to any Location where installation work is performed.

(d) Installation Standards. The Contractor must install, operate and maintain Vending Machines in accordance with the following standards: (i) applicable requirements of the Municipal Code of Chicago; (ii) applicable written standards of the City's Department of Buildings; (iii) requirements of the RFP and the Contractor's Response to the RFP; (iv) applicable manufacturer's specifications; and (v) the Contractor's standard operating practices and procedures. To the extent that these standards are inconsistent, the highest standard will prevail or, in the case of a conflict, the Commissioner will make the resolution. All Vending Machines installed by the Contractor under this Agreement must also comply with all applicable federal, state and local laws, regulations, decrees, orders and judgments.

(e) Report on Damage. The Contractor must report to the City any damage arising out of the Contractor's performance under this Agreement. Any damage to City property or to the property of third parties due to the Contractor's performance of installation or maintenance work under this Agreement must be repaired or restored by the Contractor at Contractor's cost to the equivalent condition as before the damage occurred or replaced by the Contractor.

(f) Disposal of Refuse. Immediately following any installation or maintenance of a Vending Machine, the Contractor must clean up and properly dispose of all refuse and waste materials resulting from the Contractor's work.

3.06 Licenses and Permits

The Contractor must secure and maintain at its expense such permits, licenses, authorizations and approvals as are necessary for the installation, operation and maintenance of the Vending Machines as is consistent with the vending services industry and any applicable laws.

Issuance of any required permit by the City as to the installation or maintenance of a Vending Machine pursuant to this Agreement does not waive other applicable requirements of federal or Illinois law or the Municipal Code of Chicago, and the Contractor must comply with such other requirements.

3.07 City to Supply Electricity

The City, at its expense, will supply necessary outlets for electricity and water for the Vending Machines. The City will pay all utility costs and water bills, in connection with supplying electricity and water to the Vending Machines. The Contractor must identify to the City in advance such requirements concerning electricity and water. The intent of the parties is to replace the Ace Coffee Bar Vending Machines in existing Locations with like-for-like Vending Machines, unless as otherwise mutually agreed upon.

3.08 Sanitation at Locations

The Contractor is responsible for removing all paper cardboard and other trash generated during the filling and servicing of the Vending Machines at the time of filling or servicing. The Contractor represents and warrants that at all times it will take whatever action is reasonably necessary to maintain the highest standards of sanitation and cleanliness in the areas where the Vending Machines are located to the extent such action is consistent with the vending services industry standards. The Contractor's commitment to the maintenance of a clean and attractive environment in the areas surrounding the Vending Machines consistent with the vending services industry standard and any applicable local, state, or federal laws, is a material covenant on which the City has relied in entering into this Agreement. In the event of any violation of this Section by the Contractor, City will notify Contractor in writing, and will allow Contractor a reasonable period of time to remedy such violation consistent with the terms of Section 8.02 herein.

3.09 Special Promotions

Wherever and whenever possible, the Contractor may offer a variety of promotional programs, special events, product give-aways, and contests in connection with the Services. Whenever the Contractor offers promotions sponsored by manufacturers or suppliers of any

Merchandise at any Location, those promotions must be offered by the Contractor at all of the Locations where Vending Machines contain such Merchandise.

All promotions planned for the City's vending Locations shall be subject to the approval of the Program Manager. The Contractor must advertise such promotions to the maximum extent reasonably possible, subject to the approval of the Program Manager.

All promotions must be carried out in a fair manner. Whenever a promotion involves a contest where prizes will be awarded, the Contractor will make every effort to ensure that every participant has an equal chance of winning.

3.10 Minority and Women Owned Business Enterprises

In the performance of this Agreement, in every year this Agreement remains in effect, Contractor must abide by the Special Conditions Regarding Minority Business Enterprise Commitment and Women Business Enterprise Commitment ("MBE/WBE Special Conditions") in effect for the first year of the Agreement. Every year that this Agreement is in effect, 30 days prior to the anniversary of the effective date of the Agreement, Contractor must submit to the City revised and updated Schedules C-1 and D-1 evidencing compliance with the MBE/WBE Special Conditions in the one year period immediately following the anniversary. In addition, within 20 days after each anniversary date of the Effective Date of the Agreement, Contractor must provide a statement to the City showing (i) a calculation of the MBE/WBE goals for the prior year based on the Contractor's Gross Sales in that prior year; and (ii) the actual amount of MBE/WBE participation that Contractor achieved in that prior year. For purposes of this Section and the MBE/WBE Special Conditions, "Total Agreement Price" means the total Gross Sales. The annual MBE requirements under this Agreement will be computed by multiplying .25 (representing the required MBE percentage of 25 percent) by the Total Agreement Price in each and every year the Agreement is in effect. The annual WBE requirement under this Agreement will be computed by multiplying .05 (representing the required WBE percentage of 5 percent) by the Total Agreement price in each and every year this Agreement is in effect. "Percentage Amount of Participation," as used in Schedule D, means for each MBE or WBE participant, the Dollar Amount of Participation (as used in Schedule D) divided by the Total Agreement Price. The Contractor's completed schedules evidencing its compliance under this provision will become a part of this Agreement, in Exhibit 3, upon acceptance by the City. Notwithstanding that acceptance, Contractor must utilize minority and women business enterprises at the greater of (1) 25 percent and 5 percent of the Total Agreement Price or (2) those amounts listed in the Schedules C-1 and D-1 as approved by the City.

ARTICLE 4. TERM OF AGREEMENT; TIMELINESS

4.01 Term of Agreement

Unless sooner terminated or otherwise extended pursuant to this Agreement, this Agreement will be for a term of five (5) years beginning on the Effective Date.

4.02 Timeliness of Performance

The Contractor must provide the Services within the term and within the time limits required under this Agreement, pursuant to the provisions of this Section. **Further, Contractor acknowledges that TIME IS OF THE ESSENCE and that the failure of Contractor to comply with the time limits described in this Section may result in economic or other losses to the City.**

4.03 No Damages for Delay

Neither Contractor nor Contractor's agents, employees and Subcontractors are entitled to any damages from the City, nor is any party entitled to be reimbursed by the City, for damages, charges or other losses or expenses incurred by Contractor by reason of delays or hindrances in the performance of the Services, whether or not caused by the City, except to the extent materially caused by the negligence or willful misconduct of the City.

4.04 Extension Option

The Commissioner may at any time before this Agreement expires elect to extend this Agreement for up to two (2) additional one (1) year periods under the same terms and conditions as this original Agreement, except as provided otherwise in this Agreement, by notice in writing to Contractor. After notification by the Commissioner, this Agreement must be modified to reflect the time extension in accordance with the provisions of Section 11.03.

ARTICLE 5. INSURANCE, INDEMNIFICATION

5.01 Indemnification

(a) Contractor must defend, indemnify, keep and hold harmless the City, its officers, representatives, elected and appointed officials, agents and employees from and against any and all Losses, including those related to:

- (i) injury, death or damage of or to any person or property;
- (ii) any infringement or violation of any property right (including any patent, trademark or copyright);
- (iii) failure to pay or perform or cause to be paid or performed Contractor's covenants and obligations as and when required under this Agreement or otherwise to pay or perform its obligations to any Subcontractor;
- (iv) the City's exercise of its rights and remedies under Section 8.02 of this Agreement; and
- (v) injuries to or death of any employee of Contractor or any Subcontractor under any workers compensation statute.

(b) "Losses" means, individually and collectively, liabilities of every kind, including losses, damages and reasonable costs, payments and expenses (such as, but not limited to, court costs and reasonable attorneys' fees and disbursements), claims, demands, actions, suits, proceedings, judgments or settlements, any or all of which in any way arise out of or relate to Contractor's breach of this Agreement or to Contractor's negligent or otherwise wrongful acts or omissions or those of its officers, employees, consultants, Subcontractors or licensees.

(c) Contractor must defend all suits brought upon all such Losses and must pay all costs and expenses incidental to them, but the City has the right, at its option, to participate, at its own cost, in the defense of any suit, without relieving Contractor of any of its obligations under this Agreement. Any settlement must be made only with the prior written consent of the City Corporation Counsel, if the settlement requires any action on the part of the City.

(d) To the extent permissible by law, Contractor waives any limits to the amount of its obligations to indemnify, defend or contribute to any sums due under any Losses, including any claim by any employee of Contractor that may be subject to the Workers Compensation Act, 820 ILCS 305/1 et seq. or any other related law or judicial decision (such as, Kotecki v. Cyclops Welding Corporation, 146 Ill. 2d 155 (1991)). The City, however, does not waive any limitations it may have on its liability under the Illinois Workers Compensation Act, the Illinois Pension Code or any other judicial decision.

(e) The indemnities contained in this section survive expiration or termination of this Agreement for matters occurring or arising during the term of this Agreement or as the result of or during the Contractor's performance of Services beyond the term. Contractor acknowledges that the requirements set forth in this section to indemnify, keep and save harmless and defend the City are apart from and not limited by the Contractor's duties under this Agreement, including the insurance requirements.

5.02 Insurance Requirements

The Contractor must provide and maintain at Contractor's own expense, during the term of this Agreement and any time period following expiration if Contractor is required to return and perform any additional work, the insurance coverages and requirements specified below, insuring all operations related to the Agreement.

A. INSURANCE TO BE PROVIDED

1) Workers Compensation and Employers Liability

Workers Compensation Insurance, as prescribed by applicable law covering all employees who are to provide work under this Agreement and Employers Liability coverage with limits of not less than \$100,000 each accident, illness or disease.

2) Commercial General Liability (Primary and Umbrella)

Commercial General Liability Insurance or equivalent with limits of not less than \$2,000,000 per occurrence for bodily injury, personal injury, and property damage liability. Coverages must include the following: All premises and operations, products/completed operations, separation of insureds, defense, and contractual liability. The City of Chicago is to be named as an additional insured on a primary, non-contributory basis for any, except to the extent that claims are caused by the negligent acts or omissions or willful misconduct of the City or its employees.

3) Automobile Liability (Primary and Umbrella)

When any motor vehicles (owned, non-owned and hired) are used in connection with work to be performed, the Contractor must provide Automobile Liability Insurance with limits of not less than \$1,000,000 per occurrence for bodily injury and property damage. The City of Chicago is to be named as an additional insured on a primary, non-contributory basis, except to the extent that claims are caused by the negligent acts or omissions or willful misconduct of the City or its employees.

4) Crime

Crime Insurance or equivalent covering all persons handling funds under this Agreement, against loss by theft, dishonesty, robbery, destruction or disappearance and other related crime risks in an amount of \$1,000,000 per occurrence.

5) Property

The Contractor must maintain property Insurance to cover the Vending Machines or other personal property/equipment of Contractor that are part of this Agreement. The City of Chicago is not responsible for any loss or damage to property of Contractor, except to the extent that such loss or damage is caused by the negligent acts or omissions or willful misconduct of the City or its employees.

B. ADDITIONAL REQUIREMENTS

The Contractor must furnish the City of Chicago, Department of Procurement Services, City Hall, Room 403, 121 North LaSalle Street 60602, original Certificates of Insurance, or such similar evidence, to be in force on the Effective Date of this Agreement, and Renewal Certificates of Insurance, or such similar evidence, if the coverages have an expiration or renewal date occurring during the term of this Agreement. The Contractor must submit evidence of insurance using an ACORD form or equivalent prior to execution of Agreement. The receipt of any certificate does not constitute agreement by the City that the insurance requirements in the Agreement have been fully met or that the insurance policies indicated on the certificate are in compliance with all Agreement requirements. The failure of the City to obtain certificates or other

insurance evidence from Contractor is not a waiver by the City of any requirements for the Contractor to obtain and maintain the specified coverages. The Contractor shall advise all insurers of the Agreement provisions regarding insurance. Non-conforming insurance does not relieve Contractor of the obligation to provide insurance as specified herein. Nonfulfillment of the insurance conditions may constitute a violation of the Agreement, and the City retains the right to stop work until proper evidence of insurance is provided, or the Agreement may be terminated.

The insurance carrier will endeavor to provide 60 days prior written notice to the City in the event coverage is substantially changed, canceled, or non-renewed.

Any deductibles or self insured retentions on referenced insurance coverages must be borne by Contractor.

The Contractor hereby waives and agrees to require their insurers to waive their rights of subrogation against the City of Chicago, its employees, elected officials, agents, or representatives except to the extent that claims are caused by the negligent acts or omissions or willful misconduct of the City or its employees.

The coverages and limits furnished by Contractor in no way limit the Contractor's liabilities and responsibilities specified within the Agreement or by law.

Any insurance or self insurance programs maintained by the City of Chicago will not contribute with insurance provided by the Contractor under the Agreement except to the extent that claims are caused by the negligent acts or omissions or willful misconduct of the City or its employees.

The Contractor must require all Subcontractors to provide the insurance required herein. All Subcontractors are subject to the same insurance requirements of Contractor unless otherwise specified in this Agreement.

If Contractor or subcontractor desires additional coverages, the party desiring the additional coverages is responsible for the acquisition and cost.

Notwithstanding any provision in the Agreement to the contrary, the City of Chicago Risk Management Department maintains the right to modify, delete, alter or change these requirements. Any such changes will be communicated in writing to Contractor. Contractor shall have fifteen (15) days after receipt of written notification thereof to advise the City if it can and will comply with such insurance changes. In the event that Contractor is unable to comply with an insurance change, Contractor will have the right to terminate this Agreement upon thirty (30) days prior written notice to the City.

5.03 Disclaimer by City

Notwithstanding anything in this Agreement to the contrary, City expressly disclaims any

and all liability for damage of any kind to the Vending Machines, except to the extent that such damage is caused by the negligent acts or omissions or willful misconduct of the City or its employees. Responsibility for repairing and/or replacing any damaged or broken Vending Machine, and all liability for damage to the Vending Machines shall be the responsibility of Contractor, except to the extent that such damage is caused by the negligent acts or omissions or willful misconduct of the City or its employees. City's total disclaimer applies whether the damage to the Vending Machines occurs while the Vending Machines are in one of the Locations, are in the process of being transported to or from one of the Locations, or are in the process of being installed or removed from one of the Locations.

ARTICLE 6. PROGRAM MANAGEMENT AND DISPUTE RESOLUTION

6.01 Program Management

(a) Program Manager. The administrative matters described in this Agreement, including implementation, installation, planning and provisioning work, may be resolved by the Program Managers.

(b) Program Management Meetings. The City and Contractor shall schedule program management meetings that will be attended by the Program Manager and such other individuals as deemed necessary or desirable by either party. Such program management meetings will be held on an "as needed" basis at a time and place agreed upon by the Program Manager. The purposes of the program management meetings will be to monitor the progress of, discuss changes to and resolve disputes arising in connection with this Agreement. Program management meetings may be conducted by conference call. Contractor shall bear any expense in connection with attending such program management meetings. The Contractor agrees to include, whenever reasonably necessary, additional personnel in such program management meetings whose expertise or responsibility is pertinent to the agenda of the meeting.

6.02 Disputes

Except as otherwise provided in this Agreement, Contractor must and the City may bring any dispute concerning a question of fact arising under this Agreement which is not disposed of to the Chief Procurement Officer for decision after hearing based upon written submissions of the parties. The Chief Procurement Officer will reduce his or her decision to writing and mail or otherwise furnish a copy of it to Contractor. The decision of the Chief Procurement Officer is final and binding. Contractor must follow the procedures set out in this Section and receive the Chief Procurement Officer's final decision as a condition precedent to filing an appeal of the decision to the Circuit Court of Cook County or any other court.

ARTICLE 7. COMMISSIONS AND PAYMENT TERMS

7.01 Commissions

In exchange for the privilege of installing, maintaining and operating the Vending Machines as specified in this Agreement, the Contractor will pay the City the following

("Commissions"):

- (a) Within thirty (30) days from the date of Contract Execution, a \$25,000.00 initial payment ("Advanced Commission"), and
- (b) beginning by no later than ninety (90) days from the date of Contract Execution, the Contractor shall commence payment to the City of 20.2% of the Gross Revenues associated with the Contractor's sales from Contractor's snack Vending Machines placed on City-operated facilities as set forth in Exhibit 1, and
- (c) beginning by no later than ninety (90) days from the date of Contract Execution, the Contractor shall commence payment to the City of 30.2% of the Gross Revenues associated with the Contractor's sales from Contractor's beverage vending machines placed on City-operated facilities as set forth in Exhibit 1.

The Contractor must submit Commissions set forth in sections (b) and (c) above to the City on a monthly basis, in the form of a check made payable to the Office of the City Comptroller and delivered to the Department of Fleet and Facility Management no later than the 20th day following the end of the month during which the revenue is generated, consistent with Contractor's fiscal calendar. The monthly Commission check must be accompanied by the monthly report required by Section 3.02(e) of this Agreement. Payments made to any office or officer of the City other than the City Comptroller's office will not be counted toward the amounts payable by the Contractor under this Agreement.

Payment by the Contractor to the City of Commissions under this Agreement is not considered to be a tax and is in addition to and exclusive of all license fees, taxes, or franchise fees that the Contractor may now or in the future be obligated to pay to the City or other local, county, state, and federal government agencies. The payment of the Commissions under this Agreement is independent of each and every other covenant and agreement contained in this Agreement, and except as mutually agreed upon by the parties pursuant to the terms of Section 8.05(a) the Contractor must pay all Commissions without any set off, abatement, counterclaim or deduction whatsoever except as otherwise expressly provided in this Agreement.

7.02 Material Underpayment or Nonpayment

Without waiving any other remedies available to the City, if: (i) it is determined by independent audit or otherwise that Contractor made underpayments of Commissions in any month that were 5% or more of the amount actually due in such month; or (ii) Contractor fails to make any payments within fifteen (15) days of the date due, Contractor must pay, in addition to the amount due the City, interest on the amount of underpayment or late payment at the rate of 50% per annum. Interest on the amount underpaid accrues from the date on which the original payment was due until paid in full. The provision for the payment of interest does not constitute an authorization by the City of underpayments or late payments.

7.03 Other Fees

In addition to the Commission payments, the Contractor must pay all fees of general application necessary to obtain federal, state, local and City licenses, permits and authorizations required for installation, maintenance or operation of the Vending Machines as are consistent with the vending services industry standards and otherwise in accordance with applicable law.

7.04 Collections

The Contractor is responsible for all collections of Gross Revenues. Collections of Gross Revenues from Vending Machines must be accomplished in a prompt and timely manner and may not interfere with the Vending Machine use and access.

ARTICLE 8. EVENTS OF DEFAULT, REMEDIES, TERMINATION AND SUSPENSION

8.01 Events of Default Defined

The following constitute events of default:

(a) Any material misrepresentation, whether negligent or willful and whether in the inducement or in the performance, made by Contractor to the City.

(b) Contractor's material failure to perform any of its obligations under this Agreement including the following:

- (i) Failure to perform the Services with sufficient personnel and equipment or with sufficient material to ensure the timely performance of the Services;
- (ii) Failure to have and maintain all professional licenses required by law and consistent with the vending services industry standard to perform the Services;
- (iii) Failure to timely perform the Services;
- (iv) Failure to perform the Services in a manner reasonably satisfactory to the Commissioner or the Mayor or inability to perform the Services satisfactorily as a result of insolvency, filing for bankruptcy or assignment for the benefit of creditors;
- (v) Failure to promptly re-perform, as required, within a reasonable time and at no cost to the City, Services that are rejected as erroneous or unsatisfactory;
- (vi) Discontinuance of the Services for reasons within Contractor's reasonable control;
- (vii) Failure to comply with Section 9.01 in the performance of the Agreement;

- (viii) Failure promptly to update EDS(s) furnished in connection with this Agreement when the information or responses contained in it or them is no longer complete or accurate;
- (ix) Failure to comply with any other material term of this Agreement, including the provisions concerning insurance and nondiscrimination; and
- (x) Any other acts specifically stated in this Agreement as constituting an act of default.

(c) Subject to Section 10.05 hereunder, any change in ownership or control of Contractor without the prior written approval of the Commissioner, which approval the Commissioner will not unreasonably withhold.

(d) Contractor's failure to update its Economic Disclosure Statement and Affidavit to reflect any changes in information, including changes in ownership, and to provide it to the City as provided under Section 9.1(a).

8.02 Remedies

City and Contractor will perform their obligations under this Agreement and will make reasonable efforts to ensure that their obligations are so performed.

The occurrence of any event of default permits the City, at the City's sole option, to declare Contractor in default. The Commissioner shall give Contractor an opportunity to cure the default within a certain period of time, which period of time must not exceed 30 days, unless extended by the Commissioner.

The Commissioner will give Contractor written notice of the default, in the form of a cure notice ("Cure Notice"). If the default is not remedied in accordance with the reasonable time period set forth in the Cure Notice, then Contractor must discontinue any Services by the date of termination specified in the Cure Notice, unless otherwise directed in the notice. If the default is not remedied in accordance with the reasonable time period set forth in the Cure Notice then the City may invoke any or all remedies available to it at law or in equity

The remedies under the terms of this Agreement are not intended to be exclusive of any other remedies provided, but each and every such remedy is cumulative and is in addition to any other remedies, existing now or later, at law, in equity or by statute. No delay or omission to exercise any right or power accruing upon any event of default impairs any such right or power, nor is it a waiver of any event of default nor acquiescence in it, and every such right and power may be exercised from time to time and as often as the City deems expedient.

8.03 Early Termination

In addition to termination for default, the City may terminate this Agreement, or all or any portion of the Services to be performed under it, at any time by a notice in writing from the

City to Contractor. The City will give notice to Contractor ninety (90) days prior to the proposed termination date. The Contractor may terminate this Agreement, or all or any portion of the Services to be performed under it, at any time by a notice in writing from the Contractor to the City. The Contractor will give notice to the City one-hundred and eighty days (180) days prior to the proposed termination date. Notices will be issued in accordance with the provisions of Article 12. The effective date of termination will be the date stated in the notice. If this Agreement is terminated, the parties will agree upon a transition schedule that is approved by the Commissioner. Payment to the City of Commissions accrued before the effective date of the termination shall be paid on the same basis as set forth in Section 7.01. The amount of Commissions so accrued shall be mutually agreed upon by the City and the Contractor and, if not agreed to, the dispute shall be settled in accordance with Section 6.02 of this Agreement. Except as otherwise provided in this Agreement, no money or other consideration is payable by one party to the other party for the right of early termination.

Contractor must include in its contracts with Subcontractors an early termination provision in form and substance equivalent to this early termination provision to prevent claims against the City arising from termination of subcontracts after the early termination. Contractor will not be entitled to make any early termination claims against the City resulting from any Subcontractor's claims against the Contractor or the City to the extent inconsistent with this provision.

If City's election to terminate this Agreement for default is determined in a court of competent jurisdiction to have been wrongful, then in that case the termination is to be deemed to be an early termination pursuant to this Section.

8.04 Suspension

The City may at any time request that Contractor suspend its Services, or any part of them, by giving fifteen (15) days prior written notice to Contractor or upon informal oral, or even no notice, in the event of emergency. Contractor must promptly resume its performance of the Services under the same terms and conditions as stated in this Agreement upon written notice by the Commissioner.

No suspension of this Agreement is permitted in the aggregate to exceed a period of forty-five (45) days within any one (1) year of this Agreement. If the total number of days of suspension exceeds forty-five (45) days, Contractor by written notice may treat the suspension as an early termination of this Agreement.

8.05 Right to Offset

(a) In connection with performance under this Agreement:

Whenever in this Agreement the City is obligated to pay Contractor an amount, then unless the City otherwise elects to pay the entire amount or any part, Contractor must offset the amount as to which the election was not made against Commissions or other payments owed the

City, in lieu of requiring the City to pay the amount of the offset.

- (b) In connection with Section 2-92-380 of the Municipal Code of Chicago:
 - (i) In accordance with Section 2-92-380 of the Municipal Code of Chicago and in addition to any other rights and remedies (including any of set-off) available to the City under this Agreement or permitted at law or in equity, the City is entitled to set off a portion of the price or compensation due under this Agreement in an amount equal to the amount of the fines and penalties for each outstanding parking violation complaint and/or the amount of any debt owed by Contractor to the City. For purposes of this Section, "outstanding parking violation complaint" means a parking ticket, notice of parking violation or parking violation complaint on which no payment has been made or appearance filed in the Circuit Court of Cook County within the time specified on the complaint. "Debt" means a specified sum of money owed to the City for which the period granted for payment has expired.
 - (ii) Notwithstanding the provisions of subsection (b)(i) above, no such debt(s) or outstanding parking violation complaint(s) will be offset from the price or compensation due under this Agreement if one or more of the following conditions are met:
 - A. Contractor has entered into an agreement with the Department of Finance, or other appropriate City department, for the payment of all outstanding parking violation complaints and/or debts owed to the City and Contractor is in compliance with the agreement; or
 - B. Contractor is contesting liability for or the amount of the debt in a pending administrative or judicial proceeding; or
 - C. Contractor has filed a petition in bankruptcy and the debts owed the City are dischargeable in bankruptcy.

ARTICLE 9. COMPLIANCE WITH ALL LAWS

9.01 Compliance with All Laws Generally

(a) Contractor must observe and comply with all applicable federal, state, county and municipal laws, statutes, ordinances and executive orders, in effect now or later and whether or not they appear in this Agreement and Contractor must pay all taxes and obtain all licenses, certificates and other authorizations required by them. Contractor must require all Subcontractors to do so, also. Further, Contractor must execute an EDS in the form attached to this Agreement as Exhibit 5. Notwithstanding acceptance by the City of the EDS, Contractor's failure in the EDS to include all information required under the Municipal Code renders this

Agreement voidable at the option of the City. Contractor must promptly update its EDS(s) on file with the City whenever any information or response provided in the EDS(s) is no longer complete and accurate. Contractor must abide by the terms of Section 2-154-020 of the Municipal Code of Chicago. Contractor agrees that failure by the Contractor or any controlling person (as defined in Section 1-23-010 of the Municipal Code of Chicago) thereof to maintain eligibility to do business with the City of Chicago as required by Section 1-23-030 of the Municipal Code of Chicago shall be a default for which no cure is available and grounds for termination of this Agreement.

(b) Notwithstanding anything in this Agreement to the contrary, references to a statute or law are considered to be a reference to (i) the statute or law as it may be amended from time to time; (ii) all regulations and rules pertaining to or promulgated pursuant to the statute or law; and (iii) all future statutes, laws, regulations, rules and executive orders pertaining to the same or similar subject matter.

9.02 Nondiscrimination

In performing its Services under this Agreement, Contractor must comply with applicable laws prohibiting discrimination against individuals and groups.

(a) Federal Requirements

In performing its Services under this Agreement, Contractor must not engage in unlawful employment practices, such as (1) failing or refusing to hire or discharging any individual, or otherwise discriminating against any individual with respect to compensation or the terms, conditions, or privileges of the individual's employment, because of the individual's race, color, religion, sex, age, handicap/disability or national origin; or (2) limiting, segregating or classifying Contractor's employees or applicants for employment in any way that would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect the individual's status as an employee, because of the individual's race, color, religion, sex, age, handicap/disability or national origin.

Contractor must comply with, and the procedures Contractor utilizes and the Services Contractor provides under this Agreement must comply with, the Civil Rights Act of 1964, 42 U.S.C. sec. 2000 et seq. (1981), as amended and the Civil Rights Act of 1991, P.L. 102-166. Attention is called to: Exec. Order No. 11246, 30 Fed. Reg. 12,319 (1965), reprinted in 42 U.S.C. 2000(e) note, as amended by Exec. Order No. 11375, 32 Fed. Reg. 14,303 (1967) and by Exec. Order No. 12086, 43 Fed. Reg. 46,501 (1978); Age Discrimination Act, 42 U.S.C. §§ 6101-6106 (1981); Age Discrimination in Employment Act, 29 U.S.C. §§ 621-34; Rehabilitation Act of 1973, 29 U.S.C. §§ 793-794 (1981); Americans with Disabilities Act, 42 U.S.C. §12101 et seq.; 41 C.F.R. Part 60 et seq. (1990); and all other applicable federal statutes, regulations and other laws.

(b) State Requirements

Contractor must comply with, and the procedures Contractor utilizes and the Services

Contractor provides under this Agreement must comply with, the Illinois Human Rights Act, 775 ILCS 5/1-101 et seq. (1990), as amended and any rules and regulations promulgated in accordance with it, including the Equal Employment Opportunity Clause, 44 Ill. Admin. Code § 750 Appendix A. Furthermore, Contractor must comply with the Discrimination in Public Agreements Act, 775 ILCS 10/0.01 et seq. (1990), as amended, and all other applicable state statutes, regulations and other laws.

(c) City Requirements

Contractor must comply with, and the procedures Contractor utilizes and the Services Contractor provides under this Agreement must comply with, the Chicago Human Rights Ordinance, ch. 2-160, Section 2-160-010 et seq. of the Municipal Code of Chicago (1990), as amended, and all other applicable City ordinances and rules. Further, Contractor must furnish and must cause each of its Subcontractor(s) to furnish such reports and information as requested by the Chicago Commission on Human Relations.

Contractor must incorporate all of the above non-discrimination provisions in all agreements entered into with any suppliers of materials, furnisher of services, Subcontractors of any tier, and labor organizations that furnish skilled, unskilled and craft union skilled labor, or that may provide any such materials, labor or services in connection with this Agreement.

9.03 Cooperation in Investigations

It is the duty of any bidder, proposer or contractor, all Subcontractors, every applicant for certification of eligibility for a City contract or program, and all officers, directors, agents, partners and employees of any bidder, proposer, contractor, Subcontractor or such applicant to cooperate with the Inspector General and/or the Legislative Inspector General in any investigation or hearing, if applicable, undertaken pursuant to Chapters 2-56 or 2-55, respectively, of the Municipal Code. Contractor understands and will abide by all provisions of Chapters 2-56 and 2-55 of the Municipal Code. All subcontracts must inform Subcontractors of the provision and require understanding and compliance with it.

9.04 MacBride Ordinance

The City of Chicago, through the passage of the MacBride Principles Ordinance, seeks to promote fair and equal employment opportunities and labor practices for religious minorities in Northern Ireland and provide a better working environment for all citizens in Northern Ireland.

In accordance with Section 2-92-580 of the Municipal Code of the City of Chicago, if the primary contractor conducts any business operations in Northern Ireland, the contractor must make all reasonable and good faith efforts to conduct any business operations in Northern Ireland in accordance with the MacBride Principles for Northern Ireland as defined in Illinois Public Act 85-1390 (1988 Ill. Laws 3220).

The provisions of this Section do not apply to contracts for which the City receives funds administered by the United States Department of Transportation, except to the extent Congress has directed that the Department of Transportation not withhold funds from states and localities

that choose to implement selective purchasing policies based on agreement to comply with the MacBride Principles for Northern Ireland, or to the extent that such funds are not otherwise withheld by the Department of Transportation.

9.05 Business Relationships with Elected Officials

Pursuant to Section 2-156-030(b) of the Municipal Code of the City of Chicago, it is illegal for any elected official of the City, or any person acting at the direction of such official, to contact, either orally or in writing, any other City official or employee with respect to any matter involving any person with whom the elected official has a business relationship, or to participate in any discussion in any City Council committee hearing or in any City Council meeting or to vote on any matter involving the person with whom an elected official has a business relationship. **Violation of Section 2-156-030(b) by any elected official with respect to this Agreement is grounds for termination of this Agreement.** The term business relationship is defined as set forth in Section 2-156-080 of the Municipal Code of Chicago.

Section 2-156-080 defines a “**business relationship**” as any contractual or other private business dealing of an official, or his or her spouse, or of any entity in which an official or his or her spouse has a financial interest, with a person or entity which entitles an official to compensation or payment in the amount of \$2,500 or more in a calendar year; provided, however, a financial interest shall not include: (i) any ownership through purchase at fair market value or inheritance of less than one percent of the share of a corporation, or any corporate subsidiary, parent or affiliate thereof, regardless of the value of or dividends on such shares, if such shares are registered on a securities exchange pursuant to the Securities Exchange Act of 1934, as amended; (ii) the authorized compensation paid to an official or employee for his or her office or employment; (iii) any economic benefit provided equally to all residents of the City; (iv) a time or demand deposit in a financial institution; or (v) an endowment or insurance policy or annuity contract purchased from an insurance company. A “contractual or other private business dealing” shall not include any employment relationship of an official’s spouse with an entity when such spouse has no discretion concerning or input relating to the relationship between that entity and the City.

9.06 Chicago "Living Wage" Ordinance

(a) Section 2-92-610 of the Municipal Code provides for a living wage for certain categories of workers employed in the performance of City contracts, specifically non-City employed security guards, parking attendants, day laborers, home and health care workers, cashiers, elevator operators, custodial workers and clerical workers ("**Covered Employees**"). Accordingly, pursuant to Section 2-92-610 and regulations promulgated under it:

- (i) If Contractor has 25 or more full-time employees, and
- (ii) If at any time during the performance of this Agreement, Contractor and/or any Subcontractor or any other entity that provides any portion of the Services (collectively "**Performing Parties**") uses 25 or more full-time security guards, or any number

of other full-time Covered Employees, then

- (iii) Contractor must pay its Covered Employees, and must ensure that all other Performing Parties pay their Covered Employees, not less than the minimum hourly rate as determined in accordance with this provision (the "**Base Wage**") for all Services performed under this Agreement.

(b) Contractor's obligation to pay, and to ensure payment of, the Base Wage will begin at any time during the term of this Agreement when the conditions set forth in (a)(i) and (a)(ii) above are met, and will continue until the end of the term of this Agreement.

(c) As of July 1, 2011, the Base Wage is \$11.18 per hour, and each July 1 thereafter, the Base Wage will be adjusted using the most recent federal poverty guidelines for a family of four as published annually by the U.S. Department of Health and Human Services, to constitute the following: the poverty guidelines for a family of four divided by 2000 hours or the current base wage, whichever is higher. The currently applicable Base Wage is available from the Department of Procurement Services. At all times during the term of this Agreement, Contractor and all other Performing Parties must pay the Base Wage (as adjusted in accordance with the above). If the payment of prevailing wages is required for Services done under this Agreement, and the prevailing wages for Covered Employees are higher than the Base Wage, then Contractor and all other Performing Parties must pay the prevailing wage rates.

(d) Contractor must include provisions in all subcontracts requiring its Subcontractors to pay the Base Wage to Covered Employees. Contractor agrees to provide the City with documentation acceptable to the Comptroller demonstrating that all Covered Employees, whether employed by Contractor or by a Subcontractor, have been paid the Base Wage, upon the City's request for such documentation. The City may independently audit Contractor and/or Subcontractors to verify compliance with this section. Failure to comply with the requirements of this section will be an event of default under this Agreement, and further, failure to comply may result in ineligibility for any award of a City contract or subcontract for up to 3 years.

(e) Not-for-Profit Corporations: If Contractor is a corporation having federal tax-exempt status under Section 501(c)(3) of the Internal Revenue Code and is recognized under Illinois not-for-profit law, then the provisions of subsections (a) through (d) above do not apply.

9.07 Environmental Warranties and Representations

In accordance with Section 11-4-1600(e) of the Municipal Code of Chicago, Contractor warrants and represents that it, and to the best of its knowledge, its subcontractors have not violated and are not in violation of the following sections of the Code (collectively, the Waste Sections):

7-28-390 Dumping on public way;
7-28-440 Dumping on real estate without permit;
11-4-1410 Disposal in waters prohibited;

11-4-1420 Ballast tank, bilge tank or other discharge;
11-4-1450 Gas manufacturing residue;
11-4-1500 Treatment and disposal of solid or liquid waste;
11-4-1530 Compliance with rules and regulations required;
11-4-1550 Operational requirements; and
11-4-1560 Screening requirements.

During the period while this Agreement is executory, Contractor's or any subcontractor's violation of the Waste Sections, whether or not relating to the performance of this Agreement, constitutes a breach of and an event of default under this Agreement, for which the opportunity to cure, if curable, will be granted only at the sole discretion of the Comptroller. Such breach and default entitles the City to all remedies under the Agreement, at law or in equity.

This section does not limit Contractor's and its subcontractors' duty to comply with all applicable federal, state, county and municipal laws, statutes, ordinances and executive orders, in effect now or later, and whether or not they appear in this Agreement.

Non-compliance with these terms and conditions may be used by the City as grounds for the termination of this Agreement, and may further affect Contractor's eligibility for future contract awards.

9.08 Prohibition on Certain Contributions, Mayoral Executive Order 2011-4

No Contractor or any person or entity who directly or indirectly has an ownership or beneficial interest in Contractor of more than 7.5% ("Owners"), spouses and domestic partners of such Owners, Contractor's Subcontractors, any person or entity who directly or indirectly has an ownership or beneficial interest in any Subcontractor of more than 7.5% ("Sub-owners") and spouses and domestic partners of such Sub-owners (Contractor and all the other preceding classes of persons and entities are together, the "Identified Parties"), shall make a contribution of any amount to the Mayor of the City of Chicago (the "Mayor") or to his political fundraising committee during (i) the bid or other solicitation process for this Contract or Other Contract, including while this Contract or Other Contract is executory, (ii) the term of this Contract or any Other Contract between City and Contractor, and/or (iii) any period in which an extension of this Contract or Other Contract with the City is being sought or negotiated.

Contractor represents and warrants that since the date of public advertisement of the specification, request for qualifications, request for proposals or request for information (or any combination of those requests) or, if not competitively procured, from the date the City approached the Contractor or the date the Contractor approached the City, as applicable, regarding the formulation of this Contract, to the best of its knowledge, no Identified Parties have made a contribution of any amount to the Mayor or to his political fundraising committee.

Contractor shall not: (a) coerce, compel or intimidate its employees to make a contribution of any amount to the Mayor or to the Mayor's political fundraising committee; (b) reimburse its employees for a contribution of any amount made to the Mayor or to the Mayor's

political fundraising committee; or (c) bundle or solicit others to bundle contributions to the Mayor or to his political fundraising committee.

The Identified Parties must not engage in any conduct whatsoever designed to intentionally violate this provision or Mayoral Executive Order No. 2011-4 or to entice, direct or solicit others to intentionally violate this provision or Mayoral Executive Order No. 2011-4.

Violation of, non-compliance with, misrepresentation with respect to, or breach of any covenant or warranty under this provision or violation of Mayoral Executive Order No. 2011-4 constitutes a breach and default under this Agreement and under any Other Contract for which no opportunity to cure will be granted. Such breach and default entitles the City to all remedies at law and in equity (including without limitation termination for default under this Agreement and any Other Contract), ,

For purposes of this provision:

"Other Contract" means any agreement entered into between the Contractor and the City that is (i) formed under the authority of MCC Ch. 2-92; (ii) for the purchase, sale or lease of real or personal property; or (iii) for materials, supplies, equipment or services which are approved and/or authorized by the City Council. For purposes of clarification, Other Contracts will specifically exclude those contracts that Contractor, and/or its other divisions and/or affiliated entities may have with agencies other than the City of Chicago Department of Fleet and Facility Management to include, but not limited to, the City of Chicago Parks District and the City of Chicago Public Schools.

"Contribution" means a "political contribution" as defined in MCC Ch. 2-156, as amended.

"Political fundraising committee" means a "political fundraising committee" as defined in MCC Ch. 2-156, as amended.

9.09 Firms Owned or Operated by Individuals with Disabilities

The City encourages Contractors to use Subcontractors that are firms owned or operated by individuals with disabilities, as defined by Section 2-92-586 of the Municipal Code of the City of Chicago, where not otherwise prohibited by federal or state law.

9.10 Deemed Inclusion

Provisions required by law, ordinances, rules, regulations, or executive orders to be inserted in this Agreement are deemed inserted in this Agreement whether or not they appear in this Agreement or, upon application by either party, this Agreement will be amended to make the insertion; however, in no event will the failure to insert the provisions before or after this Agreement is signed prevent its enforcement.

ARTICLE 10. SPECIAL CONDITIONS

10.01 Warranties and Representations

In connection with signing and carrying out this Agreement, Contractor:

(a) warrants that Contractor is appropriately licensed under Illinois law to perform the Services required under this Agreement and will perform no Services for which a professional license is required by law and for which Contractor is not appropriately licensed;

(b) warrants it is financially solvent; it and each of its employees, agents and Subcontractors of any tier are competent to perform the Services required under this Agreement; and Contractor is legally authorized to execute and perform or cause to be performed this Agreement under the terms and conditions stated in this Agreement;

(c) warrants that it will not knowingly use the services of any ineligible contractor or Subcontractor for any purpose in the performance of its Services under this Agreement;

(d) warrants that Contractor and its Subcontractors are not in default at the time this Agreement is signed, have not been deemed by the Commissioner to have, within 5 years immediately preceding the date of this Agreement, been found to be in default on any contract awarded by the City of Chicago;

(e) represents that it has carefully examined and analyzed the provisions and requirements of this Agreement; it understands the nature of the Services required; from its own analysis it has satisfied itself as to the nature of all things needed for the performance of this Agreement; this Agreement is feasible of performance in accordance with all of its provisions and requirements, and Contractor warrants it can and will perform, or cause to be performed, the Services in strict accordance with the provisions and requirements of this Agreement;

(f) represents that Contractor and, to the best of its knowledge, its Subcontractors are not in violation of the provisions of Section 2-92-320 of Chapter 2-92 of the Municipal Code of Chicago, and in connection with it, and additionally in connection with the Illinois Criminal Code, 720 ILCS 5/33E as amended, and the Illinois Municipal Code, 65 ILCS 5/11-42.1-1;

(g) acknowledges that any certification, affidavit or acknowledgment made under oath in connection with this Agreement is made under penalty of perjury and, if false, is also cause for termination for default; and

(h) acknowledges that Contractor and its Subcontractors understand and will abide by all provisions of Chapter 2-26-010 *et seq.* of the Municipal Code relating to the Office of Compliance.

10.02 Business Documents

At the request of the City, Contractor must provide evidence of its authority to do business in the State of Illinois, including registrations of assumed names or limited partnerships and certifications of good standing with the Office of the Secretary of State of Illinois.

10.03 Non-liability of Public Officials

Contractor and any assignee or Subcontractor of Contractor must not charge any official, employee or agent of the City personally with any liability or expenses of defense or hold any official, employee or agent of the City personally liable to them under any term or provision of this Agreement or because of the City's execution, attempted execution or any breach of this Agreement.

10.04 Conflict of Interest

(a) No member of the governing body of the City or other units of government and no other officer, employee or agent of the City or other unit of government who exercises any functions or responsibilities in connection with the Services to which this Agreement pertains is permitted to have any personal interest, direct or indirect, in this Agreement. No member of or delegate to the Congress of the United States or the Illinois General Assembly and no alderman of the City or City employee is allowed to be admitted to any share or part of this Agreement or to any financial benefit to arise from it.

(b) Contractor covenants that it, and to the best of its knowledge, its Subcontractors if any (collectively, "Consulting Parties"), presently have no direct or indirect interest and will not acquire any interest, direct or indirect, in any project or contract that would conflict in any manner or degree with the performance of its Services under this Agreement.

(c) Upon the request of the City, to the extent that the Contractor may disclose such information and to the best of its knowledge, Contractor will disclose to the City its past client list and the names of any clients with whom it has an ongoing relationship. Contractor is not permitted to perform any Services for the City on applications or other documents submitted to the City by any of Contractor's past or present clients. If Contractor becomes aware of a conflict, it must immediately stop work on the assignment causing the conflict and notify the City.

(d) Without limiting the foregoing, if the Consulting Parties assist the City in determining the advisability or feasibility of a project or in recommending, researching, preparing, drafting or issuing a request for proposals or bid specifications for a project, the Consulting Parties must not participate, directly or indirectly, as a prime, subcontractor or joint venturer in that project or in the preparation of a proposal or bid for that project during the term of this Agreement or afterwards. The Consulting Parties may, however, assist the City in reviewing the proposals or bids for the project if none of the Consulting Parties have a relationship with the persons or entities that submitted the proposals or bids for that project.

10.05 Assignments, Transfer of Interest and Subcontracting

(a) Contractor may assign this Agreement to a legally affiliated entity of Contractor, provided that the legally affiliated entity is not barred from contracting with the City. Contractor may not assign this Agreement to a legally unaffiliated entity without the prior consent of the City, which consent will not be unreasonably withheld or delayed. In the event of assignment of this Agreement the party to which the Agreement is assigned will be required to complete and submit EDS forms to the City.

(b) All subcontracts and all approvals of Subcontractors are, regardless of their form, deemed conditioned upon performance by the Subcontractor in accordance with the terms and conditions of this Agreement. If any Subcontractor fails to observe or perform the terms and conditions of this Agreement to the satisfaction of the Department, the City has the absolute right upon written notification to immediately rescind approval and to require the performance of this Agreement by Contractor personally or through any other City-approved Subcontractor. Any approval for the use of Subcontractors in the performance of the Services under this Agreement under no circumstances operates to relieve Contractor of any of its obligations or liabilities under this Agreement.

Contractor, upon entering into any agreement with a Subcontractor, must furnish the Commissioner and the Department with a copy of its agreement. All subcontracts must contain provisions that require the Services be performed in strict accordance with the requirements of this Agreement, provide that the Subcontractors are subject to all the terms of this Agreement and are subject to the approval of the Department and the Commissioner. If the agreements do not prejudice any of the City's rights under this Agreement, such agreements may contain different provisions than are provided in this Agreement with respect to extensions of schedule, time of completion, payments, guarantees and matters not affecting the quality of the Services.

(c) The City expressly reserves the right to assign or otherwise transfer all or any part of its interests under this Agreement to any successor. In such instance, Contractor will receive written notice.

10.06 Ethics

(a) In addition to the foregoing warranties and representations, Contractor warrants to the best of its knowledge that:

- (i) no officer, agent or employee of the City is employed by Contractor or has a financial interest directly or indirectly in this Agreement or the compensation to be paid under this Agreement except as may be permitted in writing by the Board of Ethics established pursuant to be the Municipal Code of Chicago (Chapter 2-156).
- (ii) no payment, gratuity or offer of employment will be made in connection with this Agreement by or on behalf of any Subcontractors to the prime Contractor or higher tier Subcontractors or anyone associated with them,

as an inducement for the award of a subcontract or order.

(b) Contractor further acknowledges that any Agreement entered into, negotiated or performed in violation of any of the provisions of Chapter 2-156 is voidable as to the City.

10.07 Inspection of Facilities

Upon twelve (12) hours' notice, up to five (5) representatives of the City may inspect the Contractor's facilities including but not limited to any or all of its kitchens, food preparation areas, bakeries, food storage areas, refrigeration units, loading docks and trucks as such specifically pertain to the Services provided by Contractor hereunder. The City may inspect the Contractor's supplies, equipment and prepared food and unprepared food products. Notwithstanding the foregoing, nothing in this provision is intended to limit the City's rights or powers under any laws.

10.08 EDS / Certification Regarding Suspension and Debarment

Contractor certifies, as further evidenced in the EDS attached as Exhibit 5, by its acceptance of this Agreement that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from participation in this transaction by any federal department or agency. Contractor further agrees by executing this Agreement that it will include this clause without modification in all lower tier transactions, solicitations, proposals, contracts and subcontracts. If Contractor or any lower tier participant is unable to certify to this statement, it must attach an explanation to the Agreement.

10.9 Joint and Several Liability

If Contractor, or its successors or assigns, if any, is comprised of more than one individual or other legal entity (or a combination of them), then under this Agreement, each and without limitation every obligation or undertaking in this Agreement to be fulfilled or performed by Contractor is the joint and several obligation or undertaking of each such individual or other legal entity.

ARTICLE 11. GENERAL CONDITIONS

11.01 Entire Agreement

(a) General

This Agreement, and the exhibits attached to it and incorporated in it, constitute the entire agreement between the parties and no other warranties, inducements, considerations, promises or interpretations are implied or impressed upon this Agreement that are not expressly addressed in this Agreement.

(b) No Collateral Agreements

Contractor acknowledges that, except only for those representations, statements or promises expressly contained in this Agreement and any exhibits attached to it and incorporated by reference in it, no representation, statement or promise, oral or in writing, of any kind whatsoever, by the City, its officials, agents or employees, has induced Contractor to enter into this Agreement or has been relied upon by Contractor, including any with reference to: (i) the meaning, correctness, suitability or completeness of any provisions or requirements of this Agreement; (ii) the nature of the Services to be performed; (iii) the nature, quantity, quality or volume of any materials, equipment, labor and other facilities needed for the performance of this Agreement; (iv) the general conditions which may in any way affect this Agreement or its performance; (v) the compensation provisions of this Agreement; or (vi) any other matters, whether similar to or different from those referred to in (i) through (v) immediately above, affecting or having any connection with this Agreement, its negotiation, any discussions of its performance or those employed or connected or concerned with it.

(c) No Omissions

Each party acknowledges that it was given ample opportunity and time to review thoroughly all documents forming this Agreement before signing this Agreement in order that it might request inclusion in this Agreement of any statement, representation, promise or provision that it desired or on that it wished to place reliance.

11.02 Counterparts

This Agreement may be comprised of several identical counterparts, and each may be fully signed by the parties and shall be deemed an original having identical legal effect.

11.03 Amendments

From time to time, the parties hereto may administratively amend this Agreement with respect to any provisions reasonably related to the Services contemplated herein. Provided, however, that such amendment(s) shall not serve to extend the term hereof nor serve to otherwise materially alter the essential provisions contained herein. No changes, amendments, modifications or discharge of this Agreement, or any part of it are valid unless in writing and signed by the authorized agent of Contractor and by the Commissioner or their respective successors and assigns.

Whenever in this Agreement Contractor is required to obtain prior written approval, the effect of any approval that may be granted pursuant to Contractor's request is prospective only from the later of the date approval was requested or the date on which the action for which the approval was sought is to begin. In no event is approval permitted to apply retroactively to a date before the approval was requested.

11.04 Governing Law and Jurisdiction

This Agreement is governed as to performance and interpretation in accordance with the laws of the State of Illinois.

Contractor irrevocably submits itself to the original jurisdiction of those courts located within the County of Cook, State of Illinois, with regard to any controversy arising out of, relating to, or in any way concerning the execution or performance of this Agreement. The Contractor may be served, pursuant to 735 ILCS 5/2-204, by (1) leaving a copy of the process with Contractor's registered agent: CT Corporation System, 208 S. LaSalle Street, Chicago, IL 60604; or (2) in any other manner now or hereafter permitted by law; provided that in such instance a copy is also issued to Contractor's registered agent in the State of Illinois. If any action is brought by Contractor against the City concerning this Agreement, the action must be brought only in those courts located within the County of Cook, State of Illinois.

11.05 Severability

If any provision of this Agreement is held or deemed to be or is in fact inoperative or unenforceable as applied in any particular case in any jurisdiction or in all cases because it conflicts with any other provision or provisions of this Agreement or of any constitution, statute, ordinance, rule of law or public policy, or for any other reason, those circumstances do not have the effect of rendering the provision in question inoperative or unenforceable in any other case or circumstances, or of rendering any other provision or provisions in this Agreement invalid, inoperative or unenforceable to any extent whatsoever. The invalidity of any one or more phrases, sentences, clauses or sections contained in this Agreement does not affect the remaining portions of this Agreement or any part of it.

11.06 Assigns

All of the terms and conditions of this Agreement are binding upon and inure to the benefit of the parties and their respective legal representatives, successors and assigns.

11.07 Cooperation

Contractor must at all times cooperate fully with the City and act in the City's best interests. If this Agreement is terminated for any reason, or if it is to expire on its own terms, Contractor must make every effort to assure an orderly transition to another provider of the Services, if any, orderly demobilization of its own operations in connection with the Services, reasonably uninterrupted provision of Services during any transition period and must otherwise comply with the reasonable requests and requirements of the Department in connection with the termination or expiration.

11.08 Waiver

Nothing in this Agreement authorizes the waiver of a requirement or condition contrary to law or ordinance or that would result in or promote the violation of any federal, state or local law or ordinance.

Whenever under this Agreement the City by a proper authority waives Contractor's performance or Contractor waives a City obligation hereunder, the waiver so granted, whether

express or implied, only applies to the particular instance and is not a waiver forever or for subsequent instances of the performance, requirement or condition. No such waiver is a modification of this Agreement regardless of the number of times a party may have waived the performance, requirement or condition. Such waivers must be provided by one party to the other party in writing.

11.09 Independent Contractor

(a) This Agreement is not intended to and does not constitute, create, give rise to, or otherwise recognize a joint venture, partnership, corporation or other formal business association or organization of any kind between Contractor and the City. The rights and the obligations of the parties are only those set forth in this Agreement. Contractor must perform under this Agreement as an independent contractor and not as a representative, employee, agent, or partner of the City.

(b) This Agreement is between the City and an independent contractor and, if Contractor is an individual, nothing provided for under this Agreement constitutes or implies an employer-employee relationship such that:

- (i) The City will not be liable under or by reason of this Agreement for the payment of any compensation award or damages in connection with the Contractor performing the Services required under this Agreement.
- (ii) Contractor is not entitled to membership in any City Pension Fund, Group Medical Insurance Program, Group Dental Program, Group Vision Care, Group Life Insurance Program, Deferred Income Program, vacation, sick leave, extended sick leave, or any other benefits ordinarily provided to individuals employed and paid through the regular payrolls of the City.
- (iii) The City is not required to deduct or withhold any taxes, FICA or other deductions from any compensation provided to Contractor.

(c) **SHAKMAN**

- (i) The City is subject to the May 31, 2007 Order entitled “Agreed Settlement Order and Accord” (the “Shakman Accord”) and the June 24, 2011 “City of Chicago Hiring Plan” (the “City Hiring Plan”) entered in *Shakman v. Democratic Organization of Cook County*, Case No 69 C 2145 (United State District Court for the Northern District of Illinois). Among other things, the Shakman Accord and the City Hiring Plan prohibit the City from hiring persons as governmental employees in non-exempt positions on the basis of political reasons or factors.
- (ii) Contractor is aware that City policy prohibits City employees from directing any individual to apply for a position with Contractor, either as an employee or as a subcontractor, and from directing Contractor to hire

an individual as an employee or as a subcontractor. Accordingly, Contractor must follow its own hiring and contracting procedures, without being influenced by City employees. Any and all personnel provided by Contractor under this Agreement are employees or subcontractors of Contractor, not employees of the City of Chicago. This Agreement is not intended to and does not constitute, create, give rise to, or otherwise recognize an employer-employee relationship of any kind between the City and any personnel provided by Contractor.

- (iii) Contractor will not condition, base, or knowingly prejudice or affect any term or aspect of the employment of any personnel provided under this Agreement, or offer employment to any individual to provide services under this Agreement, based upon or because of any political reason or factor, including, without limitation, any individual's political affiliation, membership in a political organization or party, political support or activity, political financial contributions, promises of such political support, activity or financial contributions, or such individual's political sponsorship or recommendation. For purposes of this Agreement, a political organization or party is an identifiable group or entity that has as its primary purpose the support of or opposition to candidates for elected public office. Individual political activities are the activities of individual persons in support of or in opposition to political organizations or parties or candidates for elected public office.
- (iv) In the event of any communication to Contractor by a City employee or City official in violation of Section 11.9(c)(ii) above, or advocating a violation of Section 11.9(c)(iii) above, Contractor will, as soon as is reasonably practicable, report such communication to the Hiring Oversight Section of the City's Office of the Inspector General, and also to the head of the relevant City Department utilizing services provided under this Agreement.

ARTICLE 12. NOTICES

Notices provided for in this Agreement, unless expressly provided for otherwise in this Agreement, must be given in writing and may be delivered personally or by placing in the United States mail, first class and certified, return receipt requested, with postage prepaid and addressed as follows:

If to the City: Department of Fleet and Facility Management
30 North LaSalle Street
Suite 300
Chicago, Illinois 60602
Attention: Office of Real Estate Management

With Copies to: Department of Law

Room 600, City Hall
121 North LaSalle Street
Chicago, Illinois 60602
Attention: Corporation Counsel

If to Contractor: Compass Group USA, Inc.
216 W. Diversey
Elmhurst, IL 60126
Attn: Porter Hinton, Division President

With a copy to: Compass Group USA, Inc.
2400 Yorkmont Road
Charlotte, NC 28217
Attention: (i) General Counsel and (ii) President
Canteen Vending Services Division

Changes in these addresses must be in writing and delivered in accordance with the provisions of this Article. Notices delivered by mail are deemed received three days after mailing in accordance with this Article. Notices delivered personally are deemed effective upon receipt. Refusal to accept delivery has the same effect as receipt.

ARTICLE 13. AUTHORITY

Execution of this Agreement by Contractor is authorized by a general resolution of its Board of Directors in the ordinary course of its business operations, if a corporation, or similar governing document, and the signature(s) of each person signing on behalf of Contractor have been made with complete and full authority to commit Contractor to all terms and conditions of this Agreement, including each and every representation, certification and warranty contained in it, including the representations, certifications and warranties collectively incorporated by reference in it.

[Signature page follows.]

IN WITNESS WHEREOF, the City and the Contractor have executed this Agreement as of the Effective Date, at Chicago, Illinois.

CITY OF CHICAGO

BY: _____
Commissioner of the Department of Fleet and Facility Management

Compass Group USA, Inc. dba Canteen Vending Services

BY: _____
ITS: _____

Subscribed and sworn to before me this
_____ day of _____, 2012

Notary Public

My Commission expires: _____

**City-wide Vending Machine Services Agreement
Compass Group, USA, Inc. d/b/a Canteen Vending Services**

SECTION 2: This Ordinance shall be effective from and after the date of its passage and approval.