

## INDEPENDENT CONTRACTOR AGREEMENT

This Agreement is hereby entered into between the Ocean View School District of Orange County, hereinafter referred to as "District," and Dieli Murawka Howe, Inc.

Name of Independent Contractor

10393 San Diego Mission Rd. Ste. 209 San Diego, CA 92108

619-285-1189

Mailing Address

City

State

Zip

Telephone Number

hereinafter referred to as "Contractor."

WHEREAS, District is authorized by Section 53060 of the California Government Code to contract with and employ any persons for the furnishing of special Services and advice in financial, economic, accounting, engineering, legal or administrative matters, if such persons are specially trained and experienced and competent to perform the special Services required;

WHEREAS, District is in need of such special services and advice; and

WHEREAS, Contractor is specially trained and experienced and competent to perform the special Services required by the District, and such services are needed on a limited basis;

NOW, THEREFORE, the parties agree as follows:

1. Services to be provided by Contractor: Designing a Central Production Kitchen for the Ocean View School District, as described in attached Exhibit "A" Foodservice Design Fee Proposal.

Services shall be provided by Dieli Murawka Howe, Inc.

(Name of specific individual, if required)

2. Term. Contractor shall commence providing Services under this Agreement on October 9, 2017, and will diligently perform as required and complete performance by December, 2018.

3. Compensation. District agrees to pay the Contractor for Services satisfactorily rendered pursuant to this Agreement a total fee not to exceed Seventy Five Thousand Dollars (\$75,000).

District shall pay Contractor according to the following terms and conditions:

Fee Structure: 2% 10 Net 30

Phase	% of Contract	Total
Programming	10%	\$ 7,500
Schematic Design	10%	\$ 7,500
Design Development	30%	\$ 22,500
Construction Documents	40%	\$ 30,000
Construction Administration	10%	\$ 7,500
	100%	\$ 75,000

4. Expenses. District shall not be liable to Contractor for any costs or expenses paid or incurred by Contractor in performing Services for District, except as follows: NONE.

5. Trade Term Discounts. The District seeks entering into contracts with vendors and consultants that offer parity trade term discounts equal to or better than any other customer (public or private entity) of Contractor in the United States. Please indicate below whether Contractor offers parity trade term discounts or not. If Contractor indicates it does offer parity trade terms discounts, the Contractor shall provide documents reasonably requested by the District to show the pricing for services to be provided by Contractor pursuant to this Agreement is equal to or better than any other customer of the Contractor in the United States. If Contractor indicates it does not offer parity trade term discounts, and the District subsequently obtains evidence that indicates otherwise, it shall be grounds for immediate termination of this Agreement for cause and the District may pursue any legal action or remedies available.

X Yes, the undersigned offers parity trade term discounts as noted above and such discounts are being provided to the District in this Agreement.

\_\_\_\_\_ No, the undersigned does not offer parity trade term discounts as noted above.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Richard V. Dieli  
Name

Signed 

6. Independent Contractor. Contractor, in the performance of the Services pursuant to 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 or agents 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 Workers' Compensation. Contractor assumes the full responsibility for the acts and/or omissions of its employees or agents as they relate to the Services to be provided under this Agreement. 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.

7. Materials. Contractor shall furnish, at its own expense, all labor, materials, equipment, supplies and other items necessary to complete the Services to be provided pursuant to this Agreement. Contractor's Services will be performed in accordance with generally and currently accepted principles and practices of its profession.

8. Originality of Services/Intellectual Property. Contractor agrees that all ideas, technologies, formulae, procedures, processes and methods prepared for and submitted by Contractor to the District in connection with the Services set forth in this Agreement, shall be wholly original to Contractor and shall not be copied in whole or in part from any other source, except that submitted to Contractor by District as a basis for such Services. Contractor further agrees that all writings, materials, compositions, recordings, teleplays, and/or video productions prepared for, written for, or otherwise (hereinafter referred to as "Content") submitted by Contractor to the District and/or used in connection with the Services set forth in this Agreement, reflect the intellectual property of, and copyright interests held by District and shall not be copied or used in whole or in part by Contractor without District's express written permission. Contractor understands and agrees that all Content produced under this Agreement is the property of District and cannot be used without District's express written permission. Contractor acknowledges and agrees that District shall have all right, title and interest in said Content, including the right to secure and maintain the

copyright, trademark and/or patent of said Content in the name of the District.

9. Termination. District may, at any time, with or without reason, terminate this Agreement and compensate Contractor only for Services satisfactorily rendered to the date of termination. Written notice by District shall be sufficient to stop further performance of Services 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.

10. Hold Harmless. Contractor agrees to and does hereby indemnify, hold harmless and defend the District and its Governing Board, officers, employees and agents from every claim or demand made and every liability, loss, damage or expense, of any nature whatsoever, which may be incurred by reason of any act, neglect, default, or omission of the Contractor, or any person, firm or corporation employed by the Contractor, either directly or by independent contract, arising out of, or in any way connected with, the Services covered by this Agreement, whether said injury or damage occurs either on or off District's property.

11. Insurance. Contractor shall insure Contractor's activities in connection with the Services under this Agreement and agrees to carry a comprehensive general and automobile liability insurance policy with limits of One Million Dollars (\$1,000,000) per occurrence combined single limit for bodily injury and property damage in a form mutually acceptable to both parties to protect Contractor and District against liability or claims of liability which may arise out of this Agreement. No later than thirty (30) days from execution of this Agreement by the District and Contractor, and prior to commencing the Services under this Agreement, Contractor shall provide District with certificates of insurance evidencing all coverages and endorsements required hereunder. Contractor shall provide prior written notice to the District thirty (30) days in advance of any non-renewal, cancellation, or modification of the required insurance. The certificates of insurance shall name District, its Governing Board, officers, agents, and employees, as additional insureds with appropriate endorsements. In addition, the certificates of insurance shall include a provision stating "Such insurance as is afforded by this policy shall be primary, and any insurance carried by District shall be excess and noncontributory." Failure to maintain the above mentioned insurance coverages shall be cause for termination of this Agreement.

12. Assignment. The obligations of the Contractor pursuant to this Agreement shall not be assigned by the Contractor.

13. Compliance with Applicable Laws. The Services completed herein must meet the approval of the District and shall be subject to the District's general right of inspection to secure the satisfactory completion thereof. Contractor agrees to comply with all federal, state and local laws, rules, regulations and ordinances that are now or may in the future become applicable to Contractor, Contractor's business, the Services, equipment and personnel engaged in Services covered by this Agreement or accruing out of the performance of such Services.

14. Permits/Licenses. Contractor and all Contractor's employees or agents shall secure and maintain in force such permits and licenses as are required by law in connection with the furnishing of Services pursuant to this Agreement.

15. Employment with Public Agency. Contractor, if an employee of another public agency, agrees that Contractor will not receive salary or remuneration, other than vacation pay, as an employee of another public agency for the actual time in which Services are actually being performed pursuant to this Agreement.

16. Entire Agreement/Amendment. This Agreement and any exhibits attached hereto constitute the entire Agreement among the parties to it and supersedes any prior or contemporaneous understanding or Agreement with respect to the Services contemplated, and may be amended only by a written amendment executed by both parties to the Agreement. This Agreement incorporates by this reference, any exhibits, which are attached hereto and incorporated herein.

17. Nondiscrimination. Contractor agrees that it will not engage in unlawful discrimination in employment of persons because of race, ethnicity, religion, nationality, disability, gender, sex, marital status, age, or other characteristics protected by federal or state laws of such persons.

18. Non Waiver. The failure of District or Contractor to seek redress for violation of, or to insist upon, the strict performance of any term or condition of this Agreement, shall not be deemed a waiver by that party of such term or condition, or prevent a subsequent similar act from again constituting a violation of such term or condition.

19. Notice. All notices or demands to be given under this Agreement by either party to the other shall be in writing and given either by: (a) personal service or (b) by U.S. Mail, mailed either by registered or certified mail, return receipt requested, with postage prepaid. Service shall be considered given when received if personally served or if mailed on the third day after deposit in any U.S. Post Office. The address to which notices or demands may be given by either party may be changed by written notice given in accordance with the notice provisions of this section. At the date of this Agreement, the addresses of the parties are as follows:

District:

Ocean View School District of Orange County  
17200 Pinehurst Lane  
Huntington Beach, CA 92647

Contractor:

Dieli Murawka Howe, Inc.  
10393 San Diego Mission Rd. Ste. 209  
San Diego, CA 92108

20. Severability. If any term, condition or provision of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions will nevertheless continue in full force and effect, and shall not be affected, impaired or invalidated in any way.

21. Attorney Fees/Costs. Should litigation be necessary to enforce any terms or provisions of this Agreement, then each party shall bear its own litigation and collection expenses, witness fees, court costs, and attorneys' fees.

22. Authorized Signatures. The individual signing this Agreement warrants that he/she is authorized to do so. The Parties understand and agree that a breach of this warranty shall constitute a breach of the Agreement and shall entitle the non-breaching party to all appropriate legal and equitable remedies against the breaching party.

23. Governing Law. The terms and conditions of this Agreement shall be governed by the laws of the State of California with venue in Orange County, California. This Agreement is made in and shall be performed in Orange County, California.

This Agreement is entered into this 9th day of October, 2017.

OCEAN VIEW SCHOOL DISTRICT  
OF ORANGE COUNTY

Name of District

By:

Michael Conroy, Ed.D.

Typed Name

Deputy Superintendent

Title

DIELI MURAWKA HOWE, INC.

Contractor Name

By:

Richard V. Dieli, FCSI, MA, MBA

Typed Name

President

Title

26-1400529

Taxpayer Identification Number

*\* Risk Manager should determine all insurance requirements for the District, depending on the Services.*

*\* Criminal Record Check may be applicable.*

Contract Number:

Funding Source/Account Number:

Board Approved / Agenda Item #:

Department Lead:

Name

Signature

Date

Deputy/Asst. Supt:

Name

Signature

Date

September 11, 2017

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*Foodservice Design Fee Proposal*

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Jim Riner  
Director of Food & Nutrition Services  
Ocean View School District  
714-847-2551 ext. 1450



*Ocean View School Project: Proposal Request for Centralized Production Kitchen*

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*A New Centralized Production Kitchen*

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Dieli Murawka Howe (DMH) will be active participants in the process of bringing a healthy meal program to the Ocean View School District. Our process includes understanding the current and projected needs of the CNS requirements over the next years. DMH will provide a written narrative of the program for the Central Kitchen. The new kitchen will be designed within a DSA PC Approved relocatable modular buildings. DMH will provide the preliminary layout that will be sited on the existing site by the Architects. DMH proposes the following as conditions of agreement for planning, programming, design and specifications of the new Ocean View School District Central Kitchen.

The Central Kitchen shall include Warehouse Dry Storage, Warehouse Refrigeration Storage, Distribution and Staging Areas, Ware Washing, a Test Kitchen and Catering Area, Cook-Chill Area and associated support equipment, Primary Cooking, a Bakery Production Area, Dedicated Vegetable Prep and Assembly Area, Packaging Area and various support areas.

*The preliminary schematic design will incorporate a flow chart to define the work flow patterns within the space and to identify and eliminate possible cross contamination zones.*

DMH is prepared to meet all schedule parameters. On acceptance of this proposal, DMH will attend related user meetings. All plans will integrate with the Architectural documents. Minor updates to the plan are considered part of the scope of work. Major changes to the documents will be negotiated with the Architect and the School District.

10393 San Diego Mission Rd., Ste. 209  
San Diego, CA 92108  
Ph 619-285-1189  
rdieli@dmhfoodservicedesign.com

We will generate approximate utility loads and hood exhaust requirements two weeks after the floor plan is finalized. Our Construction Documents will include food service drawings and equipment data per our Scope of Services.

DMH will make submittal to the local environmental health department for required approval (plan check fee shall be paid by the School District).

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### *Scope of Services*

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|--|---|
| Planning & Programming                             | Building Work Plan  |
| ◦ Space Allocation, Floor Plan                     | ◦ Finish Schedule   |
| ◦ Equipment Selection and Schedule                 | ◦ Specifications 11400  |
| ◦ Electrical Location Plan                         | ◦ Plan Check submittal to local Environmental Health Department |
| ◦ Plumbing Location Plan                           | ◦ Administration/Clerical                                       |
| ◦ Curb, Platform and Depression Plan               | ◦ 11400 Estimated Budget (design-based)                         |
| ◦ Refrigeration Engineering                        | ◦ Construction Administration                                   |
| ◦ Kitchen Hood Engineering (Exhaust & Supply Data) | Job meetings  |
| ◦ Foodservice Equipment Elevations                 | Review of FSEC bids   |
| ◦ Sections and Details                             | Submittal review  |
| ◦ Seismic Details (no structural calcs included)   | Response to Requests for Information (RFI)                      |
|  | Review of related Change Order requests                         |
|  | Jobsite visits, Final punch list                                |

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### *Design Fee*

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Direct Design through to Construction Administration: \$75,000  
(Seventy-Five Thousand Dollars)...this is a 3.75% fixed fee based on the budget and preliminary design parameters.

#### Fee Structure

- 10% at completion of Programming
- 10% at completion of Schematic Design
- 30% at completion of Design Development
- 40% at completion of Construction Documents
- 10% Construction Administration (progress billing)



Our fee includes A&E Team and User Group meetings. Expenses incurred for the project (plotting and delivery) are also included.

- ***The initial food service equipment budget is estimated at 2.0 million dollars.***
- ***The initial estimated size of the space will be approximately 6,500 s.f.***
- ***The production value of the space will be predicated on an estimated meal production of 7,000 Equivalent Meal Units (Breakfast, Lunch, and Supper).***

Rates per Hour

Principal Consultant	\$185.00
Senior Designer	\$120.00
Cost Estimator	\$ 80.00
Revit Drafter	\$ 90.00
Cad Drafter	\$ 60.00
Specification Writer	\$ 60.00
Clerical	\$ 55.00

Reimbursables

1. Typical printing, plotting and delivery charges incurred for normal and customary coordination between Architect and DMH are not reimbursable, unless specifically allowed for pursuant to the District/Architect Agreement.
2. Allowable reimbursable expenses are additional and shall be billed at cost times a multiple of 1.1. This includes plotting and delivery charges of Agency permit sets, Bidding, CM/District Progress Sets, construction-related and specific District-requested sets.

Thank you for the opportunity to be of service,

Richard V Dieli, FCSI MA MBA  
Dieli Murawka Howe  
Food Service Design Consultants  
E: [rdieli@dmhfoodservicedesign.com](mailto:rdieli@dmhfoodservicedesign.com)  
W: [dmhfoodservicedesign.com](http://dmhfoodservicedesign.com)

*"Creative thinking may mean simply the realization that there's no particular virtue in doing things the way they always have been done."... Rudolf Flesch*