



ATTACHMENT A
PORTLAND PUBLIC SCHOOLS, SCHOOL DISTRICT NO 1J,
MULTNOMAH COUNTY, OREGON

STANDARD NUTRITION SERVICES FOOD CONTRACT

CONTRACT TRACKING No.

This Contract is between **PORTLAND PUBLIC SCHOOLS, SCHOOL DISTRICT NO. 1J, MULTNOMAH COUNTY, OREGON, (District)** and **(Contractor)**.

Purpose:

The parties agree as follows:

Effective Date and Termination Date. The effective date of this contract shall be _____ or the date on which each party has signed this Contract, whichever is later. Unless earlier terminated as provided below, the termination date shall be _____.

District Purchases Not Required and Subject to Change District is not required to make any purchases under this contract. District may add products to this contract at prices to be agreed upon between District and Contractor.

Contractor's Agreement to Sell Goods. Contractor agrees to sell to District on a requirements basis the goods described in Exhibit 1.

District's Agreement to Pay for Goods. District shall pay Contractor for the goods at the prices set forth in the attached Exhibit 1.

Contract Documents. The Contract Documents consist of the following documents which are listed in descending order of precedence: this Contract; exhibits to this Contract, including Exhibits 1 (Statement of Work, Compensation, Payment and Renewal Terms); Exhibit 2 (Insurance Requirements); Exhibit 3 (Certification Statement for Corporation or Independent Contractor); Exhibit 4 (Workers' Compensation Exemption Certificate)

A conflict in the contract documents shall be resolved in the priority listed above with this Contract taking precedence over all other documents. The contract documents are the entire contract between the parties and shall supercede any prior representation, written or oral.

STANDARD TERMS AND CONDITIONS

1. **Time is of the Essence.** Time is of the essence in the performance of this Contract.
2. **General Product Requirements.** All items delivered shall conform to the Specifications and shall be in first class condition. Acceptance by the District shall be subject to inspection and approval. In case of conflict between the Specifications and these Standard Terms and Conditions, the Specifications shall prevail. The apparent silence of the Standard Terms and Conditions and Specifications as to any detail or the apparent omission of a detailed description concerning any point shall be regarded as meaning that only best commercial practice is to prevail and that only items manufactured with material and workmanship of first quality are to be supplied. All items that are required by the Specifications to have any other nutritional statement, MSDS warnings, or special handling instructions shall indicate that certification on the item or in the accompanying documentation.
3. **Inspection and Acceptance.** Goods furnished under this Contract shall be subject to inspection and test by the District at times and places determined by the District. If the District finds goods furnished to be incomplete or not in compliance with the Contract, the District, at its sole discretion, may either reject the goods, require Contractor to correct any defects without charge, or negotiate with Contractor to sell the goods to the District at a reduced price, whichever the District deems equitable under the circumstances. If Contractor is unable or refuses to cure any defects within a time deemed reasonable by the District or as otherwise indicated herein, the District may reject the goods and cancel the Contract in whole or in part. Nothing in this paragraph shall in any way affect or limit the District's rights as buyer under the Uniform Commercial Code, including the rights and remedies relating to rejection under ORS 72.6020 and revocation of acceptance under ORS 72.6080.
4. **Quality Warranty.** Contractor warrants all goods delivered to be free from defects in labor, material and manufacture and to be in compliance with the specifications set out in this Contract. All implied and express warranty provisions of the UCC are hereby incorporated by reference. Further, Contractor represents and warrants to that Contractor has the power and authority to enter into and perform this Contract and that this Contract, when executed and delivered, shall be a valid and binding obligation of contractor enforceable in accordance with its terms. All items delivered shall carry either the standard manufacturer's warranty of quality.
5. **Subcontracts and Assignment.** Contractor shall not subcontract any of the obligations required by this Contract or assign or transfer any of its interest in this Contract, without the prior written consent of the District, which may be withheld without cause. In addition to any other provisions, Contractor shall require of any permitted subcontract under this Contract, that the Sub-Contractor be bound by all the same terms and conditions of this agreement. Such sub-contracts are solely between the Contractor and the Sub-Contractor and shall not have any binding effect on the District.
6. **Independent Contractor Status.** Contractor shall certify status in accordance with Exhibit 3.

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7. **No Third Party Beneficiaries.** The District and Contractor are the only parties to this Contract and are the only parties entitled to enforce its terms. Nothing in this Contract gives or provides any benefit or right, whether directly, indirectly, or otherwise, to third persons unless such third persons are individually identified by name in this Contract and expressly described as intended beneficiaries of this Contract.
8. **Successors in Interest.** The provisions of this Contract shall be binding upon and inure to the benefit of the parties and their successors and approved assigns, if any.
9. **Nonperformance.** In the event of nonperformance under this contract, the District, after seven (7) days written notice, shall have the right to obtain from other sources such products as may be required, and it is agreed that the difference in cost, if any, for said goods shall be borne by the Contractor. For purposes of this section, nonperformance shall be defined as failure to deliver goods as specified and scheduled.
10. **Escalation/De-Escalation.**
- A. The 'MARKUP' component is a fixed dollar amount and shall be protected from increase for the first twelve (120 months) of the contract. The fixed "MARKUP" for all items is the dollar amount calculated during bid evaluation even if a percentage was indicated.
 - B. Contractor shall submit in writing, requested increases in the "MARKUP" no less than sixty (60) days prior to the proposed date of change, which for the initial twelve month term, will be at the beginning of month eleven (11). Increases shall be limited to the same proportion that changes have occurred in the Consumer Price Index for the Portland Metro Area, or any other documentation approved by the District. The District reserves the right to reject any increase documented or otherwise, and to further competitively bid items under this agreement as is in the best interest of the District.
 - C. The District shall be given the immediate benefit of any "COST" decrease made to the Contractor from whatever source. Contractor shall promptly notify the District of the amount and effective date of such decrease. This decrease shall apply to orders placed on or after the effective date of the decrease. Invoices shall reflect prices in effect on the date the order was placed with the Contractor. Failure of the District to discover "COST" decreases shall not waive the District's right to a refund of overpayment. Discrepancies discovered by the District through audit of the Contractor's records shall be refunded to the District by Contractor within five (5) days of request. Such failures to disclose decreases shall subject contract to breach of contract and may affect future contracting opportunities.
 - D. If the "COST" changes during the duration any contract period, the District shall be notified in writing not less than ten (10) working days prior to the date of Delivery. Written documentation shall be provided to and approved by the District prior to the delivery or the existing contract price shall prevail.
11. **Early Termination.** This Contract may be terminated as follows unless otherwise specified herein:
- a. The District and Contractor, by mutual written agreement, may terminate this Contract at any time.
 - b. The District in its sole discretion may terminate this Contract for any reason on 30 days written notice to Contractor.
 - c. Either the District or Contractor may terminate this Contract in the event of a breach of the Contract by the other. Prior to such termination, the party seeking termination shall give to the other party written notice of the breach and intent to terminate. If the party committing the breach has not entirely cured the breach within fifteen (15) days of the date of the notice, then the party giving the notice may terminate the Contract at any time thereafter by giving a written notice of termination.
 - d. Notwithstanding paragraph 11(c), the District may terminate this Contract immediately by written notice to Contractor upon denial, suspension, revocation or non-renewal of any license, permit or certificate that Contractor must hold to provide services under this Contract.
12. **Payment of Invoices**
- a. Method of Payment. Unless otherwise provided in Exhibit 1, payment shall be approved monthly by the District, net thirty (30) days unless otherwise specified . herein.
 - b. Payment on Early Termination. Upon termination pursuant to paragraph 11, payment shall be made as follows:
 - (i) If terminated under 11(a) or 11(b) for the convenience of the District, the District shall pay Contractor for product ordered up to the date of the termination. The District shall not be liable for direct, indirect or consequential damages. Termination shall not result in a waiver of any other claim the District may have against Contractor.
 - (ii) If terminated under 11(c) by the Contractor due to a breach by the District, then the District shall pay the Contractor for products delivered up to the date of notification.
 - (iii) If terminated under 11(c) by the District due to a breach by the Contractor, then the District shall pay the Contractor for product delivered up to the date of notification.

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13. **Remedies.** In the event of breach of this Contract the parties shall have the following remedies:
- If terminated under 11(c) by the District due to a breach by the Contractor, the District may affect cover by utilizing other existing agreements or contract with another Contractor, or by a combination thereof.
 - In addition to the remedies in paragraphs 11 and 12 for a breach by the Contractor, the District also shall be entitled to any other equitable and legal remedies that are available.
 - If the District breaches this Contract, Contractor's remedy shall be limited to termination of the Contract and receipt of Contract payments to which Contractor is entitled.
14. **Hazardous Chemicals.** Contractor warrants that goods provided under this Contract comply with all federal Occupational Safety and Health Administration (OSHA) requirements and with all Oregon safety and health requirements including those of the Workers' Compensation Division. All items that include hazardous materials shall be labeled in accordance with law with the names of the hazardous ingredients, the hazards of the materials and the appropriate precautions. Contractor shall provide a Material Safety Data Sheet as defined by OSHA for any goods provided under this Contract, which may release, or otherwise result in exposure to, a hazardous substance under normal conditions of use. In addition, Contractor shall label, tag or mark such goods. Those materials for which toxicological or hazard data are unavailable shall carry a label stating: "Toxicological and other hazards unknown. Handle as extremely hazardous."
15. **Access to Records.** The Contractor agrees that the District and its authorized representatives shall have access to the books, documents, papers and records of the Contractor which are directly pertinent to the specific contract for the purpose of making audit, examination, excerpts and transcripts.
- Contractor shall maintain all fiscal records directly relating to this Contract in accordance with generally accepted accounting principles. In addition, Contractor shall maintain any other records pertinent to this Contract in such a manner as to clearly document Contractor's performance. Contractor acknowledges and agrees that the District's duly authorized representatives shall have access to such fiscal records and other books, documents, papers, plans and writings of Contractor that are pertinent to this Contract to perform examinations and audits and make excerpts and transcripts. Contractor shall retain and keep accessible all such fiscal records, books, documents, papers, plans, and writings for a minimum of three (3) years, or such longer period as may be required by applicable law, following final payment and termination of this Contract, or until the conclusion of any audit, controversy or litigation arising out of or related to this Contract, whichever date is later.
16. **Employment Standards.** The Contractor agrees that upon request by the District, it shall remove from all District premises any Contractor's employee who, in the sole opinion of the District, is guilty of improper conduct, bringing any unauthorized personnel (including their own children) into a facility, or is not qualified to perform the work assigned.
17. **Security.** Any disclosure or removal of any matter and/or property on the part of the Contractor or Contractor's employees shall be cause for immediate cancellation of the contract. Any liability, including, but not limited to, attorney fees, resulting from any action or suit brought against the District as a result of the Contractor's or Contractor's employees' willful or negligent release of information, documents or property contained in or on District property shall be borne by the Contractor. All information, documents and property contained within these facilities shall be considered privileged and confidential.
18. **Compliance with Applicable Law.** Contractor shall comply with all federal, state, and local laws applicable to public contracts and to the work done under this Contract, and all regulations and administrative rules established pursuant to those laws.
19. **Indemnity and Hold Harmless.** The Contractor shall defend, indemnify, and hold the District, its officers, agents and employees, harmless against all liability, loss, or expenses, including attorney's fees, and against all claims, actions or judgments based upon or arising out of damage or injury (including death) to persons or property caused by any act or omission of an act sustained in any way in connection with the performance of this contract or by conditions created thereby, or based upon violation of any statute, ordinance or regulation. This contractual indemnity provision does not abrogate common law or statutory liability and indemnification to the District, but is in addition to such common law or statutory provisions.
20. **Insurance.** Contractor(s) shall provide District with certificates of insurance as indicated on Exhibit 2.
21. **Workers' Compensation.** To the extent any of Contractor's employees are covered by the Oregon employment laws, the Contractor, its subcontractors, if any, and all employers working under this contract, are subject employers under the Oregon Workers' Compensation Law and shall comply with ORS 656.017, which requires them to provide workers' compensation coverage for all their subject workers. See Contractor Exemption Certification – Exhibit 4 if you believe you may be exempt from this requirement.
22. **Waiver.** Waiver of any default under this Contract by the District shall not be deemed to be a waiver of any subsequent default or a modification of the provisions of this Contract.
23. **Governing Law.** The provisions of this Contract shall be construed in accordance with the laws of the State of Oregon and, rules of the District, as they appear at the time of signing or any subsequent addenda. Any legal action involving any question arising under this Contract must be brought in Multnomah County Circuit Court. If the claim must be brought in a federal forum, then it shall be brought and conducted in the United States District Court for the State of Oregon.

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EXHIBIT 1

PORTLAND PUBLIC SCHOOLS, SCHOOL DISTRICT NO. 1J MULTNOMAH COUNTY, OREGON

STANDARD NUTRITION SERVICES FOOD CONTRACT

CONTRACT TRACKING NO.

STATEMENT OF WORK, COMPENSATION, PAYMENT and RENEWAL TERMS

1. **Contractor shall perform the following:** Insert a complete and detailed scope of work; be specific. Record the Contractor's and District's obligations. Make sure specific desired outcomes are clear and measurable.
2. **The maximum total payment under this Contract, including expenses, is \$**Insert the maximum payment that may be paid under this agreement, this amount should include any not to exceed expense that would be listed under Item # 5 below. .
3. **The District shall pay Contractor on the following basis:** Be specific and allow for at least 30 days for payment on correctly submitted invoices. indicate payment will be made upon district acceptance of work. AT A MINIMUM complete the Payment Address Section below.

Payments shall be made to the address below:

Enter The Contractor's Staff Name. (In The Course Of Normal Business Operations, The Payments Would Be Sent To Accounts Receivable. This Would Be A Staff Member In That Department.)

Enter The Name Of The Department, I .E., Accounts Receivable, Business Services, Etc.

Enter The Contractor's Business Name

Enter the Street or PO Box address

Enter City, State ZIP

4. **Contractor will invoice the District for goods as follows:** Describe the invoice method, and what information the invoice is required to include in order for the District to determine services or products were delivered in accordance with the contract. AT A MINIMUM complete Invoice Address Section below.

Invoices shall be submitted to the address below:

Enter Name Of District Staff Member Responsible For Payment Authorization.

Enter Department, Program, Section, Or School Name

Portland Public Schools

PO Box 3107

Portland, OR 97208-3107

5. **District will pay expenses on the following terms and conditions:** Record what items would be considered as expenses as a not to exceed amount that will be accepted. This should also be indicated under the maximum amount so it is clear what portion of the maximum payment is allocated to expenses.
6. **This contract may be renewed on the following basis:** Indicate how and when the contract will be renewed. If it is not renewable insert NOT RENEWABLE.

** The District shall have the right to withhold from payments due Contractor such sums as are necessary in the District's sole opinion to protect the District from any loss, damage, or claim which may result from Contractor's failure to perform in accordance with the terms of the Contract or failure to make proper payment to suppliers or subcontractors.

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EXHIBIT 2

PORTLAND PUBLIC SCHOOLS, SCHOOL DISTRICT NO 1J MULTNOMAH COUNTY, OREGON

STANDARD NUTRITION SERVICES FOOD CONTRACT CONTRACT TRACKING NO.

INSURANCE REQUIREMENTS

Contractor shall at all times maintain in force at Contractor's expense, each insurance noted below:

Workers Compensation insurance in compliance with ORS 656.017, which requires subject employers to provide workers' compensation coverage in accordance with ORS Chapter 656 for all subject workers. Contractor and all subcontractors of Contractor with one or more employees must have this insurance unless exempt under **ORS 656.027** (See Exhibit 4). **THIS COVERAGE IS REQUIRED.** Attach Certificate of Insurance. If Contractor does not have coverage and claims to be exempt, attach Exhibit 4 in lieu of Certificate.

Professional Liability / Errors & Omissions (E&O) insurance with a combined single limit of not less than:
 \$500,000, \$1,000,000, \$2,000,000 each claim, incident, or occurrence, with an annual aggregate limit of
 \$500,000, \$1,000,000, \$2,000,000. This is to cover damages caused by error, omission, or negligent acts related to professional services provided under this Contract. The policy must provide extended reporting period coverage for claims made within two years after this Contract is completed.
 Required by District Not required by District

Commercial General Liability insurance, on an occurrence basis, with a combined single limit of not less than:
 \$500,000, \$1,000,000, \$2,000,000 each occurrence for Bodily/Personal Injury and Property Damage, with an annual aggregate limit of \$500,000, \$1,000,000, \$2,000,000. This insurance must include contractual liability coverage.
 Required by District Not required by District

Commercial Automobile Liability insurance with a combined single limit, or the equivalent of not less than:
 \$500,000, \$1,000,000, \$2,000,000 each occurrence for Bodily Injury / Personal Injury, and Property Damage, including coverage for owned, hired or non-owned vehicles.
 Required by District Not required by District

Builders All-Risk insurance policy to cover the course of construction and all materials or equipment furnished or incorporated into the Work. The policy shall be equal to 100% of the contracted value of the work, and cover all property of an insurable nature, which is either in place or intended to be used as part of the permanent structure. This insurance shall include the interest of Owner in the Work and shall insure against the perils of fire and extended coverage and shall include "all risk" insurance for physical loss or damage, including without limitation and without duplication of coverage, for theft, vandalism, and malicious mischief. Losses up to the deductible amount shall be the responsibility of the Contractor.
This insurance shall be primary and not contributory to any Owner provided insurance. No Work shall be performed, nor shall Contractor's equipment or materials be stored on Owner's premises until a certificate evidencing such insurance has been delivered to and approved by Owner.
 Required by District Not required by District

Additional Requirements. Coverage must be provided by an insurance company admitted to do business in Oregon or rated A- or better by Best's Insurance Rating. Contractor shall pay all deductibles and retentions. A cross-liability clause or separation of insureds condition must be included in all commercial general liability policies required by this Contract. Contractor's coverage will be primary in the event of loss.

Certificate(s) of Insurance Required. Upon Request of the District, Contractor shall furnish a current Certificate(s) of Insurance to the District within forty eight (48) hours. The Certificate(s) shall provide that there shall be no cancellation, termination, material change, or reduction of limits of the insurance coverage without 30 days written notice from the Contractor's insurer to the District. The Certificate(s) shall also state the deductible or retention level. For commercial general liability the Certificate shall also provide that the District, its agents, officers, and employees are Additional Insureds with respect to Contractor's services to be provided under this Contract. If requested, complete copies of insurance policies shall be provided to the District.

Reviewed by: _____

Date: _____

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EXHIBIT 3

**PORTLAND PUBLIC SCHOOLS, SCHOOL DISTRICT NO. 1J
MULTNOMAH COUNTY, OREGON**

**STANDARD NUTRITION SERVICES FOOD CONTRACT
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**CERTIFICATION STATEMENT FOR CORPORATION
OR INDEPENDENT CONTRACTOR**

NOTE: Contractor Must Complete A or B below:

A. CONTRACTOR IS A CORPORATION, LIMITED LIABILITY COMPANY OR A PARTNERSHIP.

I certify under penalty of perjury that Contractor is a [check one]:

Corporation Limited Liability Company Partnership authorized to do business in the State of Oregon.

Signature

Title

Date

OR

B. CONTRACTOR IS A SOLE PROPRIETOR WORKING AS AN INDEPENDENT CONTRACTOR.

Contractor certifies under penalty of perjury that the following statements are true:

1. If Contractor is providing labor or services under this Contract for which registration is required under ORS Chapter 701, Contractor has registered as required by law, **and**
2. If Contractor performed labor or services as an independent Contractor last year, Contractor filed federal and state income tax returns last year in the name of the business (or filed a Schedule C in the name of the business as part of a personal income tax return), **and**
3. Contractor represents to the public that the labor or services Contractor provides are provided by an independently established business, **and**
4. All of the statements checked below are true.

NOTE: Check all that apply. You must check at least four (4) to establish that you are an Independent Contractor.

- A. The labor or services I perform is primarily carried out at a location that is separate from my residence or is primarily carried out in a specific portion of my residence that is set-aside as the location of the business.
- B. I purchase commercial advertising or I have business cards for my business, or I am a member of a trade association.
- C. My business telephone listing is separate from my personal residence telephone listing.
- D. I perform labor or services only under written contracts.
- E. Each year I perform labor or services for at least two different persons or entities.
- F. I assume financial responsibility for defective workmanship or for service not provided by purchasing performance bonds, errors and omission insurance or liability insurance, or providing warranties relating to the labor or services I provide.

Signature

Date

PORTLAND PUBLIC SCHOOLS, SCHOOL DISTRICT NO. 1J
MULTNOMAH COUNTY, OREGON

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WORKERS' COMPENSATION EXEMPTION CERTIFICATE

(To be used only when Contractor claims to be exempt from Workers' Compensation coverage requirements)

Contractor is exempt from the requirement to obtain workers' compensation insurance under ORS Chapter 656 for the following reason (check the appropriate box):

SOLE PROPRIETOR

- Contractor is a sole proprietor, and
- Contractor has no employees, and
- Contractor will not hire employees to perform this contract.

CORPORATION - FOR PROFIT

- Contractor's business is incorporated, and
- All employees of the corporation are officers and directors and have a substantial ownership interest* in the corporation, and
- All work will be performed by the officers and directors; Contractor will not hire other employees to perform this contract.

CORPORATION - NONPROFIT

- Contractor's business is incorporated as a nonprofit corporation, and
- Contractor has no employees; all work is performed by volunteers, and
- Contractor will not hire employees to perform this contract.

PARTNERSHIP

- Contractor is a partnership, and
- Contractor has no employees, and
- All work will be performed by the partners; Contractor will not hire employees to perform this contract, and
- Contractor is not engaged in work performed in direct connection with the construction, alteration, repair, improvement, moving or demolition of an improvement to real property or appurtenances thereto.**

LIMITED LIABILITY COMPANY

- Contractor is a limited liability company, and
- Contractor has no employees, and
- All work will be performed by the members; Contractor will not hire employees to perform this contract, and
- If Contractor has more than one member, Contractor is not engaged in work performed in direct connection with the construction, alteration, repair, improvement, moving or demolition of an improvement to real property or appurtenances thereto.**

*NOTE: Under OAR436-50-050 a shareholder has a "substantial ownership" interest if the shareholder owns 10% of the corporation, or if less than 10% is owned, the shareholder has ownership that is at least equal to or greater than the average percentage of ownership of all shareholders.

**NOTE: Under certain circumstances partnerships and limited liability companies can claim an exemption even when performing construction work. The requirements for this exemption are complicated.

Contractor Printed Name

Contractor Signature

Contractor Title

Date