

Appendix E – Independent Service Contract - DRAFT/TEMPLATE

RFB# 1970 - 2026 District-Wide Grocery, Frozen, and Bakery

THIS INDEPENDENT CONTRACTOR AGREEMENT is made and entered into this _____ day of _____, 2026 (“Effective Date”), by and between **Mount Diablo Unified School District** (“District” or “MDUSD”) and _____ (“Contractor”) for the purpose of maintaining electrical equipment on District sites. The District and the Contractor are collectively referred to as the “Parties.”

RECITALS

WHEREAS, absent an exception or exclusion, competitive solicitation is required when contracting for goods and services in excess of the State bid limit, adjusted annually for inflation;

WHEREAS, this Agreement was competitively procured as required by California Public Contract (“PCC”) Code §§ 20111 *et seq.*, through a Request for Bids (“RFB”) for **2026 District-Wide Grocery, Frozen and Bakery** issued on **March 16, 2026** and from which Contractor was selected pursuant to the terms therein;

WHEREAS, Contractor wishes to contract to provide the District with the Products that it needs and is willing to provide the same pursuant to the District requirements.

NOW, THEREFORE, for and in consideration of the mutual promises and covenants herein, and for other good and valuable consideration, the parties agree as follows:

TERMS AND CONDITIONS

1. **Products.** Contractor shall furnish and deliver the Products to the **Mt. Diablo Unified School District, Food and Nutrition Services Department** (“Site” or “Department”), locations as further identified in **Exhibit A** attached hereto and incorporated herein by this reference in the quantities designated therein.
2. **TERM:** This Agreement shall become effective only upon approval and/or ratification by the District’s Board of Education (the “Effective Date”) in an open, noticed meeting, proper execution by the parties and certification by the Head Financial Officer as to the availability of funds. This Contract shall become effective on the Effective Date and shall remain effective, unless terminated in accordance with the provisions of this Contract. The initial term of this Agreement (“Initial Term”) shall be for one year commencing on July 1, 2026, and shall terminate on June 30, 2027. The Term may be extended for up to two (2) additional years upon mutual written agreement of both parties. In no event shall the Term of the Agreement, including any extension(s), continue for more than three (3) years and shall expire on June 30, 2029, unless terminated earlier per this Agreement.

3. **COMPENSATION:** District agrees to pay Contractor an amount not-to-exceed _____ Dollars (\$____) for the Products identified in Appendix A. District shall pay Contractor according to the following terms and conditions:
- 3.1. All costs for delivery, drayage, freight, or the packing of said articles are to be borne by the Contractor. No charge for containers, packing, drayage or other purpose will be allowed over and above the prices written in the quote, unless otherwise specified. All shipping is F.O.B. Destination.
 - 3.2. The District shall not be responsible for any taxes or surcharges with the exception of sales tax or use taxes where applicable.
 - 3.3. Invoices. Invoices shall be furnished with the delivery and include delivery site, product name, quantity, unit size, and unit price.
 - 3.4. Payment. Payment shall be made within 30 days of (i) the date of acceptance of the Products; or (ii) receipt of an undisputed invoice, whichever is later.
4. **Independent Contractor.** Contractor, in the performance of this Agreement, shall be and act as an independent contractor. Contractor understands and agrees that it and all of its employees shall not be considered officers, employees, agents, partner, or joint venture of the District, and are not entitled to benefits of any kind or nature normally provided employees of the District and/or to which District's employees are normally entitled, including, but not limited to, State Unemployment Compensation or Worker's Compensation. Contractor shall assume full responsibility for payment of all federal, state and local taxes or contributions, including unemployment insurance, social security and income taxes with respect to Contractor's employees. In the performance of this Agreement as herein contemplated, Contractor is an independent contractor or business entity that is:
- (i) free from the control and direction of the District in connection with the performance of the services, (ii) performing services that are outside the usual course of the District's business, and (iii) customarily engaged in an independently established trade, occupation, or business of the same nature as that involved in the services performed.
5. **Performance of Agreement.**
- 5.1. **Standard of Care.** Contractor represents that Contractor has the qualifications and ability to furnish and deliver the Products as specified, without the advice, control or supervision of District in accordance with generally and currently accepted principles and practices of its profession for services to California school districts. The District shall hold the Contractor responsible for any damage which may be sustained because of failure or neglect of the Contractor to comply with the terms or conditions listed herein with the terms of the Agreement. The District may upon twenty-four (24) hour written notice to the Contractor, cancel the Agreement in its entirety or cancel or rescind on all or any portion of any Agreement resulting from this price request for reason of unsatisfactory product or service or any reason determined to be detrimental to the health and welfare of students and school personnel and to hold the Contractor in default. Failure to furnish all items per the Agreement, in a timely manner, as specified, shall constitute unsatisfactory service.

- 5.2. **Delivery Time.** The District and Contractor shall identify a mutually agreeable delivery date and time to the Site.
- 5.3. **Inspection of Products Furnished.** All items furnished shall be subject to inspection and rejection by the District for spoilage, defects or non-compliance with the specifications. Defective items shall be made good by the Contractor, and unsuitable items may be rejected, notwithstanding that such defective items may have been previously overlooked by the District and accepted. If a Product is rejected at time of delivery, a credit is to be issued for the Product or Contractor shall immediately remedy such defect in a manner satisfactory to District.
- 5.4. **Safety and Security.** It shall be the responsibility of Contractor to ascertain from, and comply with, the District's rules and regulations pertaining to safety, security, and driving on District grounds, particularly when students are present.
- 5.5. **Force Majeure.** The Contractor shall be excused from performance under this Contract during the time and to the extent that it is prevented from obtaining delivery, or performing by act of God, fire, strike, loss, or shortage of transportation facilities, lock-out, commandeering of materials, products, plants, or facilities by the government, when satisfactory evidence thereof is presented to the District, provided that it is satisfactorily established that the non-performance is not due to the fault or neglect of the Contractor and that Contractor has made reasonable efforts to mitigate any damage, as determined by the District.
6. **Warranty/Quality.** Unless a longer warranty is called for or provided elsewhere, the Contractor, manufacturer, or their assigned agents shall guarantee the Product or service performed against defects or failures of materials for a minimum period of one (1) year from completion of all obligations described in **Appendix A**. All workmanship and merchandise must be warranted to be in compliance with applicable California energy, conservation, environmental, and educational standards.
7. **Audit.** Contractor shall establish and maintain books, records, and systems of account, in accordance with generally accepted accounting principles, reflecting all business operations of Contractor transacted under this Agreement. Contractor shall retain these books, records, and systems of account during the Term of this Agreement and any renewals, and for five (5) years thereafter. Contractor shall permit the District, its agent, other representatives, or an independent auditor to audit, examine, and make excerpts, copies, and transcripts from all books and records, and to make audit(s) of all billing statements, invoices, records, and other data related to the Products covered by this Agreement. Audit(s) may be performed at any time, provided that the District shall give reasonable prior notice to Contractor and shall conduct audit(s) during Contractor's normal business hours, unless Contractor otherwise consents. Proof of distributor's landing cost (distributor's invoice) will be required upon request, within a two day period, for audit purposes only. Invoices are checked regularly.

8. **Substitutions:** No substitutions of material from those specified in the District standards shall be made without the prior written approval of the District. District may deduct those costs from any amounts owing to Contractor for the review of the request for substitution, even if the request for substitution is not approved.
9. **Independent Contractor Status:** While engaged in carrying out the Services of this Contract, the Contractor is an independent contractor, and not an officer, employee, agent, partner, or joint venture of the District. Contractor shall be solely responsible for its own Workers' Compensation insurance, taxes, and other similar charges or obligations. Contractor shall be liable for its own actions, including its negligence or gross negligence, and shall be liable for the acts, omissions, or errors of its agents or employees.
10. **Contractor Supervision:** Contractor shall provide competent supervision of personnel employed to handle and or deliver product to the District, use of equipment, and quality of delivery of product.
 - 10.1. **Workers:** Contractor shall at all times enforce strict discipline and good order among its employees and the employees of its subcontractors and shall not employ or work any unfit person or anyone not skilled in work assigned to him or her. Any person in the employ of the Contractor or a subcontractor whom the District may deem incompetent or unfit shall be dismissed from the Site(s) and shall not again be employed at the Site(s) without written consent from the District.
 - 10.2. **Subcontractors:** Subcontractors, if any, engaged by the Contractor for any Service or Work under this Contract shall be subject to the approval of the District. Contractor agrees to bind every subcontractor by the terms of the Contract as far as such terms are applicable to subcontractor's work, including, without limitation, all registration, indemnification, insurance, and warranty requirements. If Contractor shall subcontract any part of this Contract, Contractor shall be fully responsible to the District for acts and omissions of its subcontractor and of persons either directly or indirectly employed by itself. Nothing contained in the Contract Documents shall create any contractual relations between any subcontractor and the District.
11. **Safety and Security:** Contractor is responsible for maintaining safety in the performance of this Contract. Contractor shall be responsible to ascertain from the District the rules and regulations pertaining to safety, security, and driving on school grounds, particularly when children are present.
12. **Clean Up:** Debris shall be removed from each Site. Each Site shall be in order at all times when work is not actually being performed and shall be maintained in a reasonably clean condition.

13. Indemnification:

- 13.1. To the furthest extent permitted by California law, Contractor shall indemnify and hold harmless the District, its agents, representatives, officers, consultants, employees, and volunteers (the "Indemnified Parties") from any and all demands, damages, injuries, losses, expenses, liabilities, claims, suits, and actions (the "claims") of any kind, nature, and description, including, but not limited to, attorneys' fees and costs, directly or indirectly arising from, arising out of, connected with, or resulting from, in whole or in part, the performance of this Contract unless the claims are caused wholly by the sole or active negligence or willful misconduct of the Indemnified Parties, as found by a court or arbitrator of competent jurisdiction.
 - 13.2. Contractor shall also, to the furthest extent permitted by California law, defend the Indemnified Parties at Contractor's own expense, including attorneys' fees and costs, from any and all claims directly or indirectly arising from, arising out of, connected with, or resulting from the performance of this Contract unless the claims are caused wholly by the sole or active negligence or willful misconduct of the Indemnified Parties, as found by a court or arbitrator of competent jurisdiction, in which case, without impacting Contractor's obligation to provide an immediate and ongoing defense of the Indemnified Parties. The District shall have the right to accept or reject any legal representation that Contractor proposes to defend the District.
 - 13.3. Pursuant to Public Contract Code section 9201, the District shall provide timely notification to Contractor of the receipt of any third-party claim relating to this Contract. The District shall be entitled to recover its reasonable costs incurred in providing said notification.
 - 13.4. If the Indemnitees provide their own defense due to failure to timely respond to tender of defense, rejection of tender of defense, or conflict of interest of proposed counsel, Contractor shall reimburse Indemnitees for any expenditures, including reasonable attorney's fees and costs.
 - 13.5. The Contractor's defense and indemnification obligations hereunder shall survive the completion of Work, including the warranty/guarantee period, and/or the termination of the Contract
- 14. Contractor's Insurance:** Contractor shall procure and maintain for the duration of the contract insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder and the results of that work by the Contractor, his or her agents, representatives or subcontractors. Specifics regarding the amount and type of insurance are set-forth in the attached **EXHIBIT C** ("Insurance Requirements").
- 15. Confidentiality:** Contractor agrees that, in connection with this Agreement, the Contractor may have access to proprietary and confidential information which may be owned or controlled by the District, the disclosure of which to third parties may be damaging to the

District, its Board, employees or students. Contractor also understands and agrees that the disclosure of such information may violate state and/or federal law and may subject the Contractor to civil liability. Consequently, Contractor agrees that all information disclosed by the District to the Contractor or in which such information is collected or received by Contractor on District's behalf shall be held in strict confidence and used only in performance of the Agreement, unless disclosure is required by law or court order. Contractor shall exercise the same standard of care to protect such information as is used to protect its own proprietary and/or confidential information and in no case less than a reasonable standard of care.

- 15.1. Contractor shall comply at all times with the requirements of the Family Educational Records Privacy Act ("FERPA") and relevant state law regarding the confidentiality and handling of student records, including but not limited to California Education Code §§ 49073 *et seq.* Contractor is prohibited from accessing or using confidential student information under this Agreement unless it first obtains prior written parental consent, or an exception to federal and state privacy laws that permit access to confidential student information applies. Even if access is permitted, Contractor shall not use confidential student data for any purpose other than providing services to the District pursuant to this Agreement. Contractor shall not re-disclose confidential student information to any third party without the prior written consent of the District and any such re-disclosure shall be consistent with state and federal law.
- 15.2. This requirement shall be ongoing and shall survive the expiration or termination of this Contract and specifically includes all student, parent, and disciplinary information.
16. **Limitation of District Liability:** District's financial obligations under this Contract shall be limited to the payment of the compensation provided in this Contract. Notwithstanding any other provision of this Contract, in no event shall District be liable, regardless of whether any claim is based on contract or tort, for any special, consequential, indirect or incidental damages, including, but not limited to, lost profits or revenue.
17. **Submitting False Claims; Monetary Penalties:** Contractor agrees to comply with and is subject to the California False Claims Act (Government Code §§ 12650 *et seq.*), including treble damages and penalties as set forth in the operative statutory provision at the time of any violation.
18. **Compliance with Laws and Board Policies:** Contractor shall give all notices and comply with all laws, ordinance, rules and regulations bearing on conduct of the Work as indicated or specified. If Contractor observes that any of the Work required by this Contract is at variance with any such laws, ordinance, rules or regulations, Contractor shall notify the District, in writing, and, at the sole option of the District, any necessary changes to the scope of the Work shall be made and this Contract shall be appropriately amended in writing, or this Contract shall be terminated effective upon Contractor's receipt of a written termination notice from the District. If Contractor performs any Work that is in

violation of any laws, ordinances, rules or regulations, without first notifying the District of the violation, Contractor shall bear all costs arising therefrom. Contractor shall keep itself fully informed of applicable District Board Policies and Administrative Regulation affecting the performance of, or necessary to ensure the safe and appropriate performance of this Agreement, and shall at all times comply with such District Board Policies, and Administrative Regulations as they may be amended from time to time.

19. **Non-Discrimination:** The District is committed to providing equal opportunity for all individuals in education. Contractor understands and agrees that in providing Services to the District, it is Contractor's obligation to comply with [Board Policy 0410 \(Nondiscrimination in District Programs and Activities\)](#), which requires that all District programs, activities, and practices be free from discrimination based on race, color, ancestry, national origin, ethnic group identification, age, religion, marital or parental status, physical or mental disability, sex, sexual orientation, gender, gender identity or expression, or genetic information; the perception of one or more of such characteristics; or association with a person or group with one or more of these actual or perceived characteristics. The Services provided by Contractor shall not reflect adversely upon persons because of their race, color, ancestry, national origin, ethnic group identification, age, religion, marital or parental status, physical or mental disability, sex, sexual orientation, gender, gender identity or expression, or genetic information; the perception of one or more of such characteristics; or association with a person or group with one or more of these actual or perceived characteristics. By signing this Contract, Contractor certifies that its programs, activities, and practices are free from discrimination and that it shall strictly adhere to and comply with District policies.
20. **Anti-Trust Claim:** Contractor and its subcontractor(s) agree to assign to the District all rights, title, and interest in and to all causes of action they may have under Section 4 of the Clayton Act (15 U.S.C. Sec. 15) or under the Cartwright Act (Chapter 2 (commencing with Section 16700) of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, services, or materials pursuant to the Contract or a subcontract. This assignment shall be made and become effective at the time the District tenders final payment to the Contractor, without further acknowledgment by the Parties.
21. **Contractor Claims:** Contractor shall comply with all claims presentation requirements as provided in Chapter 1 (commencing with section 900) and Chapter 2 (commencing with section 910) of Part 3 of Division 3.6 of Title 1 of Government Code as a condition precedent to the Contractor's right to bring a civil action against the District. Pending resolution of the dispute, Contractor and its subcontractors shall continue to perform the Work under the Contract, including the disputed work, and shall not cause a delay of the Work during any dispute, claim, negotiation, mediation, or arbitration proceeding, except by written agreement of the District.
22. **Termination:** If Contractor fails to perform the Work and Contractor's duties to the satisfaction of the District, or if Contractor fails to fulfill in a timely and professional manner Contractor's obligations under this Contract, or if Contractor violates any of the terms or provisions of this Contract, District shall have the right to terminate this Contract

and/or Contractor's right to perform the Work of the Contract for cause effective immediately upon the District giving written notice thereof to the Contractor. District shall also have the right in its sole discretion to terminate the Contract and/or Contractor's right to perform the Work of the Contract for its own convenience upon District giving three (3) days' written notice thereof to the Contractor. In case of a termination for convenience, Contractor shall be paid for the actual cost for product delivered that is unpaid and can be documented through proof of deliver, invoices, receipts, or otherwise. Termination shall have no effect upon any of the rights and obligations of the Parties arising out of any transaction occurring prior to the effective date of termination. In the event termination for cause is determined to have not been for cause, the termination shall be deemed to have been a termination for convenience effective as of the same date as the purported termination for cause.

23. **Assignment of Contract:** Contractor shall not assign or transfer in any way any or all of its rights, burdens, duties, or obligations under this Contract without the prior written consent of the District.
24. **Time is of the Essence:** Time is of the essence in the performance of and compliance with each of the provisions and conditions of this Contract.
25. **Calculation of Time:** For the purposes of this Contract, "days" refers to calendar days unless otherwise specified.
26. **Governing Law:** This Contract shall be governed by and construed in accordance with the laws of the State of California with venue of any action in a County in which the District administration office is located, Contra Costa County.
27. **Binding Contract:** This Contract shall be binding upon the Parties and upon their successors and assigns, and shall insure to the benefit of said Parties and their successors and assigns.
28. **District Waiver:** District's waiver of any term, condition, covenant or waiver of a breach of any term, condition or covenant shall not constitute the waiver of any other term, condition or covenant or the waiver of a breach of any other term, condition or covenant.
29. **Captions and Interpretations:** Paragraph headings in this Contract are used solely for convenience, and shall be wholly disregarded in the construction of this Contract. No provision of this Contract shall be interpreted for or against a party because that party or its legal representative drafted such provision, and this Contract shall be construed as if jointly prepared by the Parties.
30. **Invalid Term:** If any provision of this Contract is declared or determined by any court of competent jurisdiction to be illegal, invalid or unenforceable, the legality, validity or enforceability of the remaining parts, terms and provisions shall not be affected thereby, and said illegal, unenforceable or invalid part, term or provision will be deemed not to be a part of this Contract.
31. **Health & Safety Requirements for a Contractor:** If Contractor, its employees and/or subcontractors will enter a District school site or facility in connection with performance of

services under this Agreement or if the Contractor, its employees and/or sub-Contractors, will be in contact with District staff, contractors, or students, then the Contractor, its employees and/or sub-Contractors, shall maintain compliance with all local and state laws, health directives, orders, guidelines and policies, including but not limited to those related to COVID-19, and District policies, as updated from time to time. All costs to comply with such requirements are the Contractor's responsibility. Evidence of compliance with these requirements shall be immediately available to the District upon request or audit. Contractor agrees that it is the Contractor's responsibility to be informed on the latest public health guidance on public health emergencies and to comply with that guidance accordingly. Where a conflict exists between this Agreement and any local or state public health order related to a current Public Health Emergency, the more restrictive guidance controls.

32. **Provisions Required by Law Deemed Inserted:** Each and every provision of law and clause required by law to be inserted in this Contract shall be deemed to be inserted herein and this Contract shall be read and enforced as though it were included therein.
33. **Entire Contract:** This Contract sets forth the entire agreement between the Parties and fully supersedes any and all prior agreements, understandings, written or oral, between the Parties pertaining to the subject matter thereof.
34. **No Oral Modifications:** No oral agreement or conversation with any officer, agent, or employee of District, either before or after execution of Contract, shall affect or modify any of the terms or obligations contained in any of the documents comprising the Contract.
35. **Buy American Provision:** Mt. Diablo USD 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 United States ("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).

Exceptions to the Buy American provision can be used if:

- (a) Availability (in relationship to quantity ordered) of the domestic food item is not sufficient to meet the District's needs.
- (b) Price of the domestic food item is significantly higher than foreign alternative.

The successful bidder must ensure that whenever food is purchased by the District from non-domestic sources, one of the above outlined exceptions applies. MDUSD reserves the right to request documentation of the above exceptions for any non-domestic food products delivered under this contract. Preference will be given to bidders with an online system that is able to track this information automatically.

36. Termination.

- 36.1. For Convenience by District. District may, at any time, with or without reason, terminate this Agreement and compensate Contractor only for Products satisfactorily provided to the date of termination. Written notice by District shall be sufficient to stop further performance of this Agreement by Contractor. Notice shall be deemed given when received by the Contractor or no later than three (3) days after the day of mailing, whichever is sooner.
- 36.2. With Cause by District. District may terminate this Agreement upon giving of written notice of intention to terminate for cause. Cause shall include:
- 36.2.1. unsatisfactory product or service; or
 - 36.2.2. any reason determined to be detrimental to the health and welfare of students and District personnel; or
 - 36.2.3. material violation of this Agreement by the Contractor; or
 - 36.2.4. any act by Contractor exposing the District to liability to others for personal injury or property damage; or
 - 36.2.5. Contractor is adjudged a bankrupt, Contractor makes a general assignment for the benefit of creditors or a receiver is appointed on account of Contractor's insolvency.
- 36.3. Any notices or communications required or permitted to be given by this Agreement must be 1) given in writing; 2) personally delivered or mailed, by prepaid, certified mail, overnight courier; or 3) electronic mail transmission (including portal document format) with "read receipt" requested to the Party to whom such notice or communication is directed, to the email address or regularly-monitored electronic mail address of such Party as follows:

36.4. NOTICE TO THE DISTRICT:

SITE/DEPARTMENT	Food & Nutrition Services
HEAD OF SITE/DEPARTMENT	Alexandra Emmott, Director of FNS
CONTACT PERSON	Chad Voss
STREET ADDRESS	2330 Bisso Lane
CITY, STATE, ZIP	Concord, CA 94520
TELEPHONE	(925) 682-8000 Ext. 3775
EMAIL ADDRESS	vosscc@mdusd.org

36.5. NOTICE TO THE CONTRACTOR:

CONTRACTOR NAME	
CONTACT PERSON	
STREET ADDRESS	
CITY, STATE, ZIP	
TELEPHONE	()
EMAIL ADDRESS	

36.6. **With Copy to:**

Mt. Diablo Unified School District
Purchasing & Warehouse Department
Attn: Elizabeth McClanahan, Director
2326 Bisso Lane, Concord, CA 94520
mcclanahane@mdusd.org

36.7. Any such notice or communication shall be deemed to have been given on (i) the day such notice or communication is personally delivered, (ii) three (3) days after such notice or communication is mailed by prepaid certified or registered mail, (iii) one (1) working day after such notice or communication is sent by overnight courier, or (iv) the day such notice or communication is sent electronically, provided that the sender has received a confirmation of such electronic transmission. A Party may, for purposes of this Agreement, change his, her or its address, email address or the person to whom a notice or other communication is marked to the attention of, by giving notice of such change to the other Party pursuant to this Section.

37. Each party has the full power and authority to enter into and perform this Contract, and the person signing this Contract on behalf of each party has been properly authority and empowered to enter into this Contract.

38. This Contract incorporates by this reference the Contract Documents attached hereto. Contractor, by executing this Contract, agrees to comply with all obligations set forth in the Contract Documents. The Contract Documents include only the following documents, as indicated:

REQUIRED FOR BID OPENING:	REQUIRED UPON AWARD:
☒ Bid Document	☒ Appendix E - Agreement
☒ Appendix A - Pricing Sheet	☒ Criminal Background Investigation / Fingerprinting Certification
☒ Appendix B - Reference Check	☒ Certifications to be Completed by Contractor (9)
☒ Appendix C - Questionnaire	☒ Insurance Certificates & Endorsements
☒ Appendix D - Noncollusion Declaration	

39. By signing this Contract, Contractor certifies, under penalty of perjury, that all the information provided in the Contract Documents is true, complete, and correct.

ACCEPTED AND AGREED on the dates indicated below:

Signatures on next page

IN WITNESS WHEREOF the Parties hereto have executed this Agreement, to be effective upon approval or ratification by the District's Board of Education on _____.

[INSERT CONTRACTOR NAME] Approved By: _____ Date Name [INSERT] _____ Title: [INSERT] _____	MT DIABLO UNIFIED SCHOOL DISTRICT Authorized and Approved By: _____ Adrian Vargas, Chief Business Official Date By: _____ Alexandra Emmott Date Director of Food & Nutrition Services _____
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APPROVED AS TO FORM

Elizabeth McClanahan, Date
Director of Purchasing & Warehouse

CONTRACTS OVER \$500,000

By: _____
General Counsel Date

Full Address of Contractor _____

Taxpayer's Identification No. of Contract _____

Telephone Number _____

E-mail Address _____

NOTE: Section 6041 of the Internal Revenue Code (26 U.S.C. 6041) and Section 1.6041-1 of Title 26 of the Code of Federal Regulations (26 C.F.R. 1.6041-1) requires the recipients of \$600.00 or more to furnish their taxpayer information to the payer. In order to comply with these requirements, the District requires the Contractor to furnish the information requested in this section.

EXHIBIT A - Delivery Locations

CENTRAL FOOD WAREHOUSE

Central Food Warehouse 2330 Bisso Lane, Concord, CA 94520
925-682-8000 ext. 3770

Delivery days will be Monday through Friday, 4:30 a.m. to 11:30 a.m.

CENTRAL KITCHEN

Central Kitchen 1266 San Carlos Ave, Concord, CA 94518
925-682-8000 ext. 7312

Delivery days will be Monday through Friday, 5:30 a.m. to 12:30 p.m.

HIGH SCHOOLS (Fresh Bakery Items Only)

Concord High School	4200 Concord Blvd., Concord, CA	925-682-8000 ex. 3336
Mt. Diablo High School	2450 Grant St, Concord, CA	925-682-8000 ex. 3442
Northgate High School	425 Castle Rock Rd, Walnut Creek, CA	925-682-8000 ex. 3540
College Park High School	201 Viking Dr, Pleasant Hill, CA	925-682-8000 ex. 3236
Ygnacio Valley High School	755 Oak Grove Rd, Concord, CA	925-682-8000 ex. 3643

Delivery days will be Monday through Friday, 6:30 a.m. to 1:30 p.m.

EXHIBIT B - PRICING

APPENDIX A - PRICING SHEET from Request for Bids (RFB) #1970 is attached and incorporated by reference.

Protocols:

1) Pricing-Term of Contract. Minimum contract term is one (1) year. Quoted prices must stay in effect for twelve (12) months after award of RFP and may be extended upon mutual consent of Mt. Diablo Unified School District and Contractor for two additional one-year periods in accordance with provisions contained in the Education Code, Sections 17596 (K-12) and 81644 (Community Colleges). If extended, price increases may be negotiated **subject to existing local market conditions, and as determined by the California Consumer Price Index (CPI), but may never exceed an increase of more than five percent (5% annually) without prior District consent.** In the event of a general price decrease the District reserves the right to revoke the RFP award unless the decrease is passed on to the District.

2) Method of Payment: Contractor shall submit invoices in a format approved by the District. Invoices must include the purchase order number, District site name, name of individual(s) performing duties, date(s) worked, hours worked. Flat rate compensation is not permitted and will be rejected unless approved by the Procurement Department. Contractor shall submit invoices to the District via the District's authorized representative referenced in Section 17 (Notices).

- **Upon receipt and approval of Contractor's invoices, the District agrees to make payments on all undisputed amounts within thirty (30) days of receipt of the invoice.**

EXHIBIT C

INSURANCE REQUIREMENTS

Without in any way limiting Service Provider's liability pursuant to the "Indemnification" section of this Agreement, Service Provider must maintain in force, during the full term of the Agreement, insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder and the results of that work by the Service Provider, his or her agents, representatives, employees or subcontractors.

MINIMUM SCOPE OF INSURANCE

Coverage shall be at least as broad as:

Commercial General Liability: Written on an "occurrence" basis, including products and completed operations, property damage, bodily injury and personal & advertising injury with limits no less than two million dollars (\$2,000,000) per occurrence, and a four million dollar (\$4,000,000) aggregate.

Mount Diablo Unified School District, its Board, officers, officials, employees, and volunteers shall be named as additional insureds with respect to liability arising out of the services performed by or on behalf of the Service Provider under this Agreement. The policy shall contain a severability of interest provision that must apply for the additional insureds, ensuring that Service Provider's insurance shall apply separately to each insured against whom a claim is made or suit is brought, except with respect to the policies' limits.

Automobile Liability: With limits of no less than one million dollars (\$1,000,000) per accident, combined single limit for bodily injury and property damage, including owned, non-owned and hired automobiles. If Service Provider has no owned autos the policy may be limited to cover hired and non-owned autos only. A waiver of the Automobile liability insurance requirements may be requested by Service Provider provided that Service Provider will not use any automobiles in the performance of this Agreement. The parties understand and agree that the District shall rely upon the representations that the Service Provider shall make in any such waiver.

Workers' Compensation: As required by the State of California, with Statutory Limits, and Employer's Liability Insurance with a limit of no less than one million dollars (\$1,000,000) per accident for bodily injury or disease.

Umbrella or Excess Insurance: Any Umbrella or Excess insurance shall apply on a primary and noncontributory basis for the benefit of the District, before the District's own primary insurance or self-insurance shall be called upon to protect it as a Named Insured. Excess policies of insurance shall be as broad as, and follow the form of the underlying (primary) insurance.

If Service Provider maintains broader coverage and/or higher limits than the minimums shown above, the District requires and shall be entitled to the broader coverage and/or higher limits

maintained by the Service Provider. No representation is made that the minimum insurance requirements of this Agreement are sufficient to cover the obligations of Service Provider hereunder.

Sexual Molestation and Abuse Liability Insurance. Contractor shall procure and maintain, during the life of this Contract, sexual molestation and abuse insurance. Contractor shall require its Subcontractor(s), if any, to procure and maintain sexual molestation and abuse insurance for all employees of Subcontractor(s). Any class of employee or employees not covered by a Subcontractor's insurance shall be covered by Contractor's insurance. If any class of employee or employees engaged in Work under the Contract, on or at the Site of the Project, are not covered under the sexual molestation and abuse insurance, Contractor shall provide, or shall cause a Subcontractor to provide, adequate insurance coverage to cover any employee(s) not otherwise covered before any of those employee(s) commence work.

OTHER INSURANCE PROVISIONS

Primary and Noncontributory: For any claims related to this Agreement, Service Provider's insurance coverage shall be primary insurance coverage. Any insurance or self-insurance maintained by the District shall be excess of the Service Provider's insurance and shall not contribute with it.

Transfer of Rights of Recovery against Others to Us (Waiver of Subrogation): Service Provider hereby grants to the District, a waiver of any right to subrogation which any insurer of said Service Provider may acquire against the District, its Board, officers, officials, employees, and volunteers by virtue of the payment of any loss under such insurance. Service Provider shall obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the District, its Board, officers, officials, employees, and volunteers have received a Transfer of Rights of Recovery against Others to Us endorsement from the insurer(s).

Acceptability of Insurers: Unless otherwise acceptable to the District, all insurance is to be placed with insurers authorized to conduct business in California with a current A.M. Best's rating of no less than A:VII, or approved by the Surplus Lines Association to do business in California.

Claims Made Policies: If any of the required policies provide claims-made coverage:

- The Retroactive Date must be shown, and must be before the date of the contract or the beginning of contract work.
- Insurance must be maintained and evidence of insurance must be provided for at least five (5) years after completion of the contract work.
- If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a Retroactive Date prior to the contract effective date, the Service Provider must purchase "extended reporting" coverage for a minimum of five (5) years after completion of work.

Self-Insured Retentions: Self-insured retentions must be declared to and approved by the District. The District may require the Service Provider to provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention.

Subcontractor Insurance: Should the Service Provider use any subcontractor(s) to perform services under this Agreement, Service Provider shall be responsible for ensuring that such subcontractor(s) procure and maintain insurance and limits appropriate to the nature and scope of services provided. Service Provider shall collect Certificates of Insurance evidencing coverage(s) and limits of insurance, and with the exception of Workers' Compensation and Professional Liability policies, the Service Provider and the District shall be included as additional insureds for all ongoing and completed operations of the subcontractor(s).

District's Right to Modify Insurance Requirements: District reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.

Notice of Cancellation: No policy required to be maintained by Service Provider shall be canceled, nonrenewed, or materially altered without thirty (30) days prior written notice to the District, except where cancellation is due to the nonpayment of premium(s) in which event, ten (10) days prior written notice to the District shall suffice. For contracts in which the total compensation to the Service Provider is one million dollars (\$1,000,000) or more, a policy endorsement is required to obligate Service Provider's insurance carrier to notify the District directly of policy cancellations.

Verification of Coverage: Prior to the commencement of services pursuant to this Agreement, Service Provider shall furnish the District with insurance certificates and amendatory endorsements for the Additional Insured and Primary and Noncontributory provisions, or copies of the applicable policy language evidencing the insurance coverage and limits required by this Agreement. The District reserves the right to require additional amendatory endorsements and complete copies of any policy(ies) required hereunder at any time. Acceptance of the Certificates of Insurance by the District does not relieve Service Provider of the insurance requirements, nor decrease the liability of Service Provider under this Agreement. It is the Service Provider's responsibility to ensure compliance with these insurance requirements. Any actual or alleged failure on the part of the District to obtain proof of insurance required under this Agreement shall not in any way be construed to be a waiver of any right or remedy of the District, in this or any regard.

Certificate Holder:

**Mt. Diablo Unified School District
1936 Carolotta Drive, Concord, CA 94519**

Commercial General Liability	Includes: Bodily Injury, Property Damage, Personal & Advertising Injury, Product Liability and Completed Operations	\$2,000,000 each occurrence; \$4,000,000 general aggregate
Automobile Liability – Any Auto	Combined Single Limit	\$2,000,000 per occurrence
Workers Compensation		Statutory limits pursuant to State law; \$1M/\$1M/\$1M
Sexual Abuse / Molestation		\$1,000,000 each incident; \$2,000,000 policy limit

EXHIBIT D

CRIMINAL BACKGROUND INVESTIGATION / FINGERPRINTING CERTIFICATION

The undersigned does hereby certify to the governing board of the District that undersigned is a representative of the Contractor, is familiar with the facts herein certified, is authorized and qualified to execute this certificate on behalf of Contractor; and that the information in this Criminal Background Investigation / Fingerprinting Certification is true and correct.

1. **Education Code**. Contractor has taken at least one of the following actions (check all that apply):

- ☐ **All Workers Fingerprinted.** The Contractor has complied with the fingerprinting requirements of Education Code section 45125.1 with respect to all Contractor's employees and all of its subcontractors' employees who interact with pupils, outside of the immediate supervision and control of the pupil's parent or guardian or a school employee, has a valid criminal records summary as described in Education Code Section 44237 (Contractor shall "require each applicant for employment in a position requiring contact with minor pupils to submit two sets of fingerprints prepared for submittal by the employer to the Department of Justice for the purpose of obtaining criminal record summary information from the Department of Justice and the Federal Bureau of Investigation."). A complete and accurate list of Contractor's employees and of all of its subcontractors' employees who may interact with District pupils during the course and scope of the Contract is attached hereto; and/or
- ☐ **Physical Barrier.** Pursuant to Education Code section 45125.2, Contractor has installed or will install, prior to commencement of work, a physical barrier at the Project site, that will limit contact between Contractor's employees and District pupils at all times; and/or
- ☐ **Continual Supervision by Fingerprinted Employee.** Pursuant to Education Code section 45125.2, Contractor certifies that all employees will be under the continual supervision of, and monitored by, an employee of the Contractor who the California Department of Justice has ascertained has not been convicted of a violent or serious felony. The name and title of the employee who will be supervising Contractor's employees and its subcontractors' employees is:

Name: _____ Title: _____

☐ **Unoccupied Site.** The Work on the Contract is at an unoccupied school site and no employee and/or subcontractor or supplier of any tier of Contract shall come in contact with the District pupils.

2. **Megan's Law (Sex Offenders)**. I have verified and will continue to verify that the employees of Contractor that will be on the Project site and the employees of the Subcontractor(s) that will be on the Project site are not listed on California's "Megan's Law" Website (<http://www.meganslaw.ca.gov/>).

Contractor's responsibility for background clearance extends to all of its employees, subcontractors, and employees of subcontractors coming into contact with District pupils regardless of whether they are designated as employees or acting as independent contractors of the Contractor.

Date: _____

Name of Contractor: _____

Signature: _____

Print Name: _____

Title: _____

END OF SECTION

EXHIBIT E
CERTIFICATIONS TO BE COMPLETED BY CONTRACTOR

THE UNDERSIGNED MUST CHECK EACH BOX AND EXECUTE THIS FORM AND HEREBY CERTIFIES TO THE GOVERNING BOARD OF THE DISTRICT THAT:

- **The undersigned is a representative of the Contractor,**
- **The undersigned is familiar with the facts herein certified and acknowledged,**
- **The undersigned is authorized and qualified to execute this Contract and these certifications on behalf of Contractor and that by executing this Contract undersigned is certifying the following items.**

☐ **Labor Code Sections 1860-1861 (Workers' Compensation).** In accordance with Labor Code section 3700, every contractor will be required to secure the payment of compensation to his or her employees. I acknowledge and certify under penalty of perjury that I am aware of the provisions of Section 3700 of the Labor Code which require 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.

☐ **Government Code Sections 8355-8357 (Drug-Free Workplace).** I acknowledge and certify under penalty of perjury that I will provide a drug-free workplace by doing all of the following:

- (1) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited in the person's or organization's workplace and specifying the actions that will be taken against employees for violations of the prohibition.
- (2) Establishing a drug-free awareness program to inform employees about all of the following:
 - (A) The dangers of drug abuse in the workplace.
 - (B) The person's or organization's policy of maintaining a drug-free workplace.
 - (C) Any available drug counseling, rehabilitation, and employee assistance programs.
 - (D) The penalties that may be imposed upon employees for drug abuse violations.
- (3) Requiring that each employee engaged in the performance of the contract or grant be given a copy of the statement required by subdivision (a) and that, as a condition of employment on the contract or grant, the employee agrees to abide by the terms of the statement.

I also acknowledge that this Contract may be subject to suspension of payments under the contract or grant or termination of the contract or grant, or both, and the contractor or grantee thereunder may be subject to debarment, in accordance with the requirements of the

above-referenced statute, if the contracting or granting agency determines that any of the following has occurred:

- (1) The contractor or grantee has made a false certification under Section 8355.
- (2) The contractor or grantee violates the certification by failing to carry out the requirements of subdivisions (a) to (c), inclusive, of Section 8355.

I also acknowledge that the Department of General Services shall establish and maintain a list of individuals and organizations whose contracts or grants have been canceled due to failure to comply with the above-referenced statute. This list shall be updated monthly and published each month. No state agency shall award a contract or grant to a person or organization on the published list until that person or organization has complied with the above-referenced statute.

- ☐ **Tobacco-Free Environment.** Pursuant to, without limitation, 20 U.S.C. section 6083, Labor Code section 6400 et seq., Health & Safety Code section 104350 et seq. and District Board Policies, all District sites, including the Project site, are tobacco-free environments. Smoking and the use of tobacco products by all persons is prohibited on or in District property. District property includes school buildings, school grounds, school owned vehicles and vehicles owned by others while on District property.

I acknowledge and certify under penalty of perjury that I am aware of the District's policy regarding tobacco-free environments at District sites, including the Project site and acknowledge and certify that I will adhere to the requirements of that policy and not permit any of my firm's employees, agents, subcontractors, or my firm's subcontractors' employees or agents to use tobacco and/or smoke on the Project site. The District also prohibits electronic cigarettes, "vaping" or similar product uses on District sites.

☐ **Russian Sanctions Certification**

On February 21, 2022, President Biden issued Executive Order 14065 (; "**Federal Order**") imposing economic sanctions and prohibiting many activities including, but not limited to, investing in, importing to, exporting from, and contracting with, areas of Ukraine and in Russia. On March 4, 2022, California Governor Newsom issued Executive Order N-6-22 requiring state agencies to take steps to ensure any agency and entity under contract with state agencies comply with the Federal Order (; "**State Order**").

The District requires the Consultant, as a Contractor with the District, to comply with the economic sanctions imposed in response to Russia's actions in Ukraine, including the orders and sanctions identified on the U.S. Department of the Treasury website (<https://home.treasury.gov/policy-issues/financial-sanctions/sanctions-programs-and-country-information/ukraine-russia-related-sanctions>).

If your Firm's contract with the District has a cumulative value of \$5 million or more, your certification here constitutes your written response to the District, indicating:

- (1) that your Firm is in compliance with the required economic sanctions of the Federal and State Orders;
- (2) the steps your Firm has taken in response to Russia's actions in Ukraine, including, but not limited to, desisting from making new investments in, or engaging in financial transactions with, Russian entities, not transferring technology to Russia or Russian entities, and directly providing support to the government and people of Ukraine.

☐ **Conflict of Interest Certification**

The Contractor and its subcontractors shall at all times comply with the conflict of interest certification requirements as set forth below. Specifically, by checking the one applicable option below, Contractor hereby represents and warrants to District that the Contractor and its subcontractors have read and understand the District's Conflict of Interest Code and, Contractor knows or has reason to believe that Contractor has a conflict of interest that requires disclosure and Contractor and its subcontractors shall comply with the applicable disclosure requirements of the District's Conflict of Interest Code. In addition, the Contractor shall maintain on file statements of economic interests in accordance with applicable disclosure requirements. These records shall be regularly maintained and updated by Contractor and shall be available to District upon request or audit.

☐ **Debarment, Suspension, and Other Responsibility Matters**

As required by Executive Order 12549, Debarment and Suspension, for participants or respondents in primary covered transactions:

The participant or respondent certifies that it and its principals:

- (a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal department or agency;
- (b) Have not within a three-year period preceding this application been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) transaction or contract under a public transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
- (c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (federal, state, or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and
- (d) Have not within a three-year period preceding this application had one or more public transactions (federal, state, or local) terminated for cause or default.

B. Where the participant or respondent is unable to certify to any of the statements in this certification, he or she shall attach an explanation to this application.

☐ **Lobbying Certification**

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

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure of Lobbying Activities," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents of all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all sub-recipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, United States Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

☐ **Clean Air and Water Act Certification**

The undersigned hereby certifies that:

1. The Bidder is in compliance with all applicable standards, orders, or regulations issued pursuant to the Clean Air Act (42 U.S.C. § 7401 et seq.) and the Federal Water Pollution Control Act, as amended (33 U.S.C. § 1251 et seq.).
2. The Bidder has not been found in violation of any applicable standards, orders, or regulations under the above-referenced Acts by the United States Environmental Protection Agency (EPA) or any state or local environmental agency within the past three

(3) years, or if such violations have occurred, the Bidder has fully disclosed them in writing as part of this proposal submission.

3. The Bidder agrees to comply with all applicable reporting requirements and to notify the School District of any subsequent violations of the Clean Air Act or Federal Water Pollution Control Act that occur during the term of any resulting contract.
4. The Bidder agrees that, as a condition of contract award, it will include this certification requirement in all applicable subcontracts exceeding \$150,000.
5. The Bidder understands and agrees that the School District will report any violations of this certification to the appropriate federal and state authorities, including the U.S. Environmental Protection Agency (EPA) and the California Environmental Protection Agency (CalEPA).

☐ **Buy American Certification**

In accordance with federal regulations (7 CFR § 210.21(d) and 220.16(d)), the School Food Authority (SFA) requires that all food products purchased for use in the National School Lunch Program and School Breakfast Program comply with the **Buy American Provision**.

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

1. Domestic Origin Requirement

All agricultural commodities and food products supplied under this contract are either:

- Produced in the United States; or
- Processed in the United States using agricultural commodities that are produced in the United States.

2. Definition of “Domestic Commodity or Product”

A “domestic commodity or product” is defined as:

- An agricultural commodity produced in the United States; and/or
- A food product processed in the United States, provided that at least 51 percent of the final processed product consists of agricultural commodities that were grown domestically.

3. Limited Exceptions

The Bidder acknowledges that exceptions to the Buy American Provision are allowed only under the following circumstances:

- The product is not produced or manufactured in the United States in sufficient and reasonably available quantities of a satisfactory quality; or
- Competitive bids reveal that the cost of a U.S. product is significantly higher than that of a non-domestic product.

4. Disclosure of Non-Domestic Products

The Bidder must clearly identify any product that does not meet the Buy American requirements at the time of bid submission and throughout the contract term. For each non-domestic item, the Bidder shall provide:

- Product name

- Country of origin
- Justification for exception (availability or cost)

5. Ongoing Compliance

The Bidder agrees to:

- Notify the SFA in advance if a substituted product is non-domestic
- Maintain documentation supporting compliance with the Buy American Provision
- Provide documentation upon request for audit or review purposes

6. Corrective Action

Failure to comply with the Buy American Provision may result in:

- Rejection of the product
- Requirement to provide a compliant substitute at no additional cost
- Contract termination or other remedies as permitted under the agreement

Certification

I ACKNOWLEDGE AND CERTIFY UNDER PENALTY OF PERJURY THAT I AM DULY AUTHORIZED TO LEGALLY BIND THE CONTRACTOR TO ALL PROVISIONS AND ITEMS INCLUDED IN THESE CERTIFICATIONS, THAT THE CONTENTS OF THESE CERTIFICATIONS ARE TRUE, AND THAT THESE CERTIFICATIONS ARE MADE UNDER THE LAWS OF THE STATE OF CALIFORNIA.

I FURTHER CERTIFY THAT ALL PRODUCTS SUPPLIED WILL COMPLY WITH THE BUY AMERICAN PROVISION UNLESS PROPERLY DISCLOSED AND APPROVED.

Date: _____

Name of Contractor: _____

Signature: _____

Print Name: _____

Title: _____

END OF DOCUMENT