

File No. 210374

Committee Item No. 9

Board Item No. _____

COMMITTEE/BOARD OF SUPERVISORS

AGENDA PACKET CONTENTS LIST

Committee: Budget & Finance Committee

Date May 5, 2021

Board of Supervisors Meeting

Date _____

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- Youth Commission Report
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- Grant Budget
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- Form 126 – Ethics Commission
- Award Letter
- Application
- Public Correspondence

OTHER (Use back side if additional space is needed)

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Completed by: Linda Wong

Date April 30, 2021

Completed by: Linda Wong

Date _____

1 [Contract Amendment - SMG Food and Beverage LLC - Feeding Services for Alternative
2 Shelter Locations - Not to Exceed \$18,959,634]

3 **Resolution approving a contract amendment between the City and County of San**
4 **Francisco and SMG Food and Beverage LLC, for feeding services for Alternative**
5 **Shelter locations, to extend the contract term by twelve months for a total term of May**
6 **18, 2020, through May 17, 2022, and to increase the contract amount by \$9,479,817 for a**
7 **total not to exceed amount of \$18,959,634 to commence on May 18, 2021.**

8
9 WHEREAS, The City and County of San Francisco, by and through its Human Services
10 Agency, wishes to provide food and beverage services to individuals located at Alternative
11 Shelter locations, including but not limited to: Shelter In Place (SIP), Isolation & Quarantine
12 (I&Q), and Congregate sites in San Francisco in response to COVID-19 pandemic; and

13 WHEREAS, SMG Food and Beverage LLC will deliver three meals per day to
14 individuals or families who meet specific FEMA eligibility criteria that are temporarily housed in
15 Alternative Shelter locations and experiencing food insecurity in San Francisco; and

16 WHEREAS, The Human Services Agency conducted a Request for Qualifications for
17 these services in April 2020, SMG Food and Beverage LLC submitted a proposal, and was
18 awarded a contract; and

19 WHEREAS, The Human Services Agency entered into an agreement with SMG Food
20 and Beverage LLC effective May 18, 2020, to May 17, 2021.

21 WHEREAS, The City and County of San Francisco wishes to amend the contract with
22 SMG Food and Beverage LLC, effective on and after May 18, 2021, to increase the grant
23 agreement amount by \$9,479,817 for a revised not to exceed amount of \$18,959,634 and to
24 extend the grant agreement to May 17, 2022; and

25

1 WHEREAS, On February 19, 2021, Mayor London N. Breed issued a Thirty-Fifth
2 Supplement to Mayoral Proclamation Declaring the Existence of a Local Emergency dated
3 February 25, 2020, that authorized City departments to modify COVID-19-Related Contracts
4 executed before February 1, 2021, to extend the term of the agreement up to an additional
5 twelve months; now, therefore, be it

6 RESOLVED, That the Board of Supervisors hereby authorizes the contract amendment
7 between the City and County of San Francisco and SMG Food and Beverage LLC to provide
8 feeding services for Alternative Shelter locations during the period of May 18, 2020, to May
9 17, 2022, for a total not to exceed amount of \$18,959,634; and, be it

10 FURTHER RESOLVED, That within thirty (30) days of the modification being fully
11 executed by all parties, the Human Services Agency shall provide the final grant agreement to
12 the Clerk of the Board for inclusion into the official file.

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1 APPROVED:

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5 /S/_____

6 Trent Rhorer

7 Executive Director, Human Services Agency

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Items 8 and 9 Files 21-0373 and 21-0374	Department: Human Services Agency (HSA)
EXECUTIVE SUMMARY	
<p style="text-align: center;">Legislative Objectives</p> <ul style="list-style-type: none"> • <u>File 21-0373</u>: The proposed resolution would approve the first amendment to the Feeding Services for Alternative Shelter Locations contract between the City and San Francisco New Deal to extend the contract term by one year through May 17, 2022 and to increase the contract amount by \$9,917,050, from \$9,917,050 to not to exceed \$19,834,100. • <u>File 21-0374</u>: The proposed resolution would approve the first amendment to the Feeding Services for Alternative Shelter Locations contract between the City and SMG Food and Beverage LLC to extend the contract term by one year through May 17, 2022, and to increase the contract amount by \$9,479,817 from \$9,479,817 to not-to-exceed \$18,959,634. <p style="text-align: center;">Key Points</p> <ul style="list-style-type: none"> • Following a competitive Request for Qualifications process in May 2020, San Francisco New Deal and SMG Food and Beverage LLC were selected to provide meal services to individuals who have been placed in hotels, congregate sites, and Recreation Vehicle sites (“Alternative Shelters”) in San Francisco due to the COVID-19 pandemic. • The City is contracting with two food service vendors to ensure ongoing supply of food to the Alternate Shelter programs should supply from one vendor be disrupted. • Under the original contract, San Francisco New Deal was to provide services from May 18, 2020 to May 17, 2021, for a total not to exceed amount of \$9,917,050 • Under a separate contract, SMG Food and Beverage LLC was to provide services from May 18, 2020 to May 17, 2021, for a total not to exceed amount of \$9,479,817. <p style="text-align: center;">Fiscal Impact</p> <ul style="list-style-type: none"> • The proposed increase to the SF New Deal contract is based on serving 650 clients per day at a cost of \$38 per person including a management fee of \$5.45. SMG Food and Beverage costs are based on serving 700 clients per day at a cost of \$33.73 per person including a management fee of \$3.30. • The actual number of clients served over the first term of both agreements is lower than budgeted, ranging from 410 to 800 for SF New Deal and 490 to 650 for SMG Food and Beverage. As a result, after 12 months, the SF New Deal contract has a remaining contract authority of \$843,425 and SMG Food and Beverage has a remaining contract authority of \$2,152,151. <p style="text-align: center;">Recommendations</p> <ul style="list-style-type: none"> • Amend File 21-0373 to reduce the total not-to-exceed amount by \$843,425, from \$19,834,100 to \$18,990,675. • Amend File 21-0374 to reduce the total not-to-exceed amount by \$2,152,151, from \$18,959,634 to \$16,807,483. • Approve both resolutions, as amended. 	

MANDATE STATEMENT

City Charter Section 9.118(b) states that any contract entered into by a department, board or commission that (1) has a term of more than ten years, (2) requires expenditures of \$10 million or more, or (3) requires a modification of more than \$500,000 is subject to Board of Supervisors approval.

BACKGROUND

Two Current Agreements for Feeding Services for Alternative Shelter Locations

On April 9, 2020, the Human Services Agency (HSA) issued a Request for Qualifications “COVID-19 Response: Meal Services for People in Hotels, Congregate Sites, RVs or in Homes” (RFQ No. 885) and, according to HSA, 31 organizations submitted their qualifications. From this panel-scored list of qualified organizations, San Francisco New Deal (SF New Deal) and SMG Food and Beverage LLC were selected in May 2020 for two separate emergency services contracts to provide meal services to individuals who have been placed in hotels, congregate sites, and Recreation Vehicle sites (“Alternative Shelters”) in San Francisco due to the COVID-19 pandemic:

- San Francisco New Deal for a term from May 18, 2020 to May 17, 2021, for a total not to exceed amount of \$9,917,050
- SMG Food and Beverage LLC for a term from May 18, 2020 to May 17, 2021, for a total not to exceed amount of \$9,479,817.

According to Ms. Rocio Duenas, HSA Senior Contract Manager, the City is contracting with two food service vendors to ensure ongoing supply of food to the Alternate Shelter programs should supply from one vendor be disrupted. SMG Food and Beverage provides fresh meals with a range of meal types, as well as flash frozen meals at sites. Because it partners with local restaurants, SF New Deal has the opportunity to provide a wider variety of cultural meals.

Background on the Providers

SF New Deal is a nonprofit organization that was launched March 23, 2020, dedicated to connecting restaurant meals to residents in need. According to the SF New Deal website, the goal of the nonprofit is primarily to help keep small businesses open and their employees working during the Covid-19 pandemic. SF New Deal uses government and privately raised funds to subcontract with small businesses across the City.

SMG Food and Beverage, LLC is an Industrial Services Business founded in 1999 that operates internationally.

Contract Performance

According to HSA, both SF New Deal and SMG Food & Beverage LLC have met or exceeded performance expectations on their contracts. They have worked with the City’s Alternative Shelter Program to improve service delivery and provide cost reduction opportunities for the City, including:

- Less than 24 hours’ notice is required to change meal counts for the next day,

- Ability to add individual meals that are invoiced at a per meal price vs. the daily per person/per day rate (i.e. increase of 5 meals for dinner),
- Preparation of frozen meals and free use of a deep freezer at isolation and quarantine sites in order to reduce the amount buffer meals ordered and reduce food waste, and
- Pilot by SF New Deal for culturally appropriate meals for guests at isolation and quarantine sites to allow them to more comfortably isolate during their stay.

DETAILS OF PROPOSED LEGISLATION

File 21-0373: The proposed resolution would approve the first amendment to the Feeding Services for Alternative Shelter Locations contract between the City and SF New Deal to extend the contract term by one year through May 17, 2022 and to increase the contract amount by \$9,917,050, from \$9,917,050 to not to exceed \$19,834,100.

File 21-0374: The proposed resolution would approve the first amendment to the Feeding Services for Alternative Shelter Locations contract between the City and SMG Food and Beverage LLC to extend the contract term by one year through May 17, 2022, and to increase the contract amount by \$9,479,817 from \$9,479,817 to not-to-exceed \$18,959,634.

Services Provided

Under the agreement, both contractors are to continue providing (and delivering during breakfast, lunch and dinner times) three healthy meals plus one snack per day to approximately 650 individuals. The City determines and informs providers how many meals will be needed per alternative shelter site. According to Ms. Duenas, the actual number of people served per day by SF New Deal has fluctuated throughout the term from 410 to 800. The cost per meal will remain \$38 per person/per day (Breakfast = \$9.50, Lunch = \$15.20, Dinner = \$13.30). While the contract allows for 55 partner restaurants, currently SF New Deal partners with 34 restaurants throughout the City. Appendix 1 shows SF New Deal's current partner restaurant list.

According to HSA, the actual number of people served per day by SMG Food and Beverage LLC has also fluctuated throughout the term from 490 to 650. The cost per meal will remain \$33.73 per person/per day (Breakfast = \$10.88, Lunch = \$11.97, Dinner = \$10.88).

SF New Deal is compensated on a weekly invoice basis for the actual costs of providing feeding services, including a pre negotiated management fee of \$5.45 (14.34 percent of the \$38 meal rate). SMG Food and Beverage LLC is compensated on a monthly invoice basis for the actual costs of providing feeding services, including a pre negotiated management fee of \$3.30 (9.8 percent of the \$33.73 meal rate).

FISCAL IMPACT

The proposed increase to each contract is shown in Exhibit 1. SF New Deal costs are based on serving 650 clients per day at a cost of \$38 per person. SMG Food and Beverage costs are based on serving 700 clients per day at a cost of \$33.73 per person. The current contracts and the proposed amendments each have a ten percent contingency.

Exhibit 1: Current and Proposed Contract Amounts

	Current Amount	Proposed Increase	Total Amount
SF New Deal	\$9,917,050	\$9,917,050	\$19,834,100
SMG Food & Beverage	\$9,479,817	\$9,479,817	\$18,959,634

Source: Current and Proposed Agreements, Appendix B

According to HSA, actual and projected spending on the SF New Deal contract totals \$9,073,625, leaving a remaining contract authority of \$843,425. Similarly, SMG Food and Beverage actual and projected expenditures total \$7,327,666, leaving a remaining contract authority of \$2,152,151. Both contracts are underspent because they are serving fewer actual clients than budgeted. We therefore recommend reducing the SF New Deal resolution's not-to-exceed amount by \$843,425 and the SMG Food and Beverage resolution's not-to-exceed amount by \$2,152,151.

Ms. Rocio Duenas reports that both contracts are funded through a combination of State and federal grants, including the Emergency Solutions Grants Program as funded by the CARES Act.

RECOMMENDATIONS

1. Amend File 21-0373 to reduce the total not-to-exceed amount by \$843,425, from \$19,834,100 to \$18,990,675.
2. Amend File 21-0374 to reduce the total not-to-exceed amount by \$2,152,151, from \$18,959,634 to \$16,807,483.
3. Approve both resolutions, as amended.

Appendix 1. SF New Deal's Active Partner Restaurants

Fayala
1601 Bar & Kitchen
Amber India Restaurant
Asiento
Bini's Kitchen
Broadway Dim Sum Café
Cafe Guatemalteco
Causwells
Dark Horse
Delicioso Creperie
Eko Kitchen
Farming Hope
Java Beach Café
Ladies Who Lunch Catering
Little Baobab
Little Vietnam
Little Window
Lord Stanley
Newkirks
Nia Soul
Nightbird
Old Skool Café
Reem's
SF Local Market
Sixth Course
St. Francis Fountain
Sun Rise Restaurant
Sunday Gather
Tato | All Good Pizza | Cafe
Alma
The New Spot on Polk
Twisted St Café
Uma Casa
Wayfare Tavern
Z Zoul

Source: Human Services Agency

CITY AND COUNTY OF SAN FRANCISCO

FIRST AMENDMENT

CONTRACT ID: 1000017934

THIS FIRST AMENDMENT (this “Amendment”) is made as of **May 18, 2021**, in San Francisco, California, by and between **SMG Food and Beverage LLC, 747 Howard Street, San Francisco, CA 94103** (“Contractor”), and the City and County of San Francisco, a municipal corporation (“City”), acting by and through its **Human Services Agency**.

RECITALS

WHEREAS, City and Contractor have previously entered into an agreement dated May 18, 2020 (the “Agreement”); and

WHEREAS, City and Contractor desire to modify the Agreement on the terms and conditions set forth herein to extend the term and increase the contract amount; and

WHEREAS, this Agreement was competitively procured as required by San Francisco Administrative Code Chapter 21.1 through a Request for Qualifications (“RFQ”) #885 issued on April 9, 2020, in which City selected Contractor; and

WHEREAS, the City’s Board of Supervisors approved this Amendment by [INSERT RESOLUTION NUMBER] on [INSERT DATE OF COMMISSION OR BOARD ACTION];

NOW, THEREFORE, Contractor and the City agree as follows:

Article 1 Modifications to the Agreement.

1. **Article 2.1. Term** of the Agreement currently reads as follows:

The term of this Agreement shall commence on **May 18, 2020** and continue through **May 17, 2021**, unless earlier terminated as otherwise provided herein.

Such section is hereby superseded in its entirety to read as follows:

The term of this Agreement shall commence on **May 18, 2020** and expire on **May 17, 2022**, unless earlier terminated as otherwise provided herein.

2. **Article 3.3.1. Payment** of the Agreement currently reads as follows:

3.3.1 Payment. Contractor shall provide an invoice to the City on a weekly basis for Services completed in the immediate preceding week, unless a different schedule is set out in Appendix B, "Calculation of Charges." Compensation shall be made for Services identified in the invoice that the HSA Director, in his or her sole discretion, concludes has been satisfactorily performed. Payment shall be made within 30 calendar days of receipt of the invoice, unless the City notifies the Contractor that a dispute as to the invoice exists. In no event shall the amount of this Agreement exceed **Nine Million, Four Hundred Seventy Nine Thousand, and Eight Hundred Seventeen Dollars (\$9,479,817)**. The breakdown of charges associated with this Agreement appears in Appendix B, "Calculation of Charges," attached hereto and incorporated by reference as though fully set forth herein. A portion of payment may be withheld until conclusion of the Agreement if agreed to by both parties as retainage, described in Appendix B. In no event shall City be liable for interest or late charges for any late payments.

Such section is hereby superseded in its entirety to read as follows:

3.3.1 Payment. Contractor shall provide an invoice to the City on a weekly basis for Services completed in the immediate preceding week, unless a different schedule is set out in Appendix B, "Calculation of Charges." Compensation shall be made for Services identified in the invoice that the HSA Director, in his or her sole discretion, concludes has been satisfactorily performed. Payment shall be made within 30 calendar days of receipt of the invoice, unless the City notifies the Contractor that a dispute as to the invoice exists. In no event shall the amount of this Agreement exceed **Eighteen Million, Nine Hundred Fifty Nine Thousand, and Six Hundred Thirty Four Dollars (\$18,959,634)**. The breakdown of charges associated with this Agreement appears in Appendix B, "Calculation of Charges," attached hereto and incorporated by reference as though fully set forth herein. A portion of payment may be withheld until conclusion of the Agreement if agreed to by both parties as retainage, described in Appendix B. In no event shall City be liable for interest or late charges for any late payments.

3. **Appendix A.** Appendix A of the aforesaid agreement describes the services to be provided.

Such section is hereby superseded in its entirety by Appendix A-1, attached to this Modification Agreement, which displays the additional services to be provided under this Modification Agreement.

4. **Appendix B.** Appendix B, Calculation of Charges of the Aforesaid Agreement displays the original total amount of \$9,479,817.

Such section is hereby superseded in its entirety by Appendix B-1, Calculation of Charges which displays the budget as herein modified to \$18,959,634.

5. This Amendment shall be effective on and after the date of this Amendment.

6. Except as expressly modified by this Amendment, all of the terms and conditions of the Agreement shall remain unchanged and in full force and effect.

IN WITNESS WHEREOF, Contractor and City have executed this Amendment as of the date first referenced above.

CITY

SMG FOOD AND BEVERAGE LLC

Approved by:

By: _____
Trent Rhorer
Executive Director
Human Services Agency

By: _____
Print Name: Murat Eskicioglu
Title: Regional General Manager
Address: 747 Howard Street
City, State ZIP: San Francisco, CA 94103

Approved as to Form:

City Supplier ID: 0000010861

Dennis J. Herrera
City Attorney

By: _____
David Ries
Deputy City Attorney

Approved:

Sailaja Kurella,
Acting Director of the Office of Contract
Administration, and Purchaser

SMG Food and Beverage LLC
Feeding Services for Alternative Shelter Locations
5/18/20-5/17/22

Appendix A-1
Statement of Work

- I. Purpose of Grant**
- a. To provide food and beverage services to individuals located at Alternative Shelter locations, including but not limited to: Shelter In Place (SIP), Isolation & Quarantine (I&Q), and Congregate sites in San Francisco in response to the COVID-19 pandemic.
- II. Target Population**
- a. Individuals or families who meet specific FEMA eligibility criteria that are temporarily housed in Alternative Shelter locations and experiencing food insecurity in San Francisco.
- III. Description of Services**
- a. Three (3) meals and beverages per day (breakfast, lunch, and dinner) plus one snack per day.
 - i. Menus should rotate to provide guests with a variety of meals throughout their stay.
 - ii. At a minimum dinner must be served hot; breakfast and lunch may be hot or cold/room temperature.
 - iii. The meals should be healthy, approachable, and reflect Dietary Guidelines for Americans (DGA) recommendations for adults, with special considerations to address the specific needs of the population being served; and CACFP nutritional guidelines for children.
 - b. Adult Breakfast meal can be served hot or cold and the meal should be comprised of the following components:
 - i. 2 oz.: protein
 - ii. 1 cup: starch or grain (i.e. 2 slices bread)
 - iii. 1 cup: vegetable/fruit
 - iv. 8-12 oz. beverage: 12 oz. water, 8 oz. 100% fruit juice (orange, apple, etc.), or 8 oz. milk for children
 - c. Adult Lunch may be hot or cold/room temperature and be comprised of the following components:
 - i. 4 oz.: protein
 - ii. 1 cup: starch or grain (i.e. 2 slices bread)
 - iii. 1 cup: vegetable/fruit
 - iv. 12 oz. beverage: bottled water or 8 oz. milk for children
 - v. 1 snack: (approximately 1/2/cup) (i.e. piece of fruit, granola bar, protein bar, etc.)
 - d. Adult Dinner meals must be served hot and be comprised of the following components:
 - i. 4 oz.: protein
 - ii. 1.5 cups starches or grains
 - iii. 1 cup vegetable/fruit
 - iv. 12 oz. beverage: bottled water or 8 oz. milk for children
- IV. Menu Restrictions and Requirements**
- a. Menu cannot contain nuts or shellfish
 - b. Meals must be prepared with low sodium ingredients
 - c. Menu should reflect the guests' cultural cuisine (when feasible and with advanced notice)
 - d. Meals must meet the specific dietary needs of guests at each site accommodation options must be met:
 - i. Mechanical Soft- soft foods that meet dietary guidelines and are easy to chew

- ii. Diabetic Friendly- refer to diabetic menu pattern guidance for details
- iii. Vegetarian (Lacto-Ovo)- meals include dairy and eggs as non-meat proteins in addition to the plant based proteins listed in the Vegan meals below.
 - 1. Vegetarian protein substitution suggestions: cheese, yogurt, cottage cheese, milk, eggs.
- iv. Vegan- meals must meet protein guidelines through non-animal protein substitutions.(see Vegetarian/Vegan meal guidance for additional information)
 - 1. Vegan protein substitution suggestions: peanut/other nut butters; beans (black, pinto, garbanzo, kidney, white, etc.); bean spreads (hummus); lentils; peas (black eyed, split); Tofu and other soy products.
- v. Guest's food allergies
- vi. Other: Specific dietary needs of guests as prescribed by a physician or registered dietician.

V. Packaging Requirements:

- a. Individually wrapped/boxed meals in eco-friendly containers.
 - i. Alternative options for packaging must be approved prior to implementation.
- b. Compostable utensils/napkins
- c. Individual boxes/bags that contain meals with accommodations are labeled with the room number.

VI. Meal Ordering & Delivery Protocols:

- a. COVID-19 Alternative Shelter Food Coordination Lead or CCC designee will inform the caterer of the number of meals needed per site in SharePoint based on the current amount of guests in RTZ.
 - i. Grantee confirms requested changes in SharePoint and implements accordingly.
 - 1. Grantee must inform Alternative Shelter Food Coordination Lead if changes are unable to be made as requested.
 - ii. Changes to meal counts, including decreases will be provided by 12:00pm for the following day for Shelter in Place (SIP), Isolation & Quarantine (I&Q), and Congregate locations.
 - 1. If feasible, changes outside of the set time will be made by the grantee to ensure all guests are fed.
 - iii. Higher volume decreases (10+ meals or mutually agreed upon %) will be communicated to the vendor with as much notice as possible and no less than 24 hours'.
 - 1. Site ramp-down/demobilization will be communicated with no less than one weeks' notice.
 - iv. Meal accommodations should be implemented as soon as possible and be verified in SharePoint by the grantee.
 - v. Frozen meal orders will be placed by Alternative Food Coordination Lead or CCC designee on an as needed basis and should be delivered in approximately 48 hours.
- b. Meals should be delivered during the specified delivery window to the designated area at each site and be contactless with onsite staff and/or guests.
 - i. Vendor should provide a cover page with each delivery indicating total meals and rooms with special meal accommodations for the onsite staff to review and signature accepting the delivery.
 - ii. Vendor will not be expected to serve or deliver meals to individual rooms/beds.

VII. Location & Time of Services

- a. Deliver three meals, beverages, and daily snack to the designated location(s) in San Francisco daily during the following meal delivery windows:
 - i. Breakfast 6:30-7:30am, Lunch 11:00am-12:00pm, Dinner 5:00pm-6:00pm.

VIII. Service Objectives

- a. On an annual basis Grantee will meet the following service objectives:
 - i. Ensure high quality meals are delivered within the designated delivery windows
 - ii. Maintain safe food handling procedures and health and safety conditions
 - iii. Meet special dietary needs of guests (as needed)
 - iv. Meals should be recognizable/approachable to guests
 - v. Menus should rotate on a weekly basis and should not repeat menu for a minimum of 3 weeks to provide variety to guests.
 1. Quarterly or bi-annual changes to the menus in the rotation may be necessary to as a result of feedback from the quarterly guest meal satisfaction surveys to ensure guest have a wide variety of meals.
 - vi. Menus need to be submitted 1 week prior to service for review and approval
 1. Document any changes/substitutions from submitted menu.

IX. Outcome Objectives

- a. Guest's quarterly feedback surveys indicate that 90% are satisfied (3 or higher) with the meals portion size, quality, accessibility, and ability to meet guest's specific dietary needs.
- b. Based on ongoing feedback from guest's grantee is able to make adjustments that address issues and improve services.

X. Reporting Requirements

- a. Grantee will reconcile the number of meals for breakfast, lunch, and dinner weekly with Alternative Food Coordination Lead or CCC designee.
- b. Grantee will provide monthly reports of meals served by location and all associated costs.
- c. Grantee will provide Ad Hoc reports as required by the Department.

SMG Food and Beverage LLC
Feeding Services for Alternative Shelter Locations
5/18/20-5/17/22

Appendix B-1
Calculation of Charges

- I. Contractor shall submit invoices on a monthly basis. Invoices shall document the number of meals provided as outlined in Appendix A-1, and any additional work performed under the scope of this contract.
- II. Invoice Payments: Compensation shall be based on actual guests/meals served. Invoice amounts should not exceed \$33.73 per person/per day for up to 700 clients per day. Due to daily shifts in guest counts the contractor must invoice for the actual meals served daily based on the following per meal rates: Breakfast = \$10, Lunch = \$11, Dinner = \$10.

Term	Number of People (per day)	Number of Days	Meal Rate (tax included)	Total	Contingency	Not to Exceed
5/18/20-5/17/21	700	365	\$33.73	\$8,618,015	\$861,802	\$9,479,817
5/18/21-5/17/22	700	365	\$33.73	\$8,618,015	\$861,802	\$9,479,817
Total				\$17,236,030	\$1,723,604	\$18,959,634

- III. The total contract amount is \$17,236,030 plus a contingent amount of \$1,723,604 for a total amount not to exceed \$18,959,634 for the term 5/18/20-5/17/22.
- IV. Invoices submitted for payment will include status reports detailing the executed work, location, number of meals provided, and type of meal (if applicable). Program Manager verification and approval of the work detailed in the status reports and the invoices is required for payment.
- V. A final closing invoice, clearly marked "FINAL," shall be submitted no later than thirty (30) calendar days following the closing date of the Agreement, and shall include only those Services rendered during the referenced period of performance. City's final reimbursement to the Contractor at the close of the Agreement period shall not exceed the total amount authorized and certified for this Agreement.

**City and County of San Francisco
Human Services Agency**

Emergency Agreement between the City and County of San Francisco

and

SMG Food and Beverage LLC

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Preamble

This Agreement is made this **18th day of May, 2020**, in the City and County of San Francisco, State of California, by and between **SMG Food and Beverage LLC, 747 Howard Street, San Francisco, CA 94103** (“**Contractor**”), and the City and County of San Francisco, acting by and through its Human Services Agency (“**City**”).

Recitals

WHEREAS, this Agreement is a sole source emergency services contract approved by the Office of the Controller and awarded pursuant to procedures applicable under the Local Emergency declared by Mayor London Breed on Tuesday, February 25, 2020, and Chapter 21 of the San Francisco Administrative Code, attached hereto; and

WHEREAS, the Human Services Agency (“**Department**”) wishes to procure the following emergency services in support of the Local Emergency: **meal services for individuals who have been placed in hotels, congregate sites, and RV sites in San Francisco due to the COVID-19 disaster further described in Appendix A (Statement of Work)**; and,

Now, **THEREFORE**, the parties agree as follows:

Article 1 Definitions

The following definitions apply to this Agreement:

1.1 “**Agreement**” means this contract document, including all attached appendices, and all applicable City Ordinances and Mandatory City Requirements which are specifically incorporated into this Agreement by reference as provided herein.

1.2 “**City**” means the City and County of San Francisco, a municipal corporation, acting by and through the Executive Director of the Human Services Agency.

1.3 “**Contractor**” has the meaning set forth in the Preamble.

1.4 “**Effective Date**” means the date upon which the City's Controller certifies the availability of funds for this Agreement as provided in Section 3.1.

1.5 “**Party**” and “**Parties**” mean the City and Contractor either collectively or individually.

1.6 “**Services**” means the work performed by Contractor under this Agreement as specifically described in the “Statement of Work” attached as Appendix A, including all services, labor, supervision, materials, equipment, actions and other requirements to be performed and furnished by Contractor under this Agreement.

Article 2 Term of the Agreement

2.1 Term.

The term of this Agreement shall commence on **May 18, 2020** and continue for one year through May 17, 2121, unless earlier terminated as otherwise provided herein.

Article 3 Financial Matters

3.1 Certification of Funds; Budget and Fiscal Provisions.

This Agreement is subject to the budget and fiscal provisions of the City's Charter. Charges for the Services will accrue only after prior written authorization certified by the Controller, and the amount of City's obligation hereunder shall not at any time exceed the amount certified for the purpose and period stated in such advance authorization. This Agreement will terminate without penalty, liability or expense of any kind to City at the end of any fiscal year if funds are not appropriated for the next succeeding fiscal year. If funds are appropriated for a portion of the fiscal year, this Agreement will terminate, without penalty, liability or expense of any kind at the end of the term for which funds are appropriated. City has no obligation to make appropriations for this Agreement in lieu of appropriations for new or other agreements. City budget decisions are subject to the discretion of the Mayor and the Board of Supervisors. Contractor's assumption of risk of possible non-appropriation is part of the consideration for this Agreement.

THIS SECTION CONTROLS AGAINST ANY AND ALL OTHER PROVISIONS OF THIS AGREEMENT.

3.2 Guaranteed Maximum Costs.

The City's payment obligation to Contractor cannot at any time exceed the amount certified by City's Controller for the purpose and period stated in such certification. Absent an authorized Emergency per the City Charter or applicable Code, no City representative is authorized to offer or promise, nor is the City required to honor, any offered or promised payments to Contractor under this Agreement in excess of the certified maximum amount without the Controller having first certified the additional promised amount and the Parties having modified this Agreement as provided in Section 11.5, "Modification of this Agreement."

3.3 Compensation.

3.3.1 Payment. Contractor shall provide an invoice to the City on a monthly basis for Services completed in the immediate preceding month, unless a different schedule is set out in Appendix B, "Calculation of Charges." Compensation shall be made for Services identified in the invoice that the HSA Director, in his or her sole discretion, concludes has been satisfactorily performed. Payment shall be made within 30 calendar days of receipt of the invoice, unless the City notifies the Contractor that a dispute as to the invoice exists. In no event shall the amount of this Agreement exceed **Nine Million, Four Hundred Seventy Nine Thousand, Eight Hundred Seventeen Dollars (\$9,479,817)**. The breakdown of charges associated with this Agreement appears in Appendix B, "Calculation of Charges," attached hereto and incorporated by reference as though fully set forth herein. A portion of payment may be withheld until conclusion of the Agreement if agreed to by both parties as retainage, described in Appendix B. In no event shall City be liable for interest or late charges for any late payments.

3.3.2 Payment Limited to Satisfactory Services. Contractor is not entitled to any payments from City until the Department confirms that the Services have been provided in a manner satisfying all of the requirements of this Agreement. Services that do not conform to the requirements of this Agreement may be rejected by City and in such case must be replaced by Contractor without delay at no cost to the City.

3.3.3 Withhold Payments. If Contractor fails to provide Services in accordance with Contractor's obligations under this Agreement, following written notice of such failure the City may withhold any and all payments due Contractor until such failure to perform is cured, and Contractor shall not stop performance under this Agreement as a result of City's withholding of payments as provided herein.

3.3.4 Invoice Format. Invoices furnished by Contractor under this Agreement must be in a form acceptable to the Controller and City, and must include a unique invoice number. Payment shall

be made by City as specified in Section 3.4, or in such alternate manner as the Parties have mutually agreed upon in writing.

3.3.5 LBE Payment and Utilization Tracking System. (Reserved)

3.4 Getting paid by the City for goods and/or services.

3.4.1 All City vendors receiving new contracts, contract renewals, or contract extensions must sign up to receive electronic payments through, the City's Automated Clearing House (ACH) payments service/provider. Electronic payments are processed every business day and are safe and secure. To sign up for electronic payments, visit www.sfgov.org/ach.

3.4.2 The following information is required to sign up: (i) The enroller must be their company's authorized financial representative, (ii) the company's legal name, main telephone number and all physical and remittance addresses used by the company, (iii) the company's U.S. federal employer identification number (EIN) or Social Security number (if they are a sole proprietor), and (iv) the company's bank account information, including routing and account numbers.

3.5 Federal and/or State Funded Contracts. (Reserved)

3.6 Contract Amendments.

3.6.1 **Formal Contract Amendment:** Except as expressly set forth herein, Contractor shall not be entitled to an increase in the Compensation or an extension of the Booking Period unless the Parties agree to a Formal Amendment in accordance with the San Francisco Administrative Code and Section 11.5 (Modifications of this Agreement).

3.6.2 **City Revisions to Program Budgets:** The City shall have authority, without the execution of a Formal Amendment, to purchase additional Services and/or make changes to the work in accordance with the terms of this Agreement (including such terms that require Contractor's agreement), not involving an increase in the Compensation or the Term by use of a written City Program Budget Revision.

3.7 Audit and Inspection of Records.

Contractor agrees to maintain and make available to the City, during regular business hours, accurate books and accounting records relating to the Services. Contractor will permit City to audit, examine and make excerpts and transcripts from such books and records, and to make audits of all invoices, materials, payrolls, records or personnel and other data related to all other matters covered by this Agreement, whether funded in whole or in part under this Agreement. Contractor shall maintain such data and records in an accessible location and condition for a period of not fewer than five years, unless required for a longer duration due to Federal, State, or local requirements of which the City will notify Contractor in writing, after final payment under this Agreement or until after final audit has been resolved, whichever is later. The State of California or any Federal agency having an interest in the subject matter of this Agreement shall have the same rights as conferred upon City by this Section. Contractor shall include the same audit and inspection rights and record retention requirements in all subcontracts.

3.8 Submitting False Claims.

The full text of San Francisco Administrative Code Chapter 21, Section 21.35, including the enforcement and penalty provisions, is incorporated into this Agreement. Pursuant to San Francisco Administrative Code §21.35, any entity who submits a false claim shall be liable to the City for the statutory penalties set forth in that section. An entity will be deemed to have submitted a false claim to the City if the entity: (a) knowingly presents or causes to be presented to an officer or employee of the City a false claim or request for payment or approval; (b) knowingly makes, uses, or causes to be made or used a false record or statement to get a false claim paid or approved by the City; (c) conspires to defraud the City by getting a

false claim allowed or paid by the City; (d) knowingly makes, uses, or causes to be made or used a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to the City; or (e) is a beneficiary of an inadvertent submission of a false claim to the City, subsequently discovers the falsity of the claim, and fails to disclose the false claim to the City within a reasonable time after discovery of the false claim.

3.9 **Payment of Prevailing Wages (Reserved)**

Article 4 Services Contractor and City Agrees to Perform.

4.1 **Services Contractor Agrees to Perform.**

Contractor agrees to perform the Services stated in Appendix A, "Scope of Services." Officers and employees of the City are not authorized to request, and the City is not required to reimburse the Contractor for, Services beyond the Scope of Services listed in Appendix A, unless Appendix A is modified as provided in Section 11.5, "Modification of this Agreement."

4.2 **Qualified Personnel.**

Contractor shall utilize only competent personnel under the supervision of, and in the employment of, Contractor (or Contractor's authorized subcontractors) to perform the Services. Contractor will comply with City's reasonable requests regarding assignment and/or removal of personnel, but all personnel, including those assigned at City's request, must be supervised by Contractor. Contractor shall commit adequate resources to allow timely completion within the project schedule specified in this Agreement.

4.3 **Subcontracting.**

Contractor may subcontract portions of the Services only upon prior written approval of City. Currently approved subcontractors, if any, are listed in Appendix D (Permitted Subcontractors). Contractor is responsible for its subcontractors throughout the course of the work required to perform the Services. All Subcontracts must incorporate the terms of Article 10 "Additional Requirements Incorporated by Reference" of this Agreement, unless inapplicable. Neither Party shall, on the basis of this Agreement, contract on behalf of, or in the name of, the other Party. Any agreement made in violation of this provision shall be null and void.

4.4 **Independent Contractor; Payment of Employment Taxes and Other Expenses.**

4.4.1 Independent Contractor. For the purposes of this Section 4.4, "Contractor" shall be deemed to include not only Contractor, but also any agent or employee of Contractor. Contractor acknowledges and agrees that at all times, Contractor or any agent or employee of Contractor shall be deemed at all times to be an independent contractor and is wholly responsible for the manner in which it performs the services and work requested by City under this Agreement. Contractor, its agents, and employees will not represent or hold themselves out to be employees of the City at any time. Contractor or any agent or employee of Contractor shall not have employee status with City, nor be entitled to participate in any plans, arrangements, or distributions by City pertaining to or in connection with any retirement, health or other benefits that City may offer its employees. Contractor or any agent or employee of Contractor is liable for the acts and omissions of itself, its employees and its agents. Contractor shall be responsible for all obligations and payments, whether imposed by federal, state or local law, including, but not limited to, FICA, income tax withholdings, unemployment compensation, insurance, and other similar responsibilities related to Contractor's performing services and work, or any agent or employee of Contractor providing same. Nothing in this Agreement shall be construed as creating an employment or agency relationship between City and Contractor or any agent or employee of Contractor. Any terms in this Agreement referring to direction from City shall be construed as providing for direction as to policy and the result of Contractor's work only, and not as to the means by which such

a result is obtained. City does not retain the right to control the means or the method by which Contractor performs work under this Agreement. Contractor agrees to maintain and make available to City, upon request and during regular business hours, accurate books and accounting records demonstrating Contractor's compliance with this section. Should City determine that Contractor, or any agent or employee of Contractor, is not performing in accordance with the requirements of this Agreement, City shall provide Contractor with written notice of such failure. Within five (5) business days of Contractor's receipt of such notice, and in accordance with Contractor policy and procedure, Contractor shall remedy the deficiency. Notwithstanding, if City believes that an action of Contractor, or any agent or employee of Contractor, warrants immediate remedial action by Contractor, City shall contact Contractor and provide Contractor in writing with the reason for requesting such immediate action.

4.4.2 Payment of Employment Taxes and Other Expenses. Should City, in its discretion, or a relevant taxing authority such as the Internal Revenue Service or the State Employment Development Division, or both, determine that Contractor is an employee for purposes of collection of any employment taxes, the amounts payable under this Agreement shall be reduced by amounts equal to both the employee and employer portions of the tax due (and offsetting any credits for amounts already paid by Contractor which can be applied against this liability). City shall then forward those amounts to the relevant taxing authority. Should a relevant taxing authority determine a liability for past services performed by Contractor for City, upon notification of such fact by City, Contractor shall promptly remit such amount due or arrange with City to have the amount due withheld from future payments to Contractor under this Agreement (again, offsetting any amounts already paid by Contractor which can be applied as a credit against such liability). A determination of employment status pursuant to this Section 4.4 shall be solely limited to the purposes of the particular tax in question, and for all other purposes of this Agreement, Contractor shall not be considered an employee of City. Notwithstanding the foregoing, Contractor agrees to indemnify and save harmless City and its officers, agents and employees from, and, if requested, shall defend them against any and all claims, losses, costs, damages, and expenses, including attorneys' fees, arising from this section.

4.5 Assignment.

The Services to be provided and performed by Contractor are personal in character and neither this Agreement nor any duties or obligations hereunder may be assigned or delegated by Contractor unless first approved by City by written instrument executed and approved in the same manner as this Agreement. Any purported assignment made in violation of this provision shall be null and void.

4.6 Warranty.

Contractor warrants to City that the Services will be performed with the degree of skill and care that is required by current, good and sound professional procedures and practices, and in conformance with generally accepted professional standards prevailing at the time the Services are performed so as to ensure that all Services performed are correct and appropriate for the purposes contemplated in this Agreement.

4.7 Liquidated Damages. (Reserved)

4.8 Bonding Requirements. (Reserved)

Article 5 Insurance and Indemnity

5.1 Insurance.

5.1.1 Required Coverages. Without in any way limiting Contractor's liability pursuant to the "Indemnification" section of this Agreement, Contractor must maintain in force, during the full term of the Agreement, insurance in the following amounts and coverages:

(a) Workers' Compensation, in statutory amounts, with Employers' Liability Limits not less than \$1,000,000 each accident, injury, or illness; and

(b) Commercial General Liability Insurance with limits not less than \$2,000,000 each occurrence for Bodily Injury and Property Damage, including coverage for food preparation and distribution, Contractual Liability, Personal Injury, Products and Completed Operations; and

(c) Commercial Automobile Liability Insurance with limits not less than \$1,000,000 each occurrence, "Combined Single Limit" for Bodily Injury and Property Damage, including Owned, Non-Owned and Hired auto coverage, as applicable.

(d) **Reserved. (Professional Liability Coverage)**

(e) **Reserved. (Technology Errors and Omissions Coverage)**

(f) **Reserved. (Cyber and Privacy Coverage)**

5.1.2 Commercial General Liability and Commercial Automobile Liability Insurance policies must be endorsed to name as Additional Insured the City and County of San Francisco, its Officers, Agents, and Employees.

5.1.3 Contractor's Commercial General Liability and Commercial Automobile Liability Insurance policies shall provide that such policies are primary insurance to any other insurance available to the Additional Insureds, with respect to any claims arising out of this Agreement, and that the insurance applies separately to each insured against whom claim is made or suit is brought.

5.1.4 All policies shall be endorsed to provide thirty (30) days' advance written notice to the City of cancellation for any reason, intended non-renewal, or reduction in coverages. Notices shall be sent to the City address set forth in Section 11.1, entitled "Notices to the Parties."

5.1.5 Should any of the required insurance be provided under a claims-made form, Contractor shall maintain such coverage continuously throughout the term of this Agreement and, without lapse, for a period of three years beyond the expiration of this Agreement, to the effect that, should occurrences during the contract term give rise to claims made after expiration of the Agreement, such claims shall be covered by such claims-made policies.

5.1.6 Should any of the required insurance be provided under a form of coverage that includes a general annual aggregate limit or provides that claims investigation or legal defense costs be included in such general annual aggregate limit, such general annual aggregate limit shall be double the occurrence or claims limits specified above.

5.1.7 Should any required insurance lapse during the term of this Agreement, requests for payments originating after such lapse shall not be processed until the City receives satisfactory evidence of reinstated coverage as required by this Agreement, effective as of the lapse date. If insurance is not reinstated, the City may, at its sole option, terminate this Agreement effective on the date of such lapse of insurance.

5.1.8 Before commencing any Services, Contractor shall furnish to City certificates of insurance and additional insured policy endorsements with insurers with ratings

comparable to A-, VIII or higher, that are authorized to do business in the State of California, and that are satisfactory to City, in form evidencing all coverages set forth above. Approval of the insurance by City shall not relieve or decrease Contractor's liability hereunder.

5.1.9 The Workers' Compensation policy(ies) shall be endorsed with a waiver of subrogation in favor of the City for all work performed by the Contractor, its employees, agents and subcontractors.

5.1.10 If Contractor will use any subcontractor(s) to provide Services, Contractor shall require the subcontractor(s) to provide all necessary insurance and to name the City and County of San Francisco, its officers, agents and employees and the Contractor as additional insureds.

5.2 Indemnification.

5.2.1 Contractor shall indemnify and hold harmless City and its officers, agents and employees from, and, if requested, shall defend them from and against any and all claims, demands, losses, damages, costs, expenses, and liability (legal, contractual, or otherwise) arising from or in any way connected with any: (i) injury to or death of a person, including employees of City or Contractor; (ii) loss of or damage to property; (iii) violation of local, state, or federal common law, statute or regulation, including but not limited to privacy or personally identifiable information, health information, disability and labor laws or regulations; (iv) strict liability imposed by any law or regulation; or (v) losses arising from Contractor's execution of subcontracts not in accordance with the requirements of this Agreement applicable to subcontractors; so long as such injury, violation, loss, or strict liability (as set forth in subsections (i) – (v) above) arises directly or indirectly from Contractor's performance of this Agreement, including, but not limited to, Contractor's use of facilities or equipment provided by City or others, regardless of the negligence of, and regardless of whether liability without fault is imposed or sought to be imposed on City, except to the extent that such indemnity is void or otherwise unenforceable under applicable law, and except where such loss, damage, injury, liability or claim is the result of the active negligence or willful misconduct of City and is not contributed to by any act of, or by any omission to perform some duty imposed by law or agreement on Contractor, its subcontractors, or either's agent or employee. The foregoing indemnity shall include, without limitation, reasonable fees of attorneys, consultants and experts and related costs and City's costs of investigating any claims against the City.

In addition to Contractor's obligation to indemnify City, Contractor specifically acknowledges and agrees that it has an immediate and independent obligation to defend City from any claim which actually or potentially falls within this indemnification provision, even if the allegations are or may be groundless, false or fraudulent, which obligation arises at the time such claim is tendered to Contractor by City and continues at all times thereafter.

5.2.2 Contractor shall indemnify and hold City harmless from all loss and liability, including attorneys' fees, court costs and all other litigation expenses for any infringement of the patent rights, copyright, trade secret or any other proprietary right or trademark, and all other intellectual property claims of any person or persons arising directly or indirectly from the receipt by City, or any of its officers or agents, of Contractor's Services..

Article 6 Liability of the Parties

6.1 **Liability of City.** CITY'S PAYMENT OBLIGATIONS UNDER THIS AGREEMENT SHALL BE LIMITED TO THE PAYMENT OF THE COMPENSATION PROVIDED FOR IN SECTION 3.3.1, "PAYMENT," OF THIS AGREEMENT. NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, IN NO EVENT SHALL CITY BE LIABLE, REGARDLESS OF WHETHER ANY CLAIM IS BASED ON

CONTRACT OR TORT, FOR ANY SPECIAL, CONSEQUENTIAL, INDIRECT OR INCIDENTAL DAMAGES, INCLUDING, BUT NOT LIMITED TO, LOST PROFITS, ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR THE SERVICES PERFORMED IN CONNECTION WITH THIS AGREEMENT.

6.2 **Liability for Use of Equipment.** City shall not be liable for any damage to persons or property as a result of the use, misuse or failure of any equipment used by Contractor, or any of its subcontractors, or by any of their employees, even though such equipment is furnished, rented or loaned by City.

6.3 **Liability for Incidental and Consequential Damages.** Contractor shall be responsible for incidental and consequential damages resulting in whole or in part from Contractor's acts or omissions.

Article 7 Payment of Taxes

7.1 Taxes

City shall reimburse Contractor for all sales and use taxes. Payment of any taxes, including possessory interest taxes and California sales and use taxes, levied upon or as a result of this Agreement, or the services delivered pursuant hereto, shall be the obligation of Contractor. Contractor recognizes and understands that this Agreement may create a "possessory interest" for property tax purposes. Contractor shall include a line item in its invoice and the budget for taxes.

7.2 Withholding.

Contractor agrees that it is obligated to pay all amounts due to the City under the San Francisco Business and Tax Regulations Code during the term of this Agreement. Pursuant to Section 6.10-2 of the San Francisco Business and Tax Regulations Code, Contractor further acknowledges and agrees that City may withhold any payments due to Contractor under this Agreement if Contractor is delinquent in the payment of any amount required to be paid to the City under the San Francisco Business and Tax Regulations Code. Any payments withheld under this paragraph shall be made to Contractor, without interest, upon Contractor coming back into compliance with its obligations.

Article 8 Termination and Default

8.1 Termination for Convenience

8.1.1 This Agreement shall expire of its own accord on the expiration date set forth in Section 2.1. In addition, City shall have the option, in its sole discretion with not less than 30 days' written notice, to terminate this Agreement, at any time during the term hereof, for convenience. City shall also have the option, in its sole discretion and without penalty of any kind, to terminate this Agreement upon a determination by the City that Contractor is unable to continue to provide the Services described in Appendix A or otherwise in this Agreement. In any case, the City shall provide written notice that specifies the date on which termination shall become effective.

8.1.2 Upon receipt of the notice of termination, Contractor shall commence and perform, with diligence, all actions necessary on the part of Contractor to effect the termination of this Agreement on the date specified by City and to minimize the liability of Contractor and City to third parties as a result of termination. All such actions of Contractor shall be subject to the prior approval of City. Within 30 days after the specified termination date, Contractor shall submit to City an invoice. City's payment obligation under this Section shall survive termination of this Agreement.

8.2 Termination for Default; Remedies.

8.2.1 City may terminate this Agreement for Contractor's default in the event that Contractor fails or refuses to perform or observe other term, covenant or condition contained in this Agreement, including any obligation imposed by ordinance or statute and incorporated by reference herein, and such default is not cured within thirty (30) calendar days after written notice thereof from City to Contractor ("**Event of Default**").

8.2.2 On and after any Event of Default, City shall have the right to exercise its legal and equitable remedies, including, without limitation, the right to terminate this Agreement or to seek specific performance of all or any part of this Agreement. In addition, where applicable, City shall have the right (but no obligation) to cure (or cause to be cured) on behalf of Contractor any Event of Default; Contractor shall pay to City on demand all costs and expenses incurred by City in effecting such cure, with interest thereon from the date of incurrence at the maximum rate then permitted by law. City shall have the right to offset from any amounts due to Contractor under this Agreement or any other agreement between City and Contractor: (i) all damages, losses, costs or expenses incurred by City as a result of an Event of Default; and (ii) any liquidated damages levied upon Contractor pursuant to the terms of this Agreement; and (iii), any damages imposed by any ordinance or statute that is incorporated into this Agreement by reference, or into any other agreement with the City.

8.3 Non-Waiver of Rights.

The omission by either Party at any time to enforce any default or right reserved to it, or to require performance of any of the terms, covenants, or provisions hereof by the other Party at the time designated, shall not be a waiver of any such default or right to which the Party is entitled, nor shall it in any way affect the right of the party to enforce such provisions thereafter.

8.4 Rights and Duties upon Termination or Expiration.

8.4.1 This Section and the following Sections of this Agreement listed below, shall survive termination or expiration of this Agreement:

Article 3	Financial Provisions		11.9	Agreement Made in California; Venue
Article 5	Insurance and Indemnity		11.10	Construction
Article 6	Liability of the Parties		11.11	Entire Agreement
Article 7	Payment of Taxes		11.12	Compliance with Laws
Article 8	Termination and Default		11.13	Severability
			Article 13	Data and Security

8.4.2 Subject to the survival of the Sections identified in Section 8.4.1, above, if this Agreement is terminated prior to expiration of the term specified in Article 2, this Agreement shall be of no further force or effect.

Article 9 Rights In Deliverables (Reserved)

Article 10 Additional Requirements Incorporated by Reference

10.1 Laws Incorporated by Reference.

The full text of the laws listed in this Article 10, including enforcement and penalty provisions, are incorporated by reference into this Agreement. The full text of the San Francisco Municipal Code provisions incorporated by reference in this Article and elsewhere in the Agreement ("Mandatory City Requirements") are available at http://www.amlegal.com/codes/client/san-francisco_ca/

10.2 Conflict of Interest.

By executing this Agreement, Contractor certifies that it does not know of any fact which constitutes a violation of Section 15.103 of the City's Charter; Article III, Chapter 2 of City's Campaign and Governmental Conduct Code; Title 9, Chapter 7 of the California Government Code (Section 87100 *et seq.*), or Title 1, Division 4, Chapter 1, Article 4 of the California Government Code (Section 1090 *et seq.*), and further agrees promptly to notify the City if it becomes aware of any such fact during the term of this Agreement.

10.3 Prohibition on Use of Public Funds for Political Activity.

In performing the Services, Contractor shall comply with San Francisco Administrative Code Chapter 12G, which prohibits funds appropriated by the City for this Agreement from being expended to participate in, support, or attempt to influence any political campaign for a candidate or for a ballot measure. Contractor is subject to the enforcement and penalty provisions in Chapter 12G.

10.4 Consideration of Salary History.

Contractor shall comply with San Francisco Administrative Code Chapter 12K, the Consideration of Salary History Ordinance or "Pay Parity Act." Contractor is prohibited from considering current or past salary of an applicant in determining whether to hire the applicant or what salary to offer the applicant to the extent that such applicant is applying for employment to be performed on this Agreement or in furtherance of this Agreement, and whose application, in whole or part, will be solicited, received, processed or considered, whether or not through an interview, in the City or on City property. The ordinance also prohibits employers from (1) asking such applicants about their current or past salary or (2) disclosing a current or former employee's salary history without that employee's authorization unless the salary history is publicly available. Contractor is subject to the enforcement and penalty provisions in Chapter 12K. Information about and the text of Chapter 12K is available on the web at <https://sfgov.org/olse/consideration-salary-history>. Contractor is required to comply with all of the applicable provisions of 12K, irrespective of the listing of obligations in this Section.

10.5 Nondiscrimination Requirements.

In the performance of this Agreement, Contractor covenants and agrees that it will not discriminate against an applicant for employment because of race, color, religion, sex, age, ancestry, national origin, sexual orientation, handicap, veteran's status, medical condition, marital status, or citizenship because of habit, local custom, or otherwise. All applicants for employment and employees are to be treated without regard to their race, color, religion, sex, age, ancestry, and national origin, sexual orientation, handicap, veteran's status, medical condition, marital status, or citizenship. Such equal treatment shall apply, but not be limited to, employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.

10.6 LBE and Non-Discrimination in Contracting Ordinance. (Reserved)

10.7 Minimum Compensation Ordinance.

If Administrative Code Chapter 12P applies to this contract, Contractor shall pay covered employees no less than the minimum compensation required by San Francisco Administrative Code Chapter 12P, including a minimum hourly gross compensation, compensated time off, and uncompensated time off. Contractor is subject to the enforcement and penalty provisions in Chapter 12P. Information about and the text of the Chapter 12P is available on the web at <http://sfgov.org/olse/mco>. Contractor is required to comply with all of the applicable provisions of 12P, irrespective of the listing of obligations in this Section. By signing and executing this Agreement, Contractor certifies that it complies with Chapter 12P.

10.8 Health Care Accountability Ordinance.

If Administrative Code Chapter 12Q applies to this contract, Contractor shall comply with the requirements of Chapter 12Q. For each Covered Employee, Contractor shall provide the appropriate health benefit set forth in Section 12Q.3 of the HCAO. If Contractor chooses to offer the health plan option, such health plan shall meet the minimum standards set forth by the San Francisco Health Commission. Information about and the text of the Chapter 12Q, as well as the Health Commission's minimum standards, is available on the web at <http://sfgov.org/olse/hcao>. Contractor is subject to the enforcement and penalty provisions in Chapter 12Q. Any Subcontract entered into by Contractor shall require any Subcontractor with 20 or more employees to comply with the requirements of the HCAO and shall contain contractual obligations substantially the same as those set forth in this Section.

10.9 First Source Hiring Program. (Reserved)

10.10 Alcohol and Drug-Free Workplace.

City reserves the right to deny access to, or require Contractor to remove from, City facilities personnel of any Contractor or subcontractor who City has reasonable grounds to believe has engaged in alcohol abuse or illegal drug activity which in any way impairs City's ability to maintain safe work facilities or to protect the health and well-being of City employees and the general public. City shall have the right of final approval for the entry or re-entry of any such person previously denied access to, or removed from, City facilities. Illegal drug activity means possessing, furnishing, selling, offering, purchasing, using or being under the influence of illegal drugs or other controlled substances for which the individual lacks a valid prescription. Alcohol abuse means possessing, furnishing, selling, offering, or using alcoholic beverages, or being under the influence of alcohol.

10.11 Limitations on Contributions.

By executing this Agreement, Contractor acknowledges its obligations under section 1.126 of the City's Campaign and Governmental Conduct Code, which prohibits any person who contracts with, or is seeking a contract with, any department of the City for the rendition of personal services, for the furnishing of any material, supplies or equipment, for the sale or lease of any land or building, for a grant, loan or loan guarantee, or for a development agreement, from making any campaign contribution to (i) a City elected official if the contract must be approved by that official, a board on which that official serves, or the board of a state agency on which an appointee of that official serves, (ii) a candidate for that City elective office, or (iii) a committee controlled by such elected official or a candidate for that office, at any time from the submission of a proposal for the contract until the later of either the termination of negotiations for such contract or twelve months after the date the City approves the contract. The prohibition on contributions applies to each prospective party to the contract; each member of Contractor's board of directors; Contractor's chairperson, chief executive officer, chief financial officer and chief operating officer; any person with an ownership interest of more than 10% in Contractor; any subcontractor listed in the bid or contract; and any committee that is sponsored or controlled by Contractor. Contractor certifies that it has informed each such person of the limitation on contributions imposed by Section 1.126 by the time it submitted a proposal for the contract, and has provided the names of the persons required to be informed to the City department with whom it is contracting.

10.12 Slavery Era Disclosure. (Reserved)

10.13 Working with Minors. (Reserved)

10.14 Consideration of Criminal History in Hiring.

Contractor agrees to comply fully with and be bound by all of the provisions of Chapter 12T, "City Contractor/Subcontractor Consideration of Criminal History in Hiring and Employment Decisions," of the San Francisco Administrative Code ("Chapter 12T"), including the remedies provided, and

implementing regulations, as may be amended from time to time. The provisions of Chapter 12T are incorporated by reference and made a part of this Agreement as though fully set forth herein. The text of the Chapter 12T is available on the web at <http://sfgov.org/olse/fco>. Contractor is required to comply with all of the applicable provisions of 12T, irrespective of the listing of obligations in this Section. Capitalized terms used in this Section and not defined in this Agreement shall have the meanings assigned to such terms in Chapter 12T.

10.15 Public Access to Nonprofit Records and Meetings.

If Contractor receives a cumulative total per year of at least \$250,000 in City funds or City-administered funds and is a non-profit organization as defined in Chapter 12L of the San Francisco Administrative Code, Contractor must comply with the City's Public Access to Nonprofit Records and Meetings requirements, as set forth in Chapter 12L of the San Francisco Administrative Code, including the remedies provided therein.

10.16 Food Service Waste Reduction Requirements.

Contractor shall comply with the Food Service Waste Reduction Ordinance, as set forth in San Francisco Environment Code Chapter 16, including but not limited to the remedies for noncompliance provided therein.

10.17 Distribution of Beverages and Water.

10.17.1 Sugar-Sweetened Beverage Prohibition. Contractor agrees that it shall not sell, provide, or otherwise distribute Sugar-Sweetened Beverages, as defined by San Francisco Administrative Code Chapter 101, as part of its performance of this Agreement.

10.17.2 Packaged Water Prohibition. (Reserved)

10.18 Tropical Hardwood and Virgin Redwood Ban.

Pursuant to San Francisco Environment Code Section 804(b), the City urges Contractor not to import, purchase, obtain, or use for any purpose, any tropical hardwood, tropical hardwood wood product, virgin redwood or virgin redwood wood product.

10.19 Preservative Treated Wood Products. (Reserved)

Article 11 General Provisions

11.1 Notices to the Parties.

Unless otherwise indicated in this Agreement, all written communications sent by the Parties may be by U.S. mail or e-mail, and shall be addressed as follows:

To CITY: Human Services Agency
Office of Contract Management, G-100
PO Box 7988
San Francisco, CA 94120-7988
Facsimile No. 415-557-5679

To Contractor: SMG FOOD AND BEVERAGE LLC
747 HOWARD STREET
SAN FRANCISCO, CA 94103
EMAIL: MURAT@MOSCONE.COM

Any notice of default must be sent by registered mail. Either Party may change the address to which notice is to be sent by giving written notice thereof to the other Party. If email notification is used, the sender must specify a receipt notice.

11.2 Compliance with Americans with Disabilities Act.

Contractor shall provide the Services in a manner that complies with the Americans with Disabilities Act (ADA), including but not limited to Title II's program access requirements, and all other applicable federal, state and local disability rights legislation.

11.3 Incorporation of Recitals.

The matters recited above are hereby incorporated into and made part of this Agreement.

11.4 Sunshine Ordinance.

Contractor acknowledges that this Agreement and all records related to its formation, Contractor's performance of Services, and City's payment are subject to the California Public Records Act, (California Government Code §6250 et. seq.), and the San Francisco Sunshine Ordinance, (San Francisco Administrative Code Chapter 67). Such records are subject to public inspection and copying unless exempt from disclosure under federal, state or local law.

11.5 Modification of this Agreement.

This Agreement may not be modified, nor may compliance with any of its terms be waived, except as noted in Section 11.1, "Notices to Parties," regarding change in personnel or place, and except by written instrument executed and approved in the same manner as this Agreement.

11.6 Dispute Resolution Procedure.

The Parties will attempt in good faith to resolve any dispute or controversy arising out of or relating to the performance of services under this Agreement. If the Parties are unable to resolve the dispute, then, pursuant to San Francisco Administrative Code Section 21.36, Contractor may submit to the Contracting Officer a written request for administrative review and documentation of the Contractor's claim(s). Upon such request, the Contracting Officer shall promptly issue an administrative decision in writing, stating the reasons for the action taken and informing the Contractor of its right to judicial review. If agreed by both Parties in writing, disputes may be resolved by a mutually agreed-upon alternative dispute resolution process. If the parties do not mutually agree to an alternative dispute resolution process or such efforts do not resolve the dispute, then either Party may pursue any remedy available under California law. The status of any dispute or controversy notwithstanding, Contractor shall proceed diligently with the performance of its obligations under this Agreement in accordance with the Agreement and the written directions of the City. Neither Party will be entitled to legal fees or costs for matters resolved under this section.

11.7 Government Code Claim Requirement.

No suit for money or damages may be brought against the City until a written claim therefor has been presented to and rejected by the City in conformity with the provisions of San Francisco Administrative Code Chapter 10 and California Government Code Section 900, et seq. Nothing set forth in this Agreement shall operate to toll, waive or excuse Contractor's compliance with the California Government Code Claim requirements set forth in San Francisco Administrative Code Chapter 10 and California Government Code Section 900, et seq.

11.8 Health and Human Service Dispute Resolution Procedure.

The Parties shall use best efforts to resolve disputes that have not been resolved administratively by other departmental remedies.

11.9 Agreement Made in California; Venue.

The formation, interpretation and performance of this Agreement shall be governed by the laws of the State of California. Venue for all litigation relative to the formation, interpretation and performance of this Agreement shall be in San Francisco.

11.10 Construction.

All paragraph captions are for reference only and shall not be considered in construing this Agreement.

11.11 Entire Agreement.

This contract sets forth the entire Agreement between the Parties, and supersedes all other oral or written provisions. This Agreement may be modified only as provided in Section 11.5, "Modification of this Agreement."

11.12 Compliance with Laws.

Contractor shall keep itself fully informed of the City's Charter, codes, ordinances and duly adopted rules and regulations of the City and of all state, and federal laws in any manner affecting the performance of this Agreement, and must at all times comply with such local codes, ordinances, and regulations and all applicable laws as they may be amended from time to time.

11.13 Severability.

Should the application of any provision of this Agreement to any particular facts or circumstances be found by a court of competent jurisdiction to be invalid or unenforceable, then (a) the validity of other provisions of this Agreement shall not be affected or impaired thereby, and (b) such provision shall be enforced to the maximum extent possible so as to effect the intent of the parties and shall be reformed without further action by the parties to the extent necessary to make such provision valid and enforceable.

11.14 Cooperative Drafting.

This Agreement has been drafted through a cooperative effort of City and Contractor, and both Parties have had an opportunity to have the Agreement reviewed and revised by legal counsel. No Party shall be considered the drafter of this Agreement, and no presumption or rule that an ambiguity shall be construed against the Party drafting the clause shall apply to the interpretation or enforcement of this Agreement.

11.15 Order of Precedence.

Contractor agrees to perform the services described below in accordance with the terms and conditions of this Agreement, implementing task orders, and the attached Appendices. If the Appendices to this Agreement include any standard printed terms from the Contractor, Contractor agrees that in the event of discrepancy, inconsistency, gap, ambiguity, or conflicting language between the City's terms and Contractor's printed terms attached, the City's terms shall take precedence.

11.16 Notification of Legal Requests.

Contractor shall immediately notify City upon receipt of any subpoenas, service of process, litigation holds, discovery requests and other legal requests ("Legal Requests") related to all data given to Contractor by City in the performance of this Agreement ("City Data" or "Data"), or which in any way might reasonably require access to City's Data, and in no event later than 24 hours after it receives the request. Contractor shall not respond to Legal Requests related to City without first notifying City other

than to notify the requestor that the information sought is potentially covered under a non-disclosure agreement.

Article 12 Department Specific Terms

12.1 Third Party Beneficiaries.

No third parties are intended by the parties hereto to be third party beneficiaries under this Agreement, and no action to enforce the terms of this Agreement may be brought against either party by any person who is not a party hereto.

Article 13 Data and Security

13.1 Nondisclosure of Private, Proprietary or Confidential Information.

13.1.1 Protection of Private Information. If this Agreement requires City to disclose "Private Information" to Contractor within the meaning of San Francisco Administrative Code Chapter 12M, Contractor and subcontractor shall use such information only in accordance with the restrictions stated in Chapter 12M and in this Agreement and only as necessary in performing the Services. Contractor is subject to the enforcement and penalty provisions in Chapter 12M.

13.1.2 Confidential Information. In the performance of Services, Contractor may have access to City's proprietary or Confidential Information, the disclosure of which to third parties may damage City. If City discloses proprietary or Confidential Information to Contractor, such information must be held by Contractor in confidence and used only in performing the Agreement. Contractor shall exercise the same standard of care to protect such information as a reasonably prudent Contractor would use to protect its own proprietary or Confidential Information.

13.2 Payment Card Industry ("PCI") Requirements. (Reserved)

13.3 Protected Health Information.

Contractor, all subcontractors, all agents and employees of Contractor and any subcontractor shall comply with all federal and state laws regarding the transmission, storage and protection of all private health information disclosed to Contractor by City in the performance of this Agreement. Contractor agrees that any failure of Contractor to comply with the requirements of federal and/or state and/or local privacy laws shall be a material breach of the Agreement. In the event that City pays a regulatory fine, and/or is assessed civil penalties or damages through private rights of action, based on an impermissible use or disclosure of protected health information given to Contractor or its subcontractors or agents by City, Contractor shall indemnify City for the amount of such fine or penalties or damages, including costs of notification. In such an event, in addition to any other remedies available to it under equity or law, the City may terminate the Agreement.

Article 14 Official Actions Relating to the Emergency; FEMA Assistance

14.1 Orders of Local, State or Federal Officials.

City and Contractor mutually acknowledge that local, state, or federal authorities may issue official orders related to the COVID-19 epidemic, or take other official actions, subsequent to the execution of this Agreement that Parties to this Agreement cannot presently predict. City and Contractor mutually acknowledge and agree that this Agreement shall be subject to the provisions of any such official action or order ("Official Actions"), as they may be revised and updated. If the provisions of any such Official Actions materially impact the terms of this Agreement, the provisions of those Official Actions shall govern. Contractor shall stay updated on the status of the City Health Officer orders by checking the Department of Public Health website (sfdph.org) regularly. Contractor is strongly encouraged to post a copy of relevant Health Officer orders onsite and to provide a copy to any member of the public asking for a copy.

14.2 FEMA Assistance.

This is an acknowledgement that FEMA financial assistance will be requested by City and if provided will be used to fund all or a portion of this Agreement. Contractor shall comply with all applicable Federal law, regulations, executive orders, FEMA policies, procedures, and directives, including the FEMA Emergency & Exigency Contracts Requirements attached hereto as Appendix D and incorporated herein by reference.

Article 15 MacBride And Signature

15.1 MacBride Principles -Northern Ireland.

The provisions of San Francisco Administrative Code §12F are incorporated herein by this reference and made part of this Agreement. By signing this Agreement, Contractor confirms that Contractor has read and understood that the City urges companies doing business in Northern Ireland to resolve employment inequities and to abide by the MacBride Principles, and urges San Francisco companies to do business with corporations that abide by the MacBride Principles.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day first mentioned above.

CITY

CONTRACTOR

CITY AND COUNTY OF SAN FRANCISCO,
a municipal corporation

SMG FOOD AND BEVERAGE LLC

DocuSigned by:
Trent Rhorer 5/19/2020
By: 9753A6870BB74EE...
Trent Rhorer
Executive Director
Human Services Agency

DocuSigned by:
Murat Eskicioglu 5/18/2020
By: AE29ABA1ED3349A...
Murat Eskicioglu
Regional General Manager
747 Howard Street
San Francisco, CA 94103

Recommended by:

Supplier ID: 0000010861

Approved as to Form:

Dennis J. Herrera
City Attorney

DocuSigned by:
Louise S. Simpson 5/18/2020
By: BD54168A4C3B452...
Louise S. Simpson
Deputy City Attorney

Approved:

DocuSigned by:
Shawn Peeters 5/21/2020
By: C13CDA276251449...
Sailaja Kurella,
Acting Director of the Office of Contract
Administration, and Purchaser
Shawn Peeters

Appendices

- A: Statement of Work
- B: Calculation of Charges
- C: Method of Payment
- D: Permitted Subcontractors (Reserved)
- E: FEMA Emergency & Exigency Contracts Requirements
- F: Local Emergency Declaration

Appendix A Statement of Work

I. Purpose of Grant

To provide meal services to individuals who have been placed in hotels, congregate sites, and RV sites in San Francisco due to the COVID-19 disaster.

II. Target Population

Individuals or families who are being housed in hotel, congregate, and RV sites in San Francisco due to the COVID-19 emergency. This may also include individuals who are homeless or have underlying health conditions that make them medically vulnerable.

III. Description of Services

Grantee shall provide the following services during the term of this contract:

1. Three (3) meals per day (breakfast, lunch, dinner) plus one snack.
2. Menus should rotate through the weeks to provide variety.
3. The meals should be healthy and comply with USDA nutrition guidelines ([MyPlateGuidelines](#)).
4. Breakfast should include:
 - a. 4 ounces protein (yogurt, eggs, cottage cheese, cheese, beans, sausage, etc.)
 - b. Fruit
 - c. 4 ounces starch (muffin, bagel, tortilla, baked good, etc.)
 - d. Orange juice/apple juice/water (no added sugar)
5. Lunch/Dinner should be 14-16 ounces in total weight, comprised of the following:
 - a. 6 oz. protein
 - b. 4 oz. starch or grain
 - c. 4 oz. vegetable
 - d. Bottled water (12-16 ounces)
6. At least dinner must be a hot meal; breakfast and lunch may be either hot or cold.
7. Menu Option Requirements:
 - a. NO meals should have nuts or shellfish.
 - b. No apples or raw carrots.
 - c. 10% of meals should be vegetarian
 - d. All meals should be low salt
 - e. No more than 50% of meals provided (that day/meal) should have pork.
 - f. Based on the special needs of clients at each site, these options must be accommodated:
 - Mechanical soft for those with dental issues (i.e. easy to chew)
 - Diabetic
 - Allergic to: eggs/lactose/gluten/etc.
 - Vegan
 - Etc.
8. Snack examples: (Banana + granola bar), (Cheese, crackers, fruit), (Cliff bar + fruit) etc.

**Menu should be approved by the City more than 24 hours in advance.
Caterer should provide written copy of the menu for each guest.**

Packaging Requirements:

1. Individually wrapped/boxed
2. Compostable utensils/napkins

3. Label the individual boxes/bags that have special meals with the room number and meal type.

Delivery:

1. Delivery three (3) times per day is required if there isn't a refrigerator on site.
2. Breakfast 6:30-7:30am, Lunch 11am-12pm, Dinner 5pm-6pm (Unless the City approves otherwise).
3. The City will inform the caterer how many meals will be needed per site/area at least 24 hours in advance, however for higher volume orders we will make every effort to provide at least 48 hours' notice.

IV. Service Objectives

The Grantee will provide three meals a day (breakfast, lunch, dinner) plus a snack for up to 700 individuals.

The Grantee will deliver meals at the following times:

Breakfast: 6:30 a.m. – 7:30 a.m.

Lunch: 11:00 a.m. – 12:00 p.m.

Dinner: 5:00 p.m. – 6:00 p.m.

Delivery times can be modified with City's prior approval.

V. Reporting Requirements

Grantee will provide a monthly report of activities, referencing the tasks as described in Section V Service Objectives. Grantee will enter the monthly metrics in the CARBON database by the 15th of the following month.

- a. Total number of meals provided per date per site
- b. Total number of special meal accommodations

For assistance with reporting requirements or submission of reports, contact:

Rocio.Duenas@sfgov.org

Contract Manager, San Francisco Human Services Agency

or

Tiana.Wertheim@sfgov.org

Program Manager, San Francisco Human Services Agency

Appendix B Calculation of Charges

- I.** Contractor shall submit invoices on a monthly basis. Invoices shall document the number of meals provided as outlined in Appendix A, and any additional work performed under the scope of this contract.
- II.** Invoice Payments: Compensation shall be based on invoice payment amounts of \$33.73 per person per day for up to 700 clients per day.

Maximum # of People per day	# of Days	Meal Rate	Total	Contingency	Not to Exceed
700	365	\$33.73	\$ 8,618,015	\$ 861,802	\$ 9,479,817

- III.** The total contract amount is \$8,618,015 plus a contingent amount of \$861,802 for a total amount not to exceed \$9,479,817 for the term 5/18/20-5/17/21.
- IV.** Invoices submitted for payment will include status reports detailing the executed work, location, number of meals provided, and type of meal. Program Manager verification and approval of the work detailed in the status reports and the invoices is required for payment.
- V.** A final closing invoice, clearly marked "FINAL," shall be submitted no later than thirty (30) calendar days following the closing date of the Agreement, and shall include only those Services rendered during the referenced period of performance. City's final reimbursement to the Contractor at the close of the Agreement period shall not exceed the total amount authorized and certified for this Agreement.

Appendix C Method of Payment

- I. In accordance with Article 3 of the Contract Agreement, payments shall be made for the unit of service rate incurred and reported for each month. Under no circumstances shall payment exceed the amount set forth in Article 3.3 Compensation of the Agreement.
- II. Contractor will submit all bills, invoices and related documentation in the format specified by SFHSA within 15 days after the month of service to SFHSA's web-based Contracts Administration, Reporting, and Billing Online (CARBON) System at: <https://contracts.sfhsa.org>

Contractor may submit bills, invoices and related documentation in the format specified by SFHSA via paper or email only upon special permission by their assigned Contract Manager.
- III. Contractor must sign up to receive payments electronically via Automated Clearing House (ACH). Remittance information will be provided through Paymode-X. Additional information and sign up is available at: <http://www.sfgov.org/ach>
- IV. The Executive Director or CFO must submit a letter of authorization designating specific users who will have access to CARBON to electronically submit and sign for invoices, budget revision requests, program reports, and view other information that is in CARBON.
 - A. Submittal of the invoice by designated authorized personnel with proper login credentials constitutes an electronic signature and certification of the invoice.
 - B. Authorized personnel with CARBON login credentials shall not share or internally reassign logins.
 - C. Contractor shall notify SFHSA Contract Manager immediately regarding any need for the restriction or termination of a previously authorized CARBON login.
- V. Invoices shall include actual expenditures incurred during the period of service, unless otherwise specified.
 - A. The contractor will submit a monthly invoice detailing **units of service** and amount charged. The contractor will maintain a record describing units of service and activities provided.
 - B. All charges incurred under this agreement shall be due and payable only after services have been rendered, and in no case in advance of such services.
 - C. Invoices from subcontractors (if any) for the period of service must be submitted regardless of dollar amount. If requested by SFHSA, supporting documentation must be uploaded into CARBON and submitted along with the invoice.
 - D. Contractor shall supply additional specific supporting documentation when requested by SFHSA. Supporting documentation must be uploaded into CARBON and submitted along with the invoice.
- VI. Following SFHSA verification of submitted documentation and that claimed services are authorized and delivered satisfactorily, SFHSA will authorize payment within 10 business days after receipt of the invoice and all billing information set forth above submitted via CARBON.
- VII. Timely Submission of Reports – If reports/documents are required, Contractor shall submit these reports prior to submitting invoices. Failure to submit required reports/documents in CARBON by specified deadlines may result in withholding of contract payments.

Appendix D
Permitted Subcontractors (Reserved)

Appendix E
FEMA Emergency & Exigency Contracts Requirements

1. Precedence of FEMA Requirements. This contract may be eligible for FEMA funding. FEMA requires inclusion of the following contract provisions for procurement under exigent or emergency circumstances. In the event of a conflict between this appendix and other provisions of the Agreement that address the same or a similar requirement, the provisions that are stricter and impose the greater duties upon Contractor shall apply.

2. Work Hours and Safety Standards. Contractor agrees as follows:

A. **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.

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

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

D. **Subcontracts.** Contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraphs (A) through (D) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. Contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (A) through (D) of this section.

E. **Exceptions.** This Section 5 does not apply to the purchase of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence

3. Clean Air Act. Contractor agrees as follows:

A. 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.

B. Contractor agrees to report each violation to the City and understands and agrees that the City 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.

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

4. Federal Water Pollution Act. Contractor agrees as follows:

A. 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.

B. Contractor agrees to report each violation to the City and understands and agrees that the City 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.

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

5. Debarment and Suspension. Contractor agrees as follows:

A. To the extent this contract is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000, Contractor is required to verify that none of 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).

B. To the extent this contract is a covered transaction, 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.

C. This certification is a material representation of fact relied upon by the City. If it is later determined that 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 the City, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.

D. Contractor agrees to comply with the requirements of 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C throughout the period of any contract that may arise from this offer. Contractor further agrees to include a provision requiring such compliance in its lower tier covered transactions.

6. Procurement of Recovered Materials

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

- i. Competitively within a timeframe providing for compliance with the contract performance schedule;
- ii. Meeting contract performance requirements; or

iii. At a reasonable price.

B. 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/comprehensive-procurement-guideline-cpg-program>.

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

7. Department of Homeland Security Seal, Logo, and Flags. Contractor shall not use the DHS seal(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials without specific FEMA pre-approval.

8. Compliance with Federal Law, Regulations, and Executive Orders. This is an acknowledgement that FEMA financial assistance will be used to fund all or a portion of the contract. Contractor will comply with all applicable Federal law, regulations, executive orders, FEMA policies, procedures, and directives.

9. No Obligation by Federal Government. The Federal Government is not a party to this contract and is not subject to any obligations or liabilities to the City, Contractor, or any other party pertaining to any matter resulting from the contract.

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

11. Byrd Anti-Lobbying Certification.

A. Contractors who apply or bid for an award of \$100,000 or more shall file the required certification pursuant to the Byrd Anti-Lobbying Amendment, 31 U.S.C. §1352, as amended. 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.

B. If this contract is for a price of \$100,000 or more, Contractor, and its lower tiers, must sign and submit to the City the following certification:

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

Certification for Contracts, Grants, Loans, and Cooperative Agreements

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

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, 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.

(2) 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 undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The undersigned 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.

Contractor certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, 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.

DocuSigned by:

Murat Eskicioglu

AE29ABA1ED3349A...

Signature of Contractor's Authorized Official

Murat Eskicioglu General Manager

Name and Title of Contractor's Authorized Official

5/18/2020

Date

Appendix F
Local Emergency Proclamation (PDF Attached)



**SAN FRANCISCO
HUMAN SERVICES AGENCY**

Department of Benefits
and Family Support

April 12, 2021

Department of Disability
and Aging Services

Office of Early Care
and Education

Angela Calvillo, Clerk of the Board
Board of Supervisors
City and County of San Francisco
1 Dr. Carlton B. Goodlett Place, Room 244
San Francisco, CA 94102-4689

P.O. Box 7988
San Francisco, CA
94120-7988
www.SFHSA.org

RE: Proposed Resolution for the contract with SMG Food and Beverage LLC for the provision of Feeding Services for Alternative Shelter Locations

Dear Ms. Calvillo:

Enclosed for the Board of Supervisors' consideration and approval, please find a proposed Board Resolution requesting approval of the modification to the contract with SMG Food and Beverage LLC for the provision of feeding services for Alternative Shelter locations.

If you need additional information, please contact Rocio Duenas, Contract Manager at Rocio.Duenas@sfgov.org.



Attached please find a copy of the proposed resolution. Please calendar this item at the Board's earliest convenience and advise us of the date of introduction.

London Breed
Mayor

Thank you for your assistance.

Trent Rhorer
Executive Director

Sincerely,

Trent Rhorer
Executive Director

Enclosure



San Francisco Ethics Commission

25 Van Ness Avenue, Suite 220, San Francisco, CA 94102

Phone: 415.252.3100 . Fax: 415.252.3112

ethics.commission@sfgov.org . www.sfethics.org

Received On:

File #: 210374

Bid/RFP #: 885

Notification of Contract Approval

SFEC Form 126(f)4

(S.F. Campaign and Governmental Conduct Code § 1.126(f)4)

A Public Document

Each City elective officer who approves a contract that has a total anticipated or actual value of \$100,000 or more must file this form with the Ethics Commission within five business days of approval by: (a) the City elective officer, (b) any board on which the City elective officer serves, or (c) the board of any state agency on which an appointee of the City elective officer serves. For more information, see: <https://sfethics.org/compliance/city-officers/contract-approval-city-officers>

1. FILING INFORMATION

TYPE OF FILING	DATE OF ORIGINAL FILING (for amendment only)
Original	
AMENDMENT DESCRIPTION – Explain reason for amendment	

2. CITY ELECTIVE OFFICE OR BOARD

OFFICE OR BOARD	NAME OF CITY ELECTIVE OFFICER
Board of Supervisors	Members

3. FILER'S CONTACT

NAME OF FILER'S CONTACT	TELEPHONE NUMBER
Angela Calvillo	415-554-5184
FULL DEPARTMENT NAME	EMAIL
office of the clerk of the Board	Board.of.Supervisors@sfgov.org

4. CONTRACTING DEPARTMENT CONTACT

NAME OF DEPARTMENTAL CONTACT	DEPARTMENT CONTACT TELEPHONE NUMBER
Rocio Duenas	415-557-5626
FULL DEPARTMENT NAME	DEPARTMENT CONTACT EMAIL
HSA Human Services Agency	Rocio.Duenas@sfgov.org

5. CONTRACTOR	
NAME OF CONTRACTOR SMG Food and Beverage LLC	TELEPHONE NUMBER 415-974-4047
STREET ADDRESS (including City, State and Zip Code) 747 Howard Street, San Francisco, CA 94103	EMAIL murat@moscone.com

6. CONTRACT		
DATE CONTRACT WAS APPROVED BY THE CITY ELECTIVE OFFICER(S)	ORIGINAL BID/RFP NUMBER 885	FILE NUMBER (If applicable) 210374
DESCRIPTION OF AMOUNT OF CONTRACT \$18,959,634		
NATURE OF THE CONTRACT (Please describe) Contract amendment between the City and County of San Francisco and SMG Food and Beverage LLC, for feeding services for Alternative Shelter locations, to extend the contract term by twelve months for a total term of May 18, 2020, through May 17, 2022, and to increase the contract amount by \$9,479,817 for a total not to exceed amount of \$18,959,634 to commence on May 18, 2021.		

7. COMMENTS

8. CONTRACT APPROVAL	
This contract was approved by:	
<input type="checkbox"/>	THE CITY ELECTIVE OFFICER(S) IDENTIFIED ON THIS FORM
<input checked="" type="checkbox"/>	A BOARD ON WHICH THE CITY ELECTIVE OFFICER(S) SERVES Board of Supervisors
<input type="checkbox"/>	THE BOARD OF A STATE AGENCY ON WHICH AN APPOINTEE OF THE CITY ELECTIVE OFFICER(S) IDENTIFIED ON THIS FORM SITS

9. AFFILIATES AND SUBCONTRACTORS

List the names of (A) members of the contractor's board of directors; (B) the contractor's principal officers, including chief executive officer, chief financial officer, chief operating officer, or other persons with similar titles; (C) any individual or entity who has an ownership interest of 10 percent or more in the contractor; and (D) any subcontractor listed in the bid or contract.

#	LAST NAME/ENTITY/SUBCONTRACTOR	FIRST NAME	TYPE
1	Bension	Ron	CEO
2	Rozells	Mark	CFO
3	Miles	Amy	Board of Directors
4	Sisson	Jeff	Board of Directors
5	Jacob	Ellis	Board of Directors
6	Notto	Adina	Board of Directors
7	Glat	Neil	Board of Directors
8	Beckerman	Dan	Board of Directors
9	Reed	Rob	Board of Directors
10	Fikre	Ted	Board of Directors
11	Gilis	Kosty	Board of Directors
12	Motamedi	Amir	Board of Directors
13	Newman	Bob	Board of Directors
14	Lansing	Andy	Board of Directors
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16			
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19			

9. AFFILIATES AND SUBCONTRACTORS

List the names of (A) members of the contractor’s board of directors; (B) the contractor’s principal officers, including chief executive officer, chief financial officer, chief operating officer, or other persons with similar titles; (C) any individual or entity who has an ownership interest of 10 percent or more in the contractor; and (D) any subcontractor listed in the bid or contract.

#	LAST NAME/ENTITY/SUBCONTRACTOR	FIRST NAME	TYPE
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9. AFFILIATES AND SUBCONTRACTORS

List the names of (A) members of the contractor’s board of directors; (B) the contractor’s principal officers, including chief executive officer, chief financial officer, chief operating officer, or other persons with similar titles; (C) any individual or entity who has an ownership interest of 10 percent or more in the contractor; and (D) any subcontractor listed in the bid or contract.

#	LAST NAME/ENTITY/SUBCONTRACTOR	FIRST NAME	TYPE
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<input type="checkbox"/>	Check this box if you need to include additional names. Please submit a separate form with complete information. Select "Supplemental" for filing type.		

10. VERIFICATION

I have used all reasonable diligence in preparing this statement. I have reviewed this statement and to the best of my knowledge the information I have provided here is true and complete.

I certify under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

<p>SIGNATURE OF CITY ELECTIVE OFFICER OR BOARD SECRETARY OR CLERK</p> <p>BOS Clerk of the Board</p>	<p>DATE SIGNED</p>
---	---------------------------

From: [Duenas, Rocio \(HSA\)](#)
To: [BOS Legislation, \(BOS\)](#); [Wong, Linda \(BOS\)](#); [RivamonteMesa, Abigail \(BOS\)](#); [Campbell, Severin \(BUD\)](#)
Cc: [Gendelman, Johanna \(HSA\)](#); [Tyson, Anthony \(HSA\)](#)
Subject: Proposed Resolution - HSA - SMG Food and Beverage LLC - Feeding Services for Alternative Shelter Locations
Date: Monday, April 12, 2021 11:21:12 AM
Attachments: [Cover Letter to BoS SMG Feeding Services for Alternative Shelter Locations signed by TR.pdf](#)
[Resolution SMG Feeding Services for Alternative Shelter Locations signed by TR.docx](#)
[Resolution SMG Feeding Services for Alternative Shelter Locations.docx](#)
[Draft P-650 Amendment SMG.docx](#)
[SMG Appendix A-1.docx](#)
[SMG Appendix B-1.docx](#)
[P-245 SMG Food and Beverage LLC COVID-19 Meals \(signed\).pdf](#)
[SFEC Form 126f4BOS Notification of Contract Approval \(2\).pdf](#)
[image002.png](#)

Attached please find a proposed resolution requesting approval of the modification to HSA's contract with SMG Food and Beverage LLC for the provision of Feeding Services for Alternative Shelter Locations.

In addition to the attached cover letter and the signed proposed resolution, the following supplemental materials are attached:

- Proposed resolution (Word format)
- Draft P-650 Contract Amendment
- Appendix A-1 – Services to be Provided
- Appendix B-1 – Calculation of Charges
- Original Contract
- Form 126

Please calendar this item at the Board's earliest convenience and advise us of the date of introduction. Let me know if you have any questions.

Thank you,

Rocio

Rocio Duenas
Senior Contract Manager



SAN FRANCISCO
HUMAN SERVICES AGENCY