

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILPITAS AUTHORIZING THE CITY MANAGER TO EXECUTE AMENDMENT NO. 2 TO THE MASTER AGREEMENT WITH THE COUNTY OF SANTA CLARA FOR THE SENIOR NUTRITION PROGRAM AND AGREEMENTS WITH COMPASS GROUP USA INC. AND PAUL SZETO DBA NEW ORIENT RESTAURANT FOR SENIOR MEAL SERVICES

WHEREAS, the City of Milpitas has contracted with the County of Santa Clara to help implement the Senior Nutrition Program since March 1978, a program which serves eligible seniors 60 years and older an average of 96 meals per day 249 days per year, for a total of 23,904 meals per year; and

WHEREAS, the City and the County entered into a Master Agreement on July 1, 2011, for the Senior Nutrition Program, which is amended on an annual basis to reflect the approved budget for each fiscal year and the total approved budget for the FY 13/14 Senior Nutrition Program is \$168,742; and

WHEREAS, under the proposed Amendment No. 2 for FY 2013/2014, the City and the County would equally share the cost of the program, which amounts to a total burden of \$84,371 each (after reimbursements), as outlined in the County’s Master Agreement and in Amendment No. 2, a copy of which is attached hereto as Exhibit A; and

WHEREAS, Compass Group USA, Inc., doing business as Bateman, has been catering the Milpitas Senior Center Nutrition Program since July 1, 1998, and on February 1, 2013, the County of Santa Clara issued a Request for Proposal for the County-wide Senior Nutrition Program and awarded the contract to Bateman; and

WHEREAS, Milpitas Municipal Code Section I-3-3.08 (Cooperative Purchases) authorizes direct contracts without a competitive process when another public agency in the State has gone through a competitive process as restricted as the City’s process, thereby allowing the City to contract directly with Bateman; and

WHEREAS, pursuant to a direct contract with Bateman, a copy of which is attached hereto as Exhibit B, Bateman will provide hot meals in addition to salads and sandwiches five days a week at the Barbara Lee Senior Center and, specifically, in FY 2013/2014 Bateman will provide 15,966 meals for \$4.69 each, which will not exceed the approved FY 2013/14 budgeted amount of \$74,977; and

WHEREAS, the contract with Bateman is for one year with a retroactive effective date of July 1, 2013, and with an annual City option to extend until the expiration date of July 31, 2018, with the authority to exercise the annual option to be based on the approved annual budget from the County and subject to appropriation of the City Council for the Senior Nutrition Program; and

WHEREAS, the City has contracted with Paul Szeto, an individual dba New Orient Restaurant since July 1, 2004, for Asian-style meals twice a week for seniors at the Barbara Lee Senior Center, while no contract is currently in place and which will require completion of a competitive process; and

WHEREAS, in the interim, a short term six-month agreement with New Orient Restaurant, a copy of which is attached as Exhibit C, retroactively effective from July 1, 2013 to December 31, 2013 will fill the current need for the services while allowing time to complete the competitive process for a long-term agreement which will then be brought before City Council for approval; and

WHEREAS, pursuant to the short-term agreement, during the first half of FY 2013/14 Paul Szeto dba New Orient Restaurant will provide 3,969 meals at \$4.73 per meal, which will not exceed the approved budget amount of \$18,774 for FY 2013/14 services.

NOW, THEREFORE, the City Council of the City of Milpitas hereby finds, determines, and resolves as follows:

1. The City Council has considered the full record before it, which may include but is not limited to such things as the staff report, testimony by staff and the public, and other materials and evidence submitted or provided to it. Furthermore, the recitals set forth above are found to be true and correct and are incorporated herein by reference.
2. The City Manager is authorized to execute Amendment No. 2 to the Master Senior Nutrition Program Agreement with the County of Santa Clara (Exhibit A) retroactively effective from July 1, 2013 to June 30, 2014 in the amount of \$168,742.
3. The City Manager is authorized to execute an agreement with Compass Group USA, dba Bateman (Exhibit B) for the Senior Nutrition Program effective retroactively from July 1, 2013 to July 31, 2014 with four one-year renewal options in the initial amount of \$78,780, and is authorized to exercise annual option(s) based on the approved annual budget from Santa Clara County and subject to annual appropriation of the City Council for the Senior Nutrition Program.
4. The City Manager is authorized to execute an agreement with Paul Szeto, an individual dba New Orient Restaurant (Exhibit C) for the Senior Nutrition Program effective retroactively from July 1, 2013 to December 31, 2013 in the amount of \$18,774.

PASSED AND ADOPTED this _____ day of _____ 2013, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

APPROVED:

Mary Lavelle, City Clerk

Jose S. Esteves, Mayor

APPROVED AS TO FORM:

Michael J. Ogaz, City Attorney

Department of Aging and Adult Services
Senior Nutrition Program
4th Floor
333 W Julian St
San Jose, California 95110
Phone (408) 975-4860



July 1, 2013

Stephanie Douglas
City of Milpitas
40 N. Milpitas Blvd.
Milpitas, CA 95035

Dear Ms. Douglas,

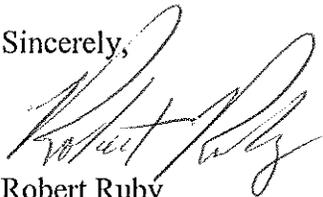
Please find enclosed two duplicate originals of the Second Amendment to the Master Contract between City of Milpitas and the County of Santa Clara Senior Nutrition Program. Please review the documents and have the appropriate people approve. Once approved, please return one of the approved originals to my attention at the address below:

Senior Nutrition Program
333 W. Julian St., 4th floor
San Jose, Ca. 95110
Attn: Robert Ruby

The County values this contractual relationship as it assists us in providing quality services to our community.

If you have any questions regarding this amendment please feel free to contact me at (408) 755-7687

Sincerely,



Robert Ruby
Senior Nutrition Program

Second Amendment to the Master Contract Between the County of Santa Clara and City of Milpitas

This is the Second Amendment to the Master Contract between the County of Santa Clara (COUNTY) and the City of Milpitas (CONTRACTOR) entered into on July 01, 2011 to provide Senior Nutrition Services.

On May 21, 2013, the Board of Supervisors approved the Delegation of Authority to the Social Services Agency (SSA) Director, or designee, to negotiate, execute, amend, and terminate. The Delegation of Authority for this Contract will expire on June 30, 2014.

Background

The purpose of this Amendment is to extend the contract term for one additional year to June 30, 2014 and augment funds by \$168,742. The additional funding is included in the revised Maximum Financial Obligation. The attached Meals and Program Budget reflect the services and fiscal budget for the extended term.

This Contract is amended as follows:

1. Section 1, on page 22, **TERM OF CONTRACT** is revised to read: This contract commences on July 01, 2011 and expires on June 30, 2014, unless terminated earlier or otherwise amended.
2. Section 3, on page 22, **MAXIMUM FINANCIAL OBLIGATION** is revised to read: CONTRACTOR is entitled to reimbursement for actual allowable expenditures subject to the provisions of this Contract, not to exceed \$173,489 in FY 2011-2012, not to exceed \$164,407 in FY 2012-2013, not to exceed \$168,742 in FY 2012-2013.
3. Add Attachment C-14, **BUDGET SUMMARY** and **PAYMENT PROVISIONS** for FY 2013-2014 attached and incorporated by this reference.

All other terms and conditions of the agreement remain in full force and effect.

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Attachment C-14 Budget Summary & Payment Provisions FY 2013-2014

Santa Clara County- Social Services Agency
 Senior Nutrition Program
 MILPITAS
 Budget - FY 2013/2014

| | | | | |
|----------------------------------|-------|---|-------|--------|
| Asian 2 days | 81 | * | 88 | 7,128 |
| Bateman 3 days | 96 | * | 161 | 15,456 |
| Additional Bateman 2 days a week | 15 | * | 88 | 1,320 |
| | 96 | * | 249 | 23,904 |
| Service Days M-F | Daily | | Total | Annual |

1. PERSONNEL

| | | | | |
|-----------------|--|----|--------|-----------|
| a. Site Manager | | \$ | 28,155 | |
| b. Kitchen Aide | | \$ | 14,624 | |
| c. Janitor | | \$ | 5,788 | \$ 48,567 |

2. OPERATION COSTS

| | | | | |
|----------|--------------|----|---|------|
| Overhead | @\$.183 meal | \$ | - | \$ - |
|----------|--------------|----|---|------|

3. VARIANCE CATEGORIES

| | | | | |
|------------------------|---------------|----|-------|----------|
| Insurance/Worker Comp. | n/a | \$ | - | |
| Fiscal | n/a | \$ | - | |
| Staff Mileage | @ \$0.555 mi. | \$ | 14 | |
| Equipment & Repair | | \$ | 50 | |
| Non-Food Items | @ \$.25 meal | \$ | 5,976 | \$ 6,040 |

4. FOOD COSTS

| | | | | | |
|------------------------------|-----------|---|--------------|--------|------------|
| New Orient @ 4.73 & .23 milk | \$ 4.96 | * | 7,128 | 35,355 | |
| Bateman | \$ 4.696 | * | 16,776 | 78,780 | \$ 114,135 |
| | Food Cost | | Annual Meals | | |

5. TOTAL BUDGET

\$ 168,742

6. CONTRACT AMOUNT

\$ 168,742

County's share at 50% of Total Expended Budget. Maximum not to exceed \$ 84,371

Fifty percent of participant contributions retained by Milpitas

Personnel Detail

| | Hours | Days | Hourly Rate | Earnings | Fringe | Vacation | Sick Leave | Medical | Total Costs |
|-----------------------|-------|------|-------------|----------|--------|----------|------------|---------|-------------|
| Site Manager | 6.00 | 260 | 13.49 | 21,044 | 2,283 | 809 | 971 | 3,047 | 28,155 |
| Kitchen Aide | 4.00 | 260 | 9.33 | 9,703 | 1,052 | 373 | 448 | 3,047 | 14,624 |
| Janitor | 2.00 | 260 | 9.33 | 4,852 | 526 | 187 | 224 | - | 5,788 |
| Total Personnel Costs | | | | 35,599 | 3,861 | 1,369 | 1,643 | 6,094 | 48,567 |

Formula

| | | | |
|----------|---------------------------------------|------------|--------------------------|
| Days | 249 + 11 holidays | Vacation | Hours x 10 x Hourly Rate |
| Earnings | Hours x Days x Hourly Rate | Sick Leave | Hours x 12 x Hourly Rate |
| Fringe | 10% of (Earnings+Vacation+Sick Leave) | | |

Payment Provisions

CONTRACTOR understands and agrees that this Contract is a **cost-reimbursement** contract. All references to "you" in this Attachment refer to CONTRACTOR.

You can only be reimbursed for expenses paid out in a report month. The Line Item allocations represent the **maximum annual amount** available for your budget. **Once the contracted line item allocations balances have been used, you cannot continue to claim a current monthly expenditure reimbursement for these items.** You may want to note on the bottom of the monthly expenditure report if you have a continuing expense over and above a zero balance line item or you may want to keep a separate record of your actual expenditures. This may help if you request a line item transfer or may help justify a change in your budget during the annual budget preparation meetings. Please see **LINE ITEM CHANGES** (See Below)** for more information.

These Line Item Definitions are part of the contract standards that were recommended by the Nutrition Contract Standards Committee and approved by the Board of Supervisors on March 10, 1998. Please refer accounting questions to Senior Nutrition Program (SNP) Accounting Staff and budget questions to the SNP Management Analyst.

In certain circumstances, you will be reimbursed for all budget line items as an all inclusive per meal cost for each meal consumed during the term of the Agreement.

1. **PERSONNEL** - Salaries and personnel expenses paid out during the report month should be claimed for all Nutrition employees that work and are authorized by your contract. Employee positions not filled cannot be claimed. Changes in personnel or circumstances that require a substitute should be reported to your assigned Dietitian **prior to filling the position**, explaining the reason for the change. Please indicate if this is a permanent or temporary change.

Fringe – This covers employer paid payroll taxes: FICA (Social Security and Medicare) and SDI (both Federal and State). It is currently budgeted at 10% of the budgeted salary including vacation and sick. You can report the actual amount up to the budgeted amount. At fiscal year end, you may request to transfer any extra budget amount to other line items.

Sick Leave – This covers sick leave paid to the SNP budgeted staff. The County budgets 12 paid sick leave days (prorated to the number of hours the employee works and serving days). Unused sick leave amount **cannot** be paid off to the staff member, but can be transferred to other line items. Unused sick leave amount which is not transferred to other line items will be returned to the County general fund. County does not accrue any unused sick leave for the SNP staff. County can only reimburse the actual amount taken, not the allocated amount.

Medical – This covers health insurance costs. You can report the actual amount up to the budgeted amount for each budgeted staff. It does not cover spouse or dependents. It is for medical only and does not include dental or vision. If receiving County Kaiser, allocation will be deducted in Line Item 6 "Other Deductible". If your agency does not provide health insurance, this amount can be distributed to the budgeted staff as allowance for purchasing his/her own health plan. If this amount is not claimed or distributed for medical insurance, it **cannot** be transferred to another line item.

2. OPERATION COSTS

Usage Costs - This allowance is for rent or lease costs incurred and paid by your agency. *You are reimbursed for rent or lease payments allocated to the Nutrition Program at the current per meal rate (\$0.463) for monthly meals served up to your budgeted allocation.* If you share building or housing costs with other programs you must be able to verify and document how you pro-rate the amount charged to the Nutrition Program. Some sites do not pay rent or lease and are not budgeted for this line item.

Overhead - This category is an allowance for utilities (heating/electricity, telephone, janitorial services, and office supplies, printing, water softener or pest control) needed to support your nutrition site, incurred and paid by your agency. *You are reimbursed at the current per meal overhead rate (\$0.183) for monthly meals served up to your budgeted allocation.* If the costs are shared with other programs, you must be able to verify how you pro-rate the amount charged to the Nutrition Program. Some sites are not budgeted for this line item.

3. VARIANCE CATEGORIES

Insurance/Worker's Compensation - This is an allowance for insurance or worker's compensation insurance payments that are actually paid out in the report month. You are only reimbursed for actual payments made. If your agency pays for other programs, only the pro-rated amount paid for the Nutrition Program Employees is allowable as an expense.

Fiscal - This allowance is for bookkeeping, accounting and payment for the annual audit. If you share bookkeeping and accounting expenses with other non- nutrition programs, only the portion allocated and paid out for the nutrition program is allowable for reimbursement. You must document and be able to verify how you pro-rate your expenses towards the Nutrition Program. Documentation of the expense and when the expense was incurred must be available to the County when requested.

Staff Mileage - This allowance is for nutrition employees who are required to attend Nutrition Staff Meetings or Trainings. Mileage to and from meetings is reimbursed at the County rate (\$0.555 per mile). The amount allocated is determined by your yearly usage.

Equipment and Repair - This allowance is for small equipment and repair expenses.

* The **Nutrition Equipment Committee** reviews requests for other equipment that exceed your budgeted amount. The amount of funds available through the Equipment Committee varies each year. Check with your Dietitian if you wish to submit a request.

Non-Food Items - This allowance will cover the cost of paper products, utensils, serving dishes, cleaning supplies and laundry.

4. FOOD COSTS - This is the allowance for food expenses. Based on whether you are a cook-on-site or a catered meal site, you may claim for raw food costs, restaurant catered meals or vendor catered meals. Some sites will have a combination of raw and catered food expenses.

5. TOTAL BUDGET - This is the total program budget amount before any deductibles.

6. OTHER DEDUCTIBLE - This line item will show items (if applicable) that are deducted from the budget. This may include the following items, but will not apply to all budgets:

County Outreach Transportation
County Kaiser
Contractor Contribution Amount

City Grants or Contributions
Community Development Block Grants (CDBG)
Other Income Contributions

7. CONTRACT AMOUNT - Final contracted budget for the site.

**** LINE ITEM CHANGES** - May be requested in writing by CONTRACTOR'S Agency Representative. Submit line item requests during the year when you first become aware of a need to transfer funds between line items. Do not assume that line item transfers will be authorized. Final line item transfer requests for fiscal year ending June 30 are to be submitted no later than the first Friday of June. The SNP Program Manager and the Nutrition Services Manager will review these requests for approval or disapproval.

Any line item request must have funds available in your budget and be accompanied by an explanation of the reason for the request. Additional verification may be requested. The SNP Program Manager has final approval or disapproval authority for any line item change request.

**AGREEMENT FOR SENIOR NUTRITION SERVICES
BETWEEN
CITY OF MILPITAS
AND
COMPASS GROUP USA, INC., BY AND THROUGH ITS BATEMAN DIVISION**

THIS AGREEMENT is made and entered retroactively on July 1, 2013 (“Effective Date”), by and between the CITY OF MILPITAS, a municipal corporation of the State of California (hereinafter “CITY”) and Compass Group USA, Inc., a Delaware corporation, by and through its Bateman Division (hereinafter “CONTRACTOR”).

RECITALS

- A. Whereas, the Senior Nutrition Program is administered by the Santa Clara County Social Service Agency and provides home delivered and congregate meals to eligible seniors sixty (60) years of age and older in Santa Clara County; and
- B. Whereas, CITY and Santa Clara County entered into a Senior Nutrition Program Master Contract dated July 1, 2011 (“County Agreement”) to provide congregate meals at the Milpitas Senior Center located at 40 N. Milpitas Blvd., Milpitas, CA 95035; and
- C. Whereas, the County Agreement is amended on an annual basis to reflect the annual approved budget for the congregate meals in the City of Milpitas and may be amended from time to time as required by Santa Clara County; and
- D. Whereas, CITY requires professional services for the preparation and delivery of meals for the Senior Nutrition Program located at the Milpitas Senior Center, 40 N. Milpitas Blvd., Milpitas, CA 95035, in accordance with the County Agreement, as amended; and
- E. Whereas, Santa Clara County issued a Request for Proposal dated February 1, 2013 (Bid Number: RFP-SSA-FY13-0185) for the County-wide Senior Nutrition Program; and
- F. Whereas, Santa Clara County awarded the Senior Nutrition Program contract to Compass Group USA, Inc., by and through its Bateman Division and the parties entered into an agreement dated July 1, 2013; and
- G. Whereas, CITY desires to enter into this Agreement with Contractor pursuant to Milpitas Municipal Code Section I-2-3.08 (“Cooperative Procurement”) to provide congregate meals at the Milpitas Senior Center in accordance with the County Agreement, as amended;

NOW, THEREFORE, in consideration of the mutual covenants set forth in this Agreement and for valuable consideration, receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

SECTION 1. SCOPE OF SERVICES.

CONTRACTOR shall perform those services specified in detail in EXHIBIT A, entitled "SCOPE OF SERVICES", which is attached hereto and incorporated herein.

SECTION 2. TERM OF AGREEMENT.

This AGREEMENT shall become effective retroactively on the Effective Date and automatically terminate on July 31, 2014 ("Initial Term"), subject to the provisions of SECTION 11 of this AGREEMENT; provided City at its sole option may extend the term of the Agreement on an annual basis for up to four (4) one (1) year extensions ("Option Term"). City shall exercise its right to extend the term of the Agreement on an annual basis by providing written notice to Contractor prior to expiration of the then current term of the Agreement in the form attached as EXHIBIT F.

SECTION 3. SCHEDULE OF PERFORMANCE.

The services of CONTRACTOR are to be completed according to the schedule set out in EXHIBIT B, entitled "SCHEDULE OF PERFORMANCE", which is attached hereto and incorporated herein. Time is of the essence in this AGREEMENT.

SECTION 4. COMPENSATION.

- A. The compensation to be paid to CONTRACTOR shall not exceed Four Dollars and Sixty-Nine Six Cents (\$4.696) per meal and the total compensation shall not exceed Seventy-Four Thousand Nine Hundred and Seventy-Seven dollars (\$74,977.00) for the Initial Term. The rate and schedule of payment is set out in EXHIBIT C, entitled "COMPENSATION," which is attached hereto and incorporated herein.
- B. CONTRACTOR acknowledges and agrees that Santa Clara County approves an annual budget for the Milpitas Senior Nutrition Program. In the event Santa Clara County provides funding after the Initial Term for the Milpitas Senior Nutrition Program and City elects to exercise its option to extend the term of this Agreement pursuant to Section 2 above for any of the Option Term, the rate of compensation for each of the Option Term shall be as approved by Santa Clara County and set forth in writing by the CITY in the form attached as EXHIBIT F. CONTRACTOR agrees to provide the services herein during the Option Term under the same terms and conditions of this Agreement.

SECTION 5. METHOD OF PAYMENT.

Each month, CONTRACTOR shall furnish to the CITY a statement of the work performed for compensation during the preceding month.

SECTION 6. INDEPENDENT CONTRACTOR.

It is understood and agreed that CONTRACTOR, in the performance of the work and services agreed to be performed by CONTRACTOR, shall act as and be an independent contractor and not an agent or employee of CITY; and as an independent contractor, CONTRACTOR shall obtain no rights to retirement benefits or other benefits which accrue to CITY's employees, and CONTRACTOR hereby expressly waives any claim it may have to any such rights.

SECTION 7. ASSIGNABILITY.

The parties agree that the expertise and experience of CONTRACTOR are material considerations for this AGREEMENT. CONTRACTOR shall not assign or transfer any interest in this AGREEMENT nor the performance of any of CONTRACTOR'S obligations hereunder, without the prior written consent of CITY, and any attempt by CONTRACTOR to so assign this AGREEMENT or any rights, duties or obligations arising hereunder shall be void and of no effect.

SECTION 8. INDEMNIFICATION.

CONTRACTOR shall defend, indemnify and hold harmless CITY, its officers, employees and agents against any claim, loss or liability arising out of or resulting in any way from work performed under this AGREEMENT due to the willful or negligent acts (active or passive) or omissions by CONTRACTOR'S officers, employees or agents. The acceptance of said services and duties by CITY shall not operate as a waiver of such right of indemnification.

SECTION 9. INSURANCE REQUIREMENTS.

CONTRACTOR agrees to have and maintain the policies set forth in EXHIBIT D, entitled "INSURANCE," which is attached hereto and incorporated herein. All policies, endorsements, certificates and/or binders shall be subject to approval by the Director of Finance or the Director's authorized designee ("Risk Manager") of the City of Milpitas as to form and content. These requirements are subject to amendment or waiver if so approved in writing by the Risk Manager. CONTRACTOR agrees to provide CITY with a copy of said policies, certificates and/or endorsements before work commences under this AGREEMENT.

SECTION 10. NONDISCRIMINATION.

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

SECTION 11. TERMINATION.

- A. CITY shall have the right to terminate this AGREEMENT, without cause, by giving not less than seven (7) days' written notice of termination.
- B. If CONTRACTOR fails to perform any of its material obligations under this AGREEMENT, in addition to all other remedies provided by law, CITY may terminate this AGREEMENT immediately upon written notice.
- C. CITY's Purchasing Agent is empowered to terminate this AGREEMENT on behalf of CITY.
- D. In the event of termination, CONTRACTOR shall deliver to CITY copies of all reports, documents, and other work performed by CONTRACTOR under this AGREEMENT, and upon receipt thereof, CITY shall pay CONTRACTOR for services performed and reimbursable expenses incurred to the date of termination.

SECTION 12. GOVERNING LAW.

CITY and CONTRACTOR agree that the law governing this AGREEMENT shall be that of the State of California.

SECTION 13. COMPLIANCE WITH LAWS.

CONTRACTOR shall comply with all applicable laws, ordinances, codes and regulations of the federal, state and local governments. Without limiting the generality of the preceding sentence, CONTRACTOR shall comply with the provisions of CITY's Business Tax Ordinance in Chapter III-I of the Milpitas Municipal Code.

SECTION 14. CONFIDENTIAL INFORMATION.

All data, documents, discussions or other information developed or received by or for CONTRACTOR in performance of this AGREEMENT are confidential and not to be disclosed to any person except as authorized by CITY, or as required by law.

SECTION 15. OWNERSHIP OF MATERIALS.

All reports, documents or other materials developed or discovered by CONTRACTOR or any other person engaged directly or indirectly by CONTRACTOR to perform the services required hereunder shall be and remain the property of CITY without restriction or limitation upon their use.

SECTION 16. WAIVER.

CONTRACTOR agrees that waiver by CITY of any breach or violation of any term or condition of this AGREEMENT shall not be deemed to be a waiver of any other term or condition contained herein or a waiver of any subsequent breach or violation of the same or any other term or condition. The acceptance by CITY of the performance of any work or services by CONTRACTOR shall not be deemed to be a waiver of any term or condition of this AGREEMENT.

SECTION 17. CONTRACTOR'S BOOKS AND RECORDS.

- A. CONTRACTOR shall maintain any and all ledgers, books of account, invoices, vouchers, cancelled checks, and other records or documents evidencing or relating to charges for services, or expenditures and disbursements charged to CITY for a minimum period of three (3) years, or for any longer period required by law, from the date of final payment to CONTRACTOR pursuant to this AGREEMENT.
- B. CONTRACTOR shall maintain all documents and records which demonstrate performance under this AGREEMENT for a minimum period of three (3) years, or for any longer period required by law, from the date of termination or completion of this AGREEMENT.
- C. Any records or documents required to be maintained pursuant to this AGREEMENT shall be made available for inspection or audit at no cost to CITY, at any time during regular business hours, upon written request by the City Attorney, City Auditor, City Manager, or a designated representative of any of these officers. Copies of such documents shall be provided to CITY for inspection at City Hall when it is practical to do so. Otherwise, unless an alternative is mutually agreed upon, the records shall be available at CONTRACTOR's address indicated for receipt of notices in this AGREEMENT. CONTRACTOR acknowledges that under certain circumstances specified in California Government Code Section 8546.7, this AGREEMENT (if it involves an expenditure of \$10,000 or more of public funds) may be subject to examination and audit by the Auditor of the State of California pursuant to California Government Code Section 8546.7.
- D. Where CITY has reason to believe that such records or documents may be lost or discarded due to dissolution, disbandment or termination of CONTRACTOR's business, CITY may, by written request by any of the above-named officers, require that custody of the records be given to CITY and that the records and documents be maintained in City Hall. Access to such records and documents shall be granted to any party authorized by

CONTRACTOR, CONTRACTOR's representatives, or CONTRACTOR's successor-in-interest.

SECTION 18. CONFLICT OF INTEREST.

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

SECTION 19. SPECIAL PROVISIONS.

Special provisions, if any, to this AGREEMENT are specified in EXHIBIT E, entitled, "SPECIAL PROVISIONS", which is attached hereto and incorporated herein.

SECTION 20. NOTICES.

All notices and other communications required or permitted to be given under this AGREEMENT shall be in writing and shall be personally served or mailed, postage prepaid and return receipt requested, addressed to the respective parties as follows:

To CITY: Milpitas Recreation Services
Attn. Stephanie Douglas
40 N. Milpitas Blvd.
Milpitas, CA 95035

To CONTRACTOR: Compass Group Use, Inc d/b/a Bateman
Attn: President
3110 West Pinhook Rd., Suite 201
Lafayette, LA 70508

Notice shall be deemed effective on the date personally delivered or, if mailed, three (3) days after deposit in the mail.

SECTION 21. VENUE.

In the event that suit shall be brought by either party to this contract, the parties agree that venue shall be exclusively vested in the state courts of the County of Santa Clara, or if federal jurisdiction is appropriate, exclusively in the United States District Court, Northern District of California, San Jose, California.

SECTION 22. INTERPRETATION, PRIOR AGREEMENTS AND AMENDMENTS.

This AGREEMENT, including all Exhibits attached hereto, represents the entire understanding of the parties as to those matters contained herein. In the event that the terms specified in any of the Exhibits attached hereto conflict with any of the terms specified in the body of this AGREEMENT, the terms specified in the body of this AGREEMENT shall control. No prior oral or written understanding shall be of any force or effect with respect to those matters covered hereunder. This AGREEMENT may be modified only by a written amendment duly executed by the parties to this AGREEMENT.

WITNESS THE EXECUTION HEREOF on the day and year first hereinabove written.

“CITY”

APPROVED AS TO FORM:

CITY OF MILPITAS, a municipal corporation

By_____

Michael J. Ogaz
City Attorney

“CONTRACTOR”
**COMPASS GROUP USA, INC., BY AND
THROUGH ITS BATEMAN DIVISION**

By_____

Name:

Title:

EXHIBIT A
SCOPE OF SERVICES

CONTRACTOR agrees to perform the following services in accordance with the City of Milpitas' Senior Nutrition Program and County Agreement, as amended.

Site Name: Milpitas Senior Center
Address: 40 N. Milpitas Blvd.
Milpitas, CA 95035

Delivery Time: 11:30 am-12:00 pm

Delivery Days: Five days per week (Monday-Friday)

Number Meals: Total meals contracted is 15,966 for 249 days for Fiscal Year 2013-2014

Cost per Meal: \$4.696 for meals in Fiscal Year in 2013/2014 (July 1, 2013 to June 30, 2014)

1. Holding time and between meal preparation and scheduled serving time shall not exceed two (2) hours.
2. Meals shall conform to the food and nutrition standards as require by County Agreement, as amended. Such meal shall be low in salt and fat contents. Use of MSG, artificial flavoring and color is not recommended. Each serving portion shall include:
 - No less than 3 ounces of meat or protein substitute
 - No less than 1 cup of vegetables
 - No less than ½ cup of rice or other carbohydrate
 - One fruit
3. Contractor shall provide a central kitchen for the production of meals pursuant to this Agreement, and shall deliver such meals to designated location as mutually agreed upon by both parties. Contractor shall provide equipment required for the provision of services, and all equipment to transport food shall be NSF (National Sanitation Foundation) approved. Food storage facilities shall maintain a temperature of 140 degrees Fahrenheit or more for hot food and 40 degrees Fahrenheit or less for cold food. Temperatures of meals shall be checked daily and recorded before leaving the kitchen.

JVP
7/15/2013

EXHIBIT B
SCHEDULE OF PERFORMANCE

Work shall commence immediately upon execution of this AGREEMENT. The estimated time for completion is June 30, 2014.

EXHIBIT C
COMPENSATION

Pursuant to this Agreement, the CITY agrees to compensate CONTRACTOR in accordance with the terms and conditions of this AGREEMENT. CITY shall make payment to CONTRACTOR no later than thirty (30) days upon receipt and approval of invoice by CITY for the delivery of meals to the Senior Nutrition Program.

1. Invoices should be submitted to CITY no later than Friday of the delivery week.
2. Per meal cost will not exceed \$4.696 per meal and total compensation will not exceed Seventy-Four Thousand Nine Hundred and Seventy-Seven dollars (\$74,977.00) for the Initial Term.
3. Payment will be made payable to:

Compass Group USA, Inc., d/b/a Bateman, 3110 West Pinhook Rd., Suite 201, Lafayette, LA 70508.

There shall be no reimbursable expenses under this Agreement.

EXHIBIT D
INSURANCE

CONTRACTOR, at CONTRACTOR's sole cost and expense, shall procure and maintain for the duration of this AGREEMENT insurance against claims for injuries to persons or damages to property which may arise from, or in connection with, the performance of the services hereunder by CONTRACTOR, its agents, representatives, employees or subcontractors.

Definition:

For purposes of this contract, the following definition applies: City of Milpitas includes the duly elected or appointed officers, agents, employees and volunteers of the City of Milpitas, individually or collectively.

Insurance Required:

No work shall be done under this Contract unless there is in effect insurance required by the Contract and under this section, and such insurance has been approved by the City, nor shall the Contractor allow any subcontractor to commence work on his subcontract until all insurance required of the subcontractor has been so obtained and approved. The Contractor shall maintain or cause to be maintained adequate workers' compensation insurance as required under the laws of the State of California, for all labor employed by him or by any subcontractor under him who may come within the protection of such worker's compensation laws of the State of California and shall provide or cause to be provided employer's liability insurance for the benefit of his employees.

A. Minimum Scope of Insurance: (Check Mark Indicates Required)

Coverage must be *at least as broad as*:

- (X) Insurance Services Office Commercial General Liability coverage (occurrence Form CG0001).
- (X) Insurance Services Office Form Number CA 0001 covering Automobile Liability, Code 1 (any auto).
- (X) Workers' Compensation insurance as required by the State of California and Employer's Liability Insurance.
- () Professional Liability or Errors & Omissions Liability insurance appropriate to the contractor's profession.
- () Architects' and Engineers' coverage is to be endorsed to include contractual liability.

B. Minimum Limits of Insurance

CONTRACTOR shall maintain limits no less than:

1. **General Liability:** **\$1,000,000** per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability insurance (Including operations, products and completed operations, as applicable.) with a general aggregate limit is used, either the general aggregate limit must apply separately to this project/location or the general aggregate limit must be twice the required occurrence limit.
2. **Automobile Liability:** **\$1,000,000** per accident for bodily injury and property damage.
3. **Workers' Compensation Employer's Liability:** Statutory
\$1,000,000 each accident
\$1,000,000 disease-policy limit
\$1,000,000 disease-each employee
4. **Professional Liability or Errors & Omissions Liability:** **\$1,000,000** each occurrence
\$1,000,000 policy aggregate

C. Deductibles and Self-Insured Retentions

Any deductibles or self-insured retentions must be declared to and approved by the City. The City may require the Contractor to provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention.

D. Other Insurance Provisions

The general liability and automobile liability policies are to contain, or be endorsed to contain, the following provisions:

1. **The City of Milpitas, its officers, officials, employees, and volunteers** are to be covered as insureds with respect to liability arising out of automobiles owned, leased, hired or borrowed by or on behalf of the contractor; and with respect to liability arising out of work or operations performed by or on behalf of the Contractor including materials, parts or equipment furnished in connection with such work or operations. General liability coverage can be provided in the form of an endorsement to the Contractor's insurance (at least as broad as ISO Form CG 20 10 11 85), or as a separate owner's policy.
2. For any claims related to this project, the **Contractor's insurance coverage shall be primary** insurance as respects the City, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the City, its officers, officials, employees, or volunteers shall be excess of the **Contractor's insurance and shall not contribute with it.**

3. The Insurance Company agrees to **waive all rights of subrogation** against the City, its elected or appointed officers, officials, agents and employees for losses paid under the terms of any policy which arise from work performed by the Named Insured for the City. This provision also applies to the Contractor's Workers' Compensation policy.
4. Each insurance policy required by this clause shall be endorsed to state that coverage shall not be canceled by either party, except after **thirty (30) days' prior written notice (10 days for non-payment)** by certified mail, return receipt requested, has been given to the City. If Contractor's insurer refuses to provide this endorsement, Contractor shall be responsible for providing written notice to the City that coverage will be canceled thirty (30) days after the date of the notice or ten (10) days for non-payment.

E. Acceptability of Insurers

Insurance is to be placed with licensed insurers admitted to transact business in the State of California with a current A.M. Best's rating of no less than A-VII. If insurance is placed with a surplus lines insurer, insurer must be listed on the State of California List of Eligible Surplus Lines Insurers (LESLI) with a current A.M. Best's rating of no less than A-X. Exception may be made for the State Compensation Fund when not specifically rated.

F. Verification of Coverage

Contractor shall furnish the City with original certificates and amendatory endorsements effecting coverage required by this clause. The endorsements should be on insurance industry forms, provided those endorsements or policies conform to the contract requirements. All certificates and endorsements are to be received and approved by the City before work commences. The City reserves the right to require, at any time, complete, certified copies of all required insurance policies, including endorsements evidencing the coverage required by these specifications.

The Certificate with endorsements and notices shall be mailed to: City of Milpitas, Attention: Purchasing, 455 East Calaveras Boulevard, Milpitas California, 95035-5411.

G. Subcontractors

Contractors must include all sub-contractors as insureds under its policies or furnish separate certificates and endorsements for each sub-contractor. All coverage for sub-contractors are subject to all of the requirements included in these specifications.

Absence of Insurance:

If the Contractor allows the insurance to lapse, be cancelled, or be reduced below the limits specified in this article, the Contractor shall cause all work in the Project to cease and any delays or expenses caused due to stopping of work and change of insurance shall be considered

JVP
7/15/2013

Contractor's delay and shall not be considered to increase cost to the City or increase time in which the Project shall be completed.

Contractor agrees that if it does not keep the aforesaid insurance in full force and effect, City may immediately terminate this Agreement

EXHIBIT E

SPECIAL PROVISIONS

Retroactive Services.

It is understood and agreed that CONTRACTOR has provided services prior to the execution of this AGREEMENT in anticipation of its execution. If CITY accepts and approves the services provided by CONTRACTOR prior to the date of this AGREEMENT, CITY agrees to compensate CONTRACTOR for those services in accordance with the terms of this AGREEMENT. However, in no event shall CONTRACTOR be compensated for work performed for CITY prior to July 1, 2013.

EXHIBIT F
NOTICE OF EXERCISE OF OPTION TO EXTEND AGREEMENT

| | |
|---|--|
| AGREEMENT TITLE and DATE: | |
| CONTRACTOR Name and Address: | |
| DATE OF OPTION: | |

(date the notice is sent must be consistent with the time for exercise set forth in Agreement)

Pursuant to Section 2 of the Agreement referenced above, the City of Milpitas hereby exercises its option to extend the term under the following provisions:

| | |
|-------------------|--|
| OPTION NO. | |
|-------------------|--|

NEW OPTION TERM

| | |
|-------------|--|
| Begin date: | |
| End date: | |

CHANGES IN RATE OF COMPENSATION

Pursuant to Section ___ of the Agreement the Rates of Compensation are hereby adjusted as follows:

(use attachment if necessary)

| | |
|--|--|
| MAXIMUM COMPENSATION for New Option Term: | |
|--|--|

For the option term exercised by this Notice, City shall pay Contractor an amount not to exceed the amount set forth above for Contractor's services. The undersigned signing on behalf of the City of Milpitas hereby certifies that an unexpended appropriation is available for the term exercised by this Notice, and that funds are available as of the date of this signature.

| |
|---|
| CITY OF MILPITAS a municipal corporation |
|---|

JVP
7/15/2013

| |
|-----------------------------|
| By _____ Name: Title: |
|-----------------------------|

**AGREEMENT FOR SENIOR NUTRITION SERVICES
BETWEEN
CITY OF MILPITAS
AND
FRANK SZETO, AN INDIVIDUAL DOING BUSINESS AS NEW ORIENT
RESTAURANT**

THIS AGREEMENT is made and entered retroactively on July 1, 2013 (“Effective Date”), by and between the CITY OF MILPITAS, a municipal corporation of the State of California (hereinafter “CITY”) and Frank Szeto, an individual doing business as “New Orient Restaurant” (hereinafter “CONTRACTOR”).

RECITALS

- A. Whereas, the Senior Nutrition Program is administered by the Santa Clara County Social Service Agency and provides home delivered and congregate meals to eligible seniors sixty (60) years of age and older in Santa Clara County; and
- B. Whereas, CITY and Santa Clara County entered into a Senior Nutrition Program Master Contract dated July 1, 2011 (“County Agreement”) to provide congregate meals at the Milpitas Senior Center located at 40 N. Milpitas Blvd., Milpitas, CA 95035; and
- C. Whereas, the County Agreement is amended on an annual basis to reflect the annual approved budget for the congregate meals in the City of Milpitas and may be amended from time to time as required by Santa Clara County; and
- D. Whereas, CITY requires professional services for the preparation and delivery of meals for the Senior Nutrition Program located at the Milpitas Senior Center, 40 N. Milpitas Blvd., Milpitas, CA 95035, in accordance with the County Agreement, as amended;

NOW, THEREFORE, in consideration of the mutual covenants set forth in this Agreement and for valuable consideration, receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

SECTION 1. SCOPE OF SERVICES.

CONTRACTOR shall perform those services specified in detail in EXHIBIT A, entitled “SCOPE OF SERVICES”, which is attached hereto and incorporated herein.

SECTION 2. TERM OF AGREEMENT.

This AGREEMENT shall become effective retroactively on the Effective Date and automatically terminates on December 31, 2013 (“Term”), subject to the provisions of SECTION 11 of this AGREEMENT.

SECTION 3. SCHEDULE OF PERFORMANCE.

The services of CONTRACTOR are to be completed according to the schedule set out in EXHIBIT B, entitled "SCHEDULE OF PERFORMANCE", which is attached hereto and incorporated herein. Time is of the essence in this AGREEMENT.

SECTION 4. COMPENSATION.

A. The compensation to be paid to CONTRACTOR shall not exceed Four Dollars and Seventy-Three Cents (\$4.73) per meal and the total compensation shall not exceed Eighteen Thousand Seven Hundred and Seventy-Four dollars (\$18,774.00) for the Term. The rate and schedule of payment is set out in EXHIBIT C, entitled "COMPENSATION," which is attached hereto and incorporated herein.

SECTION 5. METHOD OF PAYMENT.

Each month, CONTRACTOR shall furnish to the CITY a statement of the work performed for compensation during the preceding month.

SECTION 6. INDEPENDENT CONTRACTOR.

It is understood and agreed that CONTRACTOR, in the performance of the work and services agreed to be performed by CONTRACTOR, shall act as and be an independent contractor and not an agent or employee of CITY; and as an independent contractor, CONTRACTOR shall obtain no rights to retirement benefits or other benefits which accrue to CITY's employees, and CONTRACTOR hereby expressly waives any claim it may have to any such rights.

SECTION 7. ASSIGNABILITY.

The parties agree that the expertise and experience of CONTRACTOR are material considerations for this AGREEMENT. CONTRACTOR shall not assign or transfer any interest in this AGREEMENT nor the performance of any of CONTRACTOR'S obligations hereunder, without the prior written consent of CITY, and any attempt by CONTRACTOR to so assign this AGREEMENT or any rights, duties or obligations arising hereunder shall be void and of no effect.

SECTION 8. INDEMNIFICATION.

CONTRACTOR shall defend, indemnify and hold harmless CITY, its officers, employees and agents against any claim, loss or liability arising out of or resulting in any way from work performed under this AGREEMENT due to the willful or negligent acts (active or passive) or omissions by CONTRACTOR'S officers, employees or agents. The acceptance of said services and duties by CITY shall not operate as a waiver of such right of indemnification.

SECTION 9. INSURANCE REQUIREMENTS.

CONTRACTOR agrees to have and maintain the policies set forth in EXHIBIT D, entitled "INSURANCE," which is attached hereto and incorporated herein. All policies, endorsements, certificates and/or binders shall be subject to approval by the Director of Finance or the Director's authorized designee ("Risk Manager") of the City of Milpitas as to form and content. These requirements are subject to amendment or waiver if so approved in writing by the Risk Manager. CONTRACTOR agrees to provide CITY with a copy of said policies, certificates and/or endorsements before work commences under this AGREEMENT.

SECTION 10. NONDISCRIMINATION.

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

SECTION 11. TERMINATION.

- A. CITY shall have the right to terminate this AGREEMENT, without cause, by giving not less than seven (7) days' written notice of termination.
- B. If CONTRACTOR fails to perform any of its material obligations under this AGREEMENT, in addition to all other remedies provided by law, CITY may terminate this AGREEMENT immediately upon written notice.
- C. CITY's Purchasing Agent is empowered to terminate this AGREEMENT on behalf of CITY.
- D. In the event of termination, CONTRACTOR shall deliver to CITY copies of all reports, documents, and other work performed by CONTRACTOR under this AGREEMENT, and upon receipt thereof, CITY shall pay CONTRACTOR for services performed and reimbursable expenses incurred to the date of termination.

SECTION 12. GOVERNING LAW.

CITY and CONTRACTOR agree that the law governing this AGREEMENT shall be that of the State of California.

SECTION 13. COMPLIANCE WITH LAWS.

CONTRACTOR shall comply with all applicable laws, ordinances, codes and regulations of the federal, state and local governments. Without limiting the generality of the preceding sentence,

CONTRACTOR shall comply with the provisions of CITY's Business Tax Ordinance in Chapter III-I of the Milpitas Municipal Code.

SECTION 14. CONFIDENTIAL INFORMATION.

All data, documents, discussions or other information developed or received by or for CONTRACTOR in performance of this AGREEMENT are confidential and not to be disclosed to any person except as authorized by CITY, or as required by law.

SECTION 15. OWNERSHIP OF MATERIALS.

All reports, documents or other materials developed or discovered by CONTRACTOR or any other person engaged directly or indirectly by CONTRACTOR to perform the services required hereunder shall be and remain the property of CITY without restriction or limitation upon their use.

SECTION 16. WAIVER.

CONTRACTOR agrees that waiver by CITY of any breach or violation of any term or condition of this AGREEMENT shall not be deemed to be a waiver of any other term or condition contained herein or a waiver of any subsequent breach or violation of the same or any other term or condition. The acceptance by CITY of the performance of any work or services by CONTRACTOR shall not be deemed to be a waiver of any term or condition of this AGREEMENT.

SECTION 17. CONTRACTOR'S BOOKS AND RECORDS.

- A. CONTRACTOR shall maintain any and all ledgers, books of account, invoices, vouchers, cancelled checks, and other records or documents evidencing or relating to charges for services, or expenditures and disbursements charged to CITY for a minimum period of three (3) years, or for any longer period required by law, from the date of final payment to CONTRACTOR pursuant to this AGREEMENT.
- B. CONTRACTOR shall maintain all documents and records which demonstrate performance under this AGREEMENT for a minimum period of three (3) years, or for any longer period required by law, from the date of termination or completion of this AGREEMENT.
- C. Any records or documents required to be maintained pursuant to this AGREEMENT shall be made available for inspection or audit at no cost to CITY, at any time during regular business hours, upon written request by the City Attorney, City Auditor, City Manager, or a designated representative of any of these officers. Copies of such documents shall be provided to CITY for inspection at City Hall when it is practical to do so. Otherwise, unless an alternative is mutually agreed upon, the records shall be available at CONTRACTOR's address indicated for receipt of notices in this AGREEMENT.

CONTRACTOR acknowledges that under certain circumstances specified in California Government Code Section 8546.7, this AGREEMENT (if it involves an expenditure of \$10,000 or more of public funds) may be subject to examination and audit by the Auditor of the State of California pursuant to California Government Code Section 8546.7.

- D. Where CITY has reason to believe that such records or documents may be lost or discarded due to dissolution, disbandment or termination of CONTRACTOR's business, CITY may, by written request by any of the above-named officers, require that custody of the records be given to CITY and that the records and documents be maintained in City Hall. Access to such records and documents shall be granted to any party authorized by CONTRACTOR, CONTRACTOR's representatives, or CONTRACTOR's successor-in-interest.

SECTION 18. CONFLICT OF INTEREST.

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

SECTION 19. SPECIAL PROVISIONS.

Special provisions, if any, to this AGREEMENT are specified in EXHIBIT E, entitled, "SPECIAL PROVISIONS", which is attached hereto and incorporated herein.

SECTION 20. NOTICES.

All notices and other communications required or permitted to be given under this AGREEMENT shall be in writing and shall be personally served or mailed, postage prepaid and return receipt requested, addressed to the respective parties as follows:

To CITY:

Milpitas Recreation Services
Attn. Stephanie Douglas
40 N. Milpitas Blvd.
Milpitas, CA 95035

To CONTRACTOR:

Frank Szeto
New Orient Restaurant
2105 Middlefield Way, Suite C
Mountain View, CA 94043

Notice shall be deemed effective on the date personally delivered or, if mailed, three (3) days after deposit in the mail.

SECTION 21. VENUE.

In the event that suit shall be brought by either party to this contract, the parties agree that venue shall be exclusively vested in the state courts of the County of Santa Clara, or if federal jurisdiction is appropriate, exclusively in the United States District Court, Northern District of California, San Jose, California.

SECTION 22. INTERPRETATION, PRIOR AGREEMENTS AND AMENDMENTS.

This AGREEMENT, including all Exhibits attached hereto, represents the entire understanding of the parties as to those matters contained herein. In the event that the terms specified in any of the Exhibits attached hereto conflict with any of the terms specified in the body of this AGREEMENT, the terms specified in the body of this AGREEMENT shall control. No prior oral or written understanding shall be of any force or effect with respect to those matters covered hereunder. This AGREEMENT may be modified only by a written amendment duly executed by the parties to this AGREEMENT.

WITNESS THE EXECUTION HEREOF on the day and year first hereinabove written.

“CITY”

APPROVED AS TO FORM:

CITY OF MILPITAS, a municipal corporation

By _____

Michael J. Ogaz
City Attorney

“CONTRACTOR”

**FRANK SZETO, AN INDIVIDUAL
DOING BUSINESS AS NEW ORIENT
RESTAURANT**

By _____

Name:

Title:

EXHIBIT A
SCOPE OF SERVICES

CONTRACTOR agrees to perform the following services in accordance with the City of Milpitas' Senior Nutrition Program and County Agreement, as amended.

Site Name: Milpitas Senior Center
Address: 40 N. Milpitas Blvd.
Milpitas, CA 95035

Delivery Time: 11:30 am-12:00 pm

Delivery Days: Two days per week, decided upon by CITY

Number Meals: Total meals contracted is 3,967 for 49 days July 1-December 31, 2013

Cost per Meal:\$4.73 for meals in Fiscal Year in 2013/2014 (July 1, 2013 to June 30, 2014)

1. Holding time and between meal preparation and scheduled serving time shall not exceed two (2) hours.
2. Meals shall conform to the food and nutrition standards as require by County Agreement, as amended. Such meal shall be low in salt and fat contents. Use of MSG, artificial flavoring and color is not recommended. Each serving portion shall include:
 - No less than 3 ounces of meat or protein substitute
 - No less than 1 cup of vegetables
 - No less than ½ cup of rice or other carbohydrate
 - One fruit
3. Contractor shall provide a central kitchen for the production of meals pursuant to this Agreement, and shall deliver such meals to designated location as mutually agreed upon by both parties. Contractor shall provide equipment required for the provision of services, and all equipment to transport food shall be NSF (National Sanitation Foundation) approved. Food storage facilities shall maintain a temperature of 140 degrees Fahrenheit or more for hot food and 40 degrees Fahrenheit or less for cold food. Temperatures of meals shall be checked daily and recorded before leaving the kitchen.

JVP
7/19/2013

EXHIBIT B
SCHEDULE OF PERFORMANCE

Work shall commence immediately upon execution of this AGREEMENT. The estimated time for completion is December 31, 2013.

EXHIBIT C
COMPENSATION

Pursuant to this Agreement, the CITY agrees to compensate CONTRACTOR in accordance with the terms and conditions of this AGREEMENT. CITY shall make payment to CONTRACTOR no later than thirty (30) days upon receipt and approval of invoice by CITY for the delivery of meals to the Senior Nutrition Program.

1. Invoices should be submitted to CITY no later than Friday of the delivery week.
2. Per meal cost will not exceed \$4.73 per meal and total compensation will not exceed Eighteen Thousand Seven Hundred and Seventy-Four dollars (\$18,774.00) for the 6-month Term.
3. Payment will be made payable to:

Frank Szeto, d/b/a/a New Orient Restaurant, 2105 Middlefield Way, Suite C, Mountain View, CA 94043.

There shall be no reimbursable expenses under this Agreement.

EXHIBIT D
INSURANCE

CONTRACTOR, at CONTRACTOR's sole cost and expense, shall procure and maintain for the duration of this AGREEMENT insurance against claims for injuries to persons or damages to property which may arise from, or in connection with, the performance of the services hereunder by CONTRACTOR, its agents, representatives, employees or subcontractors.

Definition:

For purposes of this contract, the following definition applies: City of Milpitas includes the duly elected or appointed officers, agents, employees and volunteers of the City of Milpitas, individually or collectively.

Insurance Required:

No work shall be done under this Contract unless there is in effect insurance required by the Contract and under this section, and such insurance has been approved by the City, nor shall the Contractor allow any subcontractor to commence work on his subcontract until all insurance required of the subcontractor has been so obtained and approved. The Contractor shall maintain or cause to be maintained adequate workers' compensation insurance as required under the laws of the State of California, for all labor employed by him or by any subcontractor under him who may come within the protection of such worker's compensation laws of the State of California and shall provide or cause to be provided employer's liability insurance for the benefit of his employees.

A. Minimum Scope of Insurance: (Check Mark Indicates Required)

Coverage must be *at least as broad as*:

- (X) Insurance Services Office Commercial General Liability coverage (occurrence Form CG0001).
- (X) Insurance Services Office Form Number CA 0001 covering Automobile Liability, Code 1 (any auto).
- (X) Workers' Compensation insurance as required by the State of California and Employer's Liability Insurance.
- () Professional Liability or Errors & Omissions Liability insurance appropriate to the contractor's profession.
- () Architects' and Engineers' coverage is to be endorsed to include contractual liability.

B. Minimum Limits of Insurance

CONTRACTOR shall maintain limits no less than:

1. **General Liability:** **\$1,000,000** per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability insurance (Including operations, products and completed operations, as applicable.) with a general aggregate limit is used, either the general aggregate limit must apply separately to this project/location or the general aggregate limit must be twice the required occurrence limit.
2. **Automobile Liability:** **\$1,000,000** per accident for bodily injury and property damage.
3. **Workers' Compensation Employer's Liability:** Statutory
\$1,000,000 each accident
\$1,000,000 disease-policy limit
\$1,000,000 disease-each employee
4. **Professional Liability or Errors & Omissions Liability:** **\$1,000,000** each occurrence
\$1,000,000 policy aggregate

C. Deductibles and Self-Insured Retentions

Any deductibles or self-insured retentions must be declared to and approved by the City. The City may require the Contractor to provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention.

D. Other Insurance Provisions

The general liability and automobile liability policies are to contain, or be endorsed to contain, the following provisions:

1. **The City of Milpitas, its officers, officials, employees, and volunteers** are to be covered as insureds with respect to liability arising out of automobiles owned, leased, hired or borrowed by or on behalf of the contractor; and with respect to liability arising out of work or operations performed by or on behalf of the Contractor including materials, parts or equipment furnished in connection with such work or operations. General liability coverage can be provided in the form of an endorsement to the Contractor's insurance (at least as broad as ISO Form CG 20 10 11 85), or as a separate owner's policy.
2. For any claims related to this project, the **Contractor's insurance coverage shall be primary** insurance as respects the City, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the City, its officers, officials, employees, or volunteers shall be excess of the **Contractor's insurance and shall not contribute with it.**

3. The Insurance Company agrees to **waive all rights of subrogation** against the City, its elected or appointed officers, officials, agents and employees for losses paid under the terms of any policy which arise from work performed by the Named Insured for the City. This provision also applies to the Contractor's Workers' Compensation policy.
4. Each insurance policy required by this clause shall be endorsed to state that coverage shall not be canceled by either party, except after **thirty (30) days' prior written notice (10 days for non-payment)** by certified mail, return receipt requested, has been given to the City. If Contractor's insurer refuses to provide this endorsement, Contractor shall be responsible for providing written notice to the City that coverage will be canceled thirty (30) days after the date of the notice or ten (10) days for non-payment.

E. Acceptability of Insurers

Insurance is to be placed with licensed insurers admitted to transact business in the State of California with a current A.M. Best's rating of no less than A-VII. If insurance is placed with a surplus lines insurer, insurer must be listed on the State of California List of Eligible Surplus Lines Insurers (LESLI) with a current A.M. Best's rating of no less than A-X. Exception may be made for the State Compensation Fund when not specifically rated.

F. Verification of Coverage

Contractor shall furnish the City with original certificates and amendatory endorsements effecting coverage required by this clause. The endorsements should be on insurance industry forms, provided those endorsements or policies conform to the contract requirements. All certificates and endorsements are to be received and approved by the City before work commences. The City reserves the right to require, at any time, complete, certified copies of all required insurance policies, including endorsements evidencing the coverage required by these specifications.

The Certificate with endorsements and notices shall be mailed to: City of Milpitas, Attention: Purchasing, 455 East Calaveras Boulevard, Milpitas California, 95035-5411.

G. Subcontractors

Contractors must include all sub-contractors as insureds under its policies or furnish separate certificates and endorsements for each sub-contractor. All coverage for sub-contractors are subject to all of the requirements included in these specifications.

Absence of Insurance:

If the Contractor allows the insurance to lapse, be cancelled, or be reduced below the limits specified in this article, the Contractor shall cause all work in the Project to cease and any delays or expenses caused due to stopping of work and change of insurance shall be considered

JVP
7/19/2013

Contractor's delay and shall not be considered to increase cost to the City or increase time in which the Project shall be completed.

Contractor agrees that if it does not keep the aforesaid insurance in full force and effect, City may immediately terminate this Agreement

EXHIBIT E

SPECIAL PROVISIONS

Retroactive Services.

It is understood and agreed that CONTRACTOR has provided services prior to the execution of this AGREEMENT in anticipation of its execution. If CITY accepts and approves the services provided by CONTRACTOR prior to the date of this AGREEMENT, CITY agrees to compensate CONTRACTOR for those services in accordance with the terms of this AGREEMENT. However, in no event shall CONTRACTOR be compensated for work performed for CITY prior to July 1, 2013.