

AGREEMENT

35972

THIS AGREEMENT is made and entered, in duplicate, as of July 29, 2021, for reference purposes only, pursuant to a minute order adopted by the City Council of the City of Long Beach at its meeting on July 13, 2021, by and between CHOURA VENUE SERVICES dba GRAND FOOD BEVERAGE, THE GRAND, GRAND F&B, a California corporation ("Contractor"), with a place of business at 4101 E Willow St., Long Beach, California 90815, and the CITY OF LONG BEACH, a municipal corporation ("City").

WHEREAS, City requires specialized services requiring unique skills to be performed in connection with providing meal preparation and delivery services to the City's non-congregate shelter sites that have been activated in response to COVID-19 ("Project"); and

WHEREAS, City has selected Contractor in accordance with City's administrative procedures using Request for Proposal No. HE20-086 ("RFP"), attached hereto as Exhibit "A-1", and incorporated by this reference, and City has determined that Contractor and its employees are qualified, licensed, if so required, and experienced in performing these specialized services; and

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

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

1. SCOPE OF WORK OR SERVICES.

A. Contractor shall furnish specialized services more particularly described in Exhibit "A-2", attached to this Agreement and incorporated by this reference, in accordance with the standards of the profession, and City shall pay for these services in the manner described below, not to exceed Three Hundred Seventeen Thousand Nine Hundred Ninety-Nine Dollars (\$317,999), at the rates or

1 charges shown in Exhibit "B".

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

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

18 D. By executing this Agreement, Contractor warrants that
19 Contractor (a) has thoroughly investigated and considered the scope of services to
20 be performed, (b) has carefully considered how the services should be performed,
21 and (c) fully understands the facilities, difficulties and restrictions attending
22 performance of the services under this Agreement. If the services involve work upon
23 any site, Contractor warrants that Contractor has or will investigate the site and is
24 or will be fully acquainted with the conditions there existing, prior to commencement
25 of services set forth in this Agreement. Should Contractor discover any latent or
26 unknown conditions that will materially affect the performance of the services set
27 forth in this Agreement, Contractor must immediately inform the City of that fact and
28 may not proceed except at Contractor's risk until written instructions are received

1 from the City.

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

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

11 2. TERM. The term of this Agreement shall commence at midnight on
12 October 1, 2020, and shall terminate at 11:59 p.m. on September 30, 2021, with the option
13 to renew for three (3) additional six month periods at the discretion of the City Manager,
14 unless sooner terminated as provided in this Agreement, or unless the services or the
15 Project is completed sooner.

16 3. COORDINATION AND ORGANIZATION.

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

25 B. The parties acknowledge that a substantial inducement to City
26 for entering this Agreement was and is the reputation and skill of Contractor's key
27 employee, named in Exhibit "E" attached to this Agreement and incorporated by this
28 reference. City shall have the right to approve any person proposed by Contractor

1 to replace that key employee.

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

14 5. INSURANCE.

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

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

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

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

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

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

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

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

1 (5) days after any insurance has been voided by the insurer or cancelled by the
2 insured.

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

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

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

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

28 H. The procuring or existence of insurance shall not be construed

1 or deemed as a limitation on liability relating to Contractor's performance or as full
2 performance of or compliance with the indemnification provisions of this Agreement.

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

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

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

28 9. OWNERSHIP OF DATA. All materials, information and data

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

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

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

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

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

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

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

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

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

22 17. PREVAILING WAGES.

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

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

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

15 19. INDEMNITY.

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

1 "Claim").

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

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

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

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

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

27 22. NONDISCRIMINATION.

28 A. In connection with performance of this Agreement and subject

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

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

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

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

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

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

28 D. Failure to comply with the EBO may be used as evidence

1 against the Consultant in actions taken pursuant to the provisions of Long Beach
2 Municipal Code 2.93 et seq., Contractor Responsibility.

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

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

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

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

28 27. CONTINUATION. Termination or expiration of this Agreement shall

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

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

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

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

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

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OFFICE OF THE CITY ATTORNEY
CHARLES PARKIN, City Attorney
411 West Ocean Boulevard, 9th Floor
Long Beach, CA 90802-4664

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

3 CHOURA VENUE SERVICES dba GRAND
4 FOOD BEVERAGE, THE GRAND, GRAND
5 F&B, a California corporation

6 August 5, 2021

By Daniel D'Sa

Name DANIEL D'SA

Title VICE PRESIDENT

7 August 5, 2021

By Lisa DeLeon

Name Lisa DeLeon

Title Office Manager

10 "Contractor"

11 CITY OF LONG BEACH, a municipal
12 corporation

13 August 10, 2021

By Linda J. Jackson

City Manager

15 "City"

EXECUTED PURSUANT
TO SECTION 301 OF
THE CITY CHARTER

16 This Agreement is approved as to form on August 6, 2021.

17 CHARLES PARKIN, City Attorney

18 By [Signature]
19 Deputy

OFFICE OF THE CITY ATTORNEY
CHARLES PARKIN, City Attorney
411 West Ocean Boulevard, 9th Floor
Long Beach, CA 90802-4664

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

3 CHOURA VENUE SERVICES dba GRAND
4 FOOD BEVERAGE, THE GRAND, GRAND
5 F&B, a California corporation

6 August 5, 2021

By Daniel D'Sa

Name DANIEL D'SA

Title VICE PRESIDENT

7
8 August 5, 2021

By Linda DeLeon

Name Linda DeLeon

Title Office Manager

9
10 "Contractor"

11 CITY OF LONG BEACH, a municipal
12 corporation

13 _____, 2021

By _____

City Manager

14
15 "City"

16 This Agreement is approved as to form on _____, 2021.

17 CHARLES PARKIN, City Attorney

18
19 By _____

Deputy

EXHIBIT “A-1”

Request for Proposal

City of Long Beach
Request For Proposals Number HE20-086
For
Meal Prep and Delivery Service
at Non-Congregate Shelters

Release Date:	09/21/20
Due Date:	09/28/20

City Contact: *Tommy Ryan* *Buyer* *562-570-5664*

See Section 4 for instructions on submitting proposals.

Company Name _____ Contact Person _____

Address _____ City _____ State _____ Zip _____

Telephone (____) _____ Fax (____) _____ Federal Tax ID No. _____

E-mail: _____

Prices contained in this proposal are subject to acceptance within 90 calendar days.

I have read, understand, and agree to all terms and conditions herein. Date _____

Signed _____

Print Name & Title _____

Rev 2016 0919

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ATTACHMENTS

- A CERTIFICATION OF COMPLIANCE WITH TERMS AND CONDITIONS OF RFP
- B PRO-FORMA AGREEMENT
- C STATEMENT OF NON-COLLUSION
- D DEBARMENT, SUSPENSION, INELIGIBILITY CERTIFICATION
- E W-9 REQUEST FOR TAXPAYER IDENTIFICATION NUMBER AND CERTIFICATION
- F SECRETARY OF STATE REGISTRATION PRINTOUT
- G EQUAL BENEFITS ORDINANCE (EBO)
- H INSURANCE REQUIREMENTS
- I FEDERAL FUNDING ADDITIONAL TERMS AND CONDITIONS

1. OVERVIEW OF PROJECT

The City of Long Beach (City), Department of Health and Human Services (DHHS or Health Department), is seeking a catering service vendor to prepare and deliver meals for clients at the City's temporary non-congregate shelters for people experiencing homelessness, created in response to the COVID-19 Pandemic. The selected vendor would deliver three (3) individually packaged meals per day for approximately 55 individuals, 7 days a week. The vendor would be expected to deliver to two motel locations, one for individuals negative for COVID-19 (but at high risk of contracting COVID-19) and one for individuals who have tested positive or pending results for COVID-19 and requiring isolation and quarantine accommodations.

The vendor would need to be able to provide a variety of nutritious meal options that can accommodate various dietary restrictions between these two sites while adhering to social distancing guidelines set forth by the Centers for Diseases Control and Prevention (CDC) and the City's Health Department. See Section 3 for more specifications about the scope of work.

2. ACRONYMS/DEFINITIONS

For purposes of this RFP, the following acronyms/definitions will be used:

Awarded Contractor	The organization/individual that is awarded and has an approved contract with the City of Long Beach, California for the services identified in this RFP.
City	The City of Long Beach and any department or agency identified herein.
Contractor	Organization/individual submitting a proposal in response to this RFP.
Department / Division	City of Long Beach, Department of Health and Human Services: <ul style="list-style-type: none">• Bureau of Human Services, Homeless Services Division.
Evaluation Committee	An independent committee comprised solely of representatives of the City established to review proposals submitted in response to the RFP, score the proposals, and select a Contractor.
May	Indicates something that is not mandatory but permissible.
PEH	People Experiencing Homelessness
RFP	Request for Proposals.
Shall / Must	Indicates a mandatory requirement. Failure to meet a mandatory requirement may result in the rejection of a proposal as non-responsive.

- Should** Indicates something that is recommended, but not mandatory. If the Contractor fails to provide recommended information, the City may, at its sole option, ask the Contractor to provide the information or evaluate the proposal without the information.
- Subcontractor** Third party not directly employed by the Contractor who will provide services identified in this RFP.

3. **SCOPE OF PROJECT**

The City is soliciting proposals for a catering service vendor(s) to prepare and deliver meals to the City's non-congregate shelter sites that have been activated in response to COVID-19. The selected vendor(s) would deliver three (3) individually packaged meals per day/per client for approximately 40-55 individuals, 7 days a week to two shelter sites. Expected duration of service would be from approximately October 1, 2020 – March 31, 2021, but future opportunities for contract renewal may arise.

DHHS currently operates two non-congregate shelters models which provide emergency housing for individuals experiencing homelessness:

- **Non-Congregate Shelter Site:** This site provides private rooms for people experiencing homelessness who are most at-risk of contracting COVID-19 to safely shelter in place and prevent their exposure to COVID-19. Clients at this location include individuals 65 years of age or older and/or have certain underlying health conditions such as respiratory compromised immunities, chronic disease, etc. This site will typically shelter an average of 45 individuals.
- **Isolation/Quarantine (IQ) Site:** This site provides private rooms for adults who have tested positive for COVID-19, have either been directly exposed and/or showing symptoms and are pending test results but do not require hospitalization. This provides accommodations for residents to safely isolate while recovering. This site will typically shelter 5-10 individuals.

Responders may propose for only one or both sites. The City prefers to award to a single contractor, but reserves the right to award contracts to multiple vendors at its discretion.

Service Expectations

Awarded vendor(s) shall be able to meet volume, varied daily occupancy and nutritional standards; source local produce/meats (if applicable); meet cultural needs; and prioritize local jobs, worker retention, worker health and safety, and standards of equity of fairness in employment practices, wages, hiring, and promotion. The awarded vendor(s) should be able to accommodate the following requirements:

- Provide timely delivery of all meals to the two specified shelter locations.
- Provide individually wrapped meals and utensils that can be easily distributed to each client's room by shelter staff.
- Provide meals that are delivered hot, can be eaten at room temperature, or can be reheated in a microwave oven.
- Provide meal plan/menu that meets DHHS's nutritional guidelines that will be communicated to the selected vendor in advance of starting meal service. Reference USDA guidelines at https://www.dietaryguidelines.gov/sites/default/files/2019-05/2015-2020_Dietary_Guidelines.pdf.
- Provide meal plan/menu that can accommodate various dietary restrictions including requests for soft food, low sodium, dairy-free, vegetarian diets, allergies, gluten-free, etc.

- Provide adequate food portions for the average adult dietary intake. Reference page 77 of USDA guidelines at [https://www.dietaryguidelines.gov/sites/default/files/2019-05/2015-2020 Dietary Guidelines.pdf](https://www.dietaryguidelines.gov/sites/default/files/2019-05/2015-2020_Dietary_Guidelines.pdf).
- Ability to modify number of meals within 24 hours of being notified to accommodate fluctuating number of clients and client needs.
- Ability to set and adjust the meal plan/menu at least once every two weeks to refresh and diversify meal options for site participants.

Final meal plan/menu is subject to approval by the City. Additionally, the selected vendor(s) shall properly label meals so that they remain at food-safe temperatures during delivery. Vendor(s) shall also certify that all workers are following government guidelines for safe food handling preparation and packaging during COVID-19 and certify that health protection guidelines per the executive order are being followed, including providing facial coverings to workers.

The vendor(s) will only be responsible for dropping off meals to appropriate City staff at designated spots and should not have interactions with site participants. Monthly reporting requirements may include the following: number of meals provided, dates, deployed, and average cost per meal.

Service Period

The effective service period will be for approximately six (6) months beginning in October 2020. There may be potential to renew for additional months.

Meals must be delivered to both sites seven (7) days a week within the following time period:

- Breakfast – 7:00 AM to 7:30 AM
- Lunch – 11:00 AM to 11:30 AM
- Dinner – 4:00 PM to 4:30 PM

Social Distancing

DHHS takes infection control very seriously and the safety of City staff and participants is the highest priority. While present at the shelter sites, all vendor staff will be required to wear proper PPE while maintaining a minimum of 6-feet distance from all other personnel when delivering meals. Please refer to the City's Safer at Home Order for Control of COVID-19 for additional guidance in reducing the spread of COVID-19.

4. SUBMITTAL INSTRUCTIONS

4.1 **For questions regarding this RFP, submit all inquiries via email to rfppurchasing@longbeach.gov.** Responses to the questions will be posted on the City's online bidding platform, PlanetBids. All proposers should check PlanetBids on a regular basis.

4.1.1 The City will not be responsible for or bound by (1) any oral communication or (2) any other information or contact that occurs outside the official

communication process specified herein, unless confirmed in writing by the City Contact.

4.2 RFP Timeline (times indicated are Pacific Time)

<i>TASK</i>	<i>DATE/TIME</i>
Deadline for submission of proposals	09/28/20 by 11:00 AM

NOTE: These dates represent a tentative schedule of events. The City reserves the right to modify these dates at any time, with appropriate notice to prospective Contractors.

4.3 Method of Submission

Electronic proposals shall be submitted via the City's secure online bidding system. All required sections of the proposal must be submitted via the website. Proposer is solely responsible for "on time" submission of their electronic narrative proposal and cost proposal. The Bid Management System will not accept late proposals and no exceptions shall be made. Proposers will receive an e-bid confirmation number with a time stamp from the Bid Management System indicating that their proposal was submitted successfully. The City will only receive those proposals that were transmitted successfully.

RFP cover page shall be signed in ink, scanned and included with narrative proposal in the electronic proposal submission.

Submit proposal online at:

<http://www.planetbids.com/portal/portal.cfm?CompanyID=15810>

- 4.4 **Proposals must be received by 11:00 AM local time, 09/28/20.** Proposals that do not arrive by the specified date and time WILL NOT BE ACCEPTED. Contractors may submit their proposal any time prior to the above stated deadline. The City will not be held responsible for proposal envelopes mishandled because of the envelope not being properly prepared. Facsimile or telephone proposals will NOT be considered unless otherwise authorized; however, proposals may be modified by fax or written notice provided such notice is received prior to the opening of the proposals.

- 4.5 The proposal should be presented in a format that corresponds to and references sections outlined below and should be presented in the same order. Responses to each section and subsection should be labeled so as to indicate which item is being addressed. For ease of evaluation, proposals should be presented in the format described within this RFP.

- 4.6 Proposals are to be prepared in such a way as to provide a straightforward, concise delineation of capabilities to satisfy the requirements of this RFP. Expensive bindings, colored displays, promotional materials, etc., are not necessary or desired. Emphasis should be concentrated on conformance to the RFP instructions, responsiveness to the RFP requirements, and on completeness and clarity of content.
- 4.7 Descriptions on how any and all equipment and/or services will be used to meet the requirements of this RFP shall be given, in detail, along with any additional information documents that are appropriately marked.
- 4.8 The proposal must be signed by the individual(s) legally authorized to bind the Contractor.
- 4.9 If complete responses cannot be provided without referencing supporting documentation, such documentation must be provided with the proposal and specific references made to the tab, page, section and/or paragraph where the supplemental information can be found.
- 4.10 Proposals shall be submitted in two (2) distinct parts - the **narrative/technical proposal** and the **cost proposal**. THE NARRATIVE/TECHNICAL PROPOSAL MUST NOT INCLUDE COST AND PRICING INFORMATION. The narrative/technical proposal will be reviewed first and then the cost proposal. Therefore, each part should be **uploaded separately, but submitted together**.
- 4.11 **A responsive proposal will include the following completed documents:**
- **Narrative/Technical Proposal**
 - **Cost Proposal**
 - **City Required Forms** shall be one separate file and uploaded separately from the technical/narrative and cost proposals on the general attachment tab in PlanetBids:
 - Attachment A – Compliance with the Terms and Conditions of the RFP, signed with any exceptions noted
 - Attachment C – Statement of Non-Collusion, signed and dated
 - Attachment D – Debarment, Suspension, Ineligibility and Voluntary Exclusion Certificate, signed and dated
 - Attachment E – Contractor's W-9
 - Attachment F – Secretary of State Registration. Contractors must be registered with the California Secretary of State prior to contract execution. Submission of Attachment F with the proposal is not mandatory; however, if the Proposer has already filed, it may be uploaded as a general attachment.
 - Attachment G – Completed, signed and dated Equal Benefits Ordinance (EBO) Form.
 - Attachment I – Federal Funding Additional Terms and Conditions, signed and dated.
 - Addenda (if any)

5. PROPOSAL EVALUATION AND AWARD PROCESS

- 5.1 Proposals shall be consistently evaluated based upon the following criteria:
 - 5.1.1 Demonstrated competence;
 - 5.1.2 Experience in performance of comparable engagements;
 - 5.1.3 Expertise and availability of key personnel;
 - 5.1.4 Financial stability;
 - 5.1.5 Conformance with the terms of this RFP; and
 - 5.1.6 Reasonableness of cost.
- 5.2 Proposals shall be kept confidential until a contract is awarded.
- 5.3 The City may also contact the references provided; contact any Contractor to clarify any response; contact any current users of a Contractor's services; solicit information from any available source concerning any aspect of a proposal; and seek and review any other information deemed pertinent to the evaluation process. The City shall not be obligated to accept the lowest priced proposal, but shall make an award in the best interests of the City of Long Beach.
- 5.4 The City reserves the right to request clarification of any proposal term from prospective Contractors.
- 5.5 Selected Contractor(s) will be notified in writing. Any award is contingent upon the successful negotiation of final contract terms. Negotiations shall be confidential and not subject to disclosure to competing Contractors unless and until an agreement is reached. If contract negotiations cannot be concluded successfully, the City reserves the right to negotiate a contract with another Contractor or withdraw the RFP.
- 5.6 Any contract resulting from this RFP shall not be effective unless and until approved by the City Council / City Manager, as applicable.

6. PROTEST PROCEDURES

6.1 Who May Protest

Only a proposer who has actually submitted a proposal is eligible to protest a contract awarded through a Request for Proposals ("RFP"). A proposer may not rely on the protest submitted by another proposer but must pursue its own protest.

6.2 Time for Protest

The City will post a notice of the intent to award a contract before an award is made. The notice will be available to all proposers who submitted a proposal via the City's Electronic bid notification system at:
<http://www.longbeach.gov/finance/businessinfo/purchasing-division/>.

A proposer desiring to submit a protest for a proposal must do so within 24 hours of the electronic notification of intent to award. Proposers are responsible for registering with the City's electronic bid notification system and maintaining an updated profile. The City is not responsible for proposers' failure to obtain notification for any reason,

including but not limited to failure to maintain updated email addresses, failure to open/read electronic messages and failure of their own computer/technology equipment. The City's RFP justification memo will be available for review by protestors once the notification of intent to award has been posted via the City's electronic bid notification system.

6.3 Form of Protest

The protest must be in writing and signed by the individual who signed the proposal or, if the proposer is a corporation, by an officer of the corporation, and addressed to the City Purchasing Agent. Protests may be submitted via email, and must include a valid email address, street address and phone number sufficient to ensure that the City's decision concerning the protest will be received. Protests must set forth a complete and detailed statement of the grounds for the protest and include all relevant information to support the grounds stated, and must refer to specific portions of the RFP and attachments upon which the protest is based. Once the protest is received by the City Purchasing Agent, the City will not accept additional information on the protest unless the City requests it.

6.4 City Response to Protest

The City Purchasing Agent or designee will respond with a decision regarding the protest within two (2) business days of receipt of protest by email or US Mail to the address provided in the protest. This decision shall be final.

6.5 Limitation of Remedy

The procedure and time limits set forth herein are mandatory and are the proposer's sole and exclusive remedy in the event of a protest. The proposer's failure to comply with these procedures shall constitute a waiver of any right to further pursue a protest, including filing a Government Code Claim or initiation of legal proceedings.

7. **PROJECT SPECIFICATIONS**

Not applicable.

8. **WARRANTY/MAINTENANCE AND SERVICE**

Not applicable.

9. **COMPANY BACKGROUND AND REFERENCES**

9.1 Primary Contractor Information

Contractors must provide a company profile. Information provided shall include:

- Company ownership. If incorporated, the state in which the company is incorporated and the date of incorporation. An out-of-state Contractor must

register with the State of California Secretary of State before a contract can be executed (<http://www.sos.ca.gov/business/>).

- Location of the company offices.
- Location of the office servicing any California account(s).
- Number of employees both locally and nationally. Specify the number of full time and part-time employees residing in Long Beach.
- Location(s) from which employees will be assigned.
- Name, address and telephone number of the Contractor's point of contact for a contract resulting from this RFP.
- Company background/history and why Contractor is qualified to provide the services described in this RFP.
- Length of time Contractor has been providing services described in this RFP to the **public and/or private sector**. Please provide a brief description.
- Resumes for key staff to be responsible for performance of any contract resulting from this RFP.

9.2 Business License

The Long Beach Municipal Code (LBMC) requires all businesses operating in the City of Long Beach to pay a business license tax. In some cases, the City may require a regulatory permit and/or evidence of a State or Federal license. Prior to issuing a business license, certain business types will require the business license application and/or business location to be reviewed by the Development Services, Fire, Health, and/or Police Departments.

For more information, go to www.longbeach.gov/finance/business_license.

10. **COST**

Applicants should submit a comprehensive cost proposal outlining all proposed fees and/or markup rates with associated services.

11. **BONDS**

Not applicable.

12. **ADDITIONAL REQUIREMENTS FROM FUNDING SOURCE**

Any Contract arising from this procurement process shall be funded in whole or in part from various granting entities. Pursuant to said grants, the Awarded Consultant is required to comply with (and to incorporate into its agreements with any sub-consultants) the following provisions in the performance of the Contract, as applicable.

12.1 Order of Precedence - In the event of conflicts or discrepancies between these Federal grant funding provisions and any other Contract document, the Federal grant provisions shall take precedence.

12.2 Access to Contractor's Records - The Awarded Contractor shall provide the City, the Office of State and Local Government Coordination and Preparedness, the

Comptroller General of the United States, or any of their authorized representatives, access to any books, documents, papers, and records of the Awarded Contractor which are directly pertinent to the work performed under the Contract for the purposes of making audit, examination, excerpts or transcriptions.

- 12.3 Americans with Disabilities Act- The Awarded Contractor hereby certifies that it will comply, as applicable, with the Americans with Disabilities Act of 1990 ("ADA"), 42 USC §§ 12101 et seq., and its implementing regulations, including Subtitle A, Title II of the ADA. The Awarded Contractor will provide, as applicable, reasonable accommodations to allow qualified individuals with disabilities to have access to and to participate in its programs, services and activities in accordance with the provisions of the ADA. The Awarded Contractor will not discriminate against persons with disabilities nor against persons due to their relationship to or association with a person with a disability. Any contract entered into by the Awarded Contractor (or any subcontract thereof), relating to this Agreement, shall be subject to the provisions of this paragraph.
- 12.4 Compliance with Contract Work Hours and Safety Standard Act – The Awarded Contractor shall comply with the requirements of §§ 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C §§ 327-330) as supplemented by Department of Labor regulations (29 CFR Part 5).
- 12.5 Compliance with Copeland "Anti-Kickback" Act – The Awarded Contractor shall comply with the requirements of the Copeland "Anti-Kickback" Act (18 U.S.C. § 874) as supplemented in the Department of Labor regulations (29 CFR Part 3).
- 12.6 Compliance with Davis-Bacon Act – The Awarded Contractor shall comply with the requirements of the Davis-Bacon ACT (40 U.S.C. §§ 276 to 276-a7) as supplemented by Department of Labor regulations (29 CFR Part 5) where applicable and shall provide the City with all applicable payroll records on a weekly basis.
- 12.7 Copyright - The Awarded Contractor acknowledges the existence of requirements and regulations of the awarding Federal agency relating to copyrights and right in data, including, but not limited to those set forth in 44 CFR Part 13.34 which states: "The Federal awarding agency reserves royalty-free, nonexclusive, and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use, for Federal Government purposes: (a) The copyright in any work developed under a grant, subgrant, or contract under a grant or subgrant; and (b) Any rights of copyright to which a grantee, subgrantee or a contractor purchases ownership with grant support." The Awarded Contractor shall comply with 25 CFR 85.34.
- 12.8 Drug-Free Workplace - The Awarded Contractor hereby certifies that it shall provide or shall continue to provide a drug-free workplace as required by the Drug-Free Workplace Act of 1988 (41 U.S.C. § 701), and implemented at 44 CFR Part 17.
- 12.9 Energy Efficiency - The Awarded Contractor shall comply with all mandatory standards and policies relating to energy efficiency that are contained in the State of California's energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L.94-163, 89 Stat. 871).

- 12.10 Environmental Legislation - The Awarded Contractor shall comply with all applicable standards, orders or requirements issued under § 306 of the Clean Air Act (42 U.S.C. 1857 (h)), § 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR Part 15).
- 12.11 System for Award Management (SAM) - In accordance with Executive Orders 12549 and 12689 concerning suspension and debarment, contracts must prohibit contractors from awarding any subcontract to persons (individuals or organizations) listed as having an active exclusion of the Federal System for Awards Management Database (www.sam.gov).
- 12.12 Minority, Women and Other Business Enterprise Outreach – In accordance with CalEMA/Grantor directives, as applicable, firms who represent small business enterprises (SBEs), minority business enterprises (MBEs) and women business enterprises (WBEs) are encouraged to participate in competition for this opportunity. Any such enterprise shall include the appropriate SBE/MBE/WBE certification along with its proposal. The Awarded Contractor agrees that, to the extent contractors or subcontractors are utilized, the Awarded Contractors shall use small, minority, women-owned, or disadvantaged business concerns and contractors or subcontractors to the extent practicable and shall take the affirmative steps as set forth in 44 CFR §13.36(e).
- 12.13 National Preservation Acts -The Awarded Contractor shall assist City (if necessary) in assuring compliance with § 106 of the National Historic Preservation Act of 1966 (16 U.S.C. § 470), Executive Order 11593 (identification and protection of historic properties), the Archeological and Historical Preservation Act of 1974 (16 U.S.C. § 469 a-1 et seq.), and the National Environmental Policy Act of 1969 (42 U.S.C. § 4321).
- 12.14 Non-discrimination; Equal Employment Opportunity - The Awarded Contractor hereby assures the City that in performing its obligations pursuant to the Contract, it will comply with all applicable nondiscrimination requirements as set forth in 44 CFR Part 13.36. In addition, the Awarded Contractor shall comply with Executive Order 11246 of September 24, 1965, entitled "Equal Opportunity Employment," as amended by Executive Order 11375 of October 13, 1967, and as supplemented in Department of Labor regulations (41 CFR chapter 60), and where applicable to the nondiscrimination provisions of the Omnibus Crime Control and Safe Street Acts of 1968 (42 U.S.C. § 3789d), the Victims of Crimes Act (42 U.S.C. § 10604(e)), the Juvenile Justice and Delinquency Prevention Act (42 U.S.C. § 5672(b)), the Civil Rights Act of 1964 (42 U.S.C. § 2000d), the Rehabilitation Act of 1973 (29 U.S.C. § 794), the Americans with Disabilities Act of 1990 (42 U.S.C. §§ 12131-34), the Education Amendments of 1972 (20 U.S.C. §§ 1681, 1683, 1685-86), and the Age Discrimination Act of 1975 (42 U.S.C. §§ 6101-07), see Executive Order 13279 (equal protection of the laws for faith-based and community organizations). This provision must be incorporated by Awarded Contractor into any subcontract exceeding \$10,000.
- 12.15 Patent Rights- The Awarded Contractor acknowledges the existence of requirements and regulations of the awarding Federal agency relating to patent rights with respect to any discovery or invention which arises or is developed in the course or under this Contract, including, but not limited to those regulations and requirements set forth in

44 CFR Part 13.36. Any discovery or invention that arises during the course of this Contract shall be immediately reported to the Department's project management team. The awarding Federal agency shall determine how rights in the invention/discovery shall be allocated consistent with "Government Patent Policy" and 37 CFR Part 401.

- 12.16 Payments, Reports, Records, Retention and Enforcement - The Awarded Contractor acknowledges the requirements and regulations set forth in 44 CFR Parts 13.36 through 13.42 and 49 CFR Part 18 and agrees to cooperate with the City in order to allow the City to comply with said requirements. The Awarded Contractor shall retain all of its records relating to the project for a period of five (5) years after City makes final payment to the Awarded Contractor and all other pending matters are closed.
- 12.17 Publications – All publications created and/or published with funding under any contract arising from this RFP shall prominently contain the following statement: "This document was prepared under a grant from FEMA's Grant Programs Directorate, U.S. Department of Homeland Security. Points of view or opinions in this document are those of the author(s) and do not necessarily represent the official position or policies of FEMA's Grant Programs Directorate or the U.S. Department of Homeland Security."
- 12.18 Rights to Data – The Grantor and the City shall have unlimited rights or copyright license to any data first produced or delivered under this Agreement. "Unlimited rights" means the right to use, disclose, reproduce, prepare derivative works, distribute copies to the public and perform and display publicly, or permit others to do so; as required by 48 CFR 27.401. Where the data are not first produced under this Contract or are published copyrighted data with the notice of 17 U.S.C § 401 or 402, the Grantor acquires the data under copyright license as set forth in 48 CFR 27.404(f)(2) instead of unlimited rights (48 CFR 27.404(a)).
- 12.19 Rights to Use Inventions – City and all grantors and/or awarding Federal Agency shall have an unencumbered right, and a non-exclusive, irrevocable, royalty –free license, to use, manufacture, improve upon and all others to do so for all governmental purposes, any invention developed under the Contract.
- 12.20 Compliance with Byrd Anti-Lobbying Amendment – The Awarded Contractor shall comply with the requirements of § 1352 of the Byrd Anti-Lobbying Amendment (31 U.S.C. § 1352). Contractors who apply or bid for an award of \$100,000 or more shall file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, officer or employee of Congress, or an employee of a Member of Congress in connection with obtaining any Federal contract, grant, or any other award covered by 31 U.S.C. § 1352. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the recipient who in turn will forward the certification(s) to the awarding agency

13. TERMS, CONDITIONS AND EXCEPTIONS

- 13.1 This contract will be for a period of six months with the option to renew for four (4) additional six-month periods at the City's discretion.
- 13.2 The City reserves the right to alter, amend, or modify any provisions of this RFP, or to withdraw this RFP, at any time prior to the award of a contract pursuant hereto, if it is in the best interest of the City to do so.
- 13.3 The City reserves the right to waive informalities and minor irregularities in proposals received.
- 13.4 The City reserves the right to reject any or all proposals received prior to contract award.
- 13.5 The City shall not be obligated to accept the lowest priced proposal, but will make an award in the best interests of the City of Long Beach after all factors have been evaluated.
- 13.6 Any irregularities or lack of clarity in the RFP should be brought to the Purchasing Division designee's attention as soon as possible so that corrective addenda may be furnished to prospective Contractors.
- 13.7 Proposals must include any and all proposed terms and conditions, including, without limitation, written warranties, maintenance/service agreements, license agreements, lease purchase agreements and the Contractor's standard contract language. The omission of these documents may render a proposal non-responsive.
- 13.8 Alterations, modifications or variations to a proposal may not be considered unless authorized by the RFP or by addendum or amendment.
- 13.9 Proposals which appear unrealistic in the terms of technical commitments, lack of technical competence, or are indicative of failure to comprehend the complexity and risk of this contract, may be rejected.
- 13.10 Proposals may be withdrawn by written or facsimile notice received prior to the proposal opening time.
- 13.11 The price and amount of this proposal must have been arrived at independently and without consultation, communication, agreement or disclosure with or to any other contractor, Contractor or prospective Contractor.
- 13.12 No attempt may be made at any time to induce any firm or person to refrain from submitting a proposal or to submit any intentionally high or noncompetitive proposal. All proposals must be made in good faith and without collusion.
- 13.13 Prices offered by Contractors in their proposals are an irrevocable offer for the term of the contract and any contract extensions. The awarded Contractor agrees to provide the purchased services at the costs, rates and fees as set forth in their proposal in response to this RFP. No other costs, rates or fees shall be payable to the awarded Contractor for implementation of their proposal.

- 13.14 The City is not liable for any costs incurred by Contractors prior to entering into a formal contract. Costs of developing the proposals or any other such expenses incurred by the Contractor in responding to the RFP, are entirely the responsibility of the Contractor, and shall not be reimbursed in any manner by the City.
- 13.15 Proposal will become public record after the award of a contract unless the proposal or specific parts of the proposal can be shown to be exempt by law. Each Contractor may clearly label all or part of a proposal as "CONFIDENTIAL" provided that the Contractor thereby agrees to indemnify and defend the City for honoring such a designation. The failure to so label any information that is released by the City shall constitute a complete waiver of any and all claims for damages caused by any release of the information.
- 13.16 A proposal submitted in response to this RFP must identify any subcontractors, and outline the contractual relationship between the awarded Contractor and each subcontractor. An official of each proposed subcontractor must sign, and include as part of the proposal submitted in response to this RFP, a statement to the effect that the subcontractor has read and will agree to abide by the awarded Contractor's obligations.
- 13.17 The awarded Contractor will be the sole point of contract responsibility. The City will look solely to the awarded Contractor for the performance of all contractual obligations which may result from an award based on this RFP, and the awarded Contractor shall not be relieved for the non-performance of any or all subcontractors.
- 13.18 The awarded Contractor must maintain, for the duration of its contract, insurance coverages as required by the City. Work on the contract shall not begin until after the awarded Contractor has submitted acceptable evidence of the required insurance coverages.
- 13.19 Each Contractor must disclose any existing or potential conflict of interest relative to the performance of the contractual services resulting from this RFP. Any such relationship that might be perceived or represented as a conflict should be disclosed. The City reserves the right to disqualify any Contractor on the grounds of actual or apparent conflict of interest.
- 13.20 Each Contractor must include in its proposal a complete disclosure of any alleged significant prior or ongoing contract failures, any civil or criminal litigation or investigation pending which involves the Contractor or in which the Contractor has been judged guilty or liable. Failure to comply with the terms of this provision will disqualify any proposal. The City reserves the right to reject any proposal based upon the Contractor's prior history with the City or with any other party, which documents, without limitation, unsatisfactory performance, adversarial or contentious demeanor, significant failure(s) to meet contract milestones or other contractual failures.
- 13.21 The City will not be liable for Federal, State, or Local excise taxes.
- 13.22 Execution of Attachment A of this RFP shall constitute an agreement to all terms and conditions specified in the RFP, including, without limitation, the Attachment B contract

form and all terms and conditions therein, except such terms and conditions that the Contractor expressly excludes.

- 13.23 The City reserves the right to negotiate final contract terms with any Contractor selected. The contract between the parties will consist of the RFP together with any modifications thereto, and the awarded Contractor's proposal, together with any modifications and clarifications thereto that are submitted at the request of the City during the evaluation and negotiation process. In the event of any conflict or contradiction between or among these documents, the documents shall control in the following order of precedence: the final executed contract, the RFP, any modifications and clarifications to the awarded Contractor's proposal, and the awarded Contractor's proposal. Specific exceptions to this general rule may be noted in the final executed contract.
- 13.24 Contractor understands and acknowledges that the representations above are material and important, and will be relied on by the City in evaluation of the proposal. Any Contractor misrepresentation shall be treated as fraudulent concealment from the City of the true facts relating to the proposal.
- 13.25 No announcement concerning the award of a contract as a result of this RFP may be made without the prior written approval of the City.
- 13.26 Proposers are advised that any contract awarded pursuant to this procurement process shall be subject to the applicable provisions of Long Beach Municipal Code Section 2.73 *et seq.*, the Equal Benefits Ordinance. Proposers shall refer to attachment/appendix for further information regarding the requirements of the ordinance.

All Proposers shall complete and return, with their bid, the Equal Benefits Ordinance Compliance form contained in the attachment/appendix. Unless otherwise specified in the procurement package, Proposers do not need to submit with their bid supporting documentation proving compliance. However, supporting documentation verifying that the benefits are provided equally shall be required if the proposer is selected for award of a contract.

- 13.27 All work performed in connection with construction shall be performed in compliance with all applicable laws, ordinances, rules and regulations of federal, state, county or municipal governments or agencies (including, without limitation, all applicable federal and state labor standards, including the prevailing wage provisions of sections 1770 *et seq.* of the California Labor Code), and (b) all directions, rules and regulations of any fire marshal, health officer, building inspector, or other officer of every governmental agency now having or hereafter acquiring jurisdiction. The Contractor shall indemnify, defend and hold the City harmless from any and all claims, causes of action and liabilities based upon or arising from the failure of any work related to the Project to comply with all such applicable legal requirements, including, without limitation, any such claims, causes of action or liabilities that may be asserted against or incurred by City with respect to or in any way arising from the Project's compliance with or failure to comply with applicable laws, including all applicable federal and state

labor requirements including, without limitation, the requirements of California Labor Code section 1770 *et seq.*

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

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

Attachment A

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. Any exceptions MUST be documented.

SIGNATURE _____

EXCEPTIONS: Attach additional sheets if necessary. Please use this format.

EXCEPTION SUMMARY FORM

RFP SECTION NUMBER	RFP PAGE NUMBER	EXCEPTION (PROVIDE A DETAILED EXPLANATION)

Attachment B

PRO-FORMA AGREEMENT

[ATTACHED FOR REFERENCE; TO BE COMPLETED UPON CONTRACT AWARD.]

AGREEMENT

THIS AGREEMENT is made and entered, in duplicate, as of _____, 20__ for reference purposes only, pursuant to a minute order adopted by the City Council of the City of Long Beach at its meeting on _____, 20__, by and between _____, a _____ corporation ("Consultant"), with a place of business at _____, and the CITY OF LONG BEACH, a municipal corporation ("City").

WHEREAS, the City requires specialized services requiring unique skills to be performed in connection with _____ ("Project"); and

WHEREAS, City has selected Consultant in accordance with City's administrative procedures and City has determined that Consultant and its employees are qualified, licensed, if so required, and experienced in performing these specialized services; and

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

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

1. SCOPE OF WORK OR SERVICES.

A. Consultant shall furnish specialized services more particularly described in Exhibit "A", attached to this Agreement and incorporated by this reference, in accordance with the standards of the profession, and City shall pay for these services in the manner described below, not to exceed _____ Dollars (\$_____), at the rates or charges shown in Exhibit "B".

B. The City's obligation to pay the sum stated above for any one

1 fiscal year shall be contingent upon the City Council of the City appropriating the
2 necessary funds for such payment by the City in each fiscal year during the term of
3 this Agreement. For the purposes of this Section, a fiscal year commences on
4 October 1 of the year and continues through September 30 of the following year. In
5 the event that the City Council of the City fails to appropriate the necessary funds
6 for any fiscal year, then, and in that event, the Agreement will terminate at no
7 additional cost or obligation to the City.

8 C. Consultant may select the time and place of performance for
9 these services provided, however, that access to City documents, records, and the
10 like, if needed by Consultant, shall be available only during City's normal business
11 hours and provided that milestones for performance, if any, are met.

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

26 E. Consultant represents that Consultant has obtained all
27 necessary information on conditions and circumstances that may affect its
28 performance and has conducted site visits, if necessary.

1 F. CAUTION: Consultant shall not begin work until this
2 Agreement has been signed by both parties and until Consultant's evidence of
3 insurance has been delivered to and approved by the City.

4 2. TERM. The term of this Agreement shall commence at midnight on
5 _____, 20__, and shall terminate at 11:59 p.m. on _____, 20¹⁹, unless sooner
6 terminated as provided in this Agreement, or unless the services or the Project is
7 completed sooner.

8 3. COORDINATION AND ORGANIZATION.

9 A. Consultant shall coordinate its performance with City's
10 representative, if any, named in Exhibit "C", attached to this Agreement and
11 incorporated by this reference. Consultant shall advise and inform City's
12 representative of the work in progress on the Project in sufficient detail so as to
13 assist City's representative in making presentations and in holding meetings on the
14 Project. City shall furnish to Consultant information or materials, if any, described
15 in Exhibit "D" attached to this Agreement and incorporated by this reference, and
16 shall perform any other tasks described in the Exhibit.

17 B. The parties acknowledge that a substantial inducement to City
18 for entering this Agreement was and is the reputation and skill of Consultant's key
19 employee, named in Exhibit "E" attached to this Agreement and incorporated by this
20 reference. City shall have the right to approve any person proposed by Consultant
21 to replace that key employee.

22 4. INDEPENDENT CONTRACTOR. In performing its services,
23 Consultant is and shall act as an independent contractor and not an employee,
24 representative, or agent of City. Consultant shall have control of Consultant's work and
25 the manner in which it is performed. Consultant shall be free to contract for similar services
26 to be performed for others during this Agreement provided, however, that Consultant acts
27 in accordance with Section 9 and Section 11 of this Agreement. Consultant acknowledges
28 and agrees that a) City will not withhold taxes of any kind from Consultant's compensation,

1 b) City will not secure workers' compensation or pay unemployment insurance to, for or on
2 Consultant's behalf, and c) City will not provide and Consultant is not entitled to any of the
3 usual and customary rights, benefits or privileges of City employees. Consultant expressly
4 warrants that neither Consultant nor any of Consultant's employees or agents shall
5 represent themselves to be employees or agents of City.

6 5. INSURANCE.

7 A. As a condition precedent to the effectiveness of this
8 Agreement, Consultant shall procure and maintain, at Consultant's expense for the
9 duration of this Agreement, from insurance companies that are admitted to write
10 insurance in California and have ratings of or equivalent to A:V by A.M. Best
11 Company or from authorized non-admitted insurance companies subject to Section
12 1763 of the California Insurance Code and that have ratings of or equivalent to A:VIII
13 by A.M. Best Company the following insurance:

14 i. Commercial general liability insurance (equivalent in
15 scope to ISO form CG 00 01 11 85 or CG 00 01 10 93) in an amount not less
16 than \$1,000,000 per each occurrence and \$2,000,000 general aggregate.
17 This coverage shall include but not be limited to broad form contractual
18 liability, cross liability, independent contractors liability, and products and
19 completed operations liability. The City, its boards and commissions, and
20 their officials, employees and agents shall be named as additional insureds
21 by endorsement (on City's endorsement form or on an endorsement
22 equivalent in scope to ISO form CG 20 10 11 85 or CG 20 26 11 85 or both
23 CG 20 10 07 04 and CG 20 37 07 04 or both CG 20 33 07 04 and CG 20 37
24 07 04), and this insurance shall contain no special limitations on the scope of
25 protection given to the City, its boards and commissions, and their officials,
26 employees and agents. This policy shall be endorsed to state that the insurer
27 waives its right of subrogation against City, its boards and commissions, and
28 their officials, employees and agents.

1 ii. Workers' Compensation insurance as required by the
2 California Labor Code and employer's liability insurance in an amount not
3 less than \$1,000,000. This policy shall be endorsed to state that the insurer
4 waives its right of subrogation against City, its boards and commissions, and
5 their officials, employees and agents.

6 iii. Professional liability or errors and omissions insurance
7 in an amount not less than \$1,000,000 per claim.

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

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

16 C. Each insurance policy shall be endorsed to state that coverage
17 shall not be reduced, non-renewed, or canceled except after thirty (30) days prior
18 written notice to City, shall be primary and not contributing to any other insurance
19 or self-insurance maintained by City, and shall be endorsed to state that coverage
20 maintained by City shall be excess to and shall not contribute to insurance or self-
21 insurance maintained by Consultant. Consultant shall notify the City in writing within
22 five (5) days after any insurance has been voided by the insurer or cancelled by the
23 insured.

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

1 commencing on the date this Agreement expires or is terminated.

2 E. Consultant shall require that all subconsultants or contractors
3 which Consultant uses in the performance of these services maintain insurance in
4 compliance with this Section unless otherwise agreed in writing by City's Risk
5 Manager or designee.

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

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

21 H. The procuring or existence of insurance shall not be construed
22 or deemed as a limitation on liability relating to Consultant's performance or as full
23 performance of or compliance with the indemnification provisions of this Agreement.

24 6. ASSIGNMENT AND SUBCONTRACTING. This Agreement
25 contemplates the personal services of Consultant and Consultant's employees, and the
26 parties acknowledge that a substantial inducement to City for entering this Agreement was
27 and is the professional reputation and competence of Consultant and Consultant's
28 employees. Consultant shall not assign its rights or delegate its duties under this

1 Agreement, or any interest in this Agreement, or any portion of it, without the prior approval
2 of City, except that Consultant may with the prior approval of the City Manager of City,
3 assign any moneys due or to become due the Consultant under this Agreement. Any
4 attempted assignment or delegation shall be void, and any assignee or delegate shall
5 acquire no right or interest by reason of an attempted assignment or delegation.
6 Furthermore, Consultant shall not subcontract any portion of its performance without the
7 prior approval of the City Manager or designee, or substitute an approved subconsultant
8 or contractor without approval prior to the substitution. Nothing stated in this Section shall
9 prevent Consultant from employing as many employees as Consultant deems necessary
10 for performance of this Agreement.

11 7. CONFLICT OF INTEREST. Consultant, by executing this Agreement,
12 certifies that, at the time Consultant executes this Agreement and for its duration,
13 Consultant does not and will not perform services for any other client which would create
14 a conflict, whether monetary or otherwise, as between the interests of City and the interests
15 of that other client. Consultant further certifies that Consultant does not now have and shall
16 not acquire any interest, direct or indirect, in the area covered by this Agreement or any
17 other source of income, interest in real property or investment which would be affected in
18 any manner or degree by the performance of Consultant's services hereunder. And,
19 Consultant shall obtain similar certifications from Consultant's employees, subconsultants
20 and contractors.

21 8. MATERIALS. Consultant shall furnish all labor and supervision,
22 supplies, materials, tools, machinery, equipment, appliances, transportation, and services
23 necessary to or used in the performance of Consultant's obligations under this Agreement,
24 except as stated in Exhibit "D".

25 9. OWNERSHIP OF DATA. All materials, information and data
26 prepared, developed, or assembled by Consultant or furnished to Consultant in connection
27 with this Agreement, including but not limited to documents, estimates, calculations,
28 studies, maps, graphs, charts, computer disks, computer source documentation, samples,

1 models, reports, summaries, drawings, designs, notes, plans, information, material, and
2 memorandum ("Data") shall be the exclusive property of City. Data shall be given to City,
3 and City shall have the unrestricted right to use and disclose the Data in any manner and
4 for any purpose without payment of further compensation to Consultant. Copies of Data
5 may be retained by Consultant but Consultant warrants that Data shall not be made
6 available to any person or entity for use without the prior approval of City. This warranty
7 shall survive termination of this Agreement for five (5) years.

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

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

26 12. BREACH OF CONFIDENTIALITY. Consultant shall not be liable for
27 a breach of confidentiality with respect to Data that: (a) Consultant demonstrates
28 Consultant knew prior to the time City disclosed it; or (b) is or becomes publicly available

1 without breach of this Agreement by Consultant; or (c) a third party who has a right to
2 disclose does so to Consultant without restrictions on further disclosure; or (d) must be
3 disclosed pursuant to subpoena or court order.

4 13. ADDITIONAL COSTS AND REDESIGN.

5 A. Any costs incurred by the City due to Consultant's failure to
6 meet the standards required by the scope of work or Consultant's failure to perform
7 fully the tasks described in the scope of work which, in either case, causes the City
8 to request that Consultant perform again all or part of the Scope of Work shall be at
9 the sole cost of Consultant and City shall not pay any additional compensation to
10 Consultant for its re-performance.

11 B. If the Project involves construction and the scope of work
12 requires Consultant to prepare plans and specifications with an estimate of the cost
13 of construction, then Consultant may be required to modify the plans and
14 specifications, any construction documents relating to the plans and specifications,
15 and Consultant's estimate, at no cost to City, when the lowest bid for construction
16 received by City exceeds by more than ten percent (10%) Consultant's estimate.
17 This modification shall be submitted in a timely fashion to allow City to receive new
18 bids within four (4) months after the date on which the original plans and
19 specifications were submitted by Consultant.

20 14. AMENDMENT. This Agreement, including all Exhibits, shall not be
21 amended, nor any provision or breach waived, except in writing signed by the parties which
22 expressly refers to this Agreement.

23 15. LAW. This Agreement shall be governed by and construed pursuant
24 to the laws of the State of California (except those provisions of California law pertaining
25 to conflicts of laws). Consultant shall comply with all laws, ordinances, rules and
26 regulations of and obtain all permits, licenses, and certificates required by all federal, state
27 and local governmental authorities.

28 16. ENTIRE AGREEMENT. This Agreement, including all Exhibits,

1 constitutes the entire understanding between the parties and supersedes all other
2 agreements, oral or written, with respect to the subject matter in this Agreement.

3 17. INDEMNITY.

4 A. Consultant shall indemnify, protect and hold harmless City, its
5 Boards, Commissions, and their officials, employees and agents ("Indemnified
6 Parties"), from and against any and all liability, claims, demands, damage, loss,
7 obligations, causes of action, proceedings, awards, fines, judgments, penalties,
8 costs and expenses, arising or alleged to have arisen, in whole or in part, out of or
9 in connection with (1) Consultant's breach or failure to comply with any of its
10 obligations contained in this Agreement, or (2) negligent or willful acts, errors,
11 omissions or misrepresentations committed by Consultant, its officers, employees,
12 agents, subcontractors, or anyone under Consultant's control, in the performance
13 of work or services under this Agreement (collectively "Claims" or individually
14 "Claim").

15 B. In addition to Consultant's duty to indemnify, Consultant shall
16 have a separate and wholly independent duty to defend Indemnified Parties at
17 Consultant's expense by legal counsel approved by City, from and against all
18 Claims, and shall continue this defense until the Claims are resolved, whether by
19 settlement, judgment or otherwise. No finding or judgment of negligence, fault,
20 breach, or the like on the part of Consultant shall be required for the duty to defend
21 to arise. City shall notify Consultant of any Claim, shall tender the defense of the
22 Claim to Consultant, and shall assist Consultant, as may be reasonably requested,
23 in the defense.

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

1 D. To the extent this Agreement is a professional service
2 agreement for work or services performed by a design professional (architect,
3 landscape architect, professional engineer or professional land surveyor), the
4 provisions of this Section regarding Consultant's duty to defend and indemnify shall
5 be limited as provided in California Civil Code Section 2782.8, and shall apply only
6 to Claims that arise out of, pertain to, or relate to the negligence, recklessness, or
7 willful misconduct of the Consultant.

8 E. The provisions of this Section shall survive the expiration or
9 termination of this Agreement.

10 18. AMBIGUITY. In the event of any conflict or ambiguity between this
11 Agreement and any Exhibit, the provisions of this Agreement shall govern.

12 19. NONDISCRIMINATION.

13 A. In connection with performance of this Agreement and subject
14 to applicable rules and regulations, Consultant shall not discriminate against any
15 employee or applicant for employment because of race, religion, national origin,
16 color, age, sex, sexual orientation, gender identity, AIDS, HIV status, handicap, or
17 disability. Consultant shall ensure that applicants are employed, and that employees
18 are treated during their employment, without regard to these bases. These actions
19 shall include, but not be limited to, the following: employment, upgrading, demotion
20 or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay
21 or other forms of compensation, and selection for training, including apprenticeship.

22 B. It is the policy of City to encourage the participation of
23 Disadvantaged, Minority and Women-owned Business Enterprises in City's
24 procurement process, and Consultant agrees to use its best efforts to carry out this
25 policy in its use of subconsultants and contractors to the fullest extent consistent
26 with the efficient performance of this Agreement. Consultant may rely on written
27 representations by subconsultants and contractors regarding their status.
28 Consultant shall report to City in May and in December or, in the case of short-term

1 agreements, prior to invoicing for final payment, the names of all subconsultants
2 and contractors hired by Consultant for this Project and information on whether or
3 not they are a Disadvantaged, Minority or Women-Owned Business Enterprise, as
4 defined in Section 8 of the Small Business Act (15 U.S.C. Sec. 637).

5 20. EQUAL BENEFITS ORDINANCE. Unless otherwise exempted in
6 accordance with the provisions of the Ordinance, this Agreement is subject to the
7 applicable provisions of the Equal Benefits Ordinance (EBO), section 2.73 et seq. of the
8 Long Beach Municipal Code, as amended from time to time.

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

13 "During the performance of a contract with the City of Long Beach, the
14 Consultant will provide equal benefits to employees with spouses and its
15 employees with domestic partners. Additional information about the City of
16 Long Beach's Equal Benefits Ordinance may be obtained from the City of
17 Long Beach Business Services Division at 562-570-6200."

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

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

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

27 E. If the City determines that the Consultant has set up or used its
28 contracting entity for the purpose of evading the intent of the EBO, the City may

1 terminate the Agreement on behalf of the City. Violation of this provision may be
2 used as evidence against the Consultant in actions taken pursuant to the provisions
3 of Long Beach Municipal Code section 2.93 et seq., Contractor Responsibility.

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

11 22. COPYRIGHTS AND PATENT RIGHTS.

12 A. Consultant shall place the following copyright protection on all
13 Data: © City of Long Beach, California 2,104, inserting the appropriate year.

14 B. City reserves the exclusive right to seek and obtain a patent or
15 copyright registration on any Data or other result arising from Consultant's
16 performance of this Agreement. By executing this Agreement, Consultant assigns
17 any ownership interest Consultant may have in the Data to the City.

18 C. Consultant warrants that the Data does not violate or infringe
19 any patent, copyright, trade secret or other proprietary right of any other party.
20 Consultant agrees to and shall protect, defend, indemnify and hold City, its officials
21 and employees harmless from any and all claims, demands, damages, loss, liability,
22 causes of action, costs or expenses (including reasonable attorneys' fees) whether
23 or not reduced to judgment, arising from any breach or alleged breach of this
24 warranty.

25 23. COVENANT AGAINST CONTINGENT FEES. Consultant warrants
26 that Consultant has not employed or retained any entity or person to solicit or obtain this
27 Agreement and that Consultant has not paid or agreed to pay any entity or person any fee,
28 commission, or other monies based on or from the award of this Agreement. If Consultant

1 breaches this warranty, City shall have the right to terminate this Agreement immediately
2 notwithstanding the provisions of Section 10 or, in its discretion, to deduct from payments
3 due under this Agreement or otherwise recover the full amount of the fee, commission, or
4 other monies.

5 24. WAIVER. The acceptance of any services or the payment of any
6 money by City shall not operate as a waiver of any provision of this Agreement or of any
7 right to damages or indemnity stated in this Agreement. The waiver of any breach of this
8 Agreement shall not constitute a waiver of any other or subsequent breach of this
9 Agreement.

10 25. CONTINUATION. Termination or expiration of this Agreement shall
11 not affect rights or liabilities of the parties which accrued pursuant to Sections 7, 10, 11,
12 17, 19, 22, and 28 prior to termination or expiration of this Agreement.

13 26. TAX REPORTING. As required by federal and state law, City is
14 obligated to and will report the payment of compensation to Consultant on Form 1099-
15 Misc. Consultant shall be solely responsible for payment of all federal and state taxes
16 resulting from payments under this Agreement. Consultant shall submit Consultant's
17 Employer Identification Number (EIN), or Consultant's Social Security Number if
18 Consultant does not have an EIN, in writing to City's Accounts Payable, Department of
19 Financial Management. Consultant acknowledges and agrees that City has no obligation
20 to pay Consultant until Consultant provides one of these numbers.

21 27. ADVERTISING. Consultant shall not use the name of City, its officials
22 or employees in any advertising or solicitation for business or as a reference, without the
23 prior approval of the City Manager or designee.

24 28. AUDIT. City shall have the right at all reasonable times during the
25 term of this Agreement and for a period of five (5) years after termination or expiration of
26 this Agreement to examine, audit, inspect, review, extract information from, and copy all
27 books, records, accounts, and other documents of Consultant relating to this Agreement.

28 29. THIRD PARTY BENEFICIARY. This Agreement is not intended or

1 designed to or entered for the purpose of creating any benefit or right for any person or
2 entity of any kind that is not a party to this Agreement.

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

5 (NAME OF CONSULTANT)
6 _____, 20__ By _____
7 Name _____
8 Title _____

9 _____, 20__ By _____
10 Name _____
11 Title _____

12 "Consultant"
13 CITY OF LONG BEACH, a municipal
14 corporation

15 _____, 20__ By _____
16 City Manager

17 "City"
18 This Agreement is approved as to form on _____, 20__.

19 CHARLES PARKIN, City Attorney
20 By _____
21 Deputy

22
23
24
25
26
27
28

Attachment C

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.

Authorized Signature & Date

Print Name & Title

Attachment D

Debarment, Suspension, Ineligibility and Voluntary Exclusion Certification

Please read Acceptance of Certification and Instructions for Certification before completing

As a current or potential vendor for the City of Long Beach (City) your firm, through its business relationship with the City, may be the recipient of federal grant funds. As such, the City is required to document that neither your business entity or organization, nor any of your principals are debarred, suspended, ineligible, or have voluntarily been excluded from receiving federal grant funds. Consistent with Executive Order No. 12549 Title 2 CFR Part 180 Subpart C, all potential recipients of federal grant funds are required to comply with the requirements specified below. By submission of proposal/bid/agreement, the undersigned, under penalty of perjury, certifies that the participant, nor any of its principals in the capacity of owner, director, partner, officer, manager, or other person with substantial influence in the development or outcome of a covered transaction, whether or not employed by the participant:

- Are not currently under suspension, debarment, voluntary exclusion, or determination of ineligibility by any Federal department or agency;
- Have not, within a three (3) year period preceding this bid/agreement/proposal, been suspended, debarred, voluntarily excluded or declared ineligible by a federal agency;
- Do not presently have a proposed debarment proceeding pending;
- Have not, within a three (3) year period preceding this bid/agreement/proposal, been indicted or convicted, or had a civil judgment rendered against it by a court of competent jurisdiction in any matter involving fraud or official misconduct;
- Have not, within a three (3) year period preceding this bid/agreement/proposal, had one or more public transactions (Federal, State, or local) terminated for cause or default.

If reorganization, management turnover, or a shift or change of principals' status occurs, written notice must be submitted within 21 days. Subsequent disclosure of unfavorable information will be subject to thorough review and remedial action. Updated versions of this certification may be requested on a routine basis.

Where the potential prospective recipient of Federal assistance funds is unable to certify to any of the statement in this certification, such prospective participant shall attach an explanation to the applicable bid/agreement/proposal.

Business/Contractor/Agency

Name of Authorized Representative

Title of Authorized Representative

Signature of Authorized Representative

Date

r20141001

Acceptance of Certification

1. This bid/agreement/proposal or like document has the potential to be a recipient of Federal funds. In order to be in compliance with Code of Federal Regulations, the City requires this completed form. By signing and submitting this document, the prospective bidder/proposer is providing the certification and acknowledgement as follows:
2. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549.
3. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective recipient of Federal assistance funds knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.
4. The potential recipient of Federal assistance funds agrees by submitting this bid/agreement/proposal or like document that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

Instructions for completing the form, Attachment –Debarment Certification

1. The City of Long Beach sometimes receives Federal funding on certain purchases/projects. To ensure that the City is in compliance with Federal regulations we require this form to be completed.
2. The City of Long Beach checks the System for Award Management at www.sam.gov to make sure that Contractors who are awarded City contracts and/or purchase orders are not debarred or suspended. Prospective contractors should perform a search on this website for your company and or persons associated with your business.
3. If your business is in compliance with the conditions in the form, please have the appropriate person complete and sign this form and return with your bid/proposal/agreement.
4. If at any time, your business or persons associated with your business become debarred or suspended, we require that you inform us of this change in status.
5. If there are any exceptions to the certification, please include an attachment. Exceptions will not necessarily result in denial of award, but will be considered in determining bidder responsibility. For any exception, indicate to whom it applies, initiating agency and dates of action.
6. Note: Providing false information may result in criminal prosecution or administrative sanctions.

***If you have any questions on how to complete this form, please contact the
Purchasing Division in the City of Long Beach Business Services Bureau at 562-570-6200.***

Rev 12.11.13

Attachment E

W-9 Request for Taxpayer Identification Number and Certification

[W-9 Form must be signed and dated.]

[Form-Fillable PDF available at <http://www.irs.gov/pub/irs-pdf/fw9.pdf>]

**Request for Taxpayer
Identification Number and Certification**

**Give Form to the
requester. Do not
send to the IRS.**

Print or type See Specific Instructions on page 2.	1 Name (as shown on your income tax return). Name is required on this line; do not leave this line blank.	
	2 Business name/disregarded entity name, if different from above	
	3 Check appropriate box for federal tax classification; check only one of the following seven boxes: <input type="checkbox"/> Individual/sole proprietor or single-member LLC <input type="checkbox"/> Limited liability company. Enter the tax classification (C=C corporation, S=S corporation, P=partnership) ▶ _____ Note. For a single-member LLC that is disregarded, do not check LLC; check the appropriate box in the line above for the tax classification of the single-member owner. <input type="checkbox"/> Other (see instructions) ▶ _____	4 Exemptions (codes apply only to certain entities, not individuals; see instructions on page 3): Exempt payee code (if any) _____ Exemption from FATCA reporting code (if any) _____ <i>(Applies to accounts maintained outside the U.S.)</i>
	5 Address (number, street, and apt. or suite no.)	Requester's name and address (optional)
	6 City, state, and ZIP code	
7 List account number(s) here (optional)		

Part I Taxpayer Identification Number (TIN)

Enter your TIN in the appropriate box. The TIN provided must match the name given on line 1 to avoid backup withholding. For individuals, this is generally your social security number (SSN). However, for a resident alien, sole proprietor, or disregarded entity, see the Part I instructions on page 3. For other entities, it is your employer identification number (EIN). If you do not have a number, see *How to get a TIN* on page 3.

Note. If the account is in more than one name, see the instructions for line 1 and the chart on page 4 for guidelines on whose number to enter.

Social security number	
or	
Employer identification number	

Part II Certification

Under penalties of perjury, I certify that:

1. The number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me); and
2. I am not subject to backup withholding because: (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding; and
3. I am a U.S. citizen or other U.S. person (defined below); and
4. The FATCA code(s) entered on this form (if any) indicating that I am exempt from FATCA reporting is correct.

Certification instructions. You must cross out item 2 above if you have been notified by the IRS that you are currently subject to backup withholding because you have failed to report all interest and dividends on your tax return. For real estate transactions, item 2 does not apply. For mortgage interest paid, acquisition or abandonment of secured property, cancellation of debt, contributions to an individual retirement arrangement (IRA), and generally, payments other than interest and dividends, you are not required to sign the certification, but you must provide your correct TIN. See the instructions on page 3.

Sign Here	Signature of U.S. person ▶	Date ▶
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General Instructions

Section references are to the Internal Revenue Code unless otherwise noted.

Future developments. Information about developments affecting Form W-9 (such as legislation enacted after we release it) is at www.irs.gov/fw9.

Purpose of Form

An individual or entity (Form W-9 requester) who is required to file an information return with the IRS must obtain your correct taxpayer identification number (TIN) which may be your social security number (SSN), individual taxpayer identification number (ITIN), adoption taxpayer identification number (ATIN), or employer identification number (EIN), to report on an information return the amount paid to you, or other amount reportable on an information return. Examples of information returns include, but are not limited to, the following:

- Form 1099-INT (interest earned or paid)
- Form 1099-DIV (dividends, including those from stocks or mutual funds)
- Form 1099-MISC (various types of income, prizes, awards, or gross proceeds)
- Form 1099-B (stock or mutual fund sales and certain other transactions by brokers)
- Form 1099-S (proceeds from real estate transactions)
- Form 1099-K (merchant card and third party network transactions)

- Form 1098 (home mortgage interest), 1098-E (student loan interest), 1098-T (tuition)
- Form 1099-C (canceled debt)
- Form 1099-A (acquisition or abandonment of secured property)

Use Form W-9 only if you are a U.S. person (including a resident alien), to provide your correct TIN.

If you do not return Form W-9 to the requester with a TIN, you might be subject to backup withholding. See What is backup withholding? on page 2.

By signing the filled-out form, you:

1. Certify that the TIN you are giving is correct (or you are waiting for a number to be issued),
2. Certify that you are not subject to backup withholding, or
3. Claim exemption from backup withholding if you are a U.S. exempt payee. If applicable, you are also certifying that as a U.S. person, your allocable share of any partnership income from a U.S. trade or business is not subject to the withholding tax on foreign partners' share of effectively connected income, and
4. Certify that FATCA code(s) entered on this form (if any) indicating that you are exempt from the FATCA reporting, is correct. See *What is FATCA reporting?* on page 2 for further information.

Attachment F

Secretary of State Certification

Please provide print out showing your business is registered with the California Secretary of State.

(Note, individual and sole proprietor companies are not required to register)

Awarded vendors/contractors must be registered with the California Secretary of State prior to contract execution. For more information, please consult:

<https://businesssearch.sos.ca.gov/>

The screenshot shows the California Secretary of State's Business Search website. The header features the state seal and the name 'Alex Padilla, California Secretary of State'. A navigation bar includes links for 'About', 'Business', 'Notary & Authentications', 'Elections', 'Campaign & Lobbying', 'State Archives', 'Registries', 'News', and 'Contact'. The main content area is titled 'Business Search' and includes a search type selector (radio buttons for 'Search by Corporation Name', 'Search by LP/LLC Name', and 'Search by Entity Number'), a search criteria input field, a search filter dropdown (set to 'Keyword'), and a 'Search' button. A sidebar on the left lists various services such as 'Online Services', 'E-File Statements of Information for Corporations', 'Business Search', 'Processing Times', 'Disclosure Search', 'Service Options', 'Name Availability', 'Forms, Samples & Fees', 'Statements of Information (annual/biennial reports)', 'Filing Tips', 'Information Requests (certificates, copies & status reports)', 'Service of Process', and 'FAQs'. A note states: 'All fields marked with an asterisk (*) are required.'

Attachment G

Equal Benefits Ordinance (EBO)

EQUAL BENEFITS ORDINANCE DISCLOSURE FORM

As a condition of being awarded a contract with the City of Long Beach ("City"), the selected Contractor/Vendor ("Contractor") may be required during the performance of the Contract, to comply with the City's nondiscrimination provisions of the Equal Benefits Ordinance ("EBO") set forth in the Long Beach Municipal Code section 2.73 et seq. The EBO requires that during the performance of the contract, the Contractor shall provide equal benefits to its employees with spouses and employees with domestic partners. Benefits include but are not limited to, health benefits, bereavement leave, family medical leave, member ship and membership discounts, moving expenses, retirement benefits and travel benefits. A cash equivalent payment is permitted if an employer has made all reasonable efforts to provide domestic partners with access to benefits but is unable to do so. A situation in which a cash equivalent payment might be used if where the employer has difficulty finding an insurance provider that is willing to provide domestic partner benefits.

The EBO is applicable to the following employers:

- For-profit employers that have a contract with the City for the purchase of goods, services, public works or improvements and other construction projects in the amount of \$100,000 or more
- For-profit entities that generate \$350,000 or more in annual gross receipts leasing City property pursuant to a written agreement for a term exceeding 29 days in any calendar year

Contractors who are subject to the EBO must certify to the City before execution of the contract that they are in compliance with the EBO by completing the EBO Certification Form, attached, or that they have been issued a waiver by the City. Contractors must also allow authorized City representatives access to records so the City can verify compliance with the EBO.

The EBO includes provisions that address difficulties associated with implementing procedures to comply with the EBO. Contractors can delay implementation of procedures to comply with the EBO in the following circumstances

- 1) By the first effective date after the first open enrollment process following the contract start date, not to exceed two years, if the Contractor/vendor submits evidence of taking reasonable measures to comply with the EBO; or
- 2) At such time that the administrative steps can be taken to incorporate nondiscrimination in benefits in the Contractor/vendor's infrastructure, not to exceed three months; or
- 3) Upon expiration of the contractor's current collective bargaining agreement(s).

Compliance with the EBO

If a contractor has not received a waiver from complying with the EBO and the timeframe within which it can delay implementation has expired but it has failed to comply with the EBO, the

Contractor may be deemed to be in material breach of the Contract. In the event of a material breach, the City may cancel, terminate or suspend the City agreement, in whole or in part. The City also may deem the Contractor an irresponsible bidder and disqualify the Contractor from contracting with the City for a period of three years. In addition, the City may assess liquidated damages against the Contractor which may be deducted from money otherwise due the Contractor. The City may also pursue any other remedies available at law or in equity.

By my signature below, I acknowledge that the Contractor understands that to the extent it is subject to the provisions of the Long Beach Municipal Code section 2.73, the Contractor shall comply with this provision.

Printed Name:_____ Title:_____

Signature:_____ Date:_____

Business Entity Name:_____

**CERTIFICATION OF COMPLIANCE WITH THE
EQUAL BENEFITS ORDINANCE**

Section 1. CONTRACTOR/VENDOR INFORMATION

Name: _____ Federal Tax ID No. _____
Address: _____
City: _____ State: _____ ZIP: _____
Contact Person: _____ Telephone: _____
Email: _____ Fax: _____

Section 2. COMPLIANCE QUESTIONS

- A. The EBO is inapplicable to this Contract because the Contractor/Vendor has no employees. ____ Yes ____ No
- B. Does your company provide (or make available at the employees' expense) any employee benefits? ____ Yes ____ No
(If "yes," proceed to Question C. If "no," proceed to section 5, as the EBO does not apply to you.)
- C. Does your company provide (or make available at the employees' expense) any benefits to the spouse of an employee?
____ Yes ____ No
- D. Does your company provide (or make available at the employees' expense) any benefits to the domestic partner of an employee?
____ Yes ____ No (If you answered "no" to both questions C and D, proceed to section 5, as the EBO is not applicable to this contract. If you answered "yes" to both Questions C and D, please continue to Question E. If you answered "yes" to Question C and "no" to Question D, please continue to section 3.)
- E. Are the benefits that are available to the spouse of an employee identical to the benefits that are available to the domestic partner of an employee? ____ Yes ____ No
(If "yes," proceed to section 4, as you are in compliance with the EBO. If "no," continue to section 3.)

Section 3. PROVISIONAL COMPLIANCE

- A. Contractor/vendor is not in compliance with the EBO now but will comply by the following date:
- _____ By the first effective date after the first open enrollment process following the contract start date, not to exceed two years, if the Contractor/vendor submits evidence of taking reasonable measures to comply with the EBO; or
- _____ At such time that the administrative steps can be taken to incorporate nondiscrimination in benefits in the Contractor/vendor's infrastructure, not to exceed three months; or

_____ Upon expiration of the contractor's current collective bargaining agreement(s).

- B. If you have taken all reasonable measures to comply with the EBO but are unable to do so, do you agree to provide employees with a cash equivalent? (The cash equivalent is the amount of money your company pays for spousal benefits that are unavailable for domestic partners.)

____ Yes ____ No

Section 4. REQUIRED DOCUMENTATION

At time of issuance of purchase order or contract award, you may be required by the City to provide documentation (copy of employee handbook, eligibility statement from your plans, insurance provider statement, etc.) to verify that you do not discriminate in the provision of benefits.

Section 5. CERTIFICATION

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that I am authorized to bind this entity contractually. By signing this certification, I further agree to comply with all additional obligations of the Equal Benefits Ordinance that are set forth in the Long Beach Municipal Code and in the terms of the contract of purchase order with the City.

Executed this ____ day of _____, 20__, at _____, _____

Name _____ Signature _____

Title _____ Federal Tax ID No. _____

Attachment H

INSURANCE REQUIREMENTS

As a condition precedent to the effectiveness of this contract rewarded as a result of this RFP, Contractor shall procure and maintain at Contractor's expense for the duration of this contract rewarded as a result of this RFP from an insurance company that is admitted to write insurance in the State of California or that has a rating of or equivalent to an A:VIII by A.M. Best and Company the following insurance:

- (a) Commercial general liability insurance equivalent in coverage scope to ISO CG 00 01 10 93 naming the City of Long Beach, and its officials, employees, and agents as additional insureds on a form equivalent in coverage scope to ISO CG 20 26 11 85 from and against claims, demands, causes of action, expenses, costs, or liability for injury to or death of persons, or damage to or loss of property arising out activities performed by or on behalf of the Contractor in an amount not less than One Million Dollars (US \$1,000,000) per occurrence and Two Million Dollars (US \$2,000,000) in general aggregate. Such coverage shall not exclude claims alleging abuse or molestation.
- (b) Workers' compensation coverage as required by the Labor Code of the State of California and Employer's liability insurance with minimum limits of One Million Dollars (US \$1,000,000) per accident or occupational illness. The policy shall be endorsed with a waiver of the insurer's right of subrogation against the City of Long Beach, and its officials, employees, and agents.
- (c) If vehicles are used in performing the services provided but do not include transporting PEHs, commercial automobile liability insurance equivalent in coverage scope to ISO CA 00 01 06 92 in an amount not less than One Million Dollars (US \$1,000,000) combined single limit (CSL) covering Symbol 1 ("any auto"). IF PEHs are transported, limits increase to Five Million Dollars (US \$5,000,000) CSL.

Any self-insurance program or self-insurance retention must be approved separately in writing by City and shall protect the City of Long Beach, and its officials, employees, and agents in the same manner and to the same extent as they would have been protected had the policy or policies not contained retention provisions. Each insurance policy shall be endorsed to state that coverage shall not be suspended, voided, or canceled by either party except after thirty (30) days prior written notice to City, and shall be primary and not contributing to any other insurance or self-insurance maintained by City.

Any subcontractors which Contractor may use in the performance of this contract rewarded as a result of this RFP shall be required to indemnify the City to the same extent as the Contractor and to maintain insurance in compliance with the provisions of this section.

Contractor shall deliver to City certificates of insurance and original endorsements for approval as to sufficiency and form prior to the start of performance hereunder. The certificates and endorsements for each insurance policy shall contain the original signature of a person authorized by that insurer to bind coverage on its behalf. "Claims-made" policies are not acceptable unless City Risk Manager determines that "Occurrence" policies are not available in the market for the risk being insured. In a "Claims-made" policy is accepted, it must provide for an extended reporting period of not less than three (3) years. Such insurance as required herein shall not be deemed to limit Contractor's liability relating to performance under this contract rewarded as a result of this RFP. City reserves the right to require complete certified copies of all said policies at any time. Any modification or waiver of the insurance requirements herein shall be made only with the approval of City Risk Manager. The procuring of insurance shall not be construed as a limitation on liability or as full performance of the indemnification provisions of this contract rewarded as a result of this RFP.

Attachment I:

**Federal Funding Additional Terms and Conditions
Acknowledgment**

a. Compliance with the Contract Work Hours and Safety Standards Act

- (1) Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic 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.
- (2) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (1) 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 (1) of this section, in the sum of \$27 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 (1) of this section.
- (3) Withholding for unpaid wages and liquidated damages. The (write in the name of the Federal agency or the loan or grant recipient) 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 (2) of this section.
- (4) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (1) through (3) 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 by any subcontractor or lower

tier subcontractor with the clauses set forth in paragraphs (1) through (3) of this section.

b. Clean Air Act

- (1) The contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq.
- (2) The contractor agrees to report each violation to the (City of Long Beach) and understands and agrees that the (City of Long Beach) will, in turn, report each violation as required to assure notification to the Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.
- (3) The contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FEMA.

c. Federal Water Pollution Control Act

- (1) The contractor agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq.
- (2) The contractor agrees to report each violation to the (City of Long Beach) and understands and agrees that the (City of Long Beach) will, in turn, report each violation as required to assure notification to the Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.
- (3) The contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FEMA.

d. Suspension and Debarment

- (1) This contract is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000. As such, the contractor is required to verify that none of the contractor's principals (defined at 2 C.F.R. § 180.995) or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935)
- (2) The contractor must comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, and must include a requirement to

comply with these regulations in any lower tier covered transaction it enters into.

- (3) This certification is a material representation of fact relied upon by (City of Long Beach). If it is later determined that the contractor did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available to (City of Long Beach), the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.
- (4) The bidder or proposer agrees to comply with the requirements of 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

e. Byrd Anti-Lobbying Amendment, 31 U.S.C. § 1352 (as amended)

- (1) Contractors who apply or bid for an award of \$100,000 or more shall file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, officer or employee of Congress, or an employee of a Member of Congress in connection with obtaining any Federal contract, grant, or any other award covered by 31 U.S.C. § 1352. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the recipient who in turn will forward the certification(s) to the awarding agency.
- (2) If applicable, contractors must sign and submit to the non-federal entity the following certification.

f. Procurement of Recovered Materials

- (1) In the performance of this contract, the Contractor shall make maximum use of products containing recovered materials that are EPA-designated items unless the product cannot be acquired—
 - Competitively within a timeframe providing for compliance with the contract performance schedule;
 - Meeting contract performance requirements; or
 - At a reasonable price.

- (2) Information about this requirement, along with the list of EPA designated items, is available at EPA's Comprehensive Procurement Guidelines web site, <https://www.epa.gov/smm/comprehensiveprocurement-guideline-cpg-program>.
- (3) The Contractor also agrees to comply with all other applicable requirements of Section 6002 of the Solid Waste Disposal Act."

g. Access to Records

- (1) Contractor agrees to provide the City of Long Beach, any state agency involved in funding the Work, the FEMA Administrator, the Comptroller General of the United States, or any of their authorized representative's submission of any books, documents, papers, and records of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts, and transcriptions.
- (2) Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.
- (3) 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.
- (4) The City of Long Beach and the Contractor acknowledge and agree that no language in this contract is intended to prohibit audits or internal reviews by the FEMA Administrator or the Comptroller General of the United States.

h. DHS Seal, Logo, and Flags

- (1) The Contractor shall not use the United States Department of Homeland Security (hereinafter "DHS") seal(s), logos, crests, or reproductions of flags or likeness of DHS agency officials without specific FEMA pre-approval.

i. Compliance with Federal Law, Regulations, and Executive Orders

- (1) This is an acknowledgement that FEMA financial assistance will be used to fund all or a portion of the contract. The contractor will comply with all applicable Federal law, regulations, executive orders, FEMA policies, procedures, and directives.

j. No Obligation by Federal Government

- (1) The Federal Government is not a party to this contract and is not subject to any obligations or liabilities to the non-Federal entity, contractor, or any other party pertaining to any matter resulting from the contract.

k. Program Fraud and False or Fraudulent Statements or Related Acts

- (1) The Contractor acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to the Contractor's actions pertaining to this contract.

APPENDIX A, 44 C.F.R. PART 18 – CERTIFICATION REGARDING LOBBYING

Certification for Contracts, Grants, Loans, and Cooperative Agreements

The vendor certifies, to the best of his or her knowledge and belief, that:

- A. No Federal appropriated funds have been paid or will be paid, by or on behalf of the vendor, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
- B. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the vendor shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- C. The vendor shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction

imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

The Contractor certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C. Chap. 38, Administrative Remedies for False Claims and Statements, apply to this certification and disclosure, if any.

I have read, understand and agree to comply with the terms and conditions specified in this Request for Proposals. Any exceptions MUST be documented.

SIGNATURE _____

DATE _____

EXHIBIT “A-2”

Scope of Work

3. **SCOPE OF PROJECT**

The City is soliciting proposals for a catering service vendor(s) to prepare and deliver meals to the City's non-congregate shelter sites that have been activated in response to COVID-19. The selected vendor(s) would deliver three (3) individually packaged meals per day/per client for approximately 40-55 individuals, 7 days a week to two shelter sites. Expected duration of service would be from approximately October 1, 2020 – March 31, 2021, but future opportunities for contract renewal may arise.

DHHS currently operates two non-congregate shelters models which provide emergency housing for individuals experiencing homelessness:

- **Non-Congregate Shelter Site:** This site provides private rooms for people experiencing homelessness who are most at-risk of contracting COVID-19 to safely shelter in place and prevent their exposure to COVID-19. Clients at this location include individuals 65 years of age or older and/or have certain underlying health conditions such as respiratory compromised immunities, chronic disease, etc. This site will typically shelter an average of 45 individuals.
- **Isolation/Quarantine (IQ) Site:** This site provides private rooms for adults who have tested positive for COVID-19, have either been directly exposed and/or showing symptoms and are pending test results but do not require hospitalization. This provides accommodations for residents to safely isolate while recovering. This site will typically shelter 5-10 individuals.

Responders may propose for only one or both sites. The City prefers to award to a single contractor, but reserves the right to award contracts to multiple vendors at its discretion.

Service Expectations

Awarded vendor(s) shall be able to meet volume, varied daily occupancy and nutritional standards; source local produce/meats (if applicable); meet cultural needs; and prioritize local jobs, worker retention, worker health and safety, and standards of equity of fairness in employment practices, wages, hiring, and promotion. The awarded vendor(s) should be able to accommodate the following requirements:

- Provide timely delivery of all meals to the two specified shelter locations.
- Provide individually wrapped meals and utensils that can be easily distributed to each client's room by shelter staff.
- Provide meals that are delivered hot, can be eaten at room temperature, or can be reheated in a microwave oven.
- Provide meal plan/menu that meets DHHS's nutritional guidelines that will be communicated to the selected vendor in advance of starting meal service. Reference USDA guidelines at [https://www.dietaryguidelines.gov/sites/default/files/2019-05/2015-2020 Dietary Guidelines.pdf](https://www.dietaryguidelines.gov/sites/default/files/2019-05/2015-2020_Dietary_Guidelines.pdf).
- Provide meal plan/menu that can accommodate various dietary restrictions including requests for soft food, low sodium, dairy-free, vegetarian diets, allergies, gluten-free, etc.

- Provide adequate food portions for the average adult dietary intake. Reference page 77 of USDA guidelines at https://www.dietaryguidelines.gov/sites/default/files/2019-05/2015-2020_Dietary_Guidelines.pdf.
- Ability to modify number of meals within 24 hours of being notified to accommodate fluctuating number of clients and client needs.
- Ability to set and adjust the meal plan/menu at least once every two weeks to refresh and diversify meal options for site participants.

Final meal plan/menu is subject to approval by the City. Additionally, the selected vendor(s) shall properly label meals so that they remain at food-safe temperatures during delivery. Vendor(s) shall also certify that all workers are following government guidelines for safe food handling preparation and packaging during COVID-19 and certify that health protection guidelines per the executive order are being followed, including providing facial coverings to workers.

The vendor(s) will only be responsible for dropping off meals to appropriate City staff at designated spots and should not have interactions with site participants. Monthly reporting requirements may include the following: number of meals provided, dates, deployed, and average cost per meal.

Service Period

The effective service period will be for approximately six (6) months beginning in October 2020. There may be potential to renew for additional months.

Meals must be delivered to both sites seven (7) days a week within the following time period:

- Breakfast – 7:00 AM to 7:30 AM
- Lunch – 11:00 AM to 11:30 AM
- Dinner – 4:00 PM to 4:30 PM

Social Distancing

DHHS takes infection control very seriously and the safety of City staff and participants is the highest priority. While present at the shelter sites, all vendor staff will be required to wear proper PPE while maintaining a minimum of 6-foot distance from all other personnel when delivering meals. Please refer to the City's [Safer at Home Order for Control of COVID-19](#) for additional guidance in reducing the spread of COVID-19.

4. SUBMITTAL INSTRUCTIONS

4.1 **For questions regarding this RFP, submit all inquiries via email to rfppurchasing@longbeach.gov.** Responses to the questions will be posted on the City's online bidding platform, PlanetBids. All proposers should check PlanetBids on a regular basis.

- 4.1.1 The City will not be responsible for or bound by (1) any oral communication or (2) any other information or contact that occurs outside the official

EXHIBIT “B”

Cost/Rates



FEED THE PEOPLE

Quality Catering Since 1969

Please see the below chart for pricing per person broken down by meal – breakfast, lunch and dinner.

Meals	Per Day (Per Person)
Breakfast	\$ 4.00
Lunch	\$ 5.00
Dinner	\$ 5.00
Total:	\$ 14.00

Thank you,

Daniel D'sa

Vice President

Grand Food & Beverage

EXHIBIT “C”

City’s Representative(s):

Paul Duncan, Homeless Services Officer

Office: 562.570.4581

Paul.Duncan@longbeach.gov

EXHIBIT “D”

Materials/Information Furnished: None

EXHIBIT “E”

Consultant’s Key Employee(s):

Dan D’sa, Vice President

Office: 562.426.0555

dan@grandfandb.com