

AGREEMENT

I. INTRODUCTION

The **Hawthorne School District** (hereinafter referred to as the "District") and **Driftwood Dairy, Inc.**, (hereinafter referred to as the "Bidder") have entered into this Dairy Products Agreement ("Agreement") effective as of July 1, 2021 ("Effective Date"). The District and the Bidder may be referred to herein individually as a "Party" and collectively as the "Parties".

II. RECITALS

A. The District desires to obtain food and supplies for its Nutrition Services Department ("Services/Supplies"). On or about April 15, 2021, the District issued RFP No. FS21-22-1 for purposes of selecting a contractor to provide the necessary Services. Following review of the responses to RFP No. FS21-22-1 that it received, the district selected the responsive and responsible Bidder with minimum of 100 points and the lowest pricing.

B. The Parties acknowledge that: (i) the Services may be undertaken at a time when a public health emergency still exists with respect to the virus that causes COVID-19, and, as of the Effective Date, it is uncertain when this public health emergency will end; (ii) federal, state, and/or local governmental public health and other officials ("Public Officials") have issued mandatory guidance and orders establishing safety and other requirements relating to COVID-19 ("COVID-19 Orders") that may be applicable to the Services; and (iv) the possibility exists that, during the term of this Agreement, Public Officials may modify and/or issue additional COVID-19 Orders applicable to the Services. Without limiting the foregoing, Public Officials may include, among others: (i) the federal government, acting through the U.S. Department of Education or other department or agency of the federal government; (ii) the State of California, acting through the California Department of Education ("CDE"), the California Department of Public Health ("CDPH"), or other department or agency of the California government; or (iii) local city and/or county public health officials.

C. The Bidder acknowledges and agrees that: (i) in connection with the Bidder providing the Services and as set forth in this Agreement, the Bidder shall be responsible, at no additional cost to the District, for compliance with any and all COVID-19 Orders applicable to the Services, regardless of whether those are in effect as of the Effective Date or take effect thereafter; and (ii) in the event the District's schools or any nonpublic schools serving District students are closed or otherwise not providing student-based services and/or programs on a normal basis due to the COVID-19 emergency or for any other reason ("School Closure"), nothing in this Agreement shall be deemed or construed to constitute a commitment by the District to pay the Bidder for services not rendered in accordance with this Agreement during the period the School Closure is in effect ("School Closure Period").

II. GENERAL TERMS AND CONDITIONS

A. Scope of Work

Bidder shall perform and render all services as prescribed and required by RFP No. FS21-22-1 Distribution of Frozen, Refrigerated, Processed Commodity, and Misc. Food Products and Supplies and all Contract Documents and any other documents signed by both parties relating to the subject matter of the Contract, all of which are incorporated by reference as though set forth in full herein. If applicable, Bidder shall comply with any required prevailing wage and labor requirements and shall defend and indemnify the district from any claims arising from the Bidder's failure to comply with such requirement.

B. Term of the Agreement

Subject to Recitals B and C herein, and subject to approval by the district in its reasonable discretion of a calendar for the Services/Supplies or the District otherwise requiring provision of Services/Supplies, the Bidder shall provide the Services/Supplies during the period commencing on July 1, 2021, and ending on June 30, 2022 ("Term"). However, by means of written entered into before the end of the Term, the Parties may extend the Term for an additional school year. The Parties thereafter may agree each year to continue this Agreement on a yearly basis for up to a total of two (2) one-year periods.

C. Notices

The Parties shall serve or deliver by mail or email all legal notices, as applicable, to the persons and at the following addresses:

District Liaison for Services	Bidder Liaison for Services
Name: Jennifer Kim	Name: Greg Tortell
Title: Nutrition Services Director	Title: School Sales Manager
District: Hawthorne School District	Company Name: Driftwood Dairy, Inc.
Address: 14120 S. Hawthorne Blvd. Hawthorne, CA 90250	Address: 10724 E Lower Azusa Rd. El Monte, Ca. 91734
Phone: (310)263-3986	Phone: (626) 527-3658
E-mail: jkim@hawthorne.k12.ca.us	E-mail: gregt@driftwooddairy.com

D. Fees

1. Contract Amount

The District shall pay the Bidder as full consideration for the faithful performance of this Agreement, subject to any additions or deductions as provided in the proposal documents and accepted by the District, the total amount of this contract shall not exceed \$515,000.00.

2. Payment Terms

The Bidder shall submit to the district monthly invoices by the 15th of the following month that reflect all Services/Supplies provided during the immediate prior calendar month. Bidder shall furnish invoices in triplicate and include delivery site, product name, quantity, unit size, and unit price. One copy is to be kept by the Bidder. The original invoice must be signed by the individual checking the dropped merchandise the following morning. A signed invoice by district's designee is required for payment. Statements for all goods purchased within a calendar month shall be on an individual school basis. Discounts, rebates, and other applicable credits are to be returned to the district's, food service account. The district shall review each such invoice and supporting information and will pay the undisputed portion of the invoice within 30 days of the date the district received the invoice.

3. Spoiled or Unwholesome Food

No payment will be made to the Bidder for food that is/are spoiled or unwholesome at the time of delivery, does not meet detailed food component specifications as developed by the district, or does not otherwise meet the requirements of this contract (7 CFR Section 210.16[c][3]).

E. Contract Rate Increase

The Contract Rates set forth in Paragraph 1 of this Section D shall remain in effect at all times during the initial one-year portion of the Term. In connection with any agreement by the Parties to extend (or further extend) the Term, and subject to approval by the Board of Trustees of the Hawthorne Unified School District ("Governing Board"), the Parties may agree to increases, decreases, or other adjustments to the Contract Rates; provided that, in no event shall any increases or other adjustments to the Contract Rates be deemed or construed to be automatic or guaranteed. The district shall consider each request by the Bidder to increase the then-current Contract Rates at the time it receives the request in writing from the Bidder. However, for avoidance of doubt, in no event will the district agree to any increase, or any adjustment that results in any increase, in the Contract Rates that exceeds the applicable change, on a percentage basis and over the relevant period, in the Consumer Price Index (CPI) maintained by the U.S. Department of Labor, Bureau of Labor Statistics, for the Los Angeles-Long Beach - Anaheim Metropolitan Area, All Urban Consumers, 1982-84 equals 100.0. In the event of a general decrease in the costs to be incurred in connection with providing

the Services/Supplies, the Bidder shall pass the savings associated with the decreased costs on to the district in the form of reduced Contract Rates. In each case, the increased, decreased, or otherwise adjusted Contract Rates must stay in effect for the period as agreed by the Parties.

F. Delivery Times

Bidder agrees to make deliveries, as prescribed, and required by RFP No. FS21-22-1 Distribution of Frozen, Refrigerated, Processed Commodity, and Misc. Food Products and Supplies and all Contract Documents and any other documents signed by both parties relating to the subject matter of the Contract. All refrigerated products are to be delivered in a refrigerated truck at 40 degrees Fahrenheit and frozen foods at zero degrees Fahrenheit. Bidder is required to adhere to the following agreement:

- Drivers must disarm and rearm alarms at each site. The Bidder will be responsible for any police charges incurred if the driver is found to be at fault. There will be a \$100.00 fee for every alarm that is not disarmed or rearmed.
- The driver must put all items in the freezer units.
- The Bidder and driver must perform a dry run to learn the alarm systems and know the location of the freezer units.
- Keys will be issued on the dry run and returned to the district upon the termination of the RFP.
- The invoice will be left for the manager to verify delivered items upon arrival to work.
- The Bidder agrees to credit the account if a discrepancy in the merchandise received is noted by District.
- Bidder agrees to a pickup and full credit, should District deem the product defective or of poor quality.

Delivery Times: Schedule B – Dairy Products

DISTRICT	Number of Drops	Delivery Days	Delivery Times	Key Drops	Average Dollar Drop Per Site	Annual Expenditure
Hawthorne School District	12	Monday through Friday		Yes	\$200.00	\$515,000.00

G. Insurance

The Bidder and, if any, each of its subcontractors (regardless of tier) providing any portion of the Services/Supplies, each at its own expense, shall procure and, at all times during the Term and all authorized extensions to the Term, maintain policies of insurance in accordance with this Section G and otherwise satisfactory to the district covering the Bidder's operations in connection with this Agreement. The Bidder shall be responsible for ensuring compliance with these insurance-related requirements by its subcontractors. At least five calendar days prior to commencing performance of the Services, the Services Provider shall provide to the district, such certificates of Insurance and endorsements as reasonably evidence that its and its subcontractors' insurance coverage is in effect and applicable to the District and this Agreement. Not less than thirty (30) calendar days before any insurance policy required pursuant to this Section G is cancelled, expires, renewed, extended or otherwise modified, the Service Bidder shall furnish to the district such certificates of insurance and endorsements as reasonably evidence new or renewed insurance that satisfies all requirements of this Section G. In all cases, the insurance coverage maintained in accordance with this Section G shall require or be endorsed to require that written notice be provided to the district a minimum of thirty (30) days prior to any cancellation or change in any policy. In addition, and without limiting anything else in this Section G, each general liability and automotive liability policy shall provide, or be endorsed to provide, that each of the District, the Governing Board and each member thereof, the Superintendent, and all other District officers, employees, agents, and volunteers (collectively, not including the district, the "District Representatives") are

additional insureds for purposes of those policies. The types and coverage amounts of the insurance required pursuant to this Section G are as follows:

Workers Compensation Insurance	
In accordance with limits established by law.	\$1,000,000
Commercial General Liability Insurance	
Per Occurrence	\$1,000,000
Aggregate	\$3,000,000
Commercial Automobile Liability Insurance	
Injury/death to one person	\$1,000,000
Injury/death to more than one person	\$2,500,000
Damage to property	\$1,000,000

- 1) Workers' Compensation
In accordance with the provisions of Labor Code Section 3700, the Bidder shall secure payment of compensation to all employees. The Bidder and, if any, each of its subcontractors shall sign and file with the District the following certification prior to commencing any of the Services: "I am aware of the provisions of Section 3700 of the Labor Code, which requires every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the work of this contract." The form of such certificate is included as a part of RFP No. FS21-221.
- 2) Commercial General Liability Insurance
Coverage must be equivalent in scope or at least as broad as Insurance Services Office ("ISO") Form CG 00 01 covering CGL on an occurrence basis, and must include coverage for property damage, bodily injury, personal, & advertising injury, products and completed operations, liability assumed under an insured contract (including tort of another assumed in a business contract, and independent contractor's liability. If a general aggregate limit applies, either the general aggregate limit shall apply separately to work performed under this contract (ISO CG 25 03 or 25 04) or the general aggregate limit shall be twice the required occurrence limit. Each of the District and the District Representatives shall be named as an additional insured with respect to liability arising out of work or operations performed by or on behalf of the Bidder. General liability coverage can be provided in the form of an endorsement to the Bidder's insurance (at least as broad as ISO Form CG 20 10 11 85 or both CG 20 10, CG 20 26, CG 20 33, or CG 20 38, and CG 20 37 forms if later revisions used. The policy shall contain severability of interest/cross liability clause or language stating that the Bidder's insurance applies separately to each insured against who is made, or suit is brought, except with respect to the limit of the insurer's liability.
- 3) Commercial Automobile Liability insurance.
The Bidder shall maintain automobile liability insurance covering bodily injury and property damage for all activities of the Bidder arising out of or in connection with the work to be performed under this Agreement, including coverage for owned, hired, and non-owned vehicles. If Bidder or Bidder's employees will use personal autos in connection with this Agreement and/or the Services, the Bidder shall obtain evidence of personal auto liability coverage for each such person. Coverage must be equivalent in scope or at least as broad as ISO Form Number CA 00 01 covering any auto (Code 1) that includes all vehicles that are owned, non-owned, and hired and personal injury protection. The policy must provide Contractual Liability coverage equivalent to that provided in the 1990 and later editions of ISO Form CA 00 01.
- 4) The insurance described in the sections above shall name the district as an additional insured and shall also provide contractual liability coverage satisfactory to the district with respect to liability assumed by the Bidder under the provisions of this Agreement. Written proof of compliance with the requirements of this paragraph consisting of certificates of insurance and a copy of the additional insured endorsement to the Bidder's insurance policies in a form acceptable to the district shall be filed and approved by the district prior to any work performed by the Bidder pursuant to this Agreement and prior to the expiration of each policy year thereafter.

- 5) The Bidder shall in each case renew such insurance not less than thirty (30) calendar days prior to the expiration thereof and shall promptly advise the district that such renewal has become effective. In the event the Bidder fails to timely renew any insurance and provide notice of renewal to the District, the District, in its sole discretion may, but is not obligated to, pay the premium(s) necessary to maintain or otherwise have such insurance coverage in effect, and the Bidder shall promptly upon demand reimburse the District for the associated costs incurred by the District and/or the District may offset such costs against any money due from the District to the Bidder.
- 6) If Bidder fails to purchase and/or maintain any insurance required pursuant to this Section E, the District may, but shall not be obligated to, upon five (5) days' written notice to Bidder, purchase such insurance on behalf of Bidder and shall be entitled to be reimbursed by Bidder promptly thereafter or deduct the amount of such premiums from amounts otherwise due to Bidder hereunder. Any and all amounts expended by the district as provided in Subsection 6 or this Subsection 7 of this Section E shall bear interest from the date expended until repaid to the district at the maximum rate permitted by law or at the rate of ten percent (10%) per annum, whichever is less.
- 7) Within fourteen calendar days following any and each request by the District, the Bidder shall provide to the district a certified copy of each insurance policy as requested by the district that the Bidder is to have in effect pursuant to this Section E. The district may review the Bidder's insurance policies, associated certificates of insurance, and any and all associated endorsements, to discern whether the Bidder is in compliance with the requirements of this Section E and/or in connection with any claim or potential claim that may arise from this Agreement, the Services, and/or the actions by the Bidder and/or its subcontractors in connection with this Agreement. No failure by the district to review, or to fully, appropriately or effectively review, the Bidder's compliance with such insurance-related requirements shall be deemed or construed as a waiver or release by the District or to relieve the Bidder from its obligations pursuant to this Agreement. The Bidder's obligations pursuant to this Subsection 8 shall survive the completion of the Services and/or the expiration or earlier termination of this Agreement.
- 8) In no event shall the types or coverage limits of the insurance specified in this Section E and maintained by the Bidder, or the proceeds of any such insurance, be deemed or construed as limitations on any liabilities of the Bidder in connection with this Agreement, including, without limitation, any liabilities associated with the Bidder's indemnification obligations. The Bidder shall have in effect at all times while this Agreement is in effect such additional or other insurance coverages as the Bidder may determine in its reasonable business judgment are necessary and/or appropriate to protect the interests of the Bidder and the District in connection with this Agreement.

H. Termination

- 1) District Termination for Convenience
The district may terminate this Agreement at any time without need for cause by giving a 30-days written notice to the Bidder, in which event the termination shall be effective on the date stated in the termination written notice. Termination shall have no effect upon the rights and obligations of the parties arising out of any transaction occurring prior to the effective date of such termination. Notwithstanding the foregoing, the District may terminate this Agreement effective immediately upon notice to the Bidder in any emergency situation (regardless of whether constituting a health, fiscal, and/or other emergency) as declared by any federal, state or local governmental entity or as determined by the District in its reasonable discretion. In the event of a termination pursuant to this Subsection 1, the District shall pay to the Bidder all undisputed amounts attributable to Services/Supplies satisfactorily provided prior to the effective date of the termination, and the Parties thereafter shall be released from all further obligations and liabilities under this Agreement, except to the extent that any such obligations or liabilities expressly, implicitly, or impliedly survive the termination of this agreement.
- 2) District Termination for Cause.
The District may terminate this Agreement for cause by giving 30-days written notice of intent to terminate this Agreement to the Bidder. Any and each such notice of intent to terminate shall specify in reasonable detail

the material breach by the Bidder of its obligations pursuant to this Agreement and/or other failure, error, omission, or other defect in the performance of the Services/Supplies (each a "Default") that form the basis or bases for the termination. In such event, the Bidder shall have: (i) 24 hours from receipt of the notice to cure any and all Defaults; and (ii) twenty calendar days from receipt of the notice to cure (or to make arrangements satisfactory to the District in its reasonable discretion for cure of) any other Defaults by the Bidder. If the Bidder fails to cure (or fails to make arrangements satisfactory to the District for cure of), or if it is not reasonably possible for the Bidder to cure, any Default within the applicable period specified in this Subsection 2, the District may terminate this Agreement by providing written notice of termination to the Bidder, in which event the termination shall be effective immediately upon receipt by the Bidder of the notice of termination or on such later date as may be specified in the notice of termination.

3) Bidder Termination for Cause.

The Bidder may terminate this Agreement for cause by giving 30-days written notice of intent to terminate this Agreement to the District. Any and each such notice of intent shall specify in reasonable detail the Default(s) by the District that form the basis or bases for the termination. In such event, the District shall have twenty calendar days from receipt of the notice to cure (or to make arrangements satisfactory to the Bidder in its reasonable discretion for cure of) the Default(s) specified in the notice of intent to terminate. If the District fails to cure (or fails to make arrangements satisfactory to the Bidder for cure of) any Default within the applicable period specified in this Subsection 3, the Bidder may terminate this Agreement by providing written notice of termination to the District, in which event the termination shall be effective immediately upon receipt by the District of the notice of termination or on such later date as may be specified in the notice of termination.

4) Remedies Not Limited.

In the event of a termination pursuant to either Subsection 2 or Subsection 3 of this Section H, neither Party's remedies shall be limited, and either Party may pursue such rights and remedies as may be available pursuant to this Agreement and applicable law.

I. Availability of Funds

Each and every obligation of the District pursuant to this Agreement to pay the Bidder is conditioned on the availability of funds appropriated or allocated for the payment of such obligation. The District, in accordance with Section H herein, may terminate this Agreement at the end of any period for which funds were available if funds are not allocated and available for the subsequent continuance of this Agreement. In the event the District so terminates this Agreement, no liability shall accrue to the District as a result of such termination, and the District shall not be obligated or liable for any future payments or for any damages resulting from the termination.

J. Amendment and Modifications

Neither this Agreement nor any written amendment, supplement, or other modification to this Agreement (each a "Modification") shall have any force or effect whatsoever unless and until approved by the Governing Board, either directly or through delegation and ratification, and executed and delivered by both Parties. No oral understanding or agreement of the Parties relating to the subject matter of this Agreement shall be valid or binding for any purpose whatsoever unless and until set forth in a written and duly approved Modification

K. Assignment

In no event may the Bidder assign this Agreement or any of its rights pursuant to this Agreement, or delegate any of its obligations pursuant to this Agreement, absent the express written consent of the District, which consent the District may grant, withhold, or condition in its sole and absolute discretion. Subject to the foregoing, this Agreement shall bind and inure to the benefit of the Parties' respective successors and assigns.

L. Waiver of Subrogation

The Bidder hereby waives, for the benefit of the District and each of the District Representatives, and on behalf of its insurers, any and all rights of and to subrogation that any of those insurers may acquire or otherwise have as the result of the payment of any loss under such insurance in connection with this Agreement and/or the Services/Supplies. The Bidder shall obtain and provide to the District any and all endorsements or other

documentation that may be necessary to effect such waivers of subrogation, but the waivers shall be valid and binding regardless of whether the District actually receives any such documentation.

M. No Third Party Beneficiaries

The District and Bidder are the only parties to this Agreement and are the only parties entitled to enforce its terms. Except as provided by applicable law, nothing in this Agreement shall be deemed or construed to provide any benefit or right, directly or indirectly, to any third party.

N. Firearms and other Weapons Prohibited

All District properties are weapons and firearms-free zones. The Bidder, its subcontractors, and their respective employees, agents, and representatives are each hereby prohibited from possessing on their persons or in their vehicles, any firearms or other weapons while on or at any District property.

O. Severability

Should a court of competent jurisdiction hold or otherwise determine that any provision of this Agreement is illegal, unenforceable, and/or void, then: (i) each Party shall be relieved of any obligations arising from such provision; and (ii) if the performance of the remaining provisions of this Agreement reasonably would result in both Parties receiving substantially the benefits intended by this Agreement, such remaining provisions shall remain and continue in full force and effect, but shall to the extent possible be interpreted and implemented to effect the intent of the Parties in agreeing to the illegal, unenforceable, and/or void provision. If both Parties would not receive substantially the benefits intended by this Agreement, this Agreement shall terminate on the date the holding or other determination by the court becomes final and no longer subject to appeal.

P. Counterparts

This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together will constitute one and the same instrument.

Q. Silence/Absence/Omission

Any silence, absence, or omission from the Agreement specifications concerning any point shall mean that only the best commercial practices are to prevail. Only those materials (e.g., food, supplies, etc.) and workmanship of a quality that would normally be specified by the District are to be used.

R. Indemnification

The Bidder shall indemnify and hold harmless the District, the District Representatives, and each of them, with respect to any and all liens, judgments, damages, losses, costs, expenses (including, without limitation, attorneys' fees and other legal costs), and other liabilities of whatever nature (each a "Liability" and, collectively, the "Liabilities") that arise from breach by the Bidder of its obligations pursuant to this Agreement and/or acts or omissions (regardless of whether constituting negligence or willful misconduct) of the Bidder, any of its subcontractors, or any Bidder or subcontractor employee, agent or other representative in connection with this Agreement, including, without limitation, Liabilities that arise from death of or injury to any person, damage to any property, and any disputes between or involving the Bidder and any of its subcontractors or other third parties. With respect to each and all claims, demands, actions, and other proceedings initiated in connection with each and any Liability or Liabilities, the Bidder shall defend the District and the District Representatives, and each of them, using legal counsel reasonably acceptable to the District, but selected and retained by the Bidder at its sole cost and expense. In connection with each such defense, the Bidder shall: (i) timely pay or otherwise satisfy any and each judgment that may be rendered against the District and/or any of the District Representatives; (ii) within thirty days of receiving an invoice from the District, in each case pay all legal and/or other costs reasonably incurred by the District, including, without limitation, the costs associated with the District's legal counsel advising in regard to, monitoring and, as necessary, participating in the defense. With respect to any particular Liability, and notwithstanding the foregoing provisions of this Section R, the Bidder shall not be obligated to indemnify and hold-harmless the District or any of the District Representatives to the extent, but only to the extent, the Liability is attributable to the sole negligence, active negligence, or willful misconduct of the District or any of the District Representatives, in which case the Parties shall be responsible and liable on a comparative basis.

S. Force Majeure

For purposes of this Agreement, a "Force Majeure Event" is any situation or event that develops or occurs after the Effective Date and that reasonably: (i) is beyond the control of a Party; and (ii) precludes the Party from performing one or more of its obligations pursuant to this Agreement. Without limiting the foregoing, Force Majeure Events may include, but are not limited to: (i) a public health emergency declared by governmental officials; (ii) a fire, explosion, power failure, or strike or labor dispute, not in whole or in part caused by or attributable to any act or omission by the Party; (iii) wildfire, earthquake, flood, or similar acts of God; (iv) war, civil disturbance, acts of civil or military authorities or public enemy; and (v) local, state or federal government acts or orders that result in stoppage of work or services, or the freezing, re-allocation, reduction, or elimination of funding.

For avoidance of doubt, all mandatory guidance, orders and recommendations of federal, state, and local governmental public health and other officials ("Public Officials") relating to and/or establishing safety and other requirements relating to, the virus that causes COVID-19 (collectively, "COVID-19 Orders") that were or are in effect prior to or as of the Effective Date shall in no event be deemed or construed as the basis for, or to constitute, any Force Majeure Event. However, if and to the extent Public Officials modify and/or issue additional COVID-19 Orders that are applicable to this Agreement and/or the Services, and subject to satisfaction of all other requirements of this Section S, a Party shall not be precluded from asserting that those subsequent COVID-19 Orders constitute a Force Majeure Event. Also for avoidance of doubt, a general economic downturn or other adverse "business climate" shall in no event be deemed or construed to constitute a Force Majeure Event.

Notwithstanding anything to the contrary: (i) a Party shall not be deemed to be in breach of this Agreement if, as a direct result of a Force Majeure Event, the Party is precluded from performing, or from timely performing, any one or more of its obligations pursuant to the Agreement; and (ii) no such delay or failure shall constitute an event of default attributable to such Party. In each case that a Party cannot fully and/or timely perform as a result of a Force Majeure Event, the Party must give written notice to the other Party: (i) immediately if the failure or delay in performance relates to the actual transportation of District students; or (ii) within five calendar days of becoming aware of, or other discovery of, the Force Majeure Event, if the failure or delay in performance relates to any obligation pursuant to the Agreement other than the actual transportation of District students. Each such notice shall specify in reasonable detail the cause and existence of the applicable Force Majeure Event and its impact on the performance by the non-performing Party.

Nothing in this Section S or elsewhere in this Agreement shall be deemed or construed to preclude the District from terminating this Agreement for the District's convenience, in accordance with Section H herein.

T. Nondiscrimination

Both the District and Bidder agree that no child who participates in the National School Lunch Program (NSLP), Special Milk Program (SMP), School Breakfast Program (SBP), Summer Food Service Program (SFSP), or Child and Adult Care Food Program (CACFP) will be discriminated against on the basis of ancestry, sex, race, color, religion, creed, national origin, sexual preference, marital or parental status, pregnancy, age, or disability.

U. Compliance with the Law

The Bidder shall comply with all laws, ordinances, rules, regulations and other federal, state, and local governmental requirements applicable to this Agreement and/or the Services. At all times while this Agreement is in effect, the Bidder shall have and maintain in effect any and all licenses, permits, and other approvals or consents as are necessary and/or appropriate to authorize the Bidder to conduct its business and perform its obligations pursuant to this Agreement.

V. Applicable Law and Venue

This Agreement shall be construed and interpreted in accordance with the laws of the State of California, regardless of any conflict-of-laws, choice-of-law, or other provisions of any federal, state or other law. Any and each action or other proceeding arising from this Agreement and/or the Services shall be initiated and conducted only in an appropriate court located in the County of Los Angeles, California.

W. Interpretation of Agreement

Each Party acknowledges that, in executing this Agreement, such Party: (i) has sought, or has had the unqualified opportunity to seek, the advice of its own independent legal counsel; and (ii) has read and understands all of the terms and provisions set forth in this Agreement. Therefore, the provisions of this Agreement shall be construed based on their fair and reasonable meaning, and not for or against any Party based on whether such Party or its legal counsel was primarily responsible for drafting this Agreement or any particular provision herein. The Recitals set forth in Part II of this Agreement are hereby incorporated as operative and effective provisions of this Agreement. The headings and captions set forth in this Agreement are for the convenience of the reader only and shall not be deemed or construed to establish, define, or limit the meaning of any provision herein.

X. Provisions Required by Law

Each and every provision required by law to be inserted into this Agreement shall be deemed to have been inserted into this Agreement, and this Agreement shall be read and enforced as though it were included. However, if through mistake or otherwise, any such provision is not inserted or is not inserted correctly, then upon request of either Party, the Parties shall reasonably cooperate with respect to amending or otherwise modifying this Agreement to make such insertion or correction.

Y. Disputes

Attorneys' Fees. In connection with any and each dispute that arises from Agreement and/or the Services/Supplies, each Party shall be responsible for paying its own attorney's fees and other related costs and expenses. The provisions of this section shall survive the completion of the Services/Supplies and/or the expiration or earlier termination of this Agreement.

Z. Waiver

No action or failure to act by the District shall constitute a waiver of a right or duty afforded them under this Agreement, nor shall such action or failure to act constitute approval of, or acquiescence in, a breach there under, except as may be specifically agreed in writing.

AA. Notification of Material Change

Bidder is required to notify District when any material change in operations occurs, including changes in distribution rights for awarded products, bankruptcy, material changes in financial condition, change of ownership, within three (3) business days of such change.

BB. Product Recall

If a product recall is instituted on an item that has been furnished and delivered to District, Bidder must immediately notify the District with all pertinent information regarding the recall.

CC. Excess Product

District is not responsible for any product Bidder has on hand at the end of the period.

III. RELATIONSHIP OF THE PARTIES

The Bidder's relationship with the District will be that of an independent contractor and not that of an employee or supervisor of the District. The Bidder will not be eligible for any employee benefits, nor will the District make deductions from payments made to the Bidder for taxes, all of which will be the Bidder's responsibility. The Bidder agrees to indemnify and hold the District harmless from any liability for, or assessment of, any such taxes imposed on the District by relevant taxing authorities. The Bidder will have no authority to enter into contracts that bind the District or create obligations on the part of the District (EC Section 45103.5).

IV. BOOKS AND RECORDS

The District and the Bidder shall allow the CDE, USDA, the Comptroller General of the United States, or any of their duly authorized representatives access to any books, documents, papers, and records of the Bidder which are directly pertinent to the agreement for the purpose of making audit, examination, excerpts, and transcriptions (7 CFR

3016.36[i][10]). Bidder shall preserve all records relating to this Agreement for a period of five (5) fiscal years or for such longer period as may be required by law, after final payment relating to the services.

V. EQUIPMENT, FACILITIES, INVENTORY, AND STORAGE

The District will make available to the Bidder, without any cost or charge, area(s) of the premises agreeable to both parties in which the Bidder shall render its services. The District shall not be responsible for loss or damage to equipment owned by the Bidder and located on the District's premises.

VI. CERTIFICATIONS

1. The Bidder warrants and certifies that in the performance of this agreement, it will comply with the rules and regulations of the CDE and the USDA, and any additions or amendments thereto, including but not limited to 7 *CFR* parts 210, 215, 220, 225, 245, 250, 3016, and/or 3019, USDA FNS Instruction and Policy, and California *EC* and *Public Contract Code*, as applicable. The Bidder agrees to indemnify the District and the CDE against any loss, cost, damage, or liability by reason of the Bidder's violation of this provision.

2. The Bidder shall comply with Title VI of the Civil Rights Act of 1964, as amended; USDA regulations implementing Title IX of the Education Amendments; Section 504 of the Rehabilitation Act of 1973; and any additions or amendments.

3. As applicable, the District and Bidder shall comply with all applicable standards, orders, or regulations issued, including:

- a. Section 306 of Clean Air Act (42 U.S.C. 1857[h])
- b. Section 508 of the Clean Water Act (33 U.S.C. 1368)
- c. Executive Order 11738
- d. Environmental Protection Agency (EPA) regulations 40 *CFR* Part 15, et seq. Environmental violations shall be reported to the USDA and the U.S. EPA Assistant Administrator for Enforcement, and the FSMC agrees not to utilize a facility listed on the EPA's List of Violating Facilities.

4. Debarment Certification. The USDA Certification Regarding Debarment must accompany each subsequent two (2) additional one-year renewals (7 *CFR* Section 3017.510). Agreement renewals that do not include this certification will not be accepted for consideration.

5. Lobbying. The Certification Regarding Lobbying and a Disclosure of Lobbying Activities form (7 *CFR* Part 3018, Appendix A) must accompany each subsequent two (2) additional one-year renewals (7 *CFR*, Section 3017.510). Agreement renewals that do not include this certification will not be accepted for consideration.

6. Energy Policy and Conservation Act. The District and the Bidder shall recognize mandatory standards and policies relating to energy efficiency which are contained in the state conservation plan issued in compliance with the Energy Policy and Conservation Act.

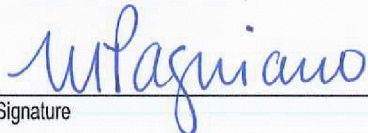
VI. ENTIRE AGREEMENT

This Agreement and the other Contract Documents, collectively: (i) constitute the entire and integrated agreement between the Parties with respect to the subject matter of this Agreement; and (ii) supersede any and all prior negotiations, representations, understandings, and agreements relating to such subject matter, whether written or oral.

In witness whereof, the Parties have executed this Agreement, as evidenced by the signatures, below, of their respective duly authorized representatives.

AGENCY:

Hawthorne School District,


Signature

By: Mara Pagniano
Print Name

Title: Assistant Superintendent, Business Services

Mailing Address:

Jennifer Kim

Nutrition Services Director

Hawthorne School District

14120 Hawthorne Blvd.
Hawthorne, CA 90250

jkim@hawthorne.k12.ca.us

(310) 676-2276 x3986

BIDDER:

Driftwood Dairy, Inc.

Company Name


Signature of Company Authorized Agent

By: John Dolan
Print Name

Title: VP Sales

Mailing Address:

Driftwood Dairy, Inc.
10724 E. Lower Azusa Rd.
El Monte, Ca. 91734

Phone:

(626) 444-9591

Fax No.: (626) 575-3937

E-mail: johnd@driftwooddairy.com