

CONTRACT SERVICES AGREEMENT

By and Between

CITY OF CARSON

and

**THE LIGHTHOUSE-HOME FOR MEDICALLY FRAGILE CHILDREN, INC.,
DBA THE LIGHTHOUSE**

**AGREEMENT FOR CONTRACT SERVICES
BETWEEN THE CITY OF CARSON AND
THE LIGHTHOUSE-HOME FOR MEDICALLY FRAGILE CHILDREN, INC.,
DBA THE LIGHTHOUSE**

THIS AGREEMENT FOR CONTRACT SERVICES (herein “Agreement”) is made and entered into this 3rd day of December, 2020 by and between the CITY OF CARSON, a California municipal corporation (“City”) and THE LIGHTHOUSE-HOME FOR MEDICALLY FRAGILE CHILDREN, INC., a California domestic nonprofit corporation, dba THE LIGHTHOUSE (“Consultant”). City and Consultant are sometimes hereinafter individually referred to as “Party” and hereinafter collectively referred to as the “Parties.”

RECITALS

A. City has sought, by issuance of a Request for Proposals or Invitation for Bids, the performance of the services defined and described particularly in Article 1 of this Agreement.

B. Consultant, following submission of a proposal or bid for the performance of the services defined and described particularly in Article 1 of this Agreement, was selected by the City to perform those services.

C. Pursuant to the City of Carson’s Municipal Code, City has authority to enter into and execute this Agreement.

D. The Parties desire to formalize the selection of Consultant for performance of those services defined and described particularly in Article 1 of this Agreement and desire that the terms of that performance be as particularly defined and described herein.

OPERATIVE PROVISIONS

NOW, THEREFORE, in consideration of the mutual promises and covenants made by the Parties and contained herein and other consideration, the value and adequacy of which are hereby acknowledged, the parties agree as follows:

ARTICLE 1. SERVICES OF CONSULTANT

1.1 Scope of Services.

In compliance with all terms and conditions of this Agreement, the Consultant shall provide those services specified in the “Scope of Services” attached hereto as Exhibit “A” and incorporated herein by this reference, which may be referred to herein as the “services” or “work” hereunder. As a material inducement to the City entering into this Agreement, Consultant represents and warrants that it has the qualifications, experience, and facilities necessary to properly perform the services required under this Agreement in a thorough, competent, and professional manner, and is experienced in performing the work and services contemplated herein. Consultant shall at all times faithfully, competently and to the best of its ability, experience and talent, perform all services described herein. Consultant covenants that it shall follow the highest professional standards in performing the work and services required hereunder and that all materials will be both of good

quality as well as fit for the purpose intended. For purposes of this Agreement, the phrase “highest professional standards” shall mean those standards of practice recognized by one or more first-class firms performing similar work under similar circumstances.

1.2 Consultant’s Proposal.

The Scope of Service shall include the Consultant’s scope of work or bid which shall be incorporated herein by this reference as though fully set forth herein. In the event of any inconsistency between the terms of such proposal and this Agreement, the terms of this Agreement shall govern.

1.3 Compliance with Law.

Consultant shall keep itself informed concerning, and shall render all services hereunder in accordance with, all ordinances, resolutions, statutes, rules, and regulations of the City and any Federal, State or local governmental entity having jurisdiction in effect at the time service is rendered.

1.4 Licenses, Permits, Fees and Assessments.

Consultant shall obtain at its sole cost and expense such licenses, permits and approvals as may be required by law for the performance of the services required by this Agreement. Consultant shall have the sole obligation to pay for any fees, assessments and taxes, plus applicable penalties and interest, which may be imposed by law and arise from or are necessary for the Consultant’s performance of the services required by this Agreement, and shall indemnify, defend and hold harmless City, its officers, employees or agents of City, against any such fees, assessments, taxes, penalties or interest levied, assessed or imposed against City hereunder.

1.5 Familiarity with Work.

By executing this Agreement, Consultant warrants that Consultant (i) has thoroughly investigated and considered the scope of services to be performed, (ii) has carefully considered how the services should be performed, and (iii) fully understands the facilities, difficulties and restrictions attending performance of the services under this Agreement. If the services involve work upon any site, Consultant warrants that Consultant has or will investigate the site and is or will be fully acquainted with the conditions there existing, prior to commencement of services hereunder. Should the Consultant discover any latent or unknown conditions, which will materially affect the performance of the services hereunder, Consultant shall immediately inform the City of such fact and shall not proceed except at Consultant’s risk until written instructions are received from the Contract Officer.

1.6 Care of Work.

The Consultant shall adopt reasonable methods during the life of the Agreement to furnish continuous protection to the work, and the equipment, materials, papers, documents, plans, studies and/or other components thereof to prevent losses or damages, and shall be responsible for all such damages, to persons or property, until acceptance of the work by City, except such losses or damages as may be caused by City’s own negligence.

1.7 Further Responsibilities of Parties.

Both parties agree to use reasonable care and diligence to perform their respective obligations under this Agreement. Both parties agree to act in good faith to execute all instruments, prepare all documents and take all actions as may be reasonably necessary to carry out the purposes of this Agreement. Unless hereafter specified, neither party shall be responsible for the service of the other.

1.8 Additional Services.

City shall have the right at any time during the performance of the services, without invalidating this Agreement, to order extra work beyond that specified in the Scope of Services or make changes by altering, adding to or deducting from said work. No such extra work may be undertaken unless a written order is first given by the Contract Officer to the Consultant, incorporating therein any adjustment in (i) the Contract Sum for the actual costs of the extra work, and/or (ii) the time to perform this Agreement, which said adjustments are subject to the written approval of the Consultant. Any increase in compensation of up to ten percent (10%) of the Contract Sum or \$25,000, whichever is less; or, in the time to perform of up to one hundred eighty (180) days, may be approved by the Contract Officer. Any greater increases, taken either separately or cumulatively, must be approved by the City Council. It is expressly understood by Consultant that the provisions of this Section shall not apply to services specifically set forth in the Scope of Services. Consultant hereby acknowledges that it accepts the risk that the services to be provided pursuant to the Scope of Services may be more costly or time consuming than Consultant anticipates and that Consultant shall not be entitled to additional compensation therefor. City may in its sole and absolute discretion have similar work done by other contractors. No claims for an increase in the Contract Sum or time for performance shall be valid unless the procedures established in this Section are followed.

1.9 Special Requirements.

Additional terms and conditions of this Agreement, if any, which are made a part hereof are set forth in the "Special Requirements" attached hereto as Exhibit "B" and incorporated herein by this reference. In the event of a conflict between the provisions of Exhibit "B" and any other provisions of this Agreement, the provisions of Exhibit "B" shall govern.

ARTICLE 2. COMPENSATION AND METHOD OF PAYMENT.

2.1 Contract Sum.

Subject to any limitations set forth in this Agreement, City agrees to pay Consultant the amounts specified in the "Schedule of Compensation" attached hereto as Exhibit "C" and incorporated herein by this reference. The total compensation, including reimbursement for actual expenses, shall not exceed Zero Dollars (\$0.00) (the "Contract Sum"). The Parties acknowledge that Consultant is providing the services at no cost to City.

2.2 Method of Compensation.

The method of compensation may include: (i) a lump sum payment upon completion; (ii) payment in accordance with specified tasks or the percentage of completion of the services, less

contract retention; (iii) payment for time and materials based upon the Consultant's rates as specified in the Schedule of Compensation, provided that (a) time estimates are provided for the performance of sub tasks, (b) contract retention is maintained, and (c) the Contract Sum is not exceeded; or (iv) such other methods as may be specified in the Schedule of Compensation.

2.3 Reimbursable Expenses.

Compensation may include reimbursement for actual and necessary expenditures for reproduction costs, telephone expenses, and travel expenses approved by the Contract Officer in advance, or actual subcontractor expenses of an approved subcontractor pursuant to Section 4.5, and only if specified in the Schedule of Compensation. The Contract Sum shall include the attendance of Consultant at all project meetings reasonably deemed necessary by the City. Coordination of the performance of the work with City is a critical component of the services. If Consultant is required to attend additional meetings to facilitate such coordination, Consultant shall not be entitled to any additional compensation for attending said meetings.

2.4 Invoices.

Each month Consultant shall furnish to City an original invoice for all work performed and expenses incurred during the preceding month in a form approved by City's Director of Finance. By submitting an invoice for payment under this Agreement, Consultant is certifying compliance with all provisions of the Agreement. The invoice shall detail charges for all necessary and actual expenses by the following categories: labor (by sub-category), travel, materials, equipment, supplies, and sub-contractor contracts. Sub-contractor charges shall also be detailed by such categories. Consultant shall not invoice City for any duplicate services performed by more than one person.

City shall independently review each invoice submitted by the Consultant to determine whether the work performed and expenses incurred are in compliance with the provisions of this Agreement. Except as to any charges for work performed or expenses incurred by Consultant which are disputed by City, or as provided in Section 7.3, City will use its best efforts to cause Consultant to be paid within forty-five (45) days of receipt of Consultant's correct and undisputed invoice; however, Consultant acknowledges and agrees that due to City warrant run procedures, the City cannot guarantee that payment will occur within this time period. In the event any charges or expenses are disputed by City, the original invoice shall be returned by City to Consultant for correction and resubmission. Review and payment by City for any invoice provided by the Consultant shall not constitute a waiver of any rights or remedies provided herein or any applicable law.

2.5 Waiver.

Payment to Consultant for work performed pursuant to this Agreement shall not be deemed to waive any defects in work performed by Consultant.

ARTICLE 3. PERFORMANCE SCHEDULE

3.1 Time of Essence.

Time is of the essence in the performance of this Agreement.

3.2 Schedule of Performance.

Consultant shall commence the services pursuant to this Agreement upon receipt of a written notice to proceed and shall perform all services within the time period(s) established in the “Schedule of Performance” attached hereto as Exhibit “D” and incorporated herein by this reference. When requested by the Consultant, extensions to the time period(s) specified in the Schedule of Performance may be approved in writing by the Contract Officer but not exceeding one hundred eighty (180) days cumulatively.

3.3 Force Majeure.

The time period(s) specified in the Schedule of Performance for performance of the services rendered pursuant to this Agreement shall be extended because of any delays due to unforeseeable causes beyond the control and without the fault or negligence of the Consultant, including, but not restricted to, acts of God or of the public enemy, unusually severe weather, fires, earthquakes, floods, epidemics, quarantine restrictions, riots, strikes, freight embargoes, wars, litigation, and/or acts of any governmental agency, including the City, if the Consultant shall within ten (10) days of the commencement of such delay notify the Contract Officer in writing of the causes of the delay. The Contract Officer shall ascertain the facts and the extent of delay, and extend the time for performing the services for the period of the enforced delay when and if in the judgment of the Contract Officer such delay is justified. The Contract Officer’s determination shall be final and conclusive upon the parties to this Agreement. In no event shall Consultant be entitled to recover damages against the City for any delay in the performance of this Agreement, however caused, Consultant’s sole remedy being extension of the Agreement pursuant to this Section.

3.4 Term.

Unless earlier terminated in accordance with Article 7 of this Agreement, this Agreement shall continue in full force and effect until completion of the services but not exceeding one (1) years from the date hereof, except as otherwise provided in the Schedule of Performance (Exhibit “D”).

ARTICLE 4. COORDINATION OF WORK

4.1 Representatives and Personnel of Consultant.

The following principals of Consultant (“Principals”) are hereby designated as being the principals and representatives of Consultant authorized to act in its behalf with respect to the work specified herein and make all decisions in connection therewith:

<u>Lisa Amos</u>	<u>Executive Director</u>
(Name)	(Title)
<u>Sarah Jackson</u>	<u>Program Director</u>
(Name)	(Title)
<u>Mary Range</u>	<u>Executive Secretary</u>
(Name)	(Title)

It is expressly understood that the experience, knowledge, capability and reputation of the foregoing principals were a substantial inducement for City to enter into this Agreement. Therefore,

the foregoing principals shall be responsible during the term of this Agreement for directing all activities of Consultant and devoting sufficient time to personally supervise the services hereunder. All personnel of Consultant, and any authorized agents, shall at all times be under the exclusive direction and control of the Principals. For purposes of this Agreement, the foregoing Principals may not be replaced nor may their responsibilities be substantially reduced by Consultant without the express written approval of City. Additionally, Consultant shall utilize only competent personnel to perform services pursuant to this Agreement. Consultant shall make every reasonable effort to maintain the stability and continuity of Consultant's staff and subcontractors, if any, assigned to perform the services required under this Agreement. Consultant shall notify City of any changes in Consultant's staff and subcontractors, if any, assigned to perform the services required under this Agreement, prior to and during any such performance.

4.2 Status of Consultant.

Consultant shall have no authority to bind City in any manner, or to incur any obligation, debt or liability of any kind on behalf of or against City, whether by contract or otherwise, unless such authority is expressly conferred under this Agreement or is otherwise expressly conferred in writing by City. Consultant shall not at any time or in any manner represent that Consultant or any of Consultant's officers, employees, or agents are in any manner officials, officers, employees or agents of City. Neither Consultant, nor any of Consultant's officers, employees or agents, shall obtain any rights to retirement, health care or any other benefits which may otherwise accrue to City's employees. Consultant expressly waives any claim Consultant may have to any such rights.

4.3 Contract Officer.

The Contract Officer shall be Gloria Marroquin, Community Services Program Manager. It shall be the Consultant's responsibility to assure that the Contract Officer is kept informed of the progress of the performance of the services and the Consultant shall refer any decisions which must be made by City to the Contract Officer. Unless otherwise specified herein, any approval of City required hereunder shall mean the approval of the Contract Officer. The Contract Officer shall have authority, if specified in writing by the City Manager, to sign all documents on behalf of the City required hereunder to carry out the terms of this Agreement.

4.4 Independent Consultant.

Neither the City nor any of its employees shall have any control over the manner, mode or means by which Consultant, its agents or employees, perform the services required herein, except as otherwise set forth herein. City shall have no voice in the selection, discharge, supervision or control of Consultant's employees, servants, representatives or agents, or in fixing their number, compensation or hours of service. Consultant shall perform all services required herein as an independent contractor of City and shall remain at all times as to City a wholly independent contractor with only such obligations as are consistent with that role. Consultant shall not at any time or in any manner represent that it or any of its agents or employees are agents or employees of City. City shall not in any way or for any purpose become or be deemed to be a partner of Consultant in its business or otherwise or a joint venturer or a member of any joint enterprise with Consultant.

4.5 Prohibition Against Subcontracting or Assignment.

The experience, knowledge, capability and reputation of Consultant, its principals and employees were a substantial inducement for the City to enter into this Agreement. Therefore, Consultant shall not contract with any other entity to perform in whole or in part the services required hereunder without the express written approval of the City. In addition, neither this Agreement nor any interest herein may be transferred, assigned, conveyed, hypothecated or encumbered voluntarily or by operation of law, whether for the benefit of creditors or otherwise, without the prior written approval of City. Transfers restricted hereunder shall include the transfer to any person or group of persons acting in concert of more than twenty five percent (25%) of the present ownership and/or control of Consultant, taking all transfers into account on a cumulative basis. In the event of any such unapproved transfer, including any bankruptcy proceeding, this Agreement shall be void. No approved transfer shall release the Consultant or any surety of Consultant of any liability hereunder without the express consent of City.

ARTICLE 5. INSURANCE AND INDEMNIFICATION

5.1 Insurance Coverages.

The Consultant shall procure and maintain, at its sole cost and expense, in a form and content satisfactory to City, during the entire term of this Agreement including any extension thereof, the following policies of insurance which shall cover all elected and appointed officers, employees and agents of City:

(a) General Liability Insurance (Occurrence Form CG0001 or equivalent). A policy of comprehensive general liability insurance written on a per occurrence basis for bodily injury, personal injury and property damage. The policy of insurance shall be in an amount not less than \$1,000,000.00 per occurrence or if a general aggregate limit is used, then the general aggregate limit shall be twice the occurrence limit.

(b) Worker's Compensation Insurance. A policy of worker's compensation insurance in such amount as will fully comply with the laws of the State of California and which shall indemnify, insure and provide legal defense for the Consultant against any loss, claim or damage arising from any injuries or occupational diseases occurring to any worker employed by or any persons retained by the Consultant in the course of carrying out the work or services contemplated in this Agreement.

(c) Automotive Insurance (Form CA 0001 (Ed 1/87) including "any auto" and endorsement CA 0025 or equivalent). A policy of comprehensive automobile liability insurance written on a per occurrence for bodily injury and property damage in an amount not less than \$1,000,000. Said policy shall include coverage for owned, non-owned, leased, hired cars and any automobile.

(d) Professional Liability. Professional liability insurance appropriate to the Consultant's profession. This coverage may be written on a "claims made" basis, and must include coverage for contractual liability. The professional liability insurance required by this Agreement must be endorsed to be applicable to claims based upon, arising out of or related to services performed under this Agreement. The insurance must be maintained for at least 5 consecutive years

following the completion of Consultant's services or the termination of this Agreement. During this additional 5-year period, Consultant shall annually and upon request of the City submit written evidence of this continuous coverage.

(e) Subcontractors. Consultant shall include all subcontractors as insureds under its policies or shall furnish separate certificates and certified endorsements for each subcontractor. All coverages for subcontractors shall include all of the requirements stated herein.

(f) Additional Insurance. Policies of such other insurance, as may be required in the Special Requirements in Exhibit "B".

5.2 General Insurance Requirements.

All of the above policies of insurance shall be primary insurance and shall name the City, its elected and appointed officers, employees and agents as additional insureds and any insurance maintained by City or its officers, employees or agents may apply in excess of, and not contribute with Consultant's insurance. The insurer is deemed hereof to waive all rights of subrogation and contribution it may have against the City, its officers, employees and agents and their respective insurers. Moreover, the insurance policy must specify that where the primary insured does not satisfy the self-insured retention, any additional insured may satisfy the self-insured retention.

All of said policies of insurance shall provide that said insurance may not be amended or cancelled by the insurer or any party hereto without providing thirty (30) days prior written notice by certified mail return receipt requested to the City. In the event any of said policies of insurance are cancelled, the Consultant shall, prior to the cancellation date, submit new evidence of insurance in conformance with Section 5.1 to the Contract Officer.

No work or services under this Agreement shall commence until the Consultant has provided the City with Certificates of Insurance, additional insured endorsement forms or appropriate insurance binders evidencing the above insurance coverages and said Certificates of Insurance or binders are approved by the City. City reserves the right to inspect complete, certified copies of and endorsements to all required insurance policies at any time. Any failure to comply with the reporting or other provisions of the policies including breaches or warranties shall not affect coverage provided to City.

All certificates shall name the City as additional insured (providing the appropriate endorsement) and shall conform to the following "cancellation" notice:

CANCELLATION:

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATED THEREOF, THE ISSUING COMPANY SHALL MAIL THIRTY (30)-DAY ADVANCE WRITTEN NOTICE TO CERTIFICATE HOLDER NAMED HEREIN.

[to be initialed]

Consultant Initials

City, its respective elected and appointed officers, directors, officials, employees, agents and volunteers are to be covered as additional insureds as respects: liability arising out of activities Consultant performs; products and completed operations of Consultant; premises owned, occupied or used by Consultant; or any automobiles owned, leased, hired or borrowed by Consultant. The coverage shall contain no special limitations on the scope of protection afforded to City, and their respective elected and appointed officers, officials, employees or volunteers. Consultant's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

Any deductibles or self-insured retentions must be declared to and approved by City. At the option of City, either the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects City or its respective elected or appointed officers, officials, employees and volunteers or the Consultant shall procure a bond guaranteeing payment of losses and related investigations, claim administration, defense expenses and claims. The Consultant agrees that the requirement to provide insurance shall not be construed as limiting in any way the extent to which the Consultant may be held responsible for the payment of damages to any persons or property resulting from the Consultant's activities or the activities of any person or persons for which the Consultant is otherwise responsible nor shall it limit the Consultant's indemnification liabilities as provided in Section 5.3.

In the event the Consultant subcontracts any portion of the work in compliance with Section 4.5 of this Agreement, the contract between the Consultant and such subcontractor shall require the subcontractor to maintain the same policies of insurance that the Consultant is required to maintain pursuant to Section 5.1, and such certificates and endorsements shall be provided to City.

5.3 Indemnification.

To the full extent permitted by law, Consultant agrees to indemnify, defend and hold harmless the City, its officers, employees and agents ("Indemnified Parties") against, and will hold and save them and each of them harmless from, any and all actions, either judicial, administrative, arbitration or regulatory claims, damages to persons or property, losses, costs, penalties, obligations, errors, omissions or liabilities whether actual or threatened (herein "claims or liabilities") that may be asserted or claimed by any person, firm or entity arising out of or in connection with the negligent performance of the work, operations or activities provided herein of Consultant, its officers, employees, agents, subcontractors, or invitees, or any individual or entity for which Consultant is legally liable ("indemnitors"), or arising from Consultant's or indemnitors' reckless or willful misconduct, or arising from Consultant's or indemnitors' negligent performance of or failure to perform any term, provision, covenant or condition of this Agreement, and in connection therewith:

(a) Consultant will defend any action or actions filed in connection with any of said claims or liabilities and will pay all costs and expenses, including legal costs and attorneys' fees incurred in connection therewith;

(b) Consultant will promptly pay any judgment rendered against the City, its officers, agents or employees for any such claims or liabilities arising out of or in connection with the negligent performance of or failure to perform such work, operations or activities of Consultant

hereunder; and Consultant agrees to save and hold the City, its officers, agents, and employees harmless therefrom;

(c) In the event the City, its officers, agents or employees is made a party to any action or proceeding filed or prosecuted against Consultant for such damages or other claims arising out of or in connection with the negligent performance of or failure to perform the work, operation or activities of Consultant hereunder, Consultant agrees to pay to the City, its officers, agents or employees, any and all costs and expenses incurred by the City, its officers, agents or employees in such action or proceeding, including but not limited to, legal costs and attorneys' fees.

Consultant shall incorporate similar indemnity agreements with its subcontractors and if it fails to do so Consultant shall be fully responsible to indemnify City hereunder therefore, and failure of City to monitor compliance with these provisions shall not be a waiver hereof. This indemnification includes claims or liabilities arising from any negligent or wrongful act, error or omission, or reckless or willful misconduct of Consultant in the performance of professional services hereunder. The provisions of this Section do not apply to claims or liabilities occurring as a result of City's sole negligence or willful acts or omissions, but, to the fullest extent permitted by law, shall apply to claims and liabilities resulting in part from City's negligence, except that design professionals' indemnity hereunder shall be limited to claims and liabilities arising out of the negligence, recklessness or willful misconduct of the design professional. The indemnity obligation shall be binding on successors and assigns of Consultant and shall survive termination of this Agreement.

5.4 Sufficiency of Insurer.

Insurance required by this Agreement shall be satisfactory only if issued by companies qualified to do business in California, rated "A" or better in the most recent edition of Best Rating Guide, The Key Rating Guide or in the Federal Register, and only if they are of a financial category Class VII or better, unless such requirements are waived by the Risk Manager of the City ("Risk Manager") due to unique circumstances. If this Agreement continues for more than 3 years duration, or in the event the risk manager determines that the work or services to be performed under this Agreement creates an increased or decreased risk of loss to the City, the Consultant agrees that the minimum limits of the insurance policies may be changed accordingly upon receipt of written notice from the Risk Manager.

ARTICLE 6. RECORDS, REPORTS, AND RELEASE OF INFORMATION

6.1 Records.

Consultant shall keep, and require subcontractors to keep, such ledgers, books of accounts, invoices, vouchers, canceled checks, reports, studies or other documents relating to the disbursements charged to City and services performed hereunder (the "books and records"), as shall be necessary to perform the services required by this Agreement and enable the Contract Officer to evaluate the performance of such services. Any and all such documents shall be maintained in accordance with generally accepted accounting principles and shall be complete and detailed. The Contract Officer shall have full and free access to such books and records at all times during normal business hours of City, including the right to inspect, copy, audit and make records and transcripts

from such records. Such records shall be maintained for a period of three (3) years following completion of the services hereunder, and the City shall have access to such records in the event any audit is required. In the event of dissolution of Consultant's business, custody of the books and records may be given to City, and access shall be provided by Consultant's successor in interest. Notwithstanding the above, the Consultant shall fully cooperate with the City in providing access to the books and records if a public records request is made and disclosure is required by law including but not limited to the California Public Records Act.

6.2 Reports.

Consultant shall periodically prepare and submit to the Contract Officer such reports concerning the performance of the services required by this Agreement as the Contract Officer shall require. Consultant hereby acknowledges that the City is greatly concerned about the cost of work and services to be performed pursuant to this Agreement. For this reason, Consultant agrees that if Consultant becomes aware of any facts, circumstances, techniques, or events that may or will materially increase or decrease the cost of the work or services contemplated herein or, if Consultant is providing design services, the cost of the project being designed, Consultant shall promptly notify the Contract Officer of said fact, circumstance, technique or event and the estimated increased or decreased cost related thereto and, if Consultant is providing design services, the estimated increased or decreased cost estimate for the project being designed.

6.3 Ownership of Documents.

All drawings, specifications, maps, designs, photographs, studies, surveys, data, notes, computer files, reports, records, documents and other materials (the "documents and materials") prepared by Consultant, its employees, subcontractors and agents in the performance of this Agreement shall be the property of City and shall be delivered to City upon request of the Contract Officer or upon the termination of this Agreement, and Consultant shall have no claim for further employment or additional compensation as a result of the exercise by City of its full rights of ownership use, reuse, or assignment of the documents and materials hereunder. Any use, reuse or assignment of such completed documents for other projects and/or use of uncompleted documents without specific written authorization by the Consultant will be at the City's sole risk and without liability to Consultant, and Consultant's guarantee and warranties shall not extend to such use, reuse or assignment. Consultant may retain copies of such documents for its own use. Consultant shall have the right to use the concepts embodied therein. All subcontractors shall provide for assignment to City of any documents or materials prepared by them, and in the event Consultant fails to secure such assignment, Consultant shall indemnify City for all damages resulting therefrom. Moreover, Consultant with respect to any documents and materials that may qualify as "works made for hire" as defined in 17 U.S.C. § 101, such documents and materials are hereby deemed "works made for hire" for the City.

6.4 Confidentiality and Release of Information.

(a) All information gained or work product produced by Consultant in performance of this Agreement shall be considered confidential, unless such information is in the public domain or already known to Consultant. Consultant shall not release or disclose any such

information or work product to persons or entities other than City without prior written authorization from the Contract Officer.

(b) Consultant, its officers, employees, agents or subcontractors, shall not, without prior written authorization from the Contract Officer or unless requested by the City Attorney, voluntarily provide documents, declarations, letters of support, testimony at depositions, response to interrogatories or other information concerning the work performed under this Agreement. Response to a subpoena or court order shall not be considered “voluntary” provided Consultant gives City notice of such court order or subpoena.

(c) If Consultant, or any officer, employee, agent or subcontractor of Consultant, provides any information or work product in violation of this Agreement, then City shall have the right to reimbursement and indemnity from Consultant for any damages, costs and fees, including attorneys fees, caused by or incurred as a result of Consultant’s conduct.

(d) Consultant shall promptly notify City should Consultant, its officers, employees, agents or subcontractors be served with any summons, complaint, subpoena, notice of deposition, request for documents, interrogatories, request for admissions or other discovery request, court order or subpoena from any party regarding this Agreement and the work performed there under. City retains the right, but has no obligation, to represent Consultant or be present at any deposition, hearing or similar proceeding. Consultant agrees to cooperate fully with City and to provide City with the opportunity to review any response to discovery requests provided by Consultant. However, this right to review any such response does not imply or mean the right by City to control, direct, or rewrite said response.

ARTICLE 7. ENFORCEMENT OF AGREEMENT AND TERMINATION

7.1 California Law.

This Agreement shall be interpreted, construed and governed both as to validity and to performance of the parties in accordance with the laws of the State of California. Legal actions concerning any dispute, claim or matter arising out of or in relation to this Agreement shall be instituted in the Superior Court of the County of Los Angeles, State of California, or any other appropriate court in such county, and Consultant covenants and agrees to submit to the personal jurisdiction of such court in the event of such action. In the event of litigation in a U.S. District Court, venue shall lie exclusively in the Central District of California, in the County of Los Angeles, State of California.

7.2 Disputes; Default.

In the event that Consultant is in default under the terms of this Agreement, the City shall not have any obligation or duty to continue compensating Consultant for any work performed after the date of default. Instead, the City may give notice to Consultant of the default and the reasons for the default. The notice shall include the timeframe in which Consultant may cure the default. This timeframe is presumptively thirty (30) days, but may be extended, though not reduced, if circumstances warrant. During the period of time that Consultant is in default, the City shall hold all invoices and shall, when the default is cured, proceed with payment on the invoices. In the alternative, the City may, in its sole discretion, elect to pay some or all of the outstanding invoices

during the period of default. If Consultant does not cure the default, the City may take necessary steps to terminate this Agreement under this Article. Any failure on the part of the City to give notice of the Consultant's default shall not be deemed to result in a waiver of the City's legal rights or any rights arising out of any provision of this Agreement.

7.3 Retention of Funds.

Consultant hereby authorizes City to deduct from any amount payable to Consultant (whether or not arising out of this Agreement) (i) any amounts the payment of which may be in dispute hereunder or which are necessary to compensate City for any losses, costs, liabilities, or damages suffered by City, and (ii) all amounts for which City may be liable to third parties, by reason of Consultant's acts or omissions in performing or failing to perform Consultant's obligation under this Agreement. In the event that any claim is made by a third party, the amount or validity of which is disputed by Consultant, or any indebtedness shall exist which shall appear to be the basis for a claim of lien, City may withhold from any payment due, without liability for interest because of such withholding, an amount sufficient to cover such claim. The failure of City to exercise such right to deduct or to withhold shall not, however, affect the obligations of the Consultant to insure, indemnify, and protect City as elsewhere provided herein.

7.4 Waiver.

Waiver by any party to this Agreement of any term, condition, or covenant of this Agreement shall not constitute a waiver of any other term, condition, or covenant. Waiver by any party of any breach of the provisions of this Agreement shall not constitute a waiver of any other provision or a waiver of any subsequent breach or violation of any provision of this Agreement. Acceptance by City of any work or services by Consultant shall not constitute a waiver of any of the provisions of this Agreement. No delay or omission in the exercise of any right or remedy by a non-defaulting party on any default shall impair such right or remedy or be construed as a waiver. Any waiver by either party of any default must be in writing and shall not be a waiver of any other default concerning the same or any other provision of this Agreement.

7.5 Rights and Remedies are Cumulative.

Except with respect to rights and remedies expressly declared to be exclusive in this Agreement, the rights and remedies of the parties are cumulative and the exercise by either party of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same default or any other default by the other party.

7.6 Legal Action.

In addition to any other rights or remedies, either party may take legal action, in law or in equity, to cure, correct or remedy any default, to recover damages for any default, to compel specific performance of this Agreement, to obtain declaratory or injunctive relief, or to obtain any other remedy consistent with the purposes of this Agreement. Notwithstanding any contrary provision herein, Consultant shall file a statutory claim pursuant to Government Code Sections 905 et. seq. and 910 et. seq., in order to pursue a legal action under this Agreement.

7.7 Termination Prior to Expiration of Term.

This Section shall govern any termination of this Contract except as specifically provided in the following Section for termination for cause. The City reserves the right to terminate this Contract at any time, with or without cause, upon thirty (30) days' written notice to Consultant, except that where termination is due to the fault of the Consultant, the period of notice may be such shorter time as may be determined by the Contract Officer. In addition, the Consultant reserves the right to terminate this Contract at any time, with or without cause, upon sixty (60) days' written notice to City, except that where termination is due to the fault of the City, the period of notice may be such shorter time as the Consultant may determine. Upon receipt of any notice of termination, Consultant shall immediately cease all services hereunder except such as may be specifically approved by the Contract Officer. Except where the Consultant has initiated termination, the Consultant shall be entitled to compensation for all services rendered prior to the effective date of the notice of termination and for any services authorized by the Contract Officer thereafter in accordance with the Schedule of Compensation or such as may be approved by the Contract Officer, except as provided in Section 7.3. In the event the Consultant has initiated termination, the Consultant shall be entitled to compensation only for the reasonable value of the work product actually produced hereunder. In the event of termination without cause pursuant to this Section, the terminating party need not provide the non-terminating party with the opportunity to cure pursuant to Section 7.2.

7.8 Termination for Default of Consultant.

If termination is due to the failure of the Consultant to fulfill its obligations under this Agreement, City may, after compliance with the provisions of Section 7.2, take over the work and prosecute the same to completion by contract or otherwise, and the Consultant shall be liable to the extent that the total cost for completion of the services required hereunder exceeds the compensation herein stipulated (provided that the City shall use reasonable efforts to mitigate such damages), and City may withhold any payments to the Consultant for the purpose of set-off or partial payment of the amounts owed the City as previously stated.

7.9 Attorneys' Fees.

If either party to this Agreement is required to initiate or defend or made a party to any action or proceeding in any way connected with this Agreement, the prevailing party in such action or proceeding, in addition to any other relief which may be granted, whether legal or equitable, shall be entitled to reasonable attorney's fees. Attorney's fees shall include attorney's fees on any appeal, and in addition a party entitled to attorney's fees shall be entitled to all other reasonable costs for investigating such action, taking depositions and discovery and all other necessary costs the court allows which are incurred in such litigation. All such fees shall be deemed to have accrued on commencement of such action and shall be enforceable whether or not such action is prosecuted to judgment.

ARTICLE 8. CITY OFFICERS AND EMPLOYEES: NON-DISCRIMINATION

8.1 Non-liability of City Officers and Employees.

No officer or employee of the City shall be personally liable to the Consultant, or any successor in interest, in the event of any default or breach by the City or for any amount which may

become due to the Consultant or to its successor, or for breach of any obligation of the terms of this Agreement.

8.2 Conflict of Interest.

Consultant covenants that neither it, nor any officer or principal of its firm, has or shall acquire any interest, directly or indirectly, which would conflict in any manner with the interests of City or which would in any way hinder Consultant's performance of services under this Agreement. Consultant further covenants that in the performance of this Agreement, no person having any such interest shall be employed by it as an officer, employee, agent or subcontractor without the express written consent of the Contract Officer. Consultant agrees to at all times avoid conflicts of interest or the appearance of any conflicts of interest with the interests of City in the performance of this Agreement.

No officer or employee of the City shall have any financial interest, direct or indirect, in this Agreement nor shall any such officer or employee participate in any decision relating to the Agreement which affects her/his financial interest or the financial interest of any corporation, partnership or association in which (s)he is, directly or indirectly, interested, in violation of any State statute or regulation. The Consultant warrants that it has not paid or given and will not pay or give any third party any money or other consideration for obtaining this Agreement.

8.3 Covenant Against Discrimination.

Consultant covenants that, by and for itself, its heirs, executors, assigns, and all persons claiming under or through them, that there shall be no discrimination against or segregation of, any person or group of persons on account of race, color, creed, religion, sex, gender, sexual orientation, marital status, national origin, ancestry or other protected class in the performance of this Agreement. Consultant shall take affirmative action to insure that applicants are employed and that employees are treated during employment without regard to their race, color, creed, religion, sex, gender, sexual orientation, marital status, national origin, ancestry or other protected class.

8.4 Unauthorized Aliens.

Consultant hereby promises and agrees to comply with all of the provisions of the Federal Immigration and Nationality Act, 8 U.S.C.A. §§ 1101, *et seq.*, as amended, and in connection therewith, shall not employ unauthorized aliens as defined therein. Should Consultant so employ such unauthorized aliens for the performance of work and/or services covered by this Agreement, and should any liability or sanctions be imposed against City for such use of unauthorized aliens, Consultant hereby agrees to and shall reimburse City for the cost of all such liabilities or sanctions imposed, together with any and all costs, including attorneys' fees, incurred by City.

ARTICLE 9. MISCELLANEOUS PROVISIONS

9.1 Notices.

Any notice, demand, request, document, consent, approval, or communication either party desires or is required to give to the other party or any other person shall be in writing and either served personally or sent by prepaid, first-class mail, in the case of the City, to the City Manager and

to the attention of the Contract Officer (with her/his name and City title), City of Carson, 701 East Carson, Carson, California 90745 and in the case of the Consultant, to the person(s) at the address designated on the execution page of this Agreement. Either party may change its address by notifying the other party of the change of address in writing. Notice shall be deemed communicated at the time personally delivered or in seventy-two (72) hours from the time of mailing if mailed as provided in this Section.

9.2 Interpretation.

The terms of this Agreement shall be construed in accordance with the meaning of the language used and shall not be construed for or against either party by reason of the authorship of this Agreement or any other rule of construction which might otherwise apply.

9.3 Counterparts.

This Agreement may be executed in counterparts, each of which shall be deemed to be an original, and such counterparts shall constitute one and the same instrument.

9.4 Integration; Amendment.

This Agreement including the attachments hereto is the entire, complete and exclusive expression of the understanding of the parties. It is understood that there are no oral agreements between the parties hereto affecting this Agreement and this Agreement supersedes and cancels any and all previous negotiations, arrangements, agreements and understandings, if any, between the parties, and none shall be used to interpret this Agreement. No amendment to or modification of this Agreement shall be valid unless made in writing and approved by the Consultant and by the City Council. The parties agree that this requirement for written modifications cannot be waived and that any attempted waiver shall be void.

9.5 Severability.

In the event that any one or more of the phrases, sentences, clauses, paragraphs, or sections contained in this Agreement shall be declared invalid or unenforceable by a valid judgment or decree of a court of competent jurisdiction, such invalidity or unenforceability shall not affect any of the remaining phrases, sentences, clauses, paragraphs, or sections of this Agreement which are hereby declared as severable and shall be interpreted to carry out the intent of the parties hereunder unless the invalid provision is so material that its invalidity deprives either party of the basic benefit of their bargain or renders this Agreement meaningless.

9.6 Warranty & Representation of Non-Collusion.

No official, officer, or employee of City has any financial interest, direct or indirect, in this Agreement, nor shall any official, officer, or employee of City participate in any decision relating to this Agreement which may affect his/her financial interest or the financial interest of any corporation, partnership, or association in which (s)he is directly or indirectly interested, or in violation of any corporation, partnership, or association in which (s)he is directly or indirectly interested, or in violation of any State or municipal statute or regulation. The determination of "financial interest" shall be consistent with State law and shall not include interests found to be

“remote” or “non-interests” pursuant to Government Code Sections 1091 or 1091.5. Consultant warrants and represents that it has not paid or given, and will not pay or give, to any third party including, but not limited to, any City official, officer, or employee, any money, consideration, or other thing of value as a result or consequence of obtaining or being awarded any agreement. Consultant further warrants and represents that (s)he/it has not engaged in any act(s), omission(s), or other conduct or collusion that would result in the payment of any money, consideration, or other thing of value to any third party including, but not limited to, any City official, officer, or employee, as a result of consequence of obtaining or being awarded any agreement. Consultant is aware of and understands that any such act(s), omission(s) or other conduct resulting in such payment of money, consideration, or other thing of value will render this Agreement void and of no force or effect.

Consultant’s Authorized Initials _____

9.7 Corporate Authority.

The persons executing this Agreement on behalf of the parties hereto warrant that (i) such party is duly organized and existing, (ii) they are duly authorized to execute and deliver this Agreement on behalf of said party, (iii) by so executing this Agreement, such party is formally bound to the provisions of this Agreement, and (iv) the entering into this Agreement does not violate any provision of any other Agreement to which said party is bound. This Agreement shall be binding upon the heirs, executors, administrators, successors and assigns of the parties.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the date(s) and year(s) set forth below, with express intent that this Agreement shall be effective on December 3, 2020.

CITY:

CITY OF CARSON, a municipal corporation

Albert Robles, Mayor

Date: _____, 2020

ATTEST:

Donesia Gause-Aldana, City Clerk

APPROVED AS TO FORM:
ALESHIRE & WYNDER, LLP

Sunny K. Soltani, City Attorney
[BRJ]

CONSULTANT:

THE LIGHTHOUSE HOME FOR MEDICALLY
FRAGILE CHILDREN, INC.

By: _____
Name: Lisa Amos
Title: President/Executive Director

Date: _____, 2020

By: _____
Name: Mary Range
Title: Secretary

Date: _____, 2020

Address: 30845 Burning Tree Drive
Canyon Lake, CA 92587

Two corporate officer signatures required when Consultant is a corporation, with one signature required from each of the following groups: 1) Chairman of the Board, President or any Vice President; and 2) Secretary, any Assistant Secretary, Chief Financial Officer or any Assistant Treasurer. CONSULTANT'S SIGNATURES SHALL BE DULY NOTARIZED, AND APPROPRIATE ATTESTATIONS SHALL BE INCLUDED AS MAY BE REQUIRED BY THE BYLAWS, ARTICLES OF INCORPORATION, OR OTHER RULES OR REGULATIONS APPLICABLE TO CONSULTANT'S BUSINESS ENTITY.

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy or validity of that document.

STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

On _____, 2020 before me, _____, personally appeared _____, proved to me on the basis of satisfactory evidence to be the person(s) whose names(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature: _____

OPTIONAL

Though the data below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent reattachment of this form.

CAPACITY CLAIMED BY SIGNER		DESCRIPTION OF ATTACHED DOCUMENT
<input type="checkbox"/>	INDIVIDUAL	_____
<input type="checkbox"/>	CORPORATE OFFICER	_____
<input type="checkbox"/>	PARTNER(S) <input type="checkbox"/> LIMITED <input type="checkbox"/> GENERAL	TITLE OR TYPE OF DOCUMENT
<input type="checkbox"/>	ATTORNEY-IN-FACT	_____
<input type="checkbox"/>	TRUSTEE(S)	NUMBER OF PAGES
<input type="checkbox"/>	GUARDIAN/CONSERVATOR	_____
<input type="checkbox"/>	OTHER _____	DATE OF DOCUMENT
SIGNER IS REPRESENTING: (NAME OF PERSON(S) OR ENTITY(IES))		_____
_____		SIGNER(S) OTHER THAN NAMED ABOVE

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy or validity of that document.

STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

On _____, 2020 before me, _____, personally appeared _____, proved to me on the basis of satisfactory evidence to be the person(s) whose names(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature: _____

OPTIONAL

Though the data below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent reattachment of this form.

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<input type="checkbox"/>	PARTNER(S) <input type="checkbox"/> LIMITED <input type="checkbox"/> GENERAL	TITLE OR TYPE OF DOCUMENT _____
<input type="checkbox"/>	ATTORNEY-IN-FACT	_____
<input type="checkbox"/>	TRUSTEE(S)	NUMBER OF PAGES _____
<input type="checkbox"/>	GUARDIAN/CONSERVATOR	_____
<input type="checkbox"/>	OTHER _____	DATE OF DOCUMENT _____
SIGNER IS REPRESENTING: (NAME OF PERSON(S) OR ENTITY(IES)) _____ _____		SIGNER(S) OTHER THAN NAMED ABOVE _____

EXHIBIT “A”
SCOPE OF SERVICES

I. Consultant will perform the following Services:

A. GENERAL OVERVIEW - MEAL AND SNACK SERVICES FOR SUMMER AND AFTER SCHOOL PROGRAMS

Contractor shall provide, on an as-needed basis, food services (preparation and delivery of lunch and supper meals and snacks) for the City’s youth Summer and Afterschool programs in accordance with this Exhibit “A.” Services shall be provided in an unbiased and professional manner and in compliance with applicable USDA nutritional requirements for Child Food Programs for ages 6-13, as may be amended from time to time (see Federal Register Vol. 81, No. 29, available at <https://www.govinfo.gov/content/pkg/FR-2016-04-25/pdf/2016-09412.pdf>).

It is estimated that during non-COVID pandemic/emergency times, Consultant will be required to prepare and deliver approximately 28,000 lunches and 32,000 snacks cumulatively during the summer months (i.e. per Summer Program year, beginning in mid-June and continuing through mid-August) and 20,000 suppers and 24,000 snacks cumulatively during the school year (i.e. per Afterschool Program year, beginning in mid-August and continuing through mid-June) pursuant to this Agreement. However, as provided in more detail in subsection (B) of this Section I, these figures are merely estimates, and actual services will be based on City’s need, as determined and requested by the Contract Officer. As of the effective date of this Agreement, it is unknown how the continued effects of the COVID pandemic will affect the foregoing estimates. All services shall be performed in accordance with this Exhibit “A,” including but not limited to the “Specifications” set forth in subparagraph (B)(7) of this Section I, below.

B. DESCRIPTION OF FOOD DISTRIBUTION SERVICES

1. **The following table enumerates the Summer and Afterschool Program locations to which meals and snacks may be required to be delivered pursuant to this Agreement, except as otherwise provided in this Agreement (the “Centers”):**

Location	Address
Anderson Park	19101 S. Wilmington Avenue, Carson, CA 90746
Calas Park	1000 E. 220th Street, Carson, CA 90745
Carriage Crest Park	23800 S. Figueroa Street, Carson, CA 90745
Carson Park	21411 S. Orrick Avenue, Carson, CA 90745
Del Amo Park	703 E. Del Amo Boulevard, Carson, CA 90746

Dolphin Park	21205 Water Street, Carson, CA 90745
Dominguez Park	21330 Santa Fe Avenue, Carson, CA 90810
James M. Foisia Park	23410 Catskill Avenue, Carson, CA 90745
Hemingway Park	700 E. Gardena Boulevard, Carson, CA 90746
Mills Park	1340 E. Diamondale Drive, Carson, 90746
Stevenson Park	17400 Lysander Drive, Carson, CA 90746
Veterans Park	22400 Moneta Avenue, Carson, CA 90745

The City reserves the right to add or remove Centers by request of the Contract Officer and without the need for amendment to this Agreement. The Contract Officer shall notify Consultant of any such changes not less than one week prior to the first required date of service to the adjusted list of Centers.

2. **Requirement Contract.**

- (a) This Agreement is a requirement contract for the services specified herein. The quantities of meals or food services specified hereinabove are estimates only, and no meals or food services are purchased hereby. City shall not be obligated to place any minimum amount or number of orders for meals or food services. The utilization of Consultant for the services pursuant to this Agreement will be dependent upon the needs and requirements of the City, as determined by the Contract Officer. Failure of City to order services in the amounts or quantities estimated herein shall not constitute a basis for any compensation payment or adjustment under this Agreement.
- (b) City shall not be limited to the estimates specified herein in ordering meals or food services from Consultant pursuant to this Agreement. Services shall be provided as necessary to meet the needs of the City's Summer and Afterschool Programs with respect to lunch and supper meals and snacks, as determined and requested by the Contract Officer.
- (c) City may issue orders requiring delivery of meals and snacks by Consultant at multiple Centers simultaneously.
- (d) All services shall be provided in accordance with applicable laws and regulations prescribed by the United States Department of Agriculture ("USDA") and the California Department of Education ("CDE") (including, without limitation, applicable regulatory guidance provided at <https://www.cde.ca.gov/ls/nu/cc>), as may be amended from time to time.

3. **Pricing.** The Parties acknowledge and agree that the services will be provided by Consultant using grant funding from the USDA food and nutrition service, which grant program is administered by CDE, and that the services will thus be provided at no cost to the City pursuant to this Agreement. As such, the Parties acknowledge and agree that Consultant is bound to comply with applicable federal and state laws, regulations, and requirements as necessary to continue its access to such grant funding throughout the term of this Agreement, and that Consultant is subject to auditing by CDE or other applicable State authorities for compliance with such grant requirements. In the event that compliance with any such regulation or requirement conflicts with any provision of this Agreement such that Consultant's compliance with such requirement would constitute a default under this Agreement, Consultant shall notify the Contract Officer of the nature of the conflict as soon as reasonably possible, and the Parties will cooperate reasonably toward entering into a mutually agreeable amendment to this Agreement that will facilitate Consultant's ability to comply with the applicable regulation(s) or grant requirement(s). The Parties acknowledge and agree that Consultant will be considered an authorized sponsor of the City pursuant to this Agreement for purposes of Consultant maintaining or re-applying for said grant funding as may be necessary throughout the term of this Agreement.
4. **Provision of Meals and Snacks; Menu Change Procedure.** Consultant shall provide meals and snacks on a daily basis while Summer and Afterschool programs are in effect, in accordance with the schedule set forth in Section I of Exhibit "D." Deviation from said schedule shall be permitted only upon authorization of the Contract Officer. The Contract Officer may periodically request menu changes or special dietary accommodations (e.g., vegetarian meals). When an emergency or unforeseen situation prevents Consultant from providing or delivering a specified type of food or meal component contemplated by a monthly menu provided pursuant to Section III.A of this Exhibit, Consultant's Contract Representative shall notify the Contract Officer of the issue as soon as reasonably possible, and the two officers shall cooperate reasonably toward finding and selecting a mutually agreeable temporary substitution.
5. **Orders for Delivery of Meals and Snacks.** Delivery of all meals and snacks will be provided by Consultant pursuant to and in accordance with orders placed by the City, via its Contract Officer (or his or her designee). The Contract Officer will order meals and snacks on Tuesday of the week preceding the week of delivery. Orders will be placed for the total number of days in the relevant week (i.e. the week subsequent to the week during which the order is placed), and will include breakdown totals for each Center and each type of meal or snack. The City reserves the right to increase or decrease the number of meals and snacks ordered upon 24 hours' advance notice to Consultant (or less if mutually agreed upon between the Contract Officer and Consultant's Contract representative).

6. **Noncompliance.** The City reserves the right to inspect and determine the quality of all food provided or delivered pursuant to this Agreement and to reject any meals or snacks that do not comply with this Agreement. Consultant shall not be permitted to make unauthorized menu changes, deliver incomplete meals, deliver meals outside the specified delivery time period, or deliver meals that do not comply with the specifications or other applicable provisions set forth in this Agreement. The City reserves the right to obtain meals from other sources if meals are rejected due to any of the foregoing reasons, and Consultant shall be responsible for any cost incurred by City in doing so. The Contract Officer or City representative inspecting shall notify Consultant in writing, for any meals rejected, of the number of meals rejected and the reasons for rejection.

7. **Specifications.**

(a) Packaging.

- (i) Hot meal unit packaging shall be suitable for maintaining meals in accordance with local health standards. Containers and overlay shall have an airtight closure, be of non-toxic material, and be capable of withstanding temperatures of 400°F (204°C) or higher.
- (ii) Cold meal unit or unnecessary-to-heat containers and overlay shall be plastic or paper and be of non-toxic material.
- (iii) Cartons - each carton shall be labeled, and the label shall include:
 - (A) The processor's (plant) name and address;
 - (B) Item identity and meal type;
 - (C) Date of production; and
 - (D) Quantity of individual units per carton.
- (iv) All meals shall be delivered with the following non-food items: condiments, straws, napkins, single service ware, etc.

(b) Food Preparation. Meals shall be prepared under properly controlled temperatures and assembled not more than 24 hours prior to delivery.

(c) Food Specifications. Meals shall consist of five (5) food components: one (1) grain, one (1) protein, one (1) fruit, one (1) vegetable, and one (1) dairy. Snacks shall consist of two (2) of the foregoing five (5) food components. Portions shall be as specified by USDA/CDE regulations or grant requirements and as required in this Agreement.

All meat and meat products, except sausage products, shall have been slaughtered, processed, and manufactured in plants inspected under a USDA-approved inspection program, and shall bear the appropriate seal. Upon delivery, all meat and meat products must be sound, sanitary, and free of objectionable odors or signs of deterioration. Options for vegetarian and special diet meals will be made available upon request.

- (d) Product Specifications. “Milk and milk products” are defined as “...fluid types of pasteurized flavored or unflavored whole milk or low fat milk, or skim milk or cultured buttermilk, which meets State and local standards for such milk...” All milks and milk products provided or delivered pursuant to this Agreement shall conform to the foregoing definitions.

8. **Delivery Requirements.**

- (a) Deliveries shall be made by Consultant to the applicable Center(s) and in accordance with the applicable order from the City.
- (b) All meals and snacks ordered shall be delivered, unloaded, and placed in the kitchen of the designated Center by the time(s) specified in the order.
- (c) Adequate refrigeration or heating shall be provided during transportation and delivery to ensure the wholesomeness of all meals and snacks at delivery in accordance with applicable federal, state and local regulations and grant requirements.
- (d) Any changes in transportation costs arising from any adjustment to the list of Centers will be borne by Consultant and not charged to the City.
- (e) On field trip days, Consultant may be required, at no additional cost to City, to deliver meals and snacks to the Centers at alternate delivery times, as may be requested by the Contract Officer, in order to facilitate transportation of the meals and snacks to the field trip locations by City and/or program participants.
- (f) The Contract Officer, upon 24 hours’ advance notice to Consultant, may require Consultant to prepare and deliver meals to be distributed to children at special events outside of the regular schedule or Centers specified in this Agreement.

9. **Equipment.** Consultant shall provide the following items of equipment and supplies to Centers as needed, pursuant to request of the Contract Officer and at no additional cost to City: (i) documentation binder; (ii) food thermometer; (iii) refrigerator thermometer; (iv) hot box warmer; and (v) refrigerator.

10. **Trainings.** Consultant shall conduct training sessions for City staff, annually or at other intervals as requested by the Contract Officer, for the purpose of training City staff to properly serve and distribute meals prepared or delivered by Consultant pursuant to this Agreement, and to properly document same in accordance with applicable federal, state and local regulations and grant requirements.
11. **Food Tasting.** As requested by the Contract Officer, Consultant shall facilitate periodic food tasting by City of meals and snacks to be provided pursuant to this Agreement.
12. **Supervision and Inspection.** Consultant shall provide management supervision at all times while providing the services, and shall maintain constant/regular quality control inspections to check for portion size, appearance, and packaging, in addition to the quality of all food products and components provided pursuant to this Agreement.
13. **Record Keeping**
 - (a) Consultant shall prepare three (3) transport records - one for Consultant, one for Center personnel, and one for the Contract Officer. Transport records shall be itemized to show the number of meals/snacks of each type delivered to each Center. Designees of the City at each Center will check the adequacy of the delivery and the meals before signing the transport record.
 - (b) Consultant shall maintain adequate transport records, purchase order records, production records, delivery records, and inspection records as necessary to document compliance with this Agreement and applicable laws and regulations.
 - (c) The books and records of Consultant pertaining to the services provided pursuant to this Agreement shall be available for City review and inspection, upon request of the Contract Officer and at any reasonable time and place, for a period of three (3) years from the date of expiration or termination this Agreement, or until the final resolution of any audits or inspections of Consultant conducted by applicable state and federal authorities, whichever is later.
 - (d) Consultant shall provide reports on meals provided or delivered as requested by the Contract Officer for City presentations.
14. **Inspection of Facility**
 - (a) The City (without limitation as to applicable CDE and USDA inspection rights) has the right, but not the obligation, to inspect the facilities where meals or snacks are prepared or delivered pursuant to this Agreement without notice at any time, and to be present during

preparation and delivery meals and snacks pursuant to this Agreement.

- (b) The Parties acknowledge and agree that Consultant's facilities are subject to periodic inspections for compliance with USDA/CDE regulations and/or other applicable laws and regulations by the USDA, the CDE/any other agency designated to inspect meal quality for the State, and applicable local health authorities.
- (c) Consultant shall arrange for the meals and snacks it prepares pursuant to this Agreement to be periodically inspected by the applicable local health department or an independent agency to determine bacteria levels in the meals and snacks being prepared, transported, and delivered. Such levels shall conform to the standards which are applied by the applicable local health authority with respect to the level of bacteria which may be present in meals served by other establishments in the local jurisdiction.
- (d) Upon commencement of this Agreement, Consultant shall provide City with a copy of its health certification for all food service facilities in which it will prepare meals and/or snacks pursuant to this Agreement.

15. **Number of Meals and Delivery Times.** Consultant shall provide/deliver the exact number of meals requested/ordered. Counts of meals will be made at all applicable Centers before meals are accepted. Damaged or incomplete meals shall not be included for purposes of determining compliance with this paragraph.

16. **Emergencies.** In the event of unforeseen emergency circumstances preventing Consultant from performing the services, notwithstanding anything in Section 3.3 of this Agreement to the contrary, Consultant shall, as soon as reasonably possible, notify the Contract Officer in writing of the following: (a) any on-time performance or delivery that is rendered impossible by the emergency circumstances; (b) the circumstance(s) precluding such performance or delivery; and (c) whether and to what extent subsequent services or deliveries will be affected. In such event, City may secure meals and snacks by other means to replace Consultant's services for the duration of the emergency period or the period in which Consultant is unable to perform, and Consultant shall reimburse the City for the cost of the meals and snacks secured by the City by such other means.

II. As part of the Services, Consultant will prepare and deliver the following tangible work products to the City:

A. See Exhibit D, Section II

- III. In addition to the requirements of Section 6.2, during performance of the Services, Consultant will keep the City apprised of the status of performance by delivering the following status reports:**
- A.** Monthly menus, inclusive of meal selections and any component substitutions.
 - B.** Detailed reports at the conclusion of each program year (separately for Summer Program and Afterschool Program years if requested by the Contract Officer), or more frequently as requested by the Contract Officer, demonstrating the number of meals provided (itemized by lunches, suppers and snacks) for the relevant program year along with the dollar value of the meals provided.
- IV. All work product is subject to review and acceptance by the City, and must be revised by the Consultant without additional charge to the City until found satisfactory and accepted by City.**
- V. Consultant will utilize the following personnel to accomplish the Services:**
- A.** Lisa Amos, Executive Director
 - B.** Sarah Jackson, Program Director
 - C.** Mary Range, Secretary
 - D.** Subcontractors:
 - 1. City recognizes that Consultant will use subcontractors to provide the prepackaged food Consultant delivers to City pursuant to this Agreement. Consultant is solely responsible for the subcontractors' preparation, handling, and transportation of food products that Consultant delivers to City pursuant to this Agreement.
 - 2. Preferred Meal Systems, Inc., a Delaware corporation, and Revolution Foods, Inc., a Delaware corporation, are authorized subcontractors hired by Consultant to prepare and deliver food pursuant to this Agreement.

EXHIBIT “B”
SPECIAL REQUIREMENTS
(Superseding Contract Boilerplate)

(added text shown in *bold italics*, deletions in strikethrough):

I. Section 1.8 (Additional Services) is stricken in its entirety because this is a zero-cost contract and the Contract Officer shall not expand Consultant’s services beyond those that may be provided pursuant to Exhibit “A.”

II. Section 2.2 (Method of Compensation) is stricken in its entirety because this is a zero-cost contract.

III. Section 2.3 (Reimbursable Expenses) is stricken in its entirety because this is a zero-cost contract.

IV. Section 2.4 (Invoices) is stricken in its entirety because this is a zero-cost contract.

V. Section 3.4 (Term) is hereby amended to read in its entirety as follows:

“3.4 Term

“Unless earlier terminated in accordance with Article 7 of this Agreement, this Agreement shall continue in full force and effect until completion of the services but not exceeding *three (3)* ~~one (1)~~ years from the date hereof, except as otherwise provided in the Schedule of Performance (Exhibit ‘D’). *At City’s option, and upon execution of a written amendment (duly approved by City) to this Agreement, the initial three-year term may be extended by up to two (2) one-year extension periods.*”

VI. Section 7.2 (Disputes; Default) is hereby amended to read in its entirety as follows:

7.2 Disputes; Default

“In the event that Consultant is in default under the terms of this Agreement, the City shall not have any obligation or duty to *compensate* ~~continue compensating~~ Consultant for any work performed after the date of default. Instead, the City may give notice to Consultant of the default and the reasons for the default. The notice shall include the timeframe in which Consultant may cure the default. This timeframe is presumptively thirty (30) days, but may be extended, though not reduced, if circumstances warrant. ~~During the period of time that Consultant is in default, the City shall hold all invoices and shall, when the default is cured, proceed with payment on the invoices. In the alternative, the City may, in its sole discretion, elect to pay some or all of the outstanding invoices during the period of default. If Consultant does not cure the default, the City may take necessary steps to terminate this Agreement under this Article. Any failure on the part of the City to give notice~~

of the Consultant's default shall not be deemed to result in a waiver of the City's legal rights or any rights arising out of any provision of this Agreement."

VII. Section 7.7 (Termination Prior to Expiration of Term) is hereby amended to read in its entirety as follows:

"7.7 Termination Prior to Expiration of Term.

This Section shall govern any termination of this Contract except as specifically provided in the following Section for termination for cause. The City reserves the right to terminate this Contract at any time, with or without cause, upon thirty (30) days' written notice to Consultant, except that where termination is due to the fault of the Consultant, the period of notice may be such shorter time as may be determined by the Contract Officer. In addition, the Consultant reserves the right to terminate this Contract at any time, with or without cause, upon sixty (60) days' written notice to City, except that where termination is due to the fault of the City, the period of notice may be such shorter time as the Consultant may determine. Upon receipt of any notice of termination, Consultant shall immediately cease all services hereunder except such as may be specifically approved by the Contract Officer. ***Regardless which Party initiates termination of this Agreement, the Consultant shall not be entitled to compensation for services rendered pursuant to this Agreement.*** ~~Except where the Consultant has initiated termination, the Consultant shall be entitled to compensation for all services rendered prior to the effective date of the notice of termination and for any services authorized by the Contract Officer thereafter in accordance with the Schedule of Compensation or such as may be approved by the Contract Officer, except as provided in Section 7.3. In the event the Consultant has initiated termination, the Consultant shall be entitled to compensation only for the reasonable value of the work product actually produced hereunder. In the event of termination without cause pursuant to this Section, the terminating party need not provide the non-terminating party with the opportunity to cure pursuant to Section 7.2."~~

VIII. Section 7.8 (Termination for Default of Consultant) is hereby amended to read in its entirety as follows:

"7.8 Termination for Default of Consultant.

If termination is due to the failure of the Consultant to fulfill its obligations under this Agreement, City may, after compliance with the provisions of Section 7.2, take over the work and prosecute the same to completion by contract or otherwise, ~~and the Consultant shall be liable to the extent that the total cost for completion of the services required hereunder exceeds the compensation herein stipulated (provided that the City shall use reasonable efforts to mitigate such damages), and City may withhold any payments to the Consultant for the purpose of set-off or partial payment of the amounts owed the City as previously stated."~~

EXHIBIT "C"
SCHEDULE OF COMPENSATION

I. Consultant shall perform the following tasks at the following rates:

	MEAL TYPE	ESTIMATED SERVINGS PER DAY	ESTIMATED NUMBER OF SERVING DAYS	UNIT PRICE (COST TO CITY)	TOTAL PRICE (COST TO CITY)
A.	Lunch	950	49	\$0	\$0
B.	Snack	600	49	\$0	\$0
C.	Supper	675	184	\$0	\$0
				Grand Total	\$0*

*Consultant is funded by grants, and provides and delivers pre-packaged meals and snacks to the City *at no cost* for City to distribute to children in its Summer and Afterschool programs.

II. A retention of ten percent (10%) shall be held from each payment as a contract retention to be paid as part of the final payment upon satisfactory completion of services. NOT APPLICABLE

III. Within the budgeted amounts for each Task, and with the approval of the Contract Officer, funds may be shifted from one Task sub-budget to another so long as the Contract Sum is not exceeded per Section 2.1, unless Additional Services are approved per Section 1.8. NOT APPLICABLE

IV. The City will compensate Consultant for the Services performed upon submission of a valid invoice. Each invoice is to include:

NOT APPLICABLE

V. The total compensation for the Services shall not exceed \$0.00, as provided in Section 2.1 of this Agreement.

VI. The Consultant's billing rates for all personnel are attached as Exhibit C-1.

NOT APPLICABLE

EXHIBIT “D”
SCHEDULE OF PERFORMANCE

I. Consultant shall perform all services timely in accordance with the following schedule:

	<u>Days of Performance</u>	<u>Times of Performance</u>
A. Task A (Lunches)	Mondays through Fridays**	Per Contract Officer Request
B. Task B (Snacks)	Mondays through Fridays**	Per Contract Officer Request
C. Task C (Suppers)	Mondays through Fridays**	Per Contract Officer Request

**Meals and snacks are to be made available to City by Consultant each day while Summer and Afterschool Programs are in effect, unless otherwise requested by the Contract Officer. Summer Programs generally run from mid-June to mid-August. Afterschool Programs generally run from mid-August to mid-June. Deliveries of meals and snacks shall be made only pursuant to City orders, on such days and times as specified in the relevant order.

II. Consultant shall deliver the following tangible work products to the City in accordance with the schedule set forth in Section I of this Exhibit “D”:

- A. Approved Lunches (5 components)**
- B. Approved Snacks (2 components)**
- C. Approved Suppers (5 components)**
- D. All required serving utensils and condiments, as provided in this Agreement.**

III. The Contract Officer may approve extensions for performance of the services in accordance with Section 3.2.