

LBUSD No. FS 2007/08
AUTHORIZED
BY
BOARD ACTION
Date 5/1/07 By g8

AGREEMENT

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THIS AGREEMENT is made and entered as of April 3, 2007 for reference purposes only, pursuant to a minute order of the City Council of the City of Long Beach adopted in its meeting held on April 3, 2007, and in a minute order of the Board of Education of the Long Beach Unified School District of Los Angeles County adopted in its meeting held on 5-1-07, 2007, by and between the CITY OF LONG BEACH, a municipal corporation ("Sponsor"), and the LONG BEACH UNIFIED SCHOOL DISTRICT OF LOS ANGELES COUNTY, a public school system created and authorized by the California Constitution and City Charter ("Vendor").

WHEREAS, the California Department of Education ("CDE") has made available funds for a 2007 Summer Food Service Program for Children ("Program") to provide meals at no cost to eligible children; and

WHEREAS, Sponsor anticipates entering an agreement with the CDE to provide for the administration of the Program; and

WHEREAS, it has been determined that the Program will be conducted at various locations throughout the City of Long Beach; and

WHEREAS, Sponsor desires to enter an agreement with Vendor for the preparation of meals pursuant to and in implementation of the Program; and

WHEREAS, Vendor has a food service facility possessing the skills, personnel and equipment necessary for the preparation of such meals;

NOW, THEREFORE, in consideration of the mutual terms and conditions herein, the parties agree as follows:

1. **VENDOR PREPARATION.** Vendor shall prepare and place in containers provided by Sponsor such meals described hereinafter as Sponsor may order from Vendor in the manner hereinafter specified for the 2007 Summer Food Service Program for Children. Vendor warrants that all meals prepared by it will be wholesome, suitable for human consumption, and that Vendor shall meet all specifications and

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1 obligations under the existing regulations of the CDE, or as amended, as are pertinent or
2 applicable to the 2007 Summer Food Service Program for Children of the National School
3 Lunch Act (hereinafter "Regulations").

4 2. **FEE.** In consideration of the satisfactory performance of Vendor's
5 obligations pursuant to this Agreement, Sponsor shall pay to Vendor the sum of \$2.23 for
6 each lunch actually prepared for service at locations within the City of Long Beach. The
7 quantity shall not exceed 10,000 such meals daily, except as may be mutually agreed by
8 Sponsor and Vendor. The quantity shall be no less than seventy (70) lunches daily, except
9 as may be mutually agreed by Sponsor and Vendor. Sponsor's ordering of a quantity in
10 excess of these amounts and Vendor's delivery of such quantity shall constitute such
11 mutual agreement. In no event shall Sponsor be held liable or be required to pay for any
12 meals which fail to meet the requirements of the Regulations, including those pertaining
13 to CDE nutritional requirements, such as meals of poor quality, unwholesome or spoiled
14 meals or portions thereof, of damaged meals, or meals which otherwise fail to meet the
15 requirements set forth in this Agreement.

16 3. **PAYMENT.** Sponsor shall pay Vendor for meals provided under this
17 Agreement within thirty (30) days after receipt of an invoice from Sponsor. It is understood
18 that the CDE assumes no liability for payment of differences between the number of meals
19 delivered and prepared by Vendor and the number of meals served by the Sponsor that
20 are eligible for reimbursement.

21 4. **SITES.** Sponsor shall provide to Vendor a list of State agency
22 approved food service sites, along with the approved level for the number of meals which
23 may be claimed for reimbursement for each site and shall inform Vendor of all sites which
24 have been approved, cancelled, or terminated subsequent to the submission of the initial
25 approved site list and of any changes to the approved level of meal service for a site, within
26 twenty-four (24) hours after these site changes.

27 5. **ORDERING.** Sponsor shall order from Vendor, on a daily basis, the
28 number of meals needed, three (3) days in advance of service at locations within the City

1 of Long Beach. Each daily order may be increased or decreased by Sponsor, but only if
2 Sponsor informs Vendor no later than 1:00 p.m. on the day prior to the day on which a
3 decrease or an increase is to take effect.

4 6. DELIVERY. Vendor shall deliver meals to the locations identified on
5 Exhibit "A" to this Agreement, which is incorporated by reference, on the day of the actual
6 service of such meals or, at the option of the participating organization whose site offers
7 these meals, the organization may pick up the meals from Vendor if the organization
8 makes its own arrangements with Vendor to do so. Sponsor shall not be liable in any way
9 to any organization with respect to such arrangements. Sponsor shall provide a minimum
10 of one food handler to receive meals at designated locations. Sponsor will provide
11 additional food handlers, if needed, as determined by Sponsor. Vendor shall deliver
12 lunches no earlier than one (1) hour before the meal service and time designated by the
13 Sponsor and no later than the scheduled beginning of the meal service. Any requests by
14 Sponsor for delivery of lunches at other than these times must be made a minimum of one
15 (1) day in advance and the meals must be picked up by Sponsor or the participating
16 organization at Vendor's dock.

17 7. PREPARATION OF MEALS. All meals prepared by Vendor pursuant
18 to this Agreement shall conform to the Regulations. Vendor shall provide different daily
19 menus to prevent monotony in the meals.

20 A. Lunches. All lunches shall meet the requirements of the CDE
21 reimbursable lunch, described generally as follows:

22 1. Eight (8) ounces of fluid milk.

23 2. Two (2) ounces (edible portion as served) of meat or meat alternate
24 (fish, cheese, one [1] egg, one-half [½] cup cooked dry beans or peas,
25 four [4] tablespoons of peanut butter), or an equivalent combination of these
26 foods.

27 3. Three-fourths (¾) cup of two (2) or more fruits and/or vegetables.

28 A serving of full strength fruit juice may be counted to meet not more than

1 three-eighths (3/8) cup of this requirement.

2 4. One (1) slice of bread or equivalent made of whole grain or
3 enriched flour or meal.

4 B. Packaging.

5 1. Meals shall be packaged in bulk. Sponsor shall insure that all
6 components are served.

7 2. Each unit shall be capable of holding meals at a temperature
8 of 32°F minimum, not to exceed 45°F maximum, for a period of three (3)
9 hours.

10 3. All sandwiches shall be individually wrapped and sealed.

11 4. An eight (8) ounce carton of fluid milk shall be supplied with each
12 meal.

13 8. MENU CYCLE. Vendor shall provide lunches in accordance with the
14 menu cycle mutually agreed upon in writing which may be repeated for the duration of the
15 Program.

16 9. FOOD ANALYSIS. At the discretion of Vendor, and at its own
17 expense, Vendor shall send a random sampling of meals to a recognized laboratory for
18 analysis of portions, bacteria, coliform and plate counts.

19 10. HEALTH REGULATIONS. Vendor shall adhere to all applicable health
20 regulations at all times. Sponsor, State, and Federal program authorities shall have the
21 right to inspect Vendor's premises and request formal inspection by health officials, if
22 deemed necessary. Failure to comply with applicable health requirements shall result in
23 the immediate termination of this Agreement.

24 11. PERMITS. Vendor shall obtain and maintain food handler's permits
25 in accordance with applicable requirements. Vendor shall ensure that its employees
26 observe sanitary food handling practices. Sponsor shall ensure that its employees and
27 volunteers observe sanitary food handling practices at serving sites. A letter notifying the
28 City's Department of Health and Human Services of this operation is on file.

1 12. **HOLDING FACILITIES AND PACKAGING MATERIAL.** Sponsor shall
2 provide satisfactory holding facilities, i.e., heavy styrofoam containers, etc. Packaging
3 material shall be of strength sufficient to prevent crushing of food.

4 13. **QUALITY STANDARD.** Quality standards shall adhere to State and
5 local specifications, and all meat and meat by-products shall come from plants inspected
6 under a federally-approved inspection plant.

7 14. **TRANSPORTING AND FOOD SERVICE EQUIPMENT.** All equipment
8 used to transport the food and all other food service equipment shall be cleaned and
9 sanitized on a daily basis.

10 15. **PACKAGING OF MEALS.** Meals shall be packaged in bulk. Sponsor
11 shall see that all components are served.

12 16. **PREPARATION AND ASSEMBLY OF MEALS.** Vendor shall prepare
13 meals under properly controlled temperatures. Assembly of meals shall include necessary
14 eating utensils, napkins, condiments, etc. Vendor shall hold assembled meals in properly
15 refrigerated or heated areas, as appropriate, that meet sanitation standards. Sponsor shall
16 approve samples of finished meal packages, in accordance with menus provided, and
17 there shall be no deviation from the packaging presented and approved.

18 17. **PRODUCTS.** All products shall be manufactured and assembled in
19 a plant approved and inspected by the CDE, County of Los Angeles, or City of Long Beach
20 Department of Health and Human Services not more than twenty-four (24) hours prior to
21 delivery. Vendor shall furnish at its cost, upon request, a microbial analysis, a chemical
22 analysis, and a flavor analysis.

23 18. **DONATED FOODS.** Foods donated by the CDE shall be utilized as
24 practicable in the Program and in accordance with availability from the State.

25 19. **ASSIGNMENT OF DONATED FOOD.** Donated food received from
26 the CDE will be directed to Vendor and freight and handling costs will be billed to and paid
27 by Vendor.

28 20. **COMPLETE MEALS.** Vendor shall deliver complete meals only. If

1 any portion of a meal is undeliverable, unacceptable or missing, Sponsor shall disallow
2 payment for total meal unless needed items are delivered five (5) minutes prior to end of
3 serving time.

4 Sponsor will instruct sites to make every effort to contact the sponsor when
5 meal components are not complete or unacceptable. Sponsor will contact Vendor for
6 replacement. In addition, Sponsor understands that the Vendor can provide additional
7 meals when there is an unexpected increase in participation.

8 21. VERIFICATION. Sponsor shall verify the number of boxes as well as
9 the number of meals in each box, prior to meal services.

10 22. RECORDS. In addition to any other records, books, statements or
11 invoices required to be kept by Vendor pursuant to this Agreement, Vendor shall maintain
12 such records (supported by invoices, receipts, or other documenting evidence) as Sponsor
13 needs to meet its responsibilities for the Program. Vendor shall report such information to
14 Sponsor within ten (10) days after the end of each month.

15 Vendor shall keep full and accurate records in connection with the meals
16 covered by this Agreement. All such records shall be kept on file for three (3) years and
17 three (3) months after the end of the federal fiscal year to which they pertain, or any other
18 period which the U.S. Secretary of Agriculture may from time to time designate. Sponsor
19 or the auditors of the CDE, upon request, shall have access to all such records for audit
20 and review at a reasonable time and place. Sponsor's authorized representatives and the
21 representatives of the CDE shall have the right to conduct on-site review of the food
22 service operation.

23 23. TERM. The term of this Agreement shall commence at 12:01 a.m. on
24 June 18, 2007, and shall terminate at midnight on August 17, 2007 provided, however, that
25 either Sponsor or Vendor may terminate this Agreement by giving to the other party at least
26 seventy-two (72) hours prior notice. Meals shall be served Monday through Friday.

27 24. CONTINGENT ON STATE/FEDERAL AGREEMENTS. Sponsor and
28 Vendor understand and agree that this Agreement is contingent upon the execution of

1 underlying agreements with the United States, or agencies thereof. Consequently, neither
2 Sponsor nor Vendor shall have any obligation to perform, and this Agreement shall be of
3 no force and effect, until such time as such underlying agreements have been duly
4 executed. Upon demand, Sponsor shall supply Vendor with copies thereof.

5 25. HOLD HARMLESS. Vendor shall defend, indemnify and hold
6 harmless Sponsor, its agents, employees and officials against any and all claims,
7 demands, damages, losses, causes of action, liabilities, costs, suits, or expenses (including
8 reasonable attorney's fees) arising out of any act or omission of any officer, agent or
9 employee of Vendor, or resulting from the condition of any property owned or controlled
10 by Vendor. Sponsor shall defend, indemnify and hold harmless Vendor, its agents,
11 employees and officers against any and all claims, demands, damages, liabilities, costs,
12 suits or expenses (including reasonable attorney's fees) arising out of any act or omission
13 of any officer or employee of Sponsor or resulting from the condition of any property owned
14 or controlled by Sponsor.

15 26. STATUS OF VENDOR. Neither Vendor nor any of its officers,
16 employees or agents are, nor shall they be deemed for any purpose, employees of
17 Sponsor nor shall they be entitled to any rights, benefits or privileges of Sponsor's
18 employees.

19 27. ASSIGNMENT. This Agreement shall not be assigned without the
20 prior written consent of Sponsor's City Council. Any attempt by Vendor to assign any of
21 its duties, obligations and responsibilities shall be void, and shall render this Agreement
22 void.

23 28. TIME OF ESSENCE. Time is of the essence hereunder.

24 29. NON-PERFORMANCE. If Vendor fails to perform any or all of the
25 tasks required by this Agreement, Sponsor reserves the right to perform such tasks in part
26 or in total. Sponsor may perform such tasks itself or by contracting with another Vendor.
27 If Sponsor performs a part of or the total of the tasks not performed by Vendor in either of
28 the aforementioned manners, Vendor shall be liable to and shall pay Sponsor for all costs

1 incurred in such performance. Sponsor shall not exercise any remedy available upon the
2 occurrence of Vendor's failure to perform until:

3 a. Sponsor gives notice to Vendor specifying any and all items of
4 non-performance to Vendor; and

5 b. Vendor shall have failed to correct the specified items of
6 non-performance within forty-eight (48) hours after receipt of such notice.

7 30. ADMINISTRATION. The City Manager, the Director of Parks,
8 Recreation and Marine, or any other designee of the City Manager is authorized and
9 directed, for and on behalf of the City, to administer this Agreement and all related matters.
10 Any decision of the City Manager or his designee in connection herewith shall be final.

11 31. NOTICES. Unless otherwise required by the context or specific
12 provision of this Agreement, all notices hereunder shall be in writing and personally
13 delivered or deposited in the U.S. Postal Service, first-class, postage prepaid, to Sponsor
14 at 2760 Studebaker Road, Long Beach, California 90815-1697 and to Vendor at 3333 East
15 Airport Way, Long Beach, California 90806 Attn: Cecelia Slater. Notice shall be deemed
16 given on the date deposited in the mail or on the date personal delivery is made, whichever
17 first occurs.

18 32. INSURANCE. As a condition precedent to the effectiveness of this
19 Agreement, Vendor shall procure and maintain at Vendor's expense for the duration of this
20 Agreement from insurance companies that are admitted to write insurance in California or
21 that has a rating of or equivalent to A:VIII by A.M. Best Company the following insurance:

22 (a) Commercial general liability insurance (equivalent in scope to ISO
23 form CG 00 01 11 85 or CG 00 01 10 93) in an amount not less than One
24 Million Dollars (\$1,000,000) per occurrence and One Million Dollars
25 (\$1,000,000) general aggregate. Such coverage shall include but not be
26 limited to broad form contractual liability, cross liability, independent
27 contractors liability, and products and completed operations liability. The
28 City, its officials, employees and agents shall be named as additional

1 insureds by endorsement (on the City's endorsement form or on an
2 endorsement equivalent in scope to ISO form CG 20 26 11 85), and this
3 insurance shall contain no special limitations on the scope of protection given
4 to the City, its officials, employees and agents.

5 (b) Workers' compensation insurance as required by the California
6 Labor Code and employer's liability insurance in an amount not less than
7 One Million Dollars (\$1,000,000) per accident.

8 c) If use of vehicles is necessary in the performance of this
9 agreement, commercial automobile liability insurance (equivalent in scope
10 to ISO form CA 00 01 06 92), covering Auto Symbol 1 (Any Auto), in an
11 amount not less than Five Hundred Thousand Dollars (\$500,000) combined
12 single limit per accident.

13 Any self-insurance program, self-insured retention, or deductible must be
14 separately approved in writing by City's Risk Manager or designee and shall protect the
15 City, its officials, employees and agents in the same manner and to the same extent as
16 they would have been protected had the policy or policies not contained retention or
17 deductible provisions. Each insurance policy shall be endorsed to state that coverage shall
18 not be reduced, non-renewed, or canceled by either party except after thirty (30) days prior
19 written notice to City, and shall be primary and not contributing to any other insurance or
20 self-insurance maintained by City, its officials, employees and agents. Vendor shall notify
21 the City in writing within five (5) days after any insurance required herein has been voided
22 by the insurer or canceled by the insured.

23 Vendor shall require that all contractors and subcontractors which Vendor
24 uses in the performance of services under this Agreement maintain insurance in
25 compliance with this Section unless otherwise agreed in writing by City's Risk Manager or
26 designee.

27 Prior to the start of performance under this Agreement, Vendor shall deliver
28 to City certificates of insurance and required endorsements, including any insurance

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1 required of Vendor's contractors and subcontractors, for approval as to sufficiency and
2 form. The certificates and endorsements shall contain the original signature of a person
3 authorized by that insurer to bind coverage on its behalf. In addition, Vendor shall, within
4 thirty (30) days prior to expiration of the insurance required hereunder, furnish to the City
5 certificates of insurance and endorsements evidencing renewal of such insurance. City
6 reserves the right to require complete certified copies of all policies of Vendor or Vendor's
7 contractors or subcontractors, at any time. Vendor shall make available to the City all
8 books, records and other information relating to the insurance coverage required herein
9 during normal business hours.

10 Any modification or waiver of the insurance requirements herein shall only
11 be made with the written approval of the City's Risk Manager or designee. Not more
12 frequently than once a year, the City's Risk Manager or designee may require that Vendor,
13 Vendor's contractors and subcontractors change the amount, scope or types of coverages
14 required herein if, in his or her sole opinion, the amount, scope, or types of coverages
15 herein are not adequate.

16 The procuring or existence of insurance shall not be construed or deemed
17 as a limitation on liability relating to Vendor's performance of services or as full
18 performance of or compliance with the indemnification provisions herein.

19 IN WITNESS WHEREOF, the parties have caused this document to be

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1 executed with all formalities required by law as of the date first stated above.

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LONG BEACH UNIFIED SCHOOL DISTRICT
OF LOS ANGELES COUNTY, a public school
system created and authorized by the California
Constitution and City Charter

By Barrick L. Bartlett
Title: Purchasing & Contracts Director
"Vendor"

CITY OF LONG BEACH, a municipal corporation
By Christine F. Shipley ASSISTANT
EXECUTIVE MANAGER
"Sponsor" TO SECTION 301 OF
THE CITY CHARTER.

This Agreement is approved as to form on May 9, 2007.

ROBERT E. SHANNON, City Attorney
By Dan J. Anderson
Deputy

ATTACHMENT A

2007 SUMMER FOOD SERVICE NONPROFIT PARTICIPANTS

Antioch Missionary Baptist Church of Long Beach
1535 Gundry Ave., Long Beach, CA 90813

Boys & Girls Clubs of Long Beach
Eastman/Fairfield Boys & Girls Club
700 E. Del Amo Blvd., Long Beach, CA 90807

Washington Branch Boys & Girls Club
1450 Cedar Ave., Long Beach, CA 90813

City of Signal Hill
Calbrisas Park
2451 California Ave., Signal Hill, CA 90755

Discovery Well Park
2200 Temple Ave., Signal Hill, CA 90755

Signal Hill Park
1780 E. Hill St., Signal Hill, CA 90755

First Congregational Church of Long Beach
241 Cedar Ave., Long Beach, CA 90802

**Housing Authority County of Los Angeles / Carmelitos Housing
Development**
851 Via Carmelitos, Long Beach, CA 90805

Long Beach Community Services Development Corporation
780 Atlantic Ave., Long Beach, CA 90813

Open Door Enrichment Center*
132 E. Artesia Blvd., Long Beach, CA 90805

*denotes new site for the 2007 Program