



RFP 19-0034

EXHIBIT 1

**SAMPLE
Master Price Agreement**

Contract No: 19-0034
This is not an order

This Contract sets forth all the covenants, conditions and promises between the following Parties:

Vendor: Attention:	Beaverton School District 16550 SW Merlo Road Beaverton, Oregon 97003-5152 Attention: Larry Pelatt, Purchasing Manager
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STATEMENT OF WORK. For the Provision of USDA Foods Processing Chicken. Provider(s) shall process USDA Foods into the specified usable end products, as requested by the District Contract Manager, shall deliver specified end products and ensure the return of quantity, quality and value of such USDA foods. Fee for service shall be defined as the fee for the processing without the value of the donated food included in the price and inclusive of all other costs as further detailed in Solicitation RFP 19-0034.

SUPERSEDING EFFECT.

There are no covenants, promises, agreements, conditions or understandings between the Parties, either oral or written, other than those contained in this Contract. This contract and all exhibits and attachments hereto together constitute the entire agreement between the Parties (listed in order of precedence): 1) Amendments to Agreement; 2) This Agreement; 3) Exhibit A District Terms and Conditions; 4) Contractor Price Proposal and Product Specification, Attachment 1; 5) Contractor Response to RFP 19-0034; 6) Solicitation RFP 19-0034 (incorporated by reference)

CONSIDERATION.

Contractor shall perform the work/deliver the goods required, on an as needed basis, in consideration for which the District agrees to pay for the work/goods in a manner further described in this contract and pursuant to the proposal pricing. Individual purchase orders will be issued by School District departments and/or Schools as needed.

CONTRACT PERIOD.

The contract period shall be upon complete execution, not sooner than July 1, 2020 to June 30, 2021.

RENEWAL OPTION.

This contract may be renewed upon mutual agreement of the Parties for four (4) additional one (1) year periods.

DISTRICT REPRESENTATIVE.

The District Representative for this contract is Charity Ralls, Administrator for Nutrition Services, at charity_ralls@beaverton.k12.or.us (email), (503) XXX-XXXX (phone) or (503) XXX-XXXX (fax).

In consideration of the mutual covenants, stipulations and agreements, the Parties hereto do Contract and acknowledge that they have read and understand this Contract and agree to be bound by its terms and conditions:

<p>Beaverton School District</p> <p>Larry Pelatt</p> <p>_____</p> <p>Signature</p> <p>Purchasing Manager Beaverton School District</p> <p>Phone/Fax : (503) 356-4378 / (503) 591-4139</p> <p>Date: _____</p>	<p>Vendor Name</p> <p>_____</p> <p>(typed or printed name of officer of Contractor)</p> <p>_____</p> <p>Signature</p> <p>Title: _____</p> <p>Phone/Fax: _____</p> <p>Email: _____</p> <p>Date: _____</p> <p>_____</p> <p>Employer Id Number</p>
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EXHIBIT A – BEAVERTON SCHOOL DISTRICT MASTER PRICE AGREEMENT GENERAL TERMS AND CONDITIONS

These terms and conditions apply to all purchases of services by or on behalf of the Beaverton School District Nutrition Services unless specifically provided otherwise in writing.

1. **Assignment.** Supplier shall not subcontract, assign, or transfer any of its interest in this Contract without the District's prior written consent.
2. **Compliance with Laws.** Supplier certifies that in performing this Contract they will comply with all applicable provisions of federal, state, and local laws, regulations, rules, and orders. Supplier expressly agrees to comply with: (i) Title VI and VII of Civil Rights Act of 1964, as amended; (ii) Sections 503 and 504 of the Rehabilitation Act of 1973, as amended; (iii) the Americans with Disabilities Act of 1990, as amended, and ORS 659.425; (iv) Executive Order 11246, as amended; (v) The Age Discrimination in Employment Act of 1967, as amended, and the Age Discrimination Act of 1975, as amended; (vi) The Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended; (vii) ORS Chapter 659, as amended; (viii) all regulations administrative rules established pursuant to the foregoing laws; (ix) all other applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations; and (x) all federal and state laws governing the handling, processing, packaging, storage, labeling, and delivery of food products, if applicable. All laws, regulations and executive orders applicable to the Contract are incorporated by reference where so required by law.
3. **SUPPLIER VIOLATION OR BREACH OF CONTRACT.** Per 2 CFR 200 Appendix II, contracts for more than the simplified acquisition threshold currently set at \$150,000, which is the inflation adjusted amount determined by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) as authorized by 41 USC 1908, must address administrative, contractual, or legal remedies in instances where Suppliers violate or breach contract terms, and provide for such sanctions and penalties as appropriate.
 - a. Except as otherwise provided for in these Terms and Conditions, either party may terminate the contract in whole or in part in the event of the other party's substantial failure to fulfill its obligations under the contract through no fault of the terminating party; provided, however, that the defaulting party is given at least ten (10) business days prior written notice of the default and intent to terminate (delivered by certified mail, return receipt requested, or other method that similarly documents receipt), and a ten (10) business day opportunity to remedy the default to the satisfaction of the terminating party.
 - b. The District will not be liable to the Supplier for any damages (including, but not limited to, loss of profits or loss of business, or any special, consequential, exemplary, or incidental damages) resulting from termination based on Supplier's default or breach of contract.
 - c. If any delay or failure of performance is caused by a Force Majeure, the District may, in its sole discretion, terminate the contract in whole or part, provided such termination complies with the procedures set out

above. Any contract termination resulting from any cause other than a Force Majeure event will be deemed valid reason for not considering any future proposals from the defaulting Supplier.

- d. Force Majeure includes, but is not limited to, governmental restraints or decrees, provided they affect all companies in Supplier's industry equally and are not actions taken solely against Supplier; acts of God (except natural phenomena, such as rain, wind or flood, which are normally expected in the locale in which performance is to take place); work stoppages due to labor disputes or strikes; fires; explosions; epidemics; riots; war; rebellion; or sabotage.

The remedies under the contract are in addition to any other remedies that may be available under law or in equity. By submitting a proposal, Proposer agrees to the Supplier violation and breach of contract terms.

4. **Changes.** The District may make written changes to this contract. If such change causes an increase or decrease in the consideration or the time required to perform, an equitable adjustment shall be made, and the agreement modified in writing.
5. **Force Majeure.** Neither the District nor Supplier shall be held responsible for delay or default caused by any contingency beyond their control, including, but not limited to war or insurrection strikes or lockouts by the parties' own employees, walkouts by the parties' own employees, fires, natural calamities, riots, or demands or requirements of governmental agencies other than the District.
6. **Contact with Students:** All Suppliers are subject to Law Enforcement Data System background check. The Supplier must not have unsupervised contact with students. When unsupervised contact with students is requested by the District, Supplier must be fingerprinted (\$75.00 fee).
7. **Governing Law.** The laws of the State of Oregon shall govern this contract. Any action or suit commenced in connection with this contract shall be in the Circuit Court of Washington District or the Federal District Court for Oregon. The prevailing party shall be entitled to reasonable attorney fees and costs as awarded by the Court, including any appeal. All rights and remedies of District and Consultant shall be cumulative and may be exercised successively or concurrently.
8. **Indemnification and Hold Harmless.** Except for claims arising out of acts caused by the sole negligence of the District, its Administrators or employees, the Supplier agrees to indemnify and hold harmless the District and its board members, administrators, teachers, employees and agents, from acts or omissions of any nature whatsoever of the Supplier, its agents, servants and employees, causing injury to, or death of person(s) or damage to property during the term of this contract, and from any expense incident to the defense of the District there from. The Supplier agrees to indemnify and hold harmless the District and its board members, administrators, teachers, employees and agents, from and to defend it against, any and all claims arising from the purchase,

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installation, and/or use of the equipment, articles and/or materials which are the subject of this Contract.

9. Independent Contractor. The services provided under this Contract are those of an independent contractor. Supplier is not an officer, employee or agent of the District. Although the District reserves the right (i) to determine (and modify) the delivery schedule for the Work to be performed and (ii) to evaluate the quality of the completed performance, the District cannot and will not control the means or manner of Supplier's performance.

- 10. Insurance.** Supplier shall purchase and maintain:
- WORKER'S COMPENSATION as required by law.
 - EMPLOYER'S LIABILITY in the minimum amount of \$500,000 when the Supplier has one or more employees performing services under the contract.
 - COMPREHENSIVE AUTOMOBILE LIABILITY including owned, non- owned and hired vehicles: \$1,000,000 Combined Single Limit Bodily Injury and Property Damage any one occurrence and in the aggregate. May be waived if Supplier has no vehicle while providing work under the contract.
 - COMPREHENSIVE GENERAL LIABILITY to include premises operations, independent Suppliers, products/completed operations, and blanket contractual: \$1,000,000 Combined Single Limit Bodily Injury, Property Damage, and personal injury any one occurrence and in the aggregate. May be waived only by the District Risk Management Department.

CERTIFICATES OF INSURANCE. The District, its employees, officials, and agents shall be named as an Additional Insured on general liability and automobile policies and shall be provided a copy of the additional insured endorsement. Such insurance shall be primary. Certificates of Insurance shall be issued, prior to the commencement of the contract, to Beaverton School District, Attn: Risk Department, 16550 SW Merlo Rd, Beaverton, OR 97003. The Supplier agrees to pay for the insurance specified and agrees to provide the District with a 30 days' notice of cancellation if non- renewal occurs during the contract period. Insurance companies must have an A rating.

- The District reserves the right to require additional insurance which will be delineated in an attachment to this agreement.

11. Ownership of Work Product. All work product of Supplier that results from this Contract is the exclusive property of the District. Supplier hereby irrevocably assigns to the District all of its right, title, and interest in and to any and all of the work product, whether arising from copyright, patent, trademark, trade secret, or any other state or federal intellectual property law or doctrine. Supplier forever waives any and all rights relating to the work product including any and all rights arising

under Title 17 USC §106A or any other rights of identification of authorship or rights of approval, restriction or limitation on use or modifications.

12. Representations. Supplier represents and warrants to the District that (1) Supplier has the power and authority to enter into and perform this Contract, (2) the Work under this Contract shall be performed in a good and workmanlike manner and in accordance with the highest professional standards, (3) Supplier shall, at all times during the term of this Contract, be qualified, professionally competent, and duly licensed to perform the Work.

13. Responsibility for Taxes and Withholding. Supplier shall be responsible for all federal or state taxes applicable to compensation paid to Supplier under this Contract. The District will not withhold from such compensation any amount(s) to cover Supplier's federal or state tax obligations. Supplier is not eligible for any social security, unemployment insurance or workers' compensation benefits from compensation paid to Supplier under this Contract.

14. Severability. If any provision of this Contract is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall be construed and enforced as if the Contract did not contain the particular provision held to be invalid.

15. Termination. As required by 2 CFR 200 Appendix II for contracts exceeding \$10,000, the contract may be terminated for cause and convenience by the District. The District shall only be required to pay Supplier for goods or services delivered to the District prior to the termination and not otherwise returned in accordance with Supplier's return policy. If the District has paid Supplier for goods or services not yet provided as of the date of termination, Supplier shall immediately refund such payment(s).

- Terminate For Convenience. This Contract may be terminated at any time by mutual written consent of the parties, or the District may, at its sole discretion, terminate this Contract, in whole or in part, upon 30 days' notice to Supplier.
- The District's Right to Terminate For Cause. The District may terminate this Contract, in whole or in part, immediately upon notice to Supplier, or at such later date as the District may establish in such notice, upon the occurrence of any of the following events:
 - The District fails to receive funding, or appropriations, limitations or other expenditure authority at levels sufficient to pay for Supplier's Work; Federal or state laws, regulations or guidelines are modified or interpreted in such a way that either the Work under this Contract is prohibited, or the District is prohibited from paying for such Work from the planned funding source;
 - Supplier no longer holds any license or certificate that is required to perform the Work; or
 - Supplier commits any material breach or default of any covenant, warranty, obligation or agreement

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under this Contract, fails to perform the Work under this Contract within the time specified herein or any extension thereof, or so fails to pursue the Work as to endanger Supplier's performance under this Contract in accordance with its terms, and such breach, default or failure is not cured within 10 business days after delivery of the District's notice, or such period as the District may specify in such notice.

- c. Supplier's Right to Terminate for Cause. Supplier may terminate this Contract upon 30 days' notice to the District if the District fails to pay Supplier pursuant to the terms of this Contract and the District fails to cure within 30 business days after receipt of Supplier's notice.
 - d. Enforcement. Termination under any provision of this Contract shall not extinguish or prejudice the District's right to enforce this Contract with respect to any breach of a Supplier warranty or any defect in or default of Supplier's performance that has not been cured, including any right of the District to indemnification by Supplier. If this Contract is so terminated, Supplier shall be paid in accordance with the terms of the contract for services rendered and accepted.
 - e. Remedies. In the event of termination pursuant to above, Supplier's sole remedy shall be a claim for the sum designated for accomplishing the Work multiplied by the percentage of Work completed and accepted by the District, less previous amounts paid. If previous amounts paid to Supplier exceed the amount due to Supplier under this subsection, Supplier shall pay any excess to the District upon demand.
 - f. Supplier's Tender Upon Termination. Upon receiving a notice of termination of this Contract, Supplier shall immediately cease all activities under this Contract, unless the District expressly directs otherwise in such notice of termination. Upon termination of this Contract, Supplier shall deliver to the District all documents, information, works-in-progress and other property that are or would be deliverables had the Contract been completed.
 - g. Limitation of Liabilities. Neither party shall be liable for (i) any indirect, incidental, consequential or special damages under the contract or (ii) any damages of any sort arising solely from the termination of this contract in accordance with its terms
16. **DEFAULT.** In the event of default by the Supplier of their obligations, the District reserves the right to obtain the required products elsewhere. The Supplier will be responsible for documented differences in price between for contracted product price and the replacement product purchased by the District.
- a. Compensation to the District shall be one of the following, at the sole discretion of the District.
 - (i) Pounds of the USDA foods item used to product the contracted product.
 - (ii) Credit to appear on the next invoice.
 - (iii) Check reimbursing the District for the

documented difference.

17. **NATIONAL PROCESSING AGREEMENT ("NPA")/STATE PROCESSING AGREEMENT ("SPA").** For the duration of the contract, the Supplier must maintain an NPA with USDA and SPA with the Oregon Department of Education Child Nutrition Programs. Failure to do so may result in the Supplier being found in default.
18. **TITLE AND TRANSPORTATION.** Title to the goods will pass to the School District upon receipt and acceptance at the destination indicated herein. Until acceptance, the Supplier retains the sole insurable interest in the goods.
- a. The shipper will prepay all transportation charges. The District or its distributor will not accept collect freight charges.
 - b. No premium carriers will be used for the District's account without prior written consent of the District Representative.
19. **LIQUIDATED DAMAGES DUE TO PROCESSING DELAY.** Supplier will deliver the ordered product to the District's Distributor within the District Representatives requested delivery window or a delivery window agreed upon by the District Representative and the Supplier or the Supplier's Representative.
- a. Supplier understands and agrees that delay or failure by Supplier to deliver the products as agreed disrupts District-wide operations, causing the District to incur administrative, replacement or substitute, and other costs.
 - b. Supplier further understand and agrees that, at the time of Contract execution, these costs are difficult to predict and depend, in large part, on the availability of convenient and feasible alternatives.
 - c. The parties agree that if the District determines it is being harmed by the failure to deliver product as requested, the Supplier will pay to the District \$100/day per product that the Supplier delivers late or fails to deliver as herein agreed and that this figure is not punitive, but reflects a reasonable approximation of the damages incurred by the District.
20. **PRICE ESCALATION/DE-ESCALATION.** The prices quoted on the proposal must remain fixed for a period of twelve (12) months beginning July 1st of the year the awarded contract is fully executed. In approximately January of the contract year the District will determine if a new contract will be issued for the upcoming year, at this point in time the Supplier may request an economic price adjustment. If the requested price adjustment exceeds the Consumer Price Index percent increase for Food Away from Home as calculated by the Bureau of Labor Statistics for the previous 12 months the requested increase must be accompanied by documentation justifying the increase. The District may choose to not accept the price increase and resolicit for the awarded product(s). If there is a decrease in the Consumer Price Index for Food Away from Home this decrease must be passed along to the District. The District Representative may request the Supplier to adjust their prices at any time during the award and/or renewal period, for any reason with valid documentation (i.e. due to fluctuating market conditions in the Producer Price Index or other market indices, etc.), that produces conditions deemed favorable and to be in the best

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interest of the District.

- 21. ADD/DELETE ITEMS.** During the course of the District reserves the right to change the product mix as new products become available or student preferences change.
- 22. QUANTITIES AND ORDER VOLUME.** Unless otherwise specified herein, the District intends to purchase the quantities indicated on the Price Schedule. The District does not guarantee orders in the quantities indicated on the Attachment – Price Proposal/Product Specification Form (See SECTION V – ATTACHMENTS of the solicitation) nor shall the District be required to limit its orders to specific quantities. It is the District's intention to meet these figures, however the District does not guarantee any specific usage. This is an indefinite quantity based on estimated usage and average daily participation (ADP). The ADP represents the average number of meals served to students daily.
- The figures represent the District's best estimates at the current time. However, the District's requirements may increase or decrease prior to orders being sent to the Supplier and the District reserves the right to increase or decrease quantities at its discretion.
 - The District will not be liable for any inventories maintained by the Supplier in anticipation of orders. The estimates provided are based on the previous year's purchases.
- 23. PRODUCT QUALITY.** If during the course of the contract the District receives product(s) deemed to not meet the quality specifications of the contract, the Supplier will provide substitutes. These substitutes must be approved by the District Representative prior to being shipped, and if approved, will be provided to the District at the same or lower cost as the original contracted item. All expenses for exchanging the products that do not meet the quality specifications with the substitutes will be borne by the Contactor.
- 24. PRODUCT TESTING.** The District reserves the right to submit a sample of any product to an independent laboratory for analysis as listed for each product. Testing of perishable products may include monitoring acceptable chemical levels and maximum bacteria levels on designated products. Random sample testing may be performed during the resultant contract as required by the District. Such analysis is to be paid for by the District if the product meets the specifications.
- If the product fails to meet specification analysis the Supplier will be billed for the analysis by the laboratory and will pay all such billings within thirty (30) days. Additionally, the Supplier will immediately replace or refund the District for all remaining affected product within five (5) working days of notification. Supplier will be responsible for all shipping, disposal, return, and restocking fees. The District reserves the right to have non-compliant products shipped to and stored in commercial storage facilities at the Supplier's expense, if the five (5) working day deadline is not met.
 - Failure of the product to meet specifications and acceptable chemical and bacterial levels warrant cancellation of the contract and future business with
- the District may be jeopardized.
- All products in the District's possession at the time of analysis must be picked up and a refund issued to the District.
- 25. FAILURE TO MEET CHILD NUTRITION (CN) LABEL OR PRODUCT ANALYSIS REQUIREMENTS.** In the event of loss of state or federal funds due to Supplier failure to meet CN Label or Product Analysis Requirements, Supplier shall reimburse all lost federal or state reimbursement and other revenue to the District.
- Reimbursement will be in an amount determined by the District and will take the form of either a credit towards future purchases or check in the full amount of the requested reimbursement.
 - The form of the reimbursement will be determined by the District.
 - Reimbursement will be provided within thirty (30) days of the District's request.
- 26. PRIVATE LABELS ON COMMERCIAL PRODUCTS.** Private labels must not appear on commercial products.
- 27. PACK SIZE/PRODUCT SPECIFICATION CHANGES.** The Supplier must not change the pack size or product specifications without notifying the District Representative in writing at least 30 days in advance. This includes but is not limited to change in ingredients, product formulations, number of servings per case. In the case of a change in product formulation, the District may request a product sample, this will be supplied by the Supplier at no charge.
- 28. DISCONTINUATION OF A PRODUCT.** The Supplier must not discontinue a product during the term of the contract, unless circumstances arise that are out of the Supplier's control. Notice in writing with an explanation for the change will be given to the District 30 days prior to any discontinuation that may occur.
- At time of notification the Supplier must offer, for the District's approval, a suitable substitute for the discontinued product. If requested by the District, the Supplier will supply a sample of the offered substitute product at no charge to the District.
- 29. RIGHT TO AUDIT.** Supplier agrees that the District shall, until the expiration of three (3) years after final payment under this Contract, have access to and the right to examine any directly pertinent books, documents, papers and records of the Supplier involving transactions relating to this Contract. Supplier agrees that the District shall have access, during normal working hours, to all necessary Supplier facilities, and shall be provided adequate and appropriate workspace, in order to conduct audits in compliance with the provisions of this section. The District shall give Supplier reasonable advance notice of intended audits.
- 30. INSPECTION.** The District reserves the right to inspect the Supplier's operations facility and/or trucks, review all applicable licenses and inspection reports.
- The District will provide 3 days' notice of an intended inspection.
 - If as a result of an inspection, corrective actions are identified the Supplier will be given 1-3 days to respond and implement the identified corrective

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actions.

- c. If in the opinion of the District the situations identified have not been satisfactorily remedied, the Supplier may be found in default, and the contract subject to cancellation. Any losses incurred by the District as a result of such a cancellation will be charged against the Supplier.

31. STORAGE AND SECURITY POLICIES. Throughout the life of the contract, Supplier's premises, equipment, supplies and warehouse facilities will be maintained in conditions satisfactory to the District, and in compliance with the Health and Sanitation Code of the State in which the Supplier produces the food item including, but not limited to:

- a. The warehouse facilities will be maintained with safeguards to prevent theft or loss of product.
- b. The warehouse facilities will be maintained such that the same types of foods are stored together and spaced to permit easy identification and provide accountability.
- c. All products furnished will be warehoused in facilities owned and operated by the Supplier unless specifically approved by the District Representative.
- d. Refrigeration and Climate Control. Product temperature FOR EACH ITEM STORED will be maintained at a suitable temperature to maintain food safety, freshness, quality, shelf life and nutritional value in accordance with the Health and Sanitation Code of the State in which the Supplier produces the food item.
- e. Food Security Measures will be employed by the selected Supplier to minimize the risk that food under their control is subject to tampering or criminal or terrorist actions.
- f. The Supplier will adhere to the highest standards of cleanliness and sanitary practices, including the food distributor's employee's appearance and performance in the preparation, service, transportation, and storage of food and related items.

32. PRODUCT PROCESSING. All products will be manufactured in a clean, sanitary environment in accordance with Title 21 CFR Part 110- Current Good Manufacturing Practice in Manufacturing, Packaging, or Holding Human Food.

33. FOOD SAFETY. The Supplier must incorporate the Hazard Analysis Critical Control Point (HACCP) principles in its standard operating procedures and will have a HACCP plan on file that meets with District approval and will be followed. This plan must include recall/hold control procedures including but not limited to:

- a. Traceability systems in place from receipt of commodity product to delivery of processed items to designated delivery site.
- b. Provision of 24 hour/7 days a week accessibility to Supplier staff in the event of a USDA Hold/Recall.

34. RECALL PROCEDURE. The Supplier must have and maintain a recall policy/procedure as part of their standard operating procedures.

- a. If a product recall is instituted on an item that has

been delivered, the Supplier will contact the District by phone immediately. Supplier will speak with the District Representative via telephone. Voice mails will not be accepted as contact.

- b. The District will be responsible for contacting individual schools impacted by the recall.
- c. Supplier will be responsible for all costs associated with the replacement of recalled items, shipping charges, and/or product credit.
- d. If at any time it is determined that the health and/or safety of the customers at the District are affected by the usage of manufacturer recalled product, the Supplier and/or Supplier's processor will assume full liability.

35. HEALTH INSPECTION. Supplier is required to have and maintain satisfactory health inspections from the State or local licensing agency in which the Suppliers facility(s) reside, USDA or a USDA recognized food safety certifying agency such as NSF.

- a. A satisfactory health inspection is defined at the sole discretion of the District.
- b. Failure to maintain this standard without a good faith effort to resolve any critical violations, as determined at the sole discretion of the District, may result in cancellation of the Contract.

36. RECYCLED MATERIALS AND SUSTAINABLE PRODUCTS AND PROCESSES. Supplier will use recycled and recyclable products to the maximum extent economically feasible during the performance of the Contract. As required by Law, the District will prefer materials or supplies manufactured from recycled material if the recycled product is available, and meet the requirements set forth in the Specifications. The District supports and encourages the use of sustainable products by the Supplier. To contribute to a clean environment for present and future generations, Supplier will utilize sustainable products to the maximum extent feasible during the performance of this Contract. Products and practices utilized by the Supplier will be based upon long-term environmental impact, social costs, and operational costs

37. SUB-CONTRACTING. The Supplier must NOT subcontract any portion of this proposal.

38. BUY AMERICAN PREFERENCE. Supplier must purchase for resale through the Contract, to the maximum extent practicable, domestic Food Service Products, and must comply, as applicable, and must cause each of its sub-Suppliers to comply, with the applicable requirements and responsibilities set forth in the Buy American Provision of federal regulations 7 CFR 210.21(d) and 7 CFR 220.16(d).

- a. Domestic Food Service Products mean:
 - i. An agricultural commodity that is produced in the United States, and;
 - ii. A Food Service Product that is processed in the United States substantially using agricultural commodities that are produced in the United States.
 - A. As required by the Buy American provision, all products must be of domestic origin as required by 7 CFR Part 210.21(d).

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- B. The District participates in the National School Lunch Program and School Breakfast Program and is required to use the nonprofit food service funds, to the maximum extent practical, to buy domestic commodities or products for Program meals. A “domestic commodity or product” is defined as one that is either produced in the U.S. or is processed in the U.S. substantially using agricultural commodities that are produced in the U.S. as provided in 7 CFR Part 210.21(d).
- C. Substantially means over 51% of the final processed product (by weight or volume) must consist of agricultural commodities that were grown domestically.
- D. Exceptions to the Buy American provision should be used as a last resort; however, an alternative or exception may be approved upon request. To be considered for the alternative or exception, the request must be submitted in writing to the District Representative, a minimum of fifteen (15) days in advance of delivery.
 - (i) The request must include the:
 - (1) Reason for exception: limited/lack of availability, or price (include price): Price of the domestic food product; and Price of the non-domestic product that meets the required specification of the domestic product.
 - (2) Alternative substitute (s) that are domestic and meet the required specifications:
 - 1. Price of the domestic food alternative substitute (s); and
 - 2. Availability of the domestic alternative substitute (s) in relation to the quantity ordered.

- b. Supplier shall be responsible for providing documentation regarding non-compliance with the Buy American Provision for all food products offered during the Contract term, including items used as temporary substitutions.
 - i. If an item has been identified as being non-compliant, Supplier must submit a waiver request using Attachment – Waiver Request to Use Foreign Food Products (see SECTION V). Requests will be approved at the District’s sole discretion.

Supplier shall bear sole responsibility for providing health care benefits for its employees who provide services to the CNP Sponsor as required by State or Federal law.

- 41. **DISCOUNTS, REBATES, ALLOWANCES AND INCENTIVES.** The Supplier fully discloses all discounts, rebates, allowances and incentives received by the District from its suppliers. If the Supplier receives a discount, rebate, allowance, or incentive from any supplier, the Supplier must disclose and return to the District the full amount of the discount, rebate, or applicable credit that is received based on the purchases made on behalf of the District.
 - a. The Supplier must identify the amount of each discount, rebate and other applicable credit on bills and invoice presented to the Sponsor for payment and individually identify the amount as a discount, rebate, or in the case of other applicable credits, the nature of the credit. (2 CFR 200 and 7CFR 210.21)
 - b. No expenditure may be made from the nonprofit food service account for any cost resulting from a cost-reimbursable contract that fails to include the requirements of 2 CFR 200 and 7 CFR 210, nor may any expenditure be made from the nonprofit food service account that permits or results in the Supplier receiving payments in excess of the Supplier's actual, next allowable costs. (2 CFR 200 and 7 CFR 210.21)
- 42. **RIGHT TO INVENTIONS MADE UNDER A CONTRACT OR AGREEMENT.** If the District’s federal award meets the definition of “funding agreement” under 37 CFR 401.2(a) and the recipient or sub recipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance or experimental, developmental, or research work under that “funding agreement,” the recipient or sub recipient must comply with the requirements of 37 CFR Part 401, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and District Agreements,” and any implementing regulations issued by the awarding agency.
- 43. **PROFIT AS A SEPARATE ELEMENT OF PRICE.** For purchases using federal funds in excess of \$150,000, the District may be required to negotiate profit as a separate element of the price. See, 2 CFR 200.323(b). When required by the District, Supplier agrees to provide information and negotiate with the School district regarding profit as a separate element of the price for a particular purchase. However, by submitting a response to this solicitation Supplier agrees that the total price, including profit, charged by Supplier to the school district shall not exceed the awarded pricing, including any applicable discount, under Supplier’s District Contract.
- 44. **CONTRACTING WITH SMALL AND MINORITY FIRMS, WOMEN’S BUSINESS ENTERPRISE AND LABOR SURPLUS AREA FIRMS.** Per 2CFR 200.321, the grantee, and Supplier and prime Supplier, if sub-contracts are to be let, must take all necessary affirmative steps to assure that minority firms, women's business enterprises, and labor surplus area firms are used when possible.
 - a. Affirmative steps must include:
 - (i) Placing qualified small and minority businesses and women’s business enterprises on solicitation lists.

39. **PROGRAM REGULATIONS.** The Supplier shall be in conformance with the applicable portions of the District’s agreement under the Child Nutrition Program (CNP). The Supplier will conduct program operations in accordance with 7CFR Parts 210, 215, 220, 225, 226 and 250.

40. **AFFORDABLE CARE ACT.** The Supplier understands and agrees that it shall be solely responsible for compliance with the patient Protection and Affordable Care Act, Public Law 111-148 and the Health Care and Education Reconciliation Act, Public Law 111-152 (collectively the Affordable Care Act “ACA”). The MPA6/19/17JLS

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- (ii) Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources.
- (iii) Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority business, and women's business enterprises.
- (iv) Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority business, and women's business enterprises.
- (v) Using the services and assistance of the Small Business Administration, and the Minority Business Development Agency of the Department of Commerce.

45. RECORD KEEPING. The books and records of the Supplier pertaining to operations under this agreement shall be available to the District at any reasonable time. These records are subject to inspection or audit by representatives of the District, State Agency, the USDA, and the US General Accounting Office at any reasonable time and place. The District shall maintain such records, for a period of not less than three (3) years after the final day of the contract, or longer if required for audit resolution. (7 CFR 210.23(c), and 2 CFR Part 200.333).

46. ALTERNATE FORMATS OF WRITTEN MATERIALS. Supplier must make available to an Authorized Purchaser or the Grantor federal agency, upon the Authorized Purchaser's or the Grantor federal agency's request, any and all written materials related to the Contract in alternate formats in compliance with administrative rules or with Grantor federal agency's policies made available to Supplier by Grantor federal agency. For the purposes of the foregoing, "written materials" includes, without limitation, all work product and subcontracts related to this Contract.

47. Confidential information. Supplier acknowledges that it or its employees, sub-contractors, or agents may, in the course of performing their responsibilities under this Contract, be exposed to or acquire information that is the confidential information of District or District's clients. Any and all information provided by District and marked confidential, or identified as confidential in a separate writing, that becomes available to Supplier or its employees, sub-contractors, or agents in the performance of this Contract shall be deemed to be confidential information of District ("Confidential Information"). Any reports or other documents or items including software, that result from Supplier's use of the Confidential Information and any Work Product that District designates as confidential are deemed Confidential Information. Confidential Information shall be deemed not to include information that: (a) is or becomes (other than by disclosure by Supplier) publicly known; (b) is furnished by District to others without restrictions similar to those imposed by this Contract; (c) is rightfully in Supplier's possession without the obligation of nondisclosure prior to the time of its disclosure under this Contract; (d) is obtained from a source other than the District without the obligation of confidentiality; (e) is disclosed with the written consent of the District; or (f) is

independently developed by employees or agents of Supplier who can be shown to have had no access to the Confidential Information.

a. **NON-DISCLOSURE.** Supplier agrees to hold Confidential Information in strict confidence, using at least the same degree of care that Supplier uses in maintaining the confidentiality of its own confidential information, and not to copy, reproduce, sell, assign, license, market, transfer or otherwise dispose of, give, or disclose Confidential Information to third parties or use Confidential Information for any purposes whatsoever other than the provision of Services to the District under this Contract, and to advise each of its employees, sub-contractors, and agents of their obligations to keep Confidential Information confidential. Supplier shall use its best efforts to assist the District in identifying and preventing any unauthorized use or disclosure of any Confidential Information. Without limiting the generality of the foregoing, Supplier shall advise the District immediately in the event Supplier learns or has reason to believe that any person who has had access to Confidential Information has violated or intends to violate the terms of this Contract and Supplier will at its expense cooperate with the District in seeking injunctive or other equitable relief in the name of the District or Supplier against any such person. Supplier agrees that, except as directed by the District, Supplier will not at any time during or after the term of this Contract disclose, directly or indirectly, any Confidential Information to any person, except in accordance with this Contract, and that upon termination of this Contract or at the District's request, Supplier will turn over to the District all documents, papers, and other matter in Supplier's possession that embody Confidential Information.

b. **INJUNCTIVE RELIEF.** Supplier acknowledges that breach of this Section, including disclosure of any Confidential Information, will give rise to irreparable injury to the District that is inadequately compensable in damages. Accordingly, the District may seek and obtain injunctive relief against the breach or threatened breach of this Section, in addition to any other legal remedies that may be available. Supplier acknowledges and agrees that the covenants contained herein are necessary for the protection of the legitimate business interests of the District and are reasonable in scope and content.

48. FERPA. Supplier agrees to comply with both FERPA and corresponding Oregon law respecting student education records. Personally identifiable information obtained from the District by the Supplier in the performance of their services: (i) will not be disclosed to third parties, except as expressly provided for in FERPA §§99.31, without signed and dated

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written consent of the student, or if the student is under eighteen (18) years of age, signed and written consent of the student's parents/guardians and (ii) will be used only to fulfill the Supplier's responsibilities under this Agreement.

- 49. Waiver.** No failure of either party to exercise any power given to it hereunder or to insist upon strict compliance by the other party with its obligations hereunder, and not custom or practice of the parties at variance with the terms hereof, nor any payment under this agreement shall constitute a waiver of either party's right to demand exact compliance with the terms hereof.
- 50. Invoicing and Payment.** A separate invoice must be issued for each shipment and must include the Order number. Invoices must not be issued prior to delivery of goods, or completion of services. Payment will not be made prior to receipt of goods, or completion of services, and receipt of invoice. Credit and discount periods will be computed from the date of receipt of the invoice to the date the District's check is mailed. Payment will be made thirty (30) Days after the latter of (1) receipt of goods, or completion of services, (2) receipt of proper billing for goods. The District will not pay any additional charges including charges for state/local taxes, interest, late charges, or extra charges for boxing, packing, cartage, or other extras unless specifically agreed to in writing by the District.
- 51. Prices.** All pricing is considered fixed and firm for the initial Contract term except as allowed in Price Escalation/De-Escalation below. The Contractor warrants that the price of the Goods covered by this Contract are not in excess of the Contractor's lowest prices in effect on the date of this Contract for comparable quantities of similar Goods.
- 52. Cooperative Participation.** This Contract is not a cooperative procurement.
- 53. Identification of Employees.** Contractor shall ensure that its employees have identifying uniforms or other designation of identity (ID badge, hat, coat with Contractor logo/name) while on District property.
- 54. Continuing Obligation.** Notwithstanding the expiration date of this Contract, the Contractor is obligated to fulfill his responsibilities until warranty, guarantee, maintenance, and parts availability requirements have completely expired.

*District Public Contracting Rules can be found on the following website:<https://www.beaverton.k12.or.us/depts/business/purchasing/Pages/default.aspx> * - END