



## SERVICES AGREEMENT

This Services Agreement (**Agreement**) is entered into between client (**Client**) and Compass Group USA, Inc., by and through its Canteen Division (**Canteen**), who agree as follows:

### DEFINITIONS

**Vending Services** means the provision of Products via vending machines.

**Equipment** means vending and other related equipment provided by Canteen.

**Factors** means 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 Canteen's Services.

**Products** means food, beverage and sundry products supplied by Canteen.

**Services** means Vending Services.

### TERMS AND CONDITIONS

#### 1. RESPONSIBILITIES OF THE PARTIES.

- Canteen will install, maintain and service the Equipment in accordance with industry standards and all applicable laws and in accordance with Exhibit A.
- Canteen will provide fresh and high quality Products for use in the Equipment and will replenish all products to appropriate levels and clean the Equipment on a weekly basis.
- Client grants to Canteen the exclusive right to provide the Services and install Equipment at the Premises.
- Client will provide a reasonably secure area within the Premises for the Equipment.
- Client will provide to Canteen the necessary space, trash removal, extermination services, internet and utilities to permit the sanitary operation of the Services.
- Client will maintain its Premises and service the areas around the Equipment in a sanitary manner in accordance with industry standards and all applicable laws. Client will provide Canteen employees the necessary access to service and maintain the Equipment.

#### 2. EQUIPMENT.

- Client has no right, title or interest to Equipment or Products and will not use, assert or disturb rights, title or interest to the foregoing.
- Client will not operate, remove or tamper with the Equipment, except to the extent necessary for Client to do so in connection with the Services. Client will be responsible for any damage to the Equipment or Products (including theft) caused by the willful misconduct or negligent acts or omissions of Client, its agents or employees.

In the event that a piece of Equipment is not generating an appropriate volume of Net Vending Sales or revenues, as the case may be, Canteen may, at its sole discretion: (i) remove such piece of Equipment; (ii) implement a subsidy arrangement upon the mutual agreement of the parties.

#### 3. INDEMNIFICATION AND INSURANCE.

- Except to the extent caused by the negligent act or omission of a party to be indemnified and/or its employees or agents, Canteen will indemnify, defend and hold harmless the Client and its officers and employees from any and all losses, damages or expenses, including reasonable attorneys' fees, arising out of or resulting from claims or actions for bodily injury, death, sickness, property damage, any breach or default hereunder or other injury or damage if caused by any negligent act or omission of the indemnifying party, its employees or agents. Canteen must receive notice of an event giving rise to an indemnification claim no later than ten (10) days after the Client receives formal notice of the claim or proper service of a lawsuit.
- Canteen will maintain insurance as follows: commercial general liability (including contractual and products-completed operations liability) in an amount not less than One Million Dollars (\$1,000,000) each occurrence and Two Million Dollars (\$2,000,000) general aggregate; business automobile coverage in an amount not less than One Million Dollars (\$1,000,000) each accident; and workers' compensation (including employers' liability coverage in an amount not less than One Million Dollars (\$1,000,000) each accident/each employee/policy limit) in an amount not less than that required by applicable statute. Client shall be named as an additional insured under such policies obtained pursuant to this agreement.

Client will maintain insurance for the Premises against risks covered by standard forms of fire, theft, and extended coverage in such amounts under such policies as the Client deems appropriate

**4. TERM, DEFAULT AND TERMINATION.** The term of this Agreement will be three (3) years beginning on the Effective Date (**Initial Term**) and thereafter will automatically renew for consecutive three (3) year terms. If either party breaches

this Agreement, the party claiming such breach will give the other party written notice citing specifics. If, within sixty (60) days from such notice, the breach has not been corrected, the non-breaching party may terminate this Agreement on thirty (30) days written notice. Additionally, either party may terminate this Agreement at the end of each renewal term upon ninety (90) days prior written notice to the other party.

**5. ASSIGNMENT/SUBCONTRACTING.** Neither party may assign or subcontract this Agreement to an unaffiliated business entity without the prior written consent of the other party, such consent not to be unreasonably withheld or delayed.

**6. EQUAL EMPLOYMENT OPPORTUNITY CERTIFICATION.** Canteen shall abide by the requirements of 41 CFR §§ 60-1.4(a), 60-300.5(a) and 60-741.5(a). These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities, and prohibit discrimination against all individuals based on their race, color, religion, sex, sexual orientation, gender identity or national origin. Moreover, these regulations require that Canteen take affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, sexual orientation, gender identity, national origin, protected veteran status or disability.

**7. NOTICES.** Notices under this Agreement may be given by personal delivery, U.S. Mail (postage prepaid) or commercial delivery service, and will be deemed duly given when received by the party charged with such notice and addressed herein or to any other address as designated upon written notice to the other party.

**8. NOTICES GOVERNMENTAL IMMUNITY.** No term or condition of this Agreement shall be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protections, or other provisions of the Colorado Government Immunity Act, C.R.S. 24-10-101 et. seq.

**9. NON-APPROPRIATION.** All obligations of the Client under the Agreement are subject to the prior appropriation and deposit or encumbrance of funds expressly made through legally required budgeting, authorization, and appropriation process. The Client does not through the Agreement or any subsequent agreement irrevocably pledge present cash reserved for payments in future years or to continue to budget funds beyond the current fiscal year. The parties agree that neither the Agreement nor any subsequent agreement creates a multiple fiscal year direct or indirect debt or financial obligation of the Client. If funds are not appropriated for the Agreement or any obligation of the Client hereunder, then the Agreement shall terminate, without penalty, as of the end of the last fiscal year for which funds were appropriated and Canteen shall not be entitled to any damages, penalty, cancellation fee, or additional compensation.

**10. PRIOR AGREEMENT.** This Agreement replaces the Vending Agreement between the parties dated September 1, 2010, which is terminated effective upon execution of this Agreement.

**11. ENTIRE AGREEMENT.** This Agreement, and the exhibit(s) attached hereto constitutes the entire agreement and understanding between the parties relating to the subject matter herein, and supersedes all other agreements between the parties with respect thereto.

{Signatures on the page that follows}

**SIGNATURE BLOCK****EFFECTIVE DATE:** May 1, 2018**CLIENT:** CITY OF COMMERCE CITY

By: \_\_\_\_\_

Name: Carolyn KeithTitle: Director, Parks, Recreation & Golf

Signature Date: \_\_\_\_\_

**PREMISES:**

- i.) 6060 Parkway Dr., Commerce City, CO 80022
- ii.) 8602 Rosemary St., Commerce City, CO 80022
- iii.) 7787 E. 60<sup>th</sup> Ave., Commerce City, CO 80022
- iv.) 13905 E. 112<sup>th</sup> St., Commerce City, CO 80022

**CLIENT NOTICE TO:**Name: Maria JepsonTitle: Executive Administrative Supervisor

Principal Address:

13905 E. 112<sup>th</sup> St., Commerce City, CO 80022**ATTEST:**\_\_\_\_\_  
City Clerk**APPROVED AS TO FORM:**\_\_\_\_\_  
City Attorney**COMPASS GROUP USA, INC.,  
BY AND THROUGH ITS CANTEEN DIVISION**

By: \_\_\_\_\_

Name: Chris Hulick  
Title: Division President

Signature Date: \_\_\_\_\_

**CANTEEN NOTICE TO:**Name: Chris Hulick  
Title: Division President  
Address: 5000 Hopyard Road, Suite 322,  
Pleasanton, CA 94588**COPY OF NOTICE TO:**

- (i) General Counsel and Secretary  
and
- (ii) President, Canteen  
2400 Yorkmont Road, Charlotte, NC 28217

**EXHIBIT A**  
**FINANCIAL ARRANGEMENTS-COMMISSIONS**

**1. VENDING SERVICES**

| <b>Product</b>       | <b>Initial Unit Selling Price*</b> | <b>Commission Percentage Rate</b> |
|----------------------|------------------------------------|-----------------------------------|
| Candies              | \$1.00-\$2.50                      | 20%                               |
| Large Cookies/Snacks | \$1.35-\$1.75                      | 20%                               |
| Large Chips          | \$1.25-\$1.50                      | 20%                               |
| Bottled Beverages    | \$1.50-\$2.75                      | 20%                               |

\*The above prices reflect a Ten Cent (\$0.10) discount for paying cash.

Canteen will pay Client commissions. Commissions will be computed monthly (based on Canteen's fiscal calendar) based upon Net Vending Sales on Client Premises. Net Vending Sales means the reported units sold multiplied by the Initial Unit Selling Prices less applicable sales taxes, California Redemption Value (if applicable) and container deposits (if applicable). Within thirty (30) days of month end, Canteen will send Client commission payments and a report detailing commissions.

**2. PRICE/COMMISSION RATE ADJUSTMENTS**

- If there are changes in Factors, Canteen may modify the prices and/or commission rate(s) in a manner proportionate to such changes.
- Notwithstanding the foregoing, Product prices may be adjusted by Canteen annually at a rate equal to the greater of the then-current, relevant rate published for the Employment Cost Index or the national or regional Consumer Price Index.
- Client shall be entitled to terminate the Agreement within thirty (30) days notice of the proposed price increase.

**3. PAYMENT**

Intentionally omitted.