

**San Mateo-Foster City School District**  
**Request for Proposal No. CNS-01-20**  
**Distribution of Processed USDA Foods and Commercial Food Products**

**PROVISIONING CONTRACT**

**THIS PROVISIONING CONTRACT** (this “**Contract**”) is made and entered into as of this \_\_\_\_ day of \_\_\_\_\_, 2019, by and between \_\_\_\_\_ (“**Provisioner**”), and the \_\_\_\_\_ (the “**District**”).

**RECITALS**

- A. The San Mateo-Foster City School District (the “District”) has solicited proposals for the distribution of processed USDA Foods end products and commercial food products via Request for Proposal Number CNS-01-20 (the “RFP”), whereby the District agrees to purchase specified products for the Districts’ use from the successful bidder.
- B. “Provisioner” is the successful bidder under such request for proposal, and the District and Provisioner hereby desire to set forth their agreement with respect to the sale to the District, and the purchase from Provisioner, of Products on the terms and conditions hereinafter set forth.

**NOW, THEREFORE**, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Provisioner and the District hereby agree as follows:

- 1. Provision of Products.** Provisioner shall provide to the District, from time to time as ordered by the District or their successor or assign (the “District Contact Person”) in accordance with the procedure described in Section 2 below, Products as described in the **Request for Proposals** information attached hereto.
- 2. Delivery of Products.** The District Contact Person shall order Products from time to time by delivery to Provisioner of a Purchase Order. Provisioner shall deliver Products of the type, kind and quantity ordered in any such Purchase Order F.O.B. to District location(s) specified. The Distributor hereby agrees that the minimum delivery time required for the delivery of any products is \_\_\_\_\_ days, and the Distributor shall not deliver any Purchase Order requiring delivery of Products within less than \_\_\_\_\_ days after the delivery of such Purchase Order to Provisioner.
- 3. Price.** The price shall be per case or unit. The Provisioner shall provide pricing based on case packaging, catalog, price list, or any other commonly recognized methodology that is standard in the specific industry. The per case/unit delivery fee per this contract shall be as follows on the attached Price Worksheet.

The provisions of this contract shall in no way prohibit the District from making incidental purchases from another supplier for the same services listed herein.

Provisioner shall enter into a Memorandum of Understanding (MOU) for Distribution Services for Delivery of USDA Foods End Products for Super Co-Op Member Districts in the State of California. Provisioner agrees to fulfill all terms of that MOU, including but not limited to prompt USDA Foods end product sales reporting; maintain records of inventory, sales, and delivery; clearly state Value Pass Through on delivery invoice; and hold/recall responsibilities.

Provisioner agrees to report sales of USDA Foods end products on behalf of the manufacturer on a daily basis to the manufacturer's reporting agency (i.e., ProcessorLink, K-12 Foodservice, etc.) Prompt reporting is imperative to ensure proper draw down of Member District entitlement balance. Value Pass Through method and amounts shall be clearly indicated on all invoices for USDA Foods end product sales. Value Pass Through crediting shall be conducted in accordance with 7 CFR 250.36.

**4. Term of Contract.** Minimum contract term is one (1) year. Quoted prices must stay in effect for one (1) year beginning on July 1, 2019 through June 30, 2020. This bid may be extended (by mutual consent expressed in writing) for up to four (4) additional one (1) year increments (total potential bid life of five (5) years from Board of Trustees award). In the event of a general price decrease the District reserves the right to revoke the bid award unless the decrease is passed on to the District.

**5. Insurance.** Provisioner shall carry and maintain during the entire term of this Contract the following insurance coverage:

(a) Comprehensive General Liability Insurance for Combined Single Limit Bodily Injury and/or Property Damage of not less than \$1,000,000 per occurrence and \$2,000,000 aggregate. The policy(ies) so secured and maintained shall include, among other things, coverage for contractual or assumed liability, products liability, and owned, hired and non-owned automobiles insurance and shall be maintained with so self-insured retention; Workers' Compensation Insurance in such amounts as may be required by law; and Such other insurance as is customarily maintained by large-scale processors and distributors of food products of the type, quality and grade provided for under this Contract.

(b) Provisioner shall furnish to the District certificates of insurance, signed by an authorized representative of the insurance carrier no later than thirty (30) days after the District board's approval of the Contract or prior to the first delivery of food products hereunder, whichever occurs first, which certificates shall be endorsed as follows:

“This policy shall not be suspended, cancelled, reduced in coverage or required limits of liability or amounts of insurance or non-renewed until notice has been

mailed to the District. Date of suspension, cancellation, reduction or non-renewal may not be less than thirty (30) days after the date of mailing such notice. The insurance afforded by this policy is primary and any other insurance carried by the District with respect to the matters covered by such policy shall be excess and non-contributing.”

(c) The certificates of insurance and insurance policies required under this Contract shall name the District indemnities named in the Request for Proposals as additional insured. Facsimile or reproduced signatures are not acceptable. If complete and proper insurance certificates as required hereunder are not delivered to the District within the time period provided in subsection (b) above, the District may declare the Contract unexecuted and void. The District reserves the right to require complete certified copies of the required insurance policies.

(d) The insurance companies providing the insurance required under this Contract shall be subject to the District’s prior written approval, which shall not be unreasonably withheld.

(e) If Provisioner fails to purchase and maintain any insurance required under this Section 5, the District may, but shall not be obligated to, upon five (5) days’ written notice to Provisioner, purchase such insurance on behalf of Provisioner and shall be entitled to be reimbursed by Provisioner promptly thereafter or deduct the amount of such premiums from amounts otherwise due to Provisioner hereunder. Any amounts expended by the District hereunder shall bear interest from the date expended until repaid to the District at the rate of ten percent (10%) per annum.

**6. Indemnification.** Provisioner shall hold harmless, indemnify and defend (with counsel acceptable to the District) the District, their board, directors, employees, agents and consultants from and against any and all obligations, liabilities, claims, losses, damages, costs and expenses (including attorneys’ fees and costs) arising from or in connection with (a) any defects in the food products, (b) Provisioner conduct or negligent, willful or improper procedures in connection with the discharge of its responsibilities and obligations hereunder (including, without limitation, the processing of food products) or any other negligent behavior or willful misconduct of Provisioner, or (c) any breach or default by Provisioner under this Contract. The terms and provisions of this Section 6 shall survive the expiration or earlier termination of this Contract.

**7. Default Remedies.** The delivery of defective products, or the breach of any other term or provision of this Contract by Provisioner, shall constitute a “**Default**” of Provisioner hereunder. Provisioner shall have seven (7) days after delivery of notice of any Default from the District to cure any such Default, other than a Default relating to the delivery of defective products. No cure period shall be provided Provisioner with respect to any Default relating to the delivery of defective products. If Provisioner fails to cure the Default within the aforementioned cure period (or the Default relates to the delivery of defective products for which no cure period applies), the District may, without prejudice to any other right or remedy of the District, elect to terminate this Contract by delivery of a written termination notice to Provisioner. Immediately upon the delivery of such termination notice, this Contract shall be terminated and all rights and

obligations of the parties hereunder, except those that expressly survive the termination of this Contract, shall terminate and be of no further force or effect. In addition to the right to terminate the Contract pursuant in the preceding sentence, the District may pursue any other right or remedy that may be available to it at law or in equity, which may include an action for damages measured by all additional costs and expenses incurred by the District to procure food products from other sources for the remaining term of this Contract (including, without limitation, the difference between the price charged by such other sources for the food products and the price that would have been charged for the same or similar food products hereunder).

**8. Provisions Required by Law.** Each and every provision of law and clause required to be inserted into this Contract shall be deemed to be inserted herein and this Contract shall be read and enforced as though it were included herein, and if through mistake or otherwise any such provision is not inserted or is not inserted correctly, then upon application of either party this Contract shall forthwith be physically amended to make such insertion or correction.

**9. Due Authorization.** This Contract is duly authorized, executed and delivered by Provisioner, is the legal, valid and binding obligation of Provisioner enforceable against Provisioner in accordance with its terms (except to the extent that such enforcement may be limited by applicable bankruptcy, insolvency, moratorium and other principles relating to or limiting the rights of contracting parties generally), and does not and will not violate any provisions of any agreement to which Provisioner is a party or may become a party or to which is it subject or may become subject. Each individual and entity executing this Contract hereby represents and warrants that he, she or it has the capacity set forth on the signature page hereof with full power and authority to bind the party on whose behalf he, she or it is executing this Contract to the terms and provisions hereof.

**10. Assignment.** Provisioner shall not assign or transfer, by operation of law or otherwise, any or all of its rights, burdens, duties or obligations under this Contract (or any part hereof) without the prior written consent of the District, which may be granted or withheld in the District's sole and absolute discretion.

**11. Notices.** All notices, requests, demands, consents, instructions or other communications hereunder shall be in writing (which shall include telex, telegram or telecopy) and shall be deemed to have been duly given or made upon transmittal thereof by telex, answer back received, if transmitted on a business day, otherwise on the first business day after transmittal, or on the date of confirmed dispatch if sent by telecopy on a business day, otherwise on the first business day thereafter, or upon the delivery thereof to the telegraph office if sent by telegraph on a business day, otherwise on the first business day thereafter, or three (3) business days after deposit in the mail if sent by certified mail, postage prepaid, return receipt requested, or on the next business day if sent by overnight personal delivery, in each case addressed to the party to which such notice is requested or permitted to be given or made hereunder, at the addresses and facsimile numbers set forth underneath such party's signature line to this Contract, or at such other address and/or facsimile number of which such party shall have notified in writing the party giving such notice. For purpose of this Contract, the term "business day" shall mean a day other than a Saturday, Sunday or any day on which the District is authorized or required by law to be closed.

**12. Waiver.** No action or failure to act by the District or any District representative shall constitute a waiver of a right or duty afforded them under this Contract, nor shall such action or failure to act constitute approval of, or acquiescence in, a breach thereunder, except as may be specifically agreed in writing.

**13. Entire Agreement: Amendments.** This Contract and all documents comprising the RFP constitute the entire and integrated agreement between the parties hereto with respect to the matters set forth therein and supersede all prior negotiations, representations or agreements, either written or oral. The documents comprising the RFP are hereby incorporated into this Contract and made a part hereof. The Contract may be amended or modified only by a writing executed by both parties hereto.

**IN WITNESS WHEREOF,** this Contract has been duly executed by the above-named parties, on the day and year first above written.

**DISTRICT:**

San Mateo-Foster City School District

\_\_\_\_\_  
Signature

By: \_\_\_\_\_

Its (Title): \_\_\_\_\_

**Address:**

1170 Chess Drive  
Foster City, CA 94404

Phone No.: (650) 312-1968

**PROVISIONER:**

**[Insert Provisioner Name]**

\_\_\_\_\_  
Signature

By: \_\_\_\_\_

Its (Title): \_\_\_\_\_

**Address:**

Phone No.:  
FAX No.:

**Authorized Officers  
Or Agents  
(CORPORATE SEAL if required)**