

ORDINANCE NO. 22-600

AN ORDINANCE OF THE CITY OF DENTON AUTHORIZING THE CITY MANAGER ENTER INTO AN AGREEMENT BETWEEN THE CITY AND STH PROJECT, INC. A NON-PROFIT CORPORATION (“STH PROJECT”), TO PROVIDE SUMMER BREAKFASTS, LUNCHESES, AND AFTERSCHOOL SUPPER, TO CHILDREN UNDER THE AGE OF EIGHTEEN AND QUALIFYING DISABLED PARTICIPANTS THROUGH AGE 21 AT NO CHARGE TO SAID RECIPIENTS AT DESIGNATED CITY OF DENTON PARK AND RECREATION FACILITY SITES; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City recognizes the importance of providing breakfasts and lunches (“Summer Food”) during the summer months when school is not in session and after school supper September through May; at no charge to children under the age of eighteen and qualifying disabled participants through age twenty-one;

WHEREAS, in 2017 through 2021 the City worked with STH Project to provide summer food at multiple locations throughout the City; and

WHEREAS, the City and STH Project desire to continue the program for summer 2022 through summer 2024; and

WHEREAS, this Agreement serves a valid public purpose and is in the public interest;

NOW THEREFORE,

THE COUNCIL OF THE CITY OF DENTON HEREBY ORDAINS:

SECTION 1. The findings and recitations contained in the preamble of this Ordinance are incorporated herein by reference.

SECTION 2. The City Manager is hereby authorized to execute the Agreement between the City and STH attached hereto as Exhibit “A,” on behalf of the City.

SECTION 3. This ordinance shall become effective immediately upon its passage and approval.

The motion to approve this Ordinance was made by Jesse Davis and seconded by Alison Maguire. This Ordinance was passed and approved by the following vote [7 - 0]:

	<u>Aye</u>	<u>Nay</u>	<u>Abstain</u>	<u>Absent</u>
Gerard Hudspeth, Mayor:	<u>✓</u>	_____	_____	_____
Vicki Byrd, District 1:	<u>✓</u>	_____	_____	_____

Brian Beck, District 2:	<u>✓</u>	_____	_____	_____
Jesse Davis, District 3:	<u>✓</u>	_____	_____	_____
Alison Maguire, District 4:	<u>✓</u>	_____	_____	_____
Deb Armintor, At Large Place 5:	<u>✓</u>	_____	_____	_____
Paul Meltzer, At Large Place 6:	<u>✓</u>	_____	_____	_____

PASSED AND APPROVED this the 5th day of April, 2022.




 GERARD HUDSPETH, MAYOR

ATTEST:
 ROSA RIOS, CITY SECRETARY

BY: 

APPROVED AS TO LEGAL FORM:
 MACK REINWAND, CITY ATTORNEY


 BY: _____



**SITE AGREEMENT FOR THE 2022-2024 SUMMER FOOD AND
AFTER SCHOOL SUPPER PROGRAM
BETWEEN THE CITY OF DENTON, TEXAS AND
STH PROJECT, INC.**

This Agreement is hereby entered into by and between the City of Denton, Texas, a home-rule municipal corporation, hereinafter referred to as "City", and STH Project Inc., a Texas Non-Profit Corporation, hereinafter referred to as "STH Project."

WHEREAS, the City recognizes the importance of providing breakfasts and lunches ("Summer Food) during the summer months when school is not in session and after school supper September through May; at no charge to children under the age of eighteen and qualifying disabled participants through age twenty-one;

WHEREAS, in 2017 through 2021 the City worked with STH Project to provide summer food at multiple locations throughout the City; and

WHEREAS, the City and STH Project desire to continue the program for summer 2022 through summer 2024; and

WHEREAS, this Agreement serves a valid public purpose and is in the public interest;

NOW, THEREFORE, the parties hereto mutually agree as follows:

I. SCOPE OF SERVICES

STH Project shall, in a satisfactory and proper manner, perform the following tasks, for which the locations provided by City may be used:

II. OBLIGATIONS OF STH PROJECT

STH Project agrees to the following terms and conditions:

A. STH Project shall supply unitized meals and catered planned meals ("Summer Food") that meet or exceed the minimum meal pattern requirements found in 7 C.F.R. Part 225: Summer Food Service Program. Meals will be prepared and delivered under controlled temperatures and in accordance with state and local health standards.

B. STH Project shall conduct training for staff and conduct program monitoring during the duration of the program to ensure compliance of 7 C.F.R. Part 225 and all applicable state and Federal laws.

C. The Summer Food and Afterschool Suppers shall be provided during the time period described below at the locations identified in Exhibit A, which is attached.

D. The Summer Food and Afterschool Suppers shall be available to all children eighteen (18) years of age and under and qualifying disabled participants through age twenty-one (21), in accordance with United States Department of Agriculture (USDA) regulations.

D. STH Project shall maintain records required by either the City or USDA regarding (i) meal production, including the composition of all meals, (ii) number of meals served throughout the term of this Agreement, (iii) receipts, invoices, and inventory records; and (iv) daily delivery tickets for Summer Food and Afterschool Suppers at each site location. STH Project will permit authorized officials of the City to review these records at any time.

E. Upon request, STH Project will provide to City its by-laws and any of its rules and regulations that may be relevant to this Agreement.

F. If STH Project is subject to an inspection by the local health department or an independent agency to determine bacterial levels in the Summer Food and Afterschool Suppers being served, a copy of the results of such inspection must be submitted promptly to the City for review.

G. STH Project shall report to the City any changes in the number of meals required as attendance fluctuates and any problems or issues with service of the Summer Food and Afterschool Suppers.

H. STH Project will appoint a representative who will be available to meet with City officials when requested.

I. STH Project's meal service shall include the delivery, distribution, and clean-up of Summer Food and Afterschool Suppers at the locations identified in Exhibit A.

J. STH Project will carry and provide evidence of insurance as detailed below.

III. REPRESENTATIONS OF CITY

The City agrees to allow STH Project to use the locations identified in Exhibit A under the following terms and conditions:

A. STH Project shall provide adequate refrigeration or heating during the delivery of all food to ensure the wholesomeness of food at delivery in accordance with State or local health codes and performing constant quality control inspections.

B. STH Project shall deliver, distribute, and ensure proper clean-up of meals according to the following schedule, each day meals are provided

- i. Summer breakfast will be delivered between 8 a.m. and 11:30 a.m.; field trip schedules will be communicated by staff to ensure early delivery as needed. When communicated by staff and where overnight refrigeration is available, breakfasts may be delivered with lunches one day prior.

- ii. Summer lunch will be delivered by 11:30 a.m.; clean-up will be completed by 2 p.m.
- iii. Afterschool Supper will be delivered by 3:15 p.m.; cleanup will be completed by 5:30 p.m.

C. All locations are accepted by STH Project on an “as is” basis and may not be altered in any way by STH Project or guests.

D. STH Project shall ensure that the number of people being served with Summer Food and Afterschool Supper does not exceed the maximum capacity of accommodation at each location as listed in Exhibit A.

E. The City reserves the right to cancel use of any of the locations in its sole discretion. If cancellation is initiated by the City, City staff will attempt to secure an alternative site (if available).

F. STH Project is responsible for obtaining all required vendor permits and/or health permits for the dissemination of Summer Food and Afterschool Supper.

F. Per City of Denton Ordinance No. 2015-121, smoking is prohibited inside City facilities. In addition, patrons must be twenty feet (20’) from all entrances (including handicap ramps/entryways/walkways) when smoking. This ordinance encompasses all forms of smoke, to include barbeque smokers, grills, tobacco, tobacco products, and e-cigs.

G. No storage or equipment will be available on-site.

H. No open flame, candles, hay, confetti-type décor, soap bubbles, rice, birdseed, or live animals (excluding service animals) are allowed in the building. Decorations must be authorized and meet all fire codes.

I. No alcohol sales are permitted without City Council approval in advance.

J. No alcoholic beverages are permitted in vehicles, parking lots, loading areas, sidewalks, or park/grass areas.

K. All trash must be put into trash cans.

L. When the kitchen is used, STH Project is responsible for cleaning of the room and appliances. Kitchen and appliances are provided on an “as-is” basis for food preparation. Appliances are provided as a courtesy and their reliability cannot be guaranteed.

IV. TIME OF PERFORMANCE

The term of this Agreement shall commence on the effective date and terminate August 31, 2024, unless the contract is sooner terminated under Section VII "Suspension or Termination."

The Summer Food provided herein shall be served weekdays from May 31, 2022, through August 5, 2022. No lunches will be served on July 4, 2022, in observance of the Independence Day holiday. Summer lunches for 2023 and 2024 will be served weekdays, between May and August, from the first day of summer programming through the last day of programming as determined by Denton Independent School District school calendars. City staff will send specific program dates as they become available.

The Afterschool Suppers provided herein shall be served weekdays from September 1 through May 31 for the 2022-2023 and 2023-2024 school years. On school breaks, suppers will be served up to 2 days prior to the celebrated holiday.

V. EVALUATION

STH Project agrees to participate in an implementation and maintenance system whereby the services can be continuously monitored. STH Project agrees to make available its financial records for review by City at City's discretion. In addition, upon request, STH Project agrees to provide City the following data and reports, or copies thereof:

A. All external or internal audits. STH Project shall submit a copy of the annual independent audit to City within ten (10) days of receipt.

B. All external or internal evaluation reports.

C. An explanation of any major changes in program services.

D. Nothing in the above subsections shall be construed to relieve STH Project of responsibility for retaining accurate and current records that clearly reflect the level and benefit of services provided under this Agreement.

VI. DIRECTORS' MEETINGS

Upon request, minutes of all meetings of STH Project's governing body shall be available to City for inspection or copy within ten (10) working days of approval.

VII. TERMINATION

The City may terminate this Agreement for cause if STH Project violates any covenants, agreements, or guarantees of this Agreement, STH Project's insolvency or filing of bankruptcy, dissolution, or receivership, or STH Project's violation of any law or regulation to which it is bound under the terms of this Agreement. The City may terminate this Agreement for any other reasons not specifically enumerated in this paragraph.

VIII. EQUAL OPPORTUNITY AND COMPLIANCE WITH LAWS

A. STH Project shall comply with all applicable equal employment opportunity and affirmative action laws or regulations, including but not limited to the following: rights laws, as amended: Title VI of the Education Amendments of 1972; Section 504 of the Rehabilitation Act of 1973; the Age Discrimination Act of 1975; Title 7 CFR Parts 15, 15a, and 15b; the Americans with Disabilities Act; and FNS Instruction 113-1, Civil Rights Compliance and Enforcement – Nutrition Programs and Activities.

B. STH Project will furnish all information and reports requested by City, and will permit access to its books, records, and accounts for purposes of investigation to ascertain compliance with local, State, and Federal rules and regulations.

C. In the event of noncompliance by STH Project with the nondiscrimination requirements, the Agreement may be canceled, terminated, or suspended in whole or in part, and STH Project may be barred from further contracts with City.

IX. WARRANTIES

STH Project represents and warrants that:

A. All information, reports, and data heretofore or hereafter requested by City and furnished to City, are complete and accurate as of the date shown on the information, data, or report, and, since that date, have not undergone any significant change without written notice to City.

B. Any supporting financial statements heretofore requested by City and furnished to City, are complete, accurate, and fairly reflect the financial conditions of STH Project on the date shown on said report, and the results of the operation for the period covered by the report, and that since said data, there has been no material change, adverse or otherwise, in the financial condition of STH Project.

C. No litigation or legal proceedings are presently pending or threatened against STH Project.

D. None of the provisions herein contravenes or is in conflict with the authority under which STH Project is doing business or with the provisions of any existing indenture or agreement of STH.

E. STH Project has the power to enter into this Agreement and has taken all necessary action to authorize such acceptance of the terms and conditions of this Agreement.

F. None of the assets of STH Project are subject to any lien or encumbrance of any character, except for current taxes not delinquent, except as shown in the financial statements furnished by STH Project to City.

Each of these representations and warranties shall be continuing and shall be deemed to have been repeated by the submission of each request for payment.

X. CHANGES AND AMENDMENTS

A. Any alterations, additions, or deletions to the terms of this Agreement shall be by written amendment executed by both parties, except when the terms of this Agreement expressly provide that another method shall be used.

B. It is understood and agreed by the parties hereto that changes in the State, Federal, or local laws or regulations pursuant hereto may occur during the term of this Agreement. Any such modifications are to be automatically incorporated into this Agreement without written amendment hereto and shall become a part of the Agreement on the effective date specified by the law or regulation.

C. STH Project shall notify City of any changes in personnel or governing board composition.

XI. INSURANCE

A. Without limiting any of the other obligations or liabilities of STH Project, STH Project shall provide and maintain through the term of this Agreement the minimum insurance coverage as indicated hereinafter.

B. As soon as practicable after notification that this Agreement has been executed by the City, STH Project shall file with the Parks and Recreation Department satisfactory certificates of insurance including any applicable addendum or endorsements. STH Project may, upon written request to the Parks and Recreation Department, ask for clarification of any insurance requirements at any time; however, STH Project is strongly advised to make such requests prior to executing this Agreement, since the insurance requirements may not be modified or waived after execution unless a written Agreement amendment is approved by the City Council. STH Project shall not commence any work or deliver any Summer Food or Afterschool Supper until it receives notification that the Agreement has been accepted, approved, and signed by the City.

C. All insurance policies proposed or obtained in satisfaction of these requirements shall comply with the following general specifications, and shall be maintained in compliance with these general specifications throughout the duration of the Agreement, or longer, if so noted:

- Each policy shall be issued by a company authorized to do business in the State of Texas with an A.M. Best Company rating of at least A or better.
- Any deductibles or self-insured retentions shall be declared in the proposal. If requested by the City, the insurer shall reduce or eliminate such deductibles or self-insured retentions with respect to the City, its officials, agents, employees, and volunteers; or, STH Project shall procure a bond guaranteeing payment of losses and related investigations, claim administration, and defense expenses.

- Liability policies shall be endorsed to provide the following:
 - Name as Additional Insured the City of Denton, its Officials, Agents, Employees, and volunteers.
 - That such insurance is primary to any other insurance available to the Additional Insured with respect to claims covered under the policy and that this insurance applies separately to each insured against whom claim is made or suit is brought. The inclusion of more than one insured shall not operate to increase the insurer's limit of liability.
 - Provide a Waiver of Subrogation in favor of the City of Denton, its officials, agents, employees, and volunteers.
- Cancellation: City requires 30 day written notice should any of the policies described on the certificate be cancelled or materially changed before the expiration date.
- Should any of the required insurance be provided under a claims made form, STH Project shall maintain such coverage continuously throughout the term of this Agreement and, without lapse, for a period of three years beyond the contract expiration, such that occurrences arising during the contract term which give rise to claims made after expiration of the contract shall be covered.
- Should any of the required insurance be provided under a form of coverage that includes a general annual aggregate limit providing for claims investigation or legal defense costs to be included in the general annual aggregate limit, STH Project shall either double the occurrence limits or obtain Owners and Contractors Protective Liability Insurance.
- Should any required insurance lapse during the contract term, requests for location/site use originating after such lapse shall not be processed or approved until the City receives satisfactory evidence of reinstated coverage as required by this contract, effective as of the lapse date. If insurance is not reinstated, City may, at its sole option, terminate this agreement effective on the date of the lapse.

D. SPECIFIC ADDITIONAL INSURANCE REQUIREMENTS:

All insurance policies proposed or obtained in satisfaction of this Agreement shall additionally comply with the following marked specifications, and shall be maintained in compliance with these additional specifications throughout the duration of the Agreement, or longer, if so noted:

1. General Liability Insurance:

General Liability insurance with combined single limits of not less than \$1,000,000.00 shall be provided and maintained by STH Project. The policy shall be written on an occurrence basis either in a single policy or in a combination of underlying and umbrella or excess policies.

If the Commercial General Liability form (ISO Form CG 0001 current edition) is used:

- Coverage A shall include premises, operations, products, and completed operations, independent contractors, contractual liability covering this contract and broad form property damage coverage.
- Coverage B shall include personal injury.
- Coverage C, medical payments, is not required.

If the Comprehensive General Liability form (ISO Form GL 0002 Current Edition and ISO Form GL 0404) is used, it shall include at least:

- Bodily injury and Property Damage Liability for premises, operations, products and completed operations, independent contractors and property damage resulting from explosion, collapse or underground (XCU) exposures.
- Broad form contractual liability (preferably by endorsement) covering this contract, personal injury liability and broad form property damage liability.

2. Automobile Liability Insurance:

STH Project shall provide Commercial Automobile Liability insurance with Combined Single Limits (CSL) of not less than \$500,000 either in a single policy or in a combination of basic and umbrella or excess policies. The policy will include bodily injury and property damage liability arising out of the operation, maintenance and use of all automobiles and mobile equipment used in conjunction with this contract.

Satisfaction of the above requirement shall be in the form of a policy endorsement for:

- any auto, or
- all owned, hired, and non-owned autos.

3. Workers' Compensation Insurance

STH Project shall purchase and maintain Workers' Compensation insurance which, in addition to meeting the minimum statutory requirements for issuance of such insurance, has Employer's Liability limits of at least \$100,000 for each accident, \$100,000 per each employee, and a \$500,000 policy limit for occupational disease. The City need not be named as an "Additional Insured" but the insurer shall agree to waive all rights of subrogation against the City, its officials, agents, employees, and volunteers for any work performed for the City by the Named Insured.

XII. INDEMNIFICATION

To the extent authorized by law, STH Project agrees to indemnify, hold harmless, and defend the City, its officers, agents, and employees from and against any and all claims or suits for injuries, damage, loss, or liability of whatever kind or character, arising out of or in connection with the performance by STH Project or those services contemplated by this Agreement, including all such claims or causes of action based upon common, constitutional, or statutory law, or based, in whole or in part, upon allegations of negligent or intentional acts of STH Project, its officers, employees, agents, subcontractors, licensees, and invitees.

XIII. CONFLICT OF INTEREST

A. STH Project covenants that neither it nor any member of its governing body presently has any interest, direct or indirect, which would conflict in any manner or degree with the performance of services required to be performed under this Agreement. STH Project further covenants that in the performance of this Agreement, no person having such interest shall be employed or appointed as a member of its governing body.

B. STH Project further covenants that no member of its governing body or its staff, subcontractors, or employees shall possess any interest in or use his/her position for a purpose that is or gives the appearance of being motivated by desire for private gain for himself/herself, or others; particularly those with which he/she has family, business, or other ties.

C. No officer, member, or employee of City and no member of its governing body who exercises any function or responsibilities in the review or approval of the undertaking or carrying out of this Agreement shall participate in any decision relating to the Agreement which affects his personal interest or the interest in any corporation, partnership, or association in which he has direct or indirect interest.

XIV. NOTICE

Any notice or other written instrument required or permitted to be delivered under the terms of this Agreement shall be deemed to have been delivered, whether actually received or not, when deposited in the United States mail, postage prepaid, registered or certified, return receipt requested, or via hand-delivery or facsimile, addressed to STH Project or City, as the case may be, at the following addresses:

CITY:

AND

STH Project:

City of Denton, Texas
Attn: City Manager
215 E. McKinney
Denton, TX 76201

STH Project Inc.
Attn: Teddy Howard
P.O. Box 270636
Flower Mound, TX 75027

with a copy to:

City of Denton, Texas
Attn: City Attorney's Office
215 E. McKinney
Denton, Texas 76201

Either party may change its mailing address by sending notice of change of address to the other at the above address by certified mail, return receipt requested.

XV. MISCELLANEOUS

A. STH Project shall not transfer, pledge, or otherwise assign this Agreement or any interest therein, or any claim arising thereunder to any party or parties, bank, trust company, or other financial institution without the prior written approval of City.

B. If any provision of this Agreement is held to be invalid, illegal, or unenforceable, the remaining provisions shall remain in full force and effect and continue to conform to the original intent of both parties hereto.

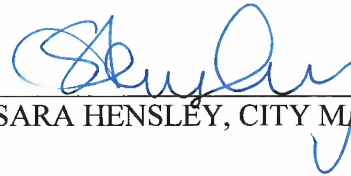
C. In no event shall any use of City locations by STH Project hereunder, or any other act or failure of City to insist in any one or more instances upon the terms and conditions of this Agreement constitute or be construed in any way to be a waiver by City of any breach of covenant or default which may then or subsequently be committed by STH Project. Neither shall such payment, act, or omission in any manner impair or prejudice any right, power, privilege, or remedy available to City to enforce its rights hereunder, which rights, powers, privileges, or remedies are always specifically preserved. No representative or agent of City may waive the effect of this provision.

D. This Agreement, together with referenced exhibits and attachments, constitutes the entire agreement between the parties hereto, and any prior agreement, assertion, statement, understanding, or other commitment occurring during the term of this Agreement, or subsequent thereto, have any legal force or effect whatsoever, unless properly executed in writing, and if appropriate, recorded as an amendment of this Agreement.

E. This Agreement shall be interpreted in accordance with the laws of the State of Texas and venue of any litigation concerning this Agreement shall be in a court of competent jurisdiction sitting in Denton County, Texas.

IN WITNESS WHEREOF, the parties do hereby affix their signatures and enter into this Agreement as of the _____ day of _____, 2022.

CITY OF DENTON, TEXAS



SARA HENSLEY, CITY MANAGER

ATTEST:
ROSA RIOS, CITY SECRETARY

BY: _____

APPROVED AS TO LEGAL FORM:
MACK REINWALD, CITY ATTORNEY



BY: _____



STH Project, Inc.

ATTEST:

EXHIBIT A:
LOCATIONS FOR SUMMER FOOD

1. Denton Civic Center, 321 E. McKinney Street, Denton, Texas 76201
Maximum capacity camp/public: 75/25
2. Denia Recreation Center, 1001 Parvin Street, Denton, Texas 76205
Maximum capacity camp/public: 30/25
3. Martin Luther King Recreation Center, 1300 Wilson Street, Denton, Texas 76205
Maximum capacity camp/public: 40/40
4. McMath Middle School, 1900 Jason Drive, Denton, Texas 76205
Maximum capacity camp/public: 75/25
5. North Lakes Rec Center - 2001 W Windsor Dr. Denton TX 76209
Maximum capacity camp/public: 30/25

LOCATIONS FOR AFTERSCHOOL SUPPER

1. Denia Recreation Center, 1001 Parvin Street, Denton, Texas 76205
Maximum capacity afterschool/public: 30/25
2. Martin Luther King Recreation Center, 1300 Wilson Street, Denton, Texas 76205
Maximum capacity afterschool/public: 30/40