

1 AGREEMENT

2 **35605**

3 THIS AGREEMENT is made and entered, in duplicate, as of August 10,  
4 2020, for reference purposes only, pursuant to a minute order adopted by the City Council  
5 of the City of Long Beach at its meeting on August 4, 2020, by and between DJC FOODS  
6 INC. DBA STARLING DINER, a California corporation ("Contractor"), with a place of  
7 business at 4114 E. 3rd St., Long Beach, CA 90814, and the CITY OF LONG BEACH, a  
8 municipal corporation ("City").

9 WHEREAS, City requires specialized services requiring unique skills to be  
10 performed in connection with the Great Plates Delivered senior meal delivery program  
11 ("Project"); and

12 WHEREAS, City has selected Contractor in accordance with City's  
13 administrative procedures using a Request for Proposals Number CM20-058 ("RFP"),  
14 incorporated by this reference, and City has determined that Contractor and its employees  
15 are qualified, licensed, if so required, and experienced in performing these specialized  
16 services; and

17 WHEREAS, City desires to have Contractor perform these specialized  
18 services, and Contractor is willing and able to do so on the terms and conditions in this  
19 Agreement; and

20 WHEREAS, City issued interim Purchase Order Number 22016012 in the  
21 amount of \$25,219.69, pursuant to Chapters 2.69 and 2.85 of the Long Beach Municipal  
22 Code (LBMC) and in response to the proclaimed emergency for COVID-19;

23 NOW, THEREFORE, in consideration of the mutual terms, covenants, and  
24 conditions in this Agreement, the parties agree as follows:

25 1. SCOPE OF WORK OR SERVICES.

26 A. Contractor shall furnish specialized services more particularly  
27 described in the Request for Proposals Number CM20-058, incorporated by this  
28 reference as if fully set forth herein, in accordance with the standards of the

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profession, and City shall pay for these services in the manner described below, not to exceed One Hundred Twenty-Five Thousand Two Hundred Nineteen Dollars and Sixty-Nine Cents (\$125,219.69), at the rates or charges shown in Exhibit "A".

B. City shall pay Contractor in due course of payments following receipt from Contractor and approval by City of invoices showing the services or task performed, the time expended (if billing is hourly), and the name of the Project. Contractor shall certify on the invoices that Contractor has performed the services in full conformance with this Agreement and is entitled to receive payment. Each invoice shall be accompanied by a progress report indicating the progress to date of services performed and covered by the invoice, including a brief statement of any Project problems and potential causes of delay in performance, and listing those services that are projected for performance by Contractor during the next invoice cycle. Where billing is done and payment is made on an hourly basis, the parties acknowledge that this arrangement is either customary practice for Contractor's profession, industry or business, or is necessary to satisfy audit and legal requirements which may arise due to the fact that City is a municipality.

C. Contractor represents that Contractor has obtained all necessary information on conditions and circumstances that may affect its performance and has conducted site visits, if necessary.

D. By executing this Agreement, Contractor warrants that Contractor (a) has thoroughly investigated and considered the scope of services to be performed, (b) has carefully considered how the services should be performed, and (c) fully understands the facilities, difficulties and restrictions attending performance of the services under this Agreement. If the services involve work upon any site, Contractor warrants that Contractor has or will investigate the site and is or will be fully acquainted with the conditions there existing, prior to commencement of services set forth in this Agreement. Should Contractor discover any latent or unknown conditions that will materially affect the performance of the services set

1           forth in this Agreement, Contractor must immediately inform the City of that fact and  
2           may not proceed except at Contractor's risk until written instructions are received  
3           from the City.

4                       E.     Contractor must adopt reasonable methods during the life of  
5           the Agreement to furnish continuous protection to the work, and the equipment,  
6           materials, papers, documents, plans, studies and other components to prevent  
7           losses or damages, and will be responsible for all damages, to persons or property,  
8           until acceptance of the work by the City, except those losses or damages as may  
9           be caused by the City's own negligence.

10                      F.     CAUTION: Contractor shall not begin work until this  
11           Agreement has been signed by both parties and until Contractor's evidence of  
12           insurance has been delivered to and approved by City.

13                      2.     TERM. The term of this Agreement shall commence at midnight on,  
14           June 9, 2020, and shall terminate at 11:59 p.m. on July 9, 2020, with the option to renew  
15           for three (3) additional one month periods based on program extensions from the state, at  
16           the discretion of the City Manager.

17                      3.     COORDINATION AND ORGANIZATION.

18                      A.     Contractor shall coordinate its performance with City's  
19           representative, if any, named in Exhibit "B", attached to this Agreement and  
20           incorporated by this reference. Contractor shall advise and inform City's  
21           representative of the work in progress on the Project in sufficient detail so as to  
22           assist City's representative in making presentations and in holding meetings on the  
23           Project. City shall furnish to Contractor information or materials, if any, described in  
24           Exhibit "C", attached to this Agreement and incorporated by this reference, and shall  
25           perform any other tasks described in the Exhibit.

26                      B.     The parties acknowledge that a substantial inducement to City  
27           for entering this Agreement was and is the reputation and skill of Contractor's key  
28           employee, named in Exhibit "D" attached to this Agreement and incorporated by this

1 reference. City shall have the right to approve any person proposed by Contractor  
2 to replace that key employee.

3 4. INDEPENDENT CONTRACTOR. In performing its services,  
4 Contractor is and shall act as an independent contractor and not an employee,  
5 representative or agent of City. Contractor shall have control of Contractor's work and the  
6 manner in which it is performed. Contractor shall be free to contract for similar services to  
7 be performed for others during this Agreement; provided, however, that Contractor acts in  
8 accordance with Section 9 and Section 11 of this Agreement. Contractor acknowledges  
9 and agrees that (a) City will not withhold taxes of any kind from Contractor's compensation;  
10 (b) City will not secure workers' compensation or pay unemployment insurance to, for or  
11 on Contractor's behalf; and (c) City will not provide and Contractor is not entitled to any of  
12 the usual and customary rights, benefits or privileges of City employees. Contractor  
13 expressly warrants that neither Contractor nor any of Contractor's employees or agents  
14 shall represent themselves to be employees or agents of City.

15 5. INSURANCE.

16 A. As a condition precedent to the effectiveness of this  
17 Agreement, Contractor shall procure and maintain, at Contractor's expense for the  
18 duration of this Agreement, from insurance companies that are admitted to write  
19 insurance in California and have ratings of or equivalent to A:V by A.M. Best  
20 Company or from authorized non-admitted insurance companies subject to Section  
21 1763 of the California Insurance Code and that have ratings of or equivalent to A:VIII  
22 by A.M. Best Company, the following insurance:

23 (a) Commercial general liability insurance (equivalent in scope to  
24 ISO form CG 00 01 11 85 or CG 00 01 10 93) in an amount not less than  
25 \$1,000,000 per each occurrence and \$2,000,000 general aggregate. This  
26 coverage shall include but not be limited to broad form contractual liability,  
27 cross liability, independent contractors liability, and products and completed  
28 operations liability. City, its boards and commissions, and their officials,

1 employees and agents shall be named as additional insureds by  
2 endorsement (on City's endorsement form or on an endorsement equivalent  
3 in scope to ISO form CG 20 10 11 85 or CG 20 26 11 85), and this insurance  
4 shall contain no special limitations on the scope of protection given to City,  
5 its boards and commissions, and their officials, employees and agents. This  
6 policy shall be endorsed to state that the insurer waives its right of  
7 subrogation against City, its boards and commissions, and their officials,  
8 employees and agents.

9 (b) Workers' Compensation insurance as required by the California  
10 Labor Code and employer's liability insurance in an amount not less than  
11 \$1,000,000. This policy shall be endorsed to state that the insurer waives  
12 its right of subrogation against City, its boards and commissions, and their  
13 officials, employees and agents.

14 (c) Professional liability or errors and omissions insurance in an  
15 amount not less than \$1,000,000 per claim.

16 (d) Commercial automobile liability insurance (equivalent in scope  
17 to ISO form CA 00 01 06 92), covering Auto Symbol 1 (Any Auto) in an  
18 amount not less than \$500,000 combined single limit per accident.

19 B. Any self-insurance program, self-insured retention, or  
20 deductible must be separately approved in writing by City's Risk Manager or  
21 designee and shall protect City, its officials, employees and agents in the same  
22 manner and to the same extent as they would have been protected had the policy  
23 or policies not contained retention or deductible provisions.

24 C. Each insurance policy shall be endorsed to state that coverage  
25 shall not be reduced, non-renewed or canceled except after thirty (30) days prior  
26 written notice to City, shall be primary and not contributing to any other insurance  
27 or self-insurance maintained by City, and shall be endorsed to state that coverage  
28 maintained by City shall be excess to and shall not contribute to insurance or self-

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insurance maintained by Contractor. Contractor shall notify City in writing within five (5) days after any insurance has been voided by the insurer or cancelled by the insured.

D. If this coverage is written on a "claims made" basis, it must provide for an extended reporting period of not less than one hundred eighty (180) days, commencing on the date this Agreement expires or is terminated, unless Contractor guarantees that Contractor will provide to City evidence of uninterrupted, continuing coverage for a period of not less than three (3) years, commencing on the date this Agreement expires or is terminated.

E. Contractor shall require that all sub-contractors or contractors that Contractor uses in the performance of these services maintain insurance in compliance with this Section unless otherwise agreed in writing by City's Risk Manager or designee.

F. Prior to the start of performance, Contractor shall deliver to City certificates of insurance and the endorsements for approval as to sufficiency and form. In addition, Contractor shall, within thirty (30) days prior to expiration of the insurance, furnish to City certificates of insurance and endorsements evidencing renewal of the insurance. City reserves the right to require complete certified copies of all policies of Contractor and Contractor's sub-Contractors and contractors, at any time. Contractor shall make available to City's Risk Manager or designee all books, records and other information relating to this insurance, during normal business hours.

G. Any modification or waiver of these insurance requirements shall only be made with the approval of City's Risk Manager or designee. Not more frequently than once a year, City's Risk Manager or designee may require that Contractor, Contractor's sub-Contractors and contractors change the amount, scope or types of coverages required in this Section if, in his or her sole opinion, the amount, scope or types of coverages are not adequate.

1 H. The procuring or existence of insurance shall not be construed  
2 or deemed as a limitation on liability relating to Contractor's performance or as full  
3 performance of or compliance with the indemnification provisions of this Agreement.

4 6. ASSIGNMENT AND SUBCONTRACTING. This Agreement  
5 contemplates the personal services of Contractor and Contractor's employees, and the  
6 parties acknowledge that a substantial inducement to City for entering this Agreement was  
7 and is the professional reputation and competence of Contractor and Contractor's  
8 employees. Contractor shall not assign its rights or delegate its duties under this  
9 Agreement, or any interest in this Agreement, or any portion of it, without the prior approval  
10 of City, except that Contractor may with the prior approval of the City Manager of City,  
11 assign any moneys due or to become due Contractor under this Agreement. Any  
12 attempted assignment or delegation shall be void, and any assignee or delegate shall  
13 acquire no right or interest by reason of an attempted assignment or delegation.  
14 Furthermore, Contractor shall not subcontract any portion of its performance without the  
15 prior approval of the City Manager or designee, or substitute an approved sub-Contractor  
16 or contractor without approval prior to the substitution. Nothing stated in this Section shall  
17 prevent Contractor from employing as many employees as Contractor deems necessary  
18 for performance of this Agreement.

19 7. CONFLICT OF INTEREST. Contractor, by executing this Agreement,  
20 certifies that, at the time Contractor executes this Agreement and for its duration,  
21 Contractor does not and will not perform services for any other client which would create a  
22 conflict, whether monetary or otherwise, as between the interests of City and the interests  
23 of that other client. And, Contractor shall obtain similar certifications from Contractor's  
24 employees, sub-Contractors and contractors.

25 8. MATERIALS. Contractor shall furnish all labor and supervision,  
26 supplies, materials, tools, machinery, equipment, appliances, transportation and services  
27 necessary to or used in the performance of Contractor's obligations under this Agreement,  
28 except as stated in Exhibit "D".

OFFICE OF THE CITY ATTORNEY  
CHARLES PARKIN, City Attorney  
411 West Ocean Boulevard, 9th Floor  
Long Beach, CA 90802

1           9.    OWNERSHIP OF DATA. All materials, information and data  
2 prepared, developed or assembled by Contractor or furnished to Contractor in connection  
3 with this Agreement, including but not limited to documents, estimates, calculations,  
4 studies, maps, graphs, charts, computer disks, computer source documentation, samples,  
5 models, reports, summaries, drawings, designs, notes, plans, information, material and  
6 memorandum ("Data") shall be the exclusive property of City. Data shall be given to City,  
7 and City shall have the unrestricted right to use and disclose the Data in any manner and  
8 for any purpose without payment of further compensation to Contractor. Copies of Data  
9 may be retained by Contractor but Contractor warrants that Data shall not be made  
10 available to any person or entity for use without the prior approval of City. This warranty  
11 shall survive termination of this Agreement for five (5) years.

12           10. TERMINATION. Either party shall have the right to terminate this  
13 Agreement for any reason or no reason at any time by giving fifteen (15) calendar days  
14 prior notice to the other party. In the event of termination under this Section, City shall pay  
15 Contractor for services satisfactorily performed and costs incurred up to the effective date  
16 of termination for which Contractor has not been previously paid. The procedures for  
17 payment in Section 1.B. with regard to invoices shall apply. On the effective date of  
18 termination, Contractor shall deliver to City all Data developed or accumulated in the  
19 performance of this Agreement, whether in draft or final form, or in process. And,  
20 Contractor acknowledges and agrees that City's obligation to make final payment is  
21 conditioned on Contractor's delivery of the Data to City.

22           11. CONFIDENTIALITY. Contractor shall keep all Data confidential and  
23 shall not disclose the Data or use the Data directly or indirectly, other than in the course of  
24 performing its services, during the term of this Agreement and for five (5) years following  
25 expiration or termination of this Agreement. In addition, Contractor shall keep confidential  
26 all information, whether written, oral or visual, obtained by any means whatsoever in the  
27 course of performing its services for the same period of time. Contractor shall not disclose  
28 any or all of the Data to any third party, or use it for Contractor's own benefit or the benefit



1 of others except for the purpose of this Agreement.

2           12. BREACH OF CONFIDENTIALITY. Contractor shall not be liable for a  
3 breach of confidentiality with respect to Data that: (a) Contractor demonstrates Contractor  
4 knew prior to the time City disclosed it; or (b) is or becomes publicly available without  
5 breach of this Agreement by Contractor; or (c) a third party who has a right to disclose does  
6 so to Contractor without restrictions on further disclosure; or (d) must be disclosed pursuant  
7 to subpoena or court order.

8           13. ADDITIONAL SERVICES. The City has the right at any time during  
9 the performance of the services, without invalidating this Agreement, to order extra work  
10 beyond that specified in the RFP or make changes by altering, adding to or deducting from  
11 the work. No extra work may be undertaken unless a written order is first given by the City,  
12 incorporating any adjustment in the Agreement Sum, or the time to perform this Agreement.  
13 Any increase in compensation of ten percent (10%) or less of the Agreement Sum, or in  
14 the time to perform of One Hundred Eighty (180) days or less, may be approved by the  
15 City Representative. Any greater increases, taken either separately or cumulatively, must  
16 be approved by the City Council. It is expressly understood by Contractor that the  
17 provisions of this paragraph do not apply to services specifically set forth in the RFP or  
18 reasonably contemplated in the RFP. Contractor acknowledges that it accepts the risk that  
19 the services to be provided pursuant to the RFP may be more costly or time consuming  
20 than Contractor anticipates and that Contractor will not be entitled to additional  
21 compensation for the services set forth in the RFP.

22           14. RETENTION OF FUNDS. Contractor authorizes the City to deduct  
23 from any amount payable to Contractor (whether or not arising out of this Agreement) any  
24 amounts the payment of which may be in dispute or that are necessary to compensate the  
25 City for any losses, costs, liabilities or damages suffered by the City, and all amounts for  
26 which the City may be liable to third parties, by reason of Contractor's acts or omissions in  
27 performing or failing to perform Contractor's obligations under this Agreement. In the event  
28 that any claim is made by a third party, the amount or validity of which is disputed by

1 Contractor, or any indebtedness exists that appears to be the basis for a claim of lien, the  
2 City may withhold from any payment due, without liability for interest because of the  
3 withholding, an amount sufficient to cover the claim. The failure of the City to exercise the  
4 right to deduct or to withhold will not, however, affect the obligations of Contractor to insure,  
5 indemnify and protect the City as elsewhere provided in this Agreement.

6 15. AMENDMENT. This Agreement, including all Exhibits, shall not be  
7 amended, nor any provision or breach waived, except in writing signed by the parties which  
8 expressly refers to this Agreement.

9 16. LAW. This Agreement shall be construed in accordance with the laws  
10 of the State of California, and the venue for any legal actions brought by any party with  
11 respect to this Agreement shall be the County of Los Angeles, State of California for state  
12 actions and the Central District of California for any federal actions. Contractor shall cause  
13 all work performed in connection with construction of the Project to be performed in  
14 compliance with (1) all applicable laws, ordinances, rules and regulations of federal, state,  
15 county or municipal governments or agencies (including, without limitation, all applicable  
16 federal and state labor standards, including the prevailing wage provisions of sections 1770  
17 *et seq.* of the California Labor Code); and (2) all directions, rules and regulations of any fire  
18 marshal, health officer, building inspector, or other officer of every governmental agency  
19 now having or hereafter acquiring jurisdiction. If any part of this Agreement is found to be  
20 in conflict with applicable laws, that part will be inoperative, null and void insofar as it is in  
21 conflict with any applicable laws, but the remainder of the Agreement will remain in full  
22 force and effect.

23 17. PREVAILING WAGES.

24 A. Consultant agrees that all public work (as defined in California  
25 Labor Code section 1720) performed pursuant to this Agreement (the "Public  
26 Work"), if any, shall comply with the requirements of California Labor Code sections  
27 1770 *et seq.* City makes no representation or statement that the Project, or any  
28 portion thereof, is or is not a "public work" as defined in California Labor Code

1 section 1720.

2 B. In all bid specifications, contracts and subcontracts for any  
3 such Public Work, Consultant shall obtain the general prevailing rate of per diem  
4 wages and the general prevailing rate for holiday and overtime work in this locality  
5 for each craft, classification or type of worker needed to perform the Public Work,  
6 and shall include such rates in the bid specifications, contract or subcontract. Such  
7 bid specifications, contract or subcontract must contain the following provision: "It  
8 shall be mandatory for the contractor to pay not less than the said prevailing rate of  
9 wages to all workers employed by the contractor in the execution of this contract.  
10 The contractor expressly agrees to comply with the penalty provisions of California  
11 Labor Code section 1775 and the payroll record keeping requirements of California  
12 Labor Code section 1771."

13 18. ENTIRE AGREEMENT. This Agreement, including all Exhibits,  
14 constitutes the entire understanding between the parties and supersedes all other  
15 agreements, oral or written, with respect to the subject matter in this Agreement.

16 19. INDEMNITY.

17 A. Consultant shall indemnify, protect and hold harmless City, its  
18 Boards, Commissions, and their officials, employees and agents ("Indemnified  
19 Parties"), from and against any and all liability, claims, demands, damage, loss,  
20 obligations, causes of action, proceedings, awards, fines, judgments, penalties,  
21 costs and expenses, including attorneys' fees, court costs, expert and witness fees,  
22 and other costs and fees of litigation, arising or alleged to have arisen, in whole or  
23 in part, out of or in connection with (1) Consultant's breach or failure to comply with  
24 any of its obligations contained in this Agreement, including all applicable federal  
25 and state labor requirements including, without limitation, the requirements of  
26 California Labor Code section 1770 *et seq.* or (2) negligent or willful acts, errors,  
27 omissions or misrepresentations committed by Consultant, its officers, employees,  
28 agents, subcontractors, or anyone under Consultant's control, in the performance

1 of work or services under this Agreement (collectively "Claims" or individually  
2 "Claim").

3 B. In addition to Consultant's duty to indemnify, Consultant shall  
4 have a separate and wholly independent duty to defend Indemnified Parties at  
5 Consultant's expense by legal counsel approved by City, from and against all  
6 Claims, and shall continue this defense until the Claims are resolved, whether by  
7 settlement, judgment or otherwise. No finding or judgment of negligence, fault,  
8 breach, or the like on the part of Consultant shall be required for the duty to defend  
9 to arise. City shall notify Consultant of any Claim, shall tender the defense of the  
10 Claim to Consultant, and shall assist Consultant, as may be reasonably requested,  
11 in the defense.

12 C. If a court of competent jurisdiction determines that a Claim was  
13 caused by the sole negligence or willful misconduct of Indemnified Parties,  
14 Consultant's costs of defense and indemnity shall be (1) reimbursed in full if the  
15 court determines sole negligence by the Indemnified Parties, or (2) reduced by the  
16 percentage of willful misconduct attributed by the court to the Indemnified Parties.

17 D. The provisions of this Section shall survive the expiration or  
18 termination of this Agreement.

19 20. FORCE MAJEURE. If any party fails to perform its obligations  
20 because of strikes, lockouts, labor disputes, embargoes, acts of God, inability to obtain  
21 labor or materials or reasonable substitutes for labor materials, governmental restrictions,  
22 governmental regulations, governmental controls, judicial orders, enemy or hostile  
23 governmental action, civil commotion, fire or other casualty, or other causes beyond the  
24 reasonable control of the party obligated to perform, then that party's performance will be  
25 excused for a period equal to the period of such cause for failure to perform.

26 21. AMBIGUITY. In the event of any conflict or ambiguity between this  
27 Agreement and any Exhibit, the provisions of this Agreement shall govern.

28 22. NONDISCRIMINATION.

1           A.     In connection with performance of this Agreement and subject  
2 to applicable rules and regulations, Contractor shall not discriminate against any  
3 employee or applicant for employment because of race, religion, national origin,  
4 color, age, sex, sexual orientation, gender identity, AIDS, HIV status, handicap or  
5 disability. Contractor shall ensure that applicants are employed, and that employees  
6 are treated during their employment, without regard to these bases. These actions  
7 shall include, but not be limited to, the following: employment, upgrading, demotion  
8 or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay  
9 or other forms of compensation; and selection for training, including apprenticeship.

10           23.   EQUAL BENEFITS ORDINANCE. Unless otherwise exempted in  
11 accordance with the provisions of the Ordinance, this Agreement is subject to the  
12 applicable provisions of the Equal Benefits Ordinance (EBO), section 2.73 et seq. of the  
13 Long Beach Municipal Code, as amended from time to time.

14           A.     During the performance of this Agreement, the Consultant  
15 certifies and represents that the Consultant will comply with the EBO. The  
16 Consultant agrees to post the following statement in conspicuous places at its place  
17 of business available to employees and applicants for employment:

18           “During the performance of a contract with the City of Long Beach, the  
19 Consultant will provide equal benefits to employees with spouses and its  
20 employees with domestic partners. Additional information about the City of  
21 Long Beach’s Equal Benefits Ordinance may be obtained from the City of  
22 Long Beach Business Services Division at 562-570-6200.”

23           B.     The failure of the Consultant to comply with the EBO will be  
24 deemed to be a material breach of the Agreement by the City.

25           C.     If the Consultant fails to comply with the EBO, the City may  
26 cancel, terminate or suspend the Agreement, in whole or in part, and monies due or  
27 to become due under the Agreement may be retained by the City. The City may  
28 also pursue any and all other remedies at law or in equity for any breach.

1 D. Failure to comply with the EBO may be used as evidence  
2 against the Consultant in actions taken pursuant to the provisions of Long Beach  
3 Municipal Code 2.93 et seq., Contractor Responsibility.

4 E. If the City determines that the Consultant has set up or used its  
5 contracting entity for the purpose of evading the intent of the EBO, the City may  
6 terminate the Agreement on behalf of the City. Violation of this provision may be  
7 used as evidence against the Consultant in actions taken pursuant to the provisions  
8 of Long Beach Municipal Code Section 2.93 et seq., Contractor Responsibility.

9 24. NOTICES. Any notice or approval required by this Agreement shall  
10 be in writing and personally delivered or deposited in the U.S. Postal Service, first class,  
11 postage prepaid, addressed to Contractor at the address first stated above, and to City at  
12 411 West Ocean Boulevard, Long Beach, California 90802, Attn: City Manager, with a copy  
13 to the City Clerk at the same address. Notice of change of address shall be given in the  
14 same manner as stated for other notices. Notice shall be deemed given on the date  
15 deposited in the mail or on the date personal delivery is made, whichever occurs first.

16 25. COVENANT AGAINST CONTINGENT FEES. Contractor warrants  
17 that Contractor has not employed or retained any entity or person to solicit or obtain this  
18 Agreement and that Contractor has not paid or agreed to pay any entity or person any fee,  
19 commission or other monies based on or from the award of this Agreement. If Contractor  
20 breaches this warranty, City shall have the right to terminate this Agreement immediately  
21 notwithstanding the provisions of Section 10 or, in its discretion, to deduct from payments  
22 due under this Agreement or otherwise recover the full amount of the fee, commission or  
23 other monies.

24 26. WAIVER. The acceptance of any services or the payment of any  
25 money by City shall not operate as a waiver of any provision of this Agreement or of any  
26 right to damages or indemnity stated in this Agreement. The waiver of any breach of this  
27 Agreement shall not constitute a waiver of any other or subsequent breach of this  
28 Agreement.

1           27. CONTINUATION. Termination or expiration of this Agreement shall  
2 not affect rights or liabilities of the parties which accrued pursuant to Sections 7, 10, 11,  
3 18, 21 and 28 prior to termination or expiration of this Agreement.

4           28. TAX REPORTING. As required by federal and state law, City is  
5 obligated to and will report the payment of compensation to Contractor on Form 1099-Misc.  
6 Contractor shall be solely responsible for payment of all federal and state taxes resulting  
7 from payments under this Agreement. Contractor shall submit Contractor's Employer  
8 Identification Number (EIN), or Contractor's Social Security Number if Contractor does not  
9 have an EIN, in writing to City's Accounts Payable, Department of Financial Management.  
10 Contractor acknowledges and agrees that City has no obligation to pay Contractor until  
11 Contractor provides one of these numbers.

12           29. ADVERTISING. Contractor shall not use the name of City, its officials  
13 or employees in any advertising or solicitation for business or as a reference, without the  
14 prior approval of the City Manager or designee.

15           30. AUDIT. City shall have the right at all reasonable times during the  
16 term of this Agreement and for a period of five (5) years after termination or expiration of  
17 this Agreement to examine, audit, inspect, review, extract information from and copy all  
18 books, records, accounts and other documents of Contractor relating to this Agreement.

19           31. THIRD PARTY BENEFICIARY. This Agreement is not intended or  
20 designed to or entered for the purpose of creating any benefit or right for any person or  
21 entity of any kind that is not a party to this Agreement.

22           32. COMPLIANCE WITH THE CONTRACT WORK HOURS AND  
23 SAFETY STANDARDS ACT.

24           A. Overtime requirements. No Contractor or subcontractor  
25 contracting for any part of the contract work which may require or involve the  
26 employment of laborers or mechanics shall require or permit any such laborer or  
27 mechanic in any workweek in which he or she is employed on such work to work  
28 in excess of forty hours in such workweek unless such laborer or mechanic

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receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

B. Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (A) of this Section the Contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such Contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (A) of this Section, in the sum of \$26 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (A) of this Section.

C. Withholding for unpaid wages and liquidated damages. The City shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the Contractor or subcontractor under any such contract or any other Federal contract with the same prime Contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime Contractor, such sums as may be determined to be necessary to satisfy any liabilities of such Contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (B) of this Section.

D. Subcontracts. The Contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (A) through (C) of this Section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime Contractor shall be responsible for compliance



1 by any subcontractor or lower tier subcontractor with the clauses set forth in  
2 paragraphs (A) through (C) of this Section.

3 33. CLEAN AIR ACT.

4 A. The Contractor agrees to comply with all applicable  
5 standards, orders or regulations issued pursuant to the Clean Air Act, as  
6 amended, 42 U.S.C. § 7401 et seq.

7 B. The Contractor agrees to report each violation to the (name of  
8 applicant entering into the contract) and understands and agrees that the (name of  
9 the applicant entering into the contract) will, in turn, report each violation as  
10 required to assure notification to the Federal Emergency Management Agency,  
11 and the appropriate Environmental Protection Agency Regional Office.

12 C. The Contractor agrees to include these requirements in each  
13 subcontract exceeding \$150,000 financed in whole or in part with Federal  
14 assistance provided by FEMA.

15 34. FEDERAL WATER POLLUTION CONTROL ACT.

16 A. The Contractor agrees to comply with all applicable  
17 standards, orders, or regulations issued pursuant to the Federal Water Pollution  
18 Control Act, as amended, 33 U.S.C. 1251 et seq.

19 B. The Contractor agrees to report each violation to the (name of  
20 the applicant entering into the contract) and understands and agrees that the  
21 (name of the applicant entering into the contract) will, in turn, report each violation  
22 as required to assure notification to the Federal Emergency Management Agency,  
23 and the appropriate Environmental Protection Agency Regional Office.

24 C. The Contractor agrees to include these requirements in each  
25 subcontract exceeding \$150,000 financed in whole or in part with Federal  
26 assistance provided by FEMA.

27 35. SUSPENSION AND DEBARMENT.

28 A. This contract is a covered transaction for purposes of 2 C.F.R.

1 pt. 180 and 2 C.F.R. pt. 3000. As such, the Contractor is required to verify that  
2 none of the Contractor's principals (defined at 2 C.F.R. § 180.995) or its affiliates  
3 (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or  
4 disqualified (defined at 2 C.F.R. § 180.935).

5 B. The Contractor must comply with 2 C.F.R. pt. 180, subpart C  
6 and 2 C.F.R. pt. 3000, subpart C, and must include a requirement to comply with  
7 these regulations in any lower tier covered transaction it enters into.

8 C. This certification is a material representation of fact relied  
9 upon by (insert name of recipient/subrecipient/applicant). If it is later determined  
10 that the Contractor did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R.  
11 pt. 3000, subpart C, in addition to remedies available to (insert name of  
12 recipient/subrecipient/applicant), the Federal Government may pursue available  
13 remedies, including but not limited to suspension and/or debarment.

14 D. The bidder or proposer agrees to comply with the  
15 requirements of 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C while  
16 this offer is valid and throughout the period of any contract that may arise from this  
17 offer. The bidder or proposer further agrees to include a provision requiring such  
18 compliance in its lower tier covered transactions.

19 36. BYRD ANTI-LOBBYING AMENDMENT, 31 U.S.C. § 1352 (as  
20 amended).

21 A. Contractors who apply or bid for an award of \$100,000 or  
22 more shall file the required certification. Each tier certifies to the tier above that it  
23 will not and has not used Federal appropriated funds to pay any person or  
24 organization for influencing or attempting to influence an officer or employee of  
25 any agency, a Member of Congress, officer or employee of Congress, or an  
26 employee of a Member of Congress in connection with obtaining any Federal  
27 contract, grant, or any other award covered by 31 U.S.C. § 1352. Each tier shall  
28 also disclose any lobbying with non-Federal funds that takes place in connection

1 with obtaining any Federal award. Such disclosures are forwarded from tier to tier  
2 up to the recipient who in turn will forward the certification(s) to the awarding  
3 agency.

4 B. If applicable, contractors must sign and submit to the non-  
5 federal entity the following certification.

6 37. PROCUREMENT OF RECOVERED MATERIALS.

7 A. In the performance of this contract, the Contractor shall make  
8 maximum use of products containing recovered materials that are EPA-designated  
9 items unless the product cannot be acquired:

10 i. Competitively within a timeframe providing for  
11 compliance with the contract performance schedule;

12 ii. Meeting contract performance requirements; or

13 iii. At a reasonable price.

14 B. Information about this requirement, along with the list of EPA  
15 designated items, is available at EPA's Comprehensive Procurement Guidelines  
16 web site, [https://www.epa.gov/smm/comprehensiveprocurement-guideline-cpg-](https://www.epa.gov/smm/comprehensiveprocurement-guideline-cpg-program)  
17 [program](https://www.epa.gov/smm/comprehensiveprocurement-guideline-cpg-program).

18 C. The Contractor also agrees to comply with all other applicable  
19 requirements of Section 6002 of the Solid Waste Disposal Act.

20 38. ACCESS TO RECORDS

21 A. Contractor agrees to provide Agency, any state agency  
22 involved in funding the Work, the FEMA Administrator, the Comptroller General of  
23 the United States, or any of their authorized representative's submission of any  
24 books, documents, papers, and records of the Contractor which are directly  
25 pertinent to this contract for the purposes of making audits, examinations,  
26 excerpts, and transcriptions.

27 B. Contractor agrees to permit any of the foregoing parties to  
28 reproduce by any means whatsoever or to copy excerpts and transcriptions as

OFFICE OF THE CITY ATTORNEY  
CHARLES PARKIN, City Attorney  
411 West Ocean Boulevard, 9th Floor  
Long Beach, CA 90802

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reasonably needed.

C. Contractor agrees to provide the FEMA Administrator or his authorized representative's access to construction or other work sites pertaining to the work being completed under the contract.

39. This contract/purchase order is deemed to include any other clause, term, condition and obligation set forth in 2 CFR 200.326 and Appendix II, but only to the extent necessary to qualify this contract/purchase order for reimbursement of costs.

IN WITNESS WHEREOF, the parties have caused this document to be duly executed with all formalities required by law as of the date first stated above.

DJC FOODS INC. DBA STARLING DINER,  
a California corporation

August 31, 2020

By Peter Basly  
Name Peter Basly  
Title manager

\_\_\_\_\_, 2020

By \_\_\_\_\_  
Name \_\_\_\_\_  
Title \_\_\_\_\_

"Contractor"

CITY OF LONG BEACH, a municipal  
corporation

September 8, 2020

By Linda J. Saturn  
City Manager

"City"

EXECUTED PURSUANT  
TO SECTION 301. OF  
THE CITY CHARTER.

This Agreement is approved as to form on Sept. 1, 2020.

CHARLES PARKIN, City Attorney

By Andy J. Anderson  
Deputy

# EXHIBIT "A"

Rates/Charges



City of Long Beach  
 Purchasing Division  
 411 West Ocean Boulevard, 6<sup>th</sup> Floor  
 Long Beach, CA 90802

Attachment B

**RFP CM20-058 Great Plates Delivered: Senior Meal Program**

**PROPOSAL RESPONSE FORM**

**Instructions:**

Please complete the following information in the Proposal Response Form (Form) if your restaurant is interested in preparing meals for eligible seniors. Once complete, upload it to the City's secure online bidding system, Planet Bids, with your response to this RFP. There are two parts of the proposal, (1) **Attachment B: Proposal Response Form** and (2) completed and/or signed Attachments, including **Attachment E, F, G and H**. All 5 of these documents must be complete and uploaded to Planet Bids in order for your proposal to be complete.

**Background:**

The Great Plates Delivered Senior Meal Program (Program) is a temporary emergency home-delivery meal program created in response to COVID-19. All restaurants are required to produce meals that meet Los Angeles County Department of Public Health senior nutritional guidelines, can be transported easily and safely via vehicle, and can be stored in the senior's refrigerator or freezer for a few days and reheated or eaten at room temperature. Your restaurant will need to meet all of these criteria and others as outlined below to be considered.

RESTAURANT INFORMATION	
Name of Restaurant:	Starling Diner
Type of Restaurant:	<input type="checkbox"/> Fast Casual <input checked="" type="checkbox"/> Full Service <input type="checkbox"/> Fine Dining <input type="checkbox"/> Quick Service <input type="checkbox"/> Other
Address:	4114 E 3rd Street Long Beach, CA, 90814



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Long Beach, CA 90802

Phone:	562 433 2041
General Email:	manager@starling-diner.com
Website:	www.starling-diner.com
Instagram:	starlingdiner
Facebook:	Starling Diner

<b>Main Restaurant Contact: (Full Name)</b>	Peter Basily
<b>Main Contact Phone:</b>	951-525-7024
<b>Main Contact Email:</b>	PeterWbasily@gmail.com
<b>ELIGIBILITY REQUIREMENTS</b>	
Is your restaurant located in the City of Long Beach?	<input checked="" type="checkbox"/> YES <input type="checkbox"/> NO
Does your restaurant prioritize local jobs and worker retention?	<input checked="" type="checkbox"/> YES <input type="checkbox"/> NO
Does your restaurant provide worker health and safety, and standards of equity and fairness in employment practices, wages, hiring, and promotion?	<input checked="" type="checkbox"/> YES <input type="checkbox"/> NO
Are you currently providing meals for any State or Federal Government meal service programs?	<input type="checkbox"/> YES <input checked="" type="checkbox"/> NO
Are you able to provide meals for the duration of the program, through June 10, 2020? NOTE: This timeframe may be extended.	<input checked="" type="checkbox"/> YES <input type="checkbox"/> NO



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<p>Are you able to follow the Los Angeles Department of Public Health nutrition guidelines for seniors as outlined <u>here</u>? NOTE: These guidelines will be sent to you in advance of starting meal service.</p>	<p><input checked="" type="checkbox"/> YES <input type="checkbox"/> NO</p> <p><b>Breakfast:</b> low in sodium, no sugary drinks (&lt;24 grams / 8 oz. and of fruit juice, must be only 100 percent fruit juice allowed); and</p> <p><input checked="" type="checkbox"/> YES <input type="checkbox"/> NO</p> <p><b>Lunch and Dinner:</b> a piece of fresh fruit or vegetable on each dish, and low in sodium, no sugary drinks (&lt;24 grams / 8 oz. and of fruit juice, must be only 100 percent fruit juice allowed).</p>
<p>Are you able to source food supplies locally?</p>	<p><input checked="" type="checkbox"/> YES <input type="checkbox"/> NO</p>
<p>Are you able to provide meals that can be frozen and reheated?</p>	<p><input checked="" type="checkbox"/> YES <input type="checkbox"/> NO</p>
<p>Are you able to follow guidelines for packaging, bundling, and labeling meals so that they remain at food-safe temperatures during delivery? NOTE: These guidelines are available at <u>FDA Best Practices</u> (Exhibit A) and a copy will be sent to you again in advance to starting meal services.</p>	<p><input checked="" type="checkbox"/> YES <input type="checkbox"/> NO</p>





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<p>Do you certify that all of your workers are following local, state, and federal government guidelines for safe food handling, preparation, and packaging during COVID-19? NOTE: These guidelines are available at <u>FDA Best Practices</u> (Exabits A, B and D).</p>	<p><input checked="" type="checkbox"/> YES  <input type="checkbox"/> NO</p>
<p>Do you certify that you are following government guidelines for reducing the risk of your employees contracting COVID-19 in the workplace? NOTE: These guidelines are available at <u>OSHA Guideline</u> (Exabit C).</p>	<p><input checked="" type="checkbox"/> YES  <input type="checkbox"/> NO</p>
<p>Do you certify that all workers are following government guidelines for safe food handling preparations during COVID-19, and certify that health protection guidelines per the executive order, including providing facial coverings to your workers? NOTE: <u>The City Long Beach Safer at Home Order</u> (Exabit D) executive order.</p>	<p><input checked="" type="checkbox"/> YES  <input type="checkbox"/> NO</p>
<p><b>CAPACITY</b></p>	
<p>What meals are you able to provide?        Please check all that apply:</p>	<p><input checked="" type="checkbox"/> Breakfast  <input type="checkbox"/> Lunch  <input type="checkbox"/> Dinner</p>
<p>How many meals are you able to provide per week? Please check all that apply.</p>	<p><input type="checkbox"/> 200- 499  <input checked="" type="checkbox"/> 500 - 999  <input type="checkbox"/> 1,000 - 1,999  <input type="checkbox"/> 2,000 - 2,999  <input type="checkbox"/> 3,000 - 3,999  <input type="checkbox"/> 4,000 or more</p>
<p>How soon can you start making meals, once notified?</p>	<p><input checked="" type="checkbox"/> 24-48 hours  <input type="checkbox"/> 48-72 hours</p>



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Long Beach, CA 90802

	<input type="checkbox"/> Other, Please specify (number in hours)
<b>ABOUT THE MEALS &amp; DELIVERY</b>	
Are you able to provide the following types of meals: Check all that apply.	<input checked="" type="checkbox"/> No Dietary Restrictions (All Meals Are Low Sodium) <input checked="" type="checkbox"/> Diabetic <input checked="" type="checkbox"/> Vegetarian <input type="checkbox"/> Vegan <input type="checkbox"/> Kosher <input checked="" type="checkbox"/> Halal <input checked="" type="checkbox"/> Nut Allergy <input checked="" type="checkbox"/> Gluten Allergy <input type="checkbox"/> Other Special Dietary Restrictions
Are you able to provide an example of a menu?	<input checked="" type="checkbox"/> YES <input type="checkbox"/> NO
Are you able to do meal delivery directly to seniors' homes?	<input type="checkbox"/> YES <input checked="" type="checkbox"/> NO
Is your staff able to transfer packaged foods from your restaurant into a vehicle for delivery?	<input checked="" type="checkbox"/> YES <input type="checkbox"/> NO
What days of the week can meals be picked up (delivered) from your restaurant?	<input checked="" type="checkbox"/> Monday <input checked="" type="checkbox"/> Tuesday <input checked="" type="checkbox"/> Wednesday <input checked="" type="checkbox"/> Thursday <input checked="" type="checkbox"/> Friday <input checked="" type="checkbox"/> Saturday <input checked="" type="checkbox"/> Sunday



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What time (in military time) windows can meals be picked up (delivered from your restaurant)? Please check all that apply.	<input checked="" type="checkbox"/> 07:00 - 09:00 <input checked="" type="checkbox"/> 09:00 - 11:00 <input type="checkbox"/> 11:00 - 13:00 <input type="checkbox"/> 13:00 - 15:00 <input type="checkbox"/> 15:00 - 17:00 <input type="checkbox"/> 17:00 - 19:00
<b>ADDITIONAL QUESTIONS</b>	
By supporting our Program during the COVID-19 crisis, how many people will you be employing specifically to support the Program?	<input type="checkbox"/> 1-5 <input type="checkbox"/> 5-10 <input checked="" type="checkbox"/> 10-20 <input type="checkbox"/> 20-30 <input type="checkbox"/> 30+
Are you both a business owner and resident of the City of Long Beach?	<input checked="" type="checkbox"/> YES <input type="checkbox"/> NO
How has your restaurant been impacted due to COVID-19?	Yes.
How will this program help your restaurant?	it will increase our Revenue. as our Revenue decrease by 80% help keep the payroll and vendors paid.



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COST	
Cost per meal, averaged across the length of the program regardless of the meal selection.	Breakfast: <u>\$ 10.00</u>
	Lunch: _____
	Dinner: _____
	Extra Options: _____

**BUSINESS BACKGROUND/REFERENCES**

1. Provide a general statement of your business's background, history and why your restaurant is qualified to provide the services described in this RFP. Provide answer below and attach any additional documents as necessary or desired.

We are small, family owned business. Famous for our signature Breakfast plates, the quality of the meals is our priority, that's why we are featured in Diner, Drive-ins and Disheshow.

2. Describe any company hardships experienced due to COVID-19.

We are having hardships that being represented by decrease in our monthly revenue by 80% hardship paying the rent.

3. Length of time Contractor has been providing food services, please provide a brief description.

I owned and operating the Business since 2018



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4. Provide up to two (2) references from previous customers.
  - a. If your restaurant has experience with similar food service requests within the last three years, provide two additional references and include:
    - i. Client name
    - ii. Food service description
    - iii. Dates of food service (starting and ending)

**CERTIFICATION OF COMPLIANCE WITH TERMS AND CONDITIONS OF RFP**

I have read, understand and agree to comply with the terms and conditions specified in this Request for Proposal.

SIGNATURE Peter Basily

**STATEMENT OF NON-COLLUSION**

The proposal is submitted as a firm and fixed request valid and open for 90 days from the submission deadline.

This proposal is genuine, and not sham or collusive, nor made in the interest or in behalf of any person not herein named; the proposer has not directly or indirectly induced or solicited any other proposer to put in a sham proposal and the proposer has not in any manner sought by collusion to secure for himself or herself an advantage over any other proposer.

In addition, this organization and its members are not now and will not in the future be engaged in any activity resulting in a conflict of interest, real or apparent, in the selection, award, or administration of a subcontract.

Peter Basily 5-20-2020  
 Authorized signature and date

Peter Basily - manager/director  
 Print Name & Title

# EXHIBIT “B”

City’s Representative:

Alma Castro

[alma.castro@longbeach.gov](mailto:alma.castro@longbeach.gov)

(562) 570-5583

# EXHIBIT “C”

Additional Materials/Information Furnished:

NONE

# EXHIBIT “D”

Contractor’s Key Employee:

Peter Basily

951-525-7024

[peterwbasily@gmail.com](mailto:peterwbasily@gmail.com)