



**MEMORANDUM OF UNDERSTANDING
BETWEEN
SPRING BRANCH INDEPENDENT SCHOOL DISTRICT
AND**

This Memorandum of Understanding (“MOU”) is entered into as of the _____ day of _____, 2018 (the “Effective Date”) between the Spring Branch Independent School District (“SBISD”), a Texas independent school district located at 955 Campbell Road, Houston, Texas 77024, and _____, a 501(c)(3) nonprofit organization located at _____.

WHEREAS, SBISD is an approved Child Nutrition Program (CNP) operator participating operator in the National School Lunch, Breakfast, and other federally approved meal programs and,

WHEREAS, The United States Department of Agriculture (USDA), the Food and Nutrition Service (FNS), and the Texas Department of Agriculture (TDA) CNP operators to increase efforts to promote the consumption of health foods and,

WHEREAS, the FNS has issued Published Instruction 786-6 which provides for the, “...use of share tables and the recycling of food and beverage items...”

NOW, THEREFORE, in consideration of the mutual covenants and conditions contained in this MOU and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, SBISD and _____, intending to be legally bound, agree as follows:

1. Scope of Services. The school or other approved entity is hereby granted the authority to operate a food sharing program or operate a food recycling program utilizing products previously served to students by the CNS Department for reimbursable meals outlined in 7 CFR 210.10, 220.8, 226.20, and 225.16.
2. Term. The term of this MOU shall begin on _____ and continue for the remainder of that same SBISD Board approved school year. Thereafter, the approved entity may renew this MOU for two (2) consecutive one (1) year terms by delivering written notice to both the SBISD Purchasing and Child Nutrition Services departments and subsequent

approval. The initial term and any renewal term(s) are collectively referred to in this MOU as "Term." Either party may terminate this MOU, without cause, upon at least thirty (30) calendar days prior written notice to the other party, with termination effective upon the expiration of the thirty (30) days or as mutually agreed to by the parties.

3. Support and Services. Food safety MUST remain a priority at all times! It is the sole responsibility of the recipient entity to guarantee the safety of the product donated. SBISD will maintain no liability or responsibility for the safety or quality of foods once they leave the control of the CNS Department. It is understood that the agreeing entity will be solely responsible for maintain all applicable State or local food safety requirements, proper collection of products, provide all and proper storage or transport containers, be solely responsible for any transportation of product, and all mandatory tracking paperwork. The SBISD CNS Department will only be responsible to provide guidance and examples of approved paperwork.

4. Non-Compliance. Notwithstanding any provision herein to the contrary, if ABBREVIATION OF VENDOR'S NAME does not comply with any part of this MOU, and the failure to comply is not corrected within thirty (30) calendar days after written notice from SBISD, this MOU may be terminated immediately upon written notice from SBISD, in SBISD's sole discretion.

5. Liability. Neither SBISD or its trustees, officers, employees or agents shall have any liability or responsibility for any claim or cause or action of any person or group arising from (a) the use of district property and/or equipment by ABBREVIATION OF VENDOR'S NAME and ABBREVIATION OF VENDOR'S NAME's officers, volunteers, employees, contractors, agents, invitees, licensees, participants, and visitors, or (b) non compliance with this MOU, or (c) any act, omission, or negligence of ABBREVIATION OF VENDOR'S NAME, or any of its officers, agents, employees, contractors, invitees, licensees, volunteers, participants or visitors.

EXCEPT AS MAY OTHERWISE BE PROVIDED HEREIN, SBISD MAKES NO EXPRESS OR IMPLIED WARRANTIES OF ANY KIND. TO THE FULLEST EXTENT PERMISSIBLE UNDER APPLICABLE LAW, SBISD DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, WARRANTIES OF PERFORMANCE, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, ACCURACY, OMISSIONS, COMPLETENESS, AND DELAYS. EXCEPT AS EXPRESSLY PROVIDED HEREIN OR AS REQUIRED BY LAW, UNDER NO CIRCUMSTANCES SHALL SBISD BE LIABLE FOR EXEMPLARY, SPECIAL, PUNITIVE, CONSEQUENTIAL, OR INCIDENTAL DAMAGES, INCLUDING, WITHOUT LIMITATION, LOST PROFITS, BUSINESS REVENUE, OR GOODWILL DUE TO ANY CAUSE WHATSOEVER, EVEN IF SBISD HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

6. Indemnity. **ABBREVIATION OF VENDOR'S NAME AGREES THAT ABBREVIATION OF VENDOR'S NAME SHALL INDEMNIFY, DEFEND, AND HOLD HARMLESS SBISD AND SBISD'S PAST, PRESENT, AND FUTURE TRUSTEES, OFFICERS, AND EMPLOYEES, FROM AND AGAINST ALL CLAIMS, DEMANDS, CAUSES OF ACTION, DAMAGES, COSTS, AND EXPENSES, INCLUDING, WITHOUT LIMITATION, COURT COSTS AND REASONABLE ATTORNEYS' FEES, OF ANY KIND OR NATURE ASSERTED BY ANY THIRD PARTY, OCCURRING OR IN ANY WAY INCIDENT TO, ARISING OUT OF, OR IN CONNECTION WITH ANY ACTS OF ABBREVIATION OF VENDOR'S NAME AND/OR ABBREVIATION OF VENDOR'S NAME'S PARTICIPANTS, VISITORS, AGENTS, EMPLOYEES, CONTRACTORS, INVITEES, OR LICENSEES DONE IN CONNECTION WITH THIS MOU.** ABBREVIATION OF VENDOR'S NAME's obligations under this clause shall survive termination or expiration of this MOU.

7. Notice. All notices or other communications required or permitted hereunder shall be in writing, and shall be personally delivered or sent by registered or certified mail, return receipt request, courier delivery, electronic mail, facsimile or receipted overnight mail, and shall be deemed received upon the earlier of (a) the date of delivery, if personally delivered, or (b) three (3) business days after the date of posting by the U.S. postal service, if mailed. All such notices or communications shall be addressed as follows:

If to SBISD: (name of SBISD employee executing agreement)
(title)
955 Campbell Road
Houston, Texas 77024

If to (recipient agency): (name of official at recipient agency)
(title)
(address of recipient agency)

Either party may change such address for notice for the party designated to receive such notice by giving advance written notice to the other party as provided in this paragraph.

8. Relationship of the Parties. It is understood and agreed that ABBREVIATION OF VENDOR'S NAME is a separate legal entity from SBISD and ABBREVIATION OF VENDOR'S NAME is not an employee, agent, joint venturer, or partner of SBISD. Nothing in this Agreement shall be interpreted or construed as creating or establishing the relationship of employer and employee between SBISD and either ABBREVIATION OF VENDOR'S NAME or any employee or agent of ABBREVIATION OF VENDOR'S NAME.

9. No Waiver of SBISD's Immunity. The execution of this MOU and the performance by SBISD of any of its obligations hereunder are not, and are not intended to waive or relinquish, and SBISD shall not waive or relinquish, any governmental, sovereign immunity or defense from or to liability or prosecution available to SBISD, its trustees, officers, employees, or agents under federal or Texas laws.

10. No Third Party Beneficiaries. Nothing in this MOU shall be deemed or construed to create any third party beneficiaries or otherwise give any third party any claim or right of action against any party to this MOU.

11. Governing Law and Venue. This MOU shall be governed by and construed in accordance with the laws of the State of Texas, without regard to its conflicts of laws provisions. The mandatory and exclusive venue for the adjudication or resolution of any dispute arising out of this Agreement shall be in Harris County, Texas.

12. Entire Agreement. This MOU and the attached and incorporated addendum or exhibits, if any, contain the entire agreement of the parties relative to the purpose(s) of the MOU and supersede any other representations, agreements, arrangements, negotiations, or understanding, oral or written, between the parties to this MOU.

13. Severability. In the event that any one or more of the provisions contained in this MOU shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provisions, and the MOU shall be construed as if such invalid, illegal, or unenforceable provision had never been contained in it.

14. Interpretation. The parties agree that the normal rules of construction that require that any ambiguities in this MOU are to be construed against the drafter shall not be employed in the interpretation of this MOU.

15. Changes and Amendments. This MOU may be amended, modified, and/or supplemented only by the mutual agreement of the parties, in writing, to be attached to and incorporated in this MOU.

16. Assignment. Neither this MOU nor any rights, duties, or obligations under it shall be assignable by ABBREVIATION OF VENDOR'S NAME without the prior written acknowledgment and authorization of SBISD. Any attempted assignment by ABBREVIATION OF VENDOR'S NAME without SBISD's prior written consent shall be void.

17. No Waiver. No failure on the part of either party at any time to require the performance by the other party of any term hereof shall be taken or held to be a waiver of such term or in any way affect such party's right to enforce such term, and no waiver on the part of either party of any term hereof shall be taken or held to be a waiver of any other term hereof or the breach thereof. No waiver, alteration, or modification of any of the provisions of this MOU shall be binding unless in writing and signed by duly authorized representatives of the parties hereto.

18. Captions. The captions herein are for convenience and identification purposes only, are not an integral part hereof, and are not to be considered in the interpretation of any part hereof.

19. Counterparts. This MOU may be executed in separate counterparts, each of which when so executed shall be an original, but all of such counterparts shall together constitute but one and the same instrument.

Executed this _____ day of _____, 2018.

SPRING BRANCH INDEPENDENT SCHOOL DISTRICT

Name
Title

Name
Title

PLEASE REMEMBER!
Food safety is always of the highest priority. Please closely monitor applicable temperatures and ensure that all donated foods are safe to consume and free of damage.

VENDOR'S NAME

Name
Title