

Brookings School District
Child Nutrition Prime Vendor Contract

This agreement is entered into this _____ day of July, 2023, by and between Performance Foodservice (“Prime Vendor”) and the Brookings School District (“The District”).

1. **Scope of Services**

Prime Vendor shall receive, handle, store and deliver commodities to all The District schools as specifically set forth in the Request for Proposal for Prime Vendor ("RFP"), and Prime Vendor's Response to the RFP for Prime Vendor, which are herein expressly incorporated by reference to this contract.

Prime Vendor shall use its best efforts to perform all tasks and achieve the objectives set forth in the scope of services.

Prime Vendor shall provide, at its own expense, all personnel required in performing the services under this contract.

2. **Term**

This contract shall be in effect from August 1, 2023, through July 31, 2024. The contract may be extended for up to four one-year periods upon mutual consent of both parties. Should, during the term of this contract, one of the named districts in the Request for Proposal for Prime Vendor cancel said contract, Prime Vendor would be allowed to renegotiate the contract with the remaining districts.

No work shall commence before a Prime Vendor receives a fully executed contract and has been given approval to proceed. Any work performed by the Prime Vendor prior to obtaining a fully executed contract with approval to proceed shall not be compensated pursuant to this contract. Any continuation of the contract beyond this term must be set forth in writing and signed by the original signatories to the contract.

3. **Pricing Method**

a. **Proposal Pricing**

Prime Vendor shall ensure that The District receives the best possible delivered price for all goods covered by this contract. The required methods for determining product prices in the agreement are for items listed in “Market Basket” may fluctuate as market determines to give best pricing possible for the school district.” The “Market Basket” method shall be used for all items in the product list. All other items shall employ the Cost plus Fixed Fee method of pricing. Fixed Fee will be held for the entire length of the one year contract. Cost plus Fixed Fee will be \$1.95 per case.

Cost is defined below:

Cost is derived from the most recent invoice cost to the Prime Vendor distribution center of such product, including any sales, use, excise or other taxes and governmental duties or assessments thereon, whenever assessed, plus applicable freight charges to deliver such products to Prime Vendor’s distribution center, plus storage and handling charges associated

with forward purchases, if any. Cash discounts are at the discretion of Prime Vendor and do not reduce the cost of products. When a vendor does not extend a cash discount, a two percent (2%) cash equalization factor is taken in order to establish Prime Vendor's invoice cost. The cost of all products sold hereunder will be determined by Prime Vendor, and such determination shall be conclusive and binding for all purposes. Prime Vendor provides an array of services for supplier of national, regional, local and Prime Vendor brands beyond typical procurement activities. These value added services including consolidated warehousing, merchandising activities, quality assurance, Prime Vendor brand development, performance based product marketing, and freight management. Prime Vendor recovers the cost of these services through earned income. The District acknowledges and agrees that such earned income does not reduce the cost basis of the product nor does it impact Prime Vendor's ability to deliver products at a competitive price.

b. Acts of God Clause

If a guaranteed delivered item price increases due to an Act of God, Prime Vendor will review the pricing adjustment options at that time. If a compromise cannot be made, the school may go back out to bid on the item(s) in question.

c. Net Off Invoice (NOI) Items

The District will notify Prime Vendor of any items they are intending on purchasing with the NOI program before the initial order. This ensures the item will be set up to process the NOI discount. In the case of manufacturer shortages on NOI items, Prime Vendor will find a replacement item to fulfill the order, but this item may not be NOI eligible. Prime Vendor is not responsible for the price difference due to the lack of an NOI discount.

d. Fixed Fee per Case

Category	Fixed Fee per Case
Produce	\$1.95
Protein (Beef, Pork, Poultry & Seafood)	\$1.95
Dairy/Non Dairy	\$1.95
Frozen Foods	\$1.95
Refrigerated Foods	\$1.95
Dry Grocery	\$1.95
Non Foods	\$1.95

4. Recordkeeping

Books and records of The District's purchases shall be made available, upon demand, in an easily accessible manner for a period of three years from the end of the agreement term (including renewals) to which they pertain, for audit, examination, excerpts and transcriptions by The District, state and federal representatives and auditors.

5. Auditing Rights

The District reserves the right to conduct quarterly audits to ensure that The District receives the

best possible Net Delivered Price for all goods covered by this contract. Distributor shall be responsible for demonstrating that the frequency and adequacy of its efforts to obtain the best prices for goods covered by this contract are reasonable to accomplish this objective. Failure to audit in a particular quarter relieves Prime Vendor of its obligations relating to The District's audit rights.

The Distributor shall furnish computer verification of costs for line items to be price verified. The Distributor shall be notified of the date and time of the price verification ten business days in advance. The District will provide a listing of items to be verified, not to exceed 30 items, and the date of the pricing period to be verified. If an error rate in excess of 10% were found, a complete market basket audit could be performed.

The Distributor shall be able to provide cost data from purchases between divisions or departments within their own organizations and from cooperatives to which they belong.

6. **Food Laws**

Distributor shall operate in accordance with all applicable laws, ordinances, regulations and rules of federal, state and local authorities.

Upon request from The District, Distributor shall provide:

- Letter of guarantee of compliance with food laws.
- Latest facility inspection forms and comments from applicable federal, state and local agencies.
- Procedures for food safety and sanitation, including procedures used for product holds or recalls.

7. **Insurance**

Distributor shall maintain all necessary and proper insurance for the duration of the work to be performed, including Comprehensive General Liability Insurance and Property Damage Insurance, Workers Compensation Insurance, and Automobile Liability Insurance.

Distributor shall provide certificates of insurance. Should any required insurance be canceled before the expiration date, the issuing company will provide a written 30 day notice, by mail, to The District.

8. **Taxes**

The District is a tax exempt, non-profit organization and will provide Tax ID upon request.

9. **Buy American**

Schools participating in the National School Lunch Program are required to purchase domestic commodities and products for school meals to the maximum extent practicable. Domestic products are those that are produced in the United States and those that are processed in the United States substantially (at least 51 percent) using agricultural commodities produced in the United States.

10. **Certification Regarding Debarment or Suspension**

The Distributor certifies that neither the Distributor or its principals; the sub-recipients or their principals; or the subcontractors or their principals are suspended, debarred, proposed for debarment, voluntarily excluded from covered transactions, or otherwise disqualified by any federal department or agency from doing business with the Federal government pursuant to Executive Orders 12549 and 12689. The Distributor specifically covenants that neither the Distributor nor its principals; the subcontractors or their principals; nor the sub-recipients or their principals are included on the Excluded Parties List System (EPLS) maintained by the General Services Administration (GSA).

11. Lobbying

If the negotiated agreement exceeds \$100,000, Distributor certifies that no federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence any federal agency or Congress with respect to the awarding of a federal contract, etc.

If Distributor has paid, or will pay, any funds other than federal appropriated funds to any person for influencing or attempting to influence an officer or employee of any federal agency or Congress, Distributor is required to submit a "Disclosure Form to Report Lobbying" at the time of the executed contract and at the time of any renewal(s).

12. Other Federally Required Contractual Provisions

If the contract exceeds \$2,500, Distributor is required to comply with sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 USC 327-330) as supplemented.

If the contract exceeds \$10,000, Distributor is required to comply with Executive Order 11246, entitled "Equal Employment Opportunity," as amended by Executive Order 11375, and as supplemented in U.S. Department of Labor regulations (41 CFR Part 60). If the contract exceeds \$100,000, Distributor will be required to comply with Section 306 of the Clean Air Act (42 USC 1857(h)), Section 508 of the Clean Water Act (33 USC 1368), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR Part 15), which prohibit the use of facilities included on the EPA List of Violating Facilities. Distributor shall report all violations to the grantor agency and to the USEPA Administrator for Enforcement (EN-329).

13. Force Majeure

The District will not be liable to pay contractor for any work that the contractor is unable to perform due to act of God, riot, war, civil unrest, flood, earthquake, outbreak of contagious disease or other cause beyond The District's reasonable control (including any mechanical, electronic, or communications failure, but excluding failure caused by a party's financial condition or negligence).

14. Indemnity

To the fullest extent permitted by law, the Prime Vendor agrees to indemnify, defend and hold harmless, The District, its agents, officers and employees, from and against all loss or expense, including related costs and reasonable attorney's fees by reason of liability for damages, including suits at law or in equity, caused by any wrongful, intentional or negligent acts or omissions of the Prime Vendor, or its agents which may arise out of or are connected with the activities covered by this contract.

In accordance with applicable laws, The District shall be responsible for defending and paying judgments on behalf of its officers, employees and agents for any claims that may arise out of The District's negligence for acts, policies, or directives that affect the activities covered by this contract.

15. Integration/Severability

This contract and its exhibits and addenda, if any, constitute the entire contract among the parties with respect to the subject matter hereof and supersede all prior proposals, negotiations, conversations, discussions and contracts among the parties concerning the subject matter hereof. No amendment or modification of any provision of this contract shall be effective unless the same shall be in writing and signed by both parties.

16. Termination of Agreement

In the event the Distributor defaults in any of the terms of this contract, and such default is not resolved within thirty (30) days after written notice of default, The District will have the right to terminate this contract. In addition, The District shall have the right to terminate this contract for any reason on written notice to Distributor given at least sixty (60) days before such termination.

The validity, construction, enforcement and effect of this contract shall be governed solely by the laws of the state of South Dakota. The state courts of South Dakota shall be the sole forum for all disputes arising of this contract.

IN WITNESS WHEREOF, the parties here to have executed this contract on the day, month and year first above written.

Prime Vendor (Performance Foodservice)

Brookings School District

Vendor Signature:

Authorized Signature:

Print Name:

Print Name:

Date: _____

Date: _____

Address: _____

Phone Number: _____