

**FOOD SERVICES DISTRIBUTOR AGREEMENT BETWEEN
US FOODS, INC. AND POUDRE SCHOOL DISTRICT R-1**

This Food Services Distributor Agreement is entered into this ____ day of ____ 2020, by and between Poudre School District R-1 (the “District”) and US Foods, Inc. (the “Contractor”). The District and the Contractor are collectively referenced herein as the “parties.” In consideration of the mutual covenants and promises contained in this Agreement, the sufficiency of which is hereby acknowledged, the parties agree as follows:

1. **Term and Termination of Agreement.**

1.1. **Term.** This Agreement shall commence as of the date first written above and shall continue through and including June 30, 2021, unless earlier terminated as provided herein. The Agreement, at the option of the District, may be extended for up to four (4) additional one-year terms, with the commencement of a written mutually agreed upon amendment to the Contract for each one-year term.

1.2. Notwithstanding any other term or provision of this Agreement, the District’s obligations hereunder are expressly subject to its budgeting and appropriation of sufficient funds for each fiscal year (July 1 - June 30) an Agreement is in effect. In no event, shall the District’s obligations in an Agreement constitute a multiple-fiscal year direct or indirect debt or other financial obligation under Article X, Section 20(4)(b) of the Colorado Constitution.

1.3. **Termination for Cause.** Notwithstanding the provisions of section 1.2 above, if either party is in breach of an obligation or covenant under this Agreement the non-breaching party may give written notice to the breaching party describing the breach and demanding that it be cured. If the breach is not cured within seven (7) days after the breaching party’s receipt of said notice, the non-breaching party may immediately terminate the Agreement and avail itself of any and all remedies available at law or in equity.

1.4. **Termination Without Cause.** Notwithstanding the provisions of sections 1.2 and 1.3 above, the District or the Contractor may terminate this Agreement at any time in its sole discretion for any reason, with or without cause, by giving the other party thirty (30) days’ advance written notice of the termination.

2. **Scope of Work.**

2.1. **Services.** The Contractor’s responsibility under this Agreement is to provide furnish and deliver food and disposable food service products (“Products”) for the District. Except as provided below, the parties agree to the following, as specified in:

2.1.1. Request for Proposal (“RFP”) #20-750-011, which is part of this agreement and attached hereto as Exhibit A.

2.1.2. Contractor’s Response to RFP #20-750-011, which is part of this agreement and attached hereto as Exhibit B.

2.1.3. Contractor's Follow Up and Pricing to RFP #20-750-011, which is part of this agreement and attached hereto as Exhibit C.

All documents which are made a part of this Agreement (hereinafter the "Services") and incorporated herein by reference.

2.2. **Product Ordering.** Contractor shall provide an online ordering system ("Ordering System"), with availability of login credentials for District's Director of Child Nutrition Services and designees ("Child Nutrition Director").

2.2.1.1. Orders shall only be accepted from the Child Nutrition Director, no orders are permitted directly from schools.

2.2.1.2. As upgrades to the Distributor's direct on-line order entry system occur during the contract period, the upgraded system and any required hardware must be made available to the District at no additional charge.

2.2.1.3. The online order system must have secure password protected accounts with user-friendly search capabilities by category, product description, product number, brand or manufacturer number.

2.2.2. Ordering System shall only offer set list of District approved Products.

2.2.3. Contractor will deliver Products to the District warehouse located at 1502 S. Timberline, Fort Collins, CO 80524 ("District Warehouse") based on an established date and time, collectively referenced herein as "Delivery" or "Deliveries".

2.2.3.1. Deliveries shall be made at a minimum on a weekly basis, or more if requested by the Child Nutrition Director.

2.2.4. Child Nutrition Director reserves the right to request removal of Products from the Ordering System.

2.2.4.1. District Locations shall not be offered or receive delivery of Products offered in Contractor's catalog which are not approved by the Child Nutrition Director.

2.2.4.2. Child Nutrition Director and designees shall have access to view, order or test Products from Contractor's complete catalog of Products.

2.2.4.3. The Distributor shall provide samples to the District, free of charge, so the Child Nutrition Director or designees can ascertain the most acceptable / appropriate Products to meet the District's needs.

2.2.4.3.1. Sampling will be required during the life of the contract. The Distributor shall be available to assist in sampling when needed. The District will be the sole judge of acceptable Products.

2.2.4.4. Newly added products and sampled Products will be made available within twenty-four (24) hours from when it becomes available in the Contractor's inventory.

2.2.5. The Contractor shall set up and provide logins, ship to information, available Products in its Ordering System for the District.

2.2.6. Ordering System shall have functionality to allow Child Nutrition Director and other personnel identified by the Child Nutrition Director to submit and approve orders for processing.

2.2.6.1. Ordering System shall notify Child Nutrition Director of orders not approved within 24 hours.

2.2.7. Contractor shall provide contact information for a dedicated sales representative ("Sales Representative"), including office phone number, cell phone number, email, and a general customer service after-hours contact.

2.2.8. The District does not guarantee ordering of Products or minimum quantities, the Contractor shall additionally not impose minimum order quantities or dollar amounts on the District.

2.2.9. Child Nutrition Director and other designees shall have access to view the catalog of Products, view order history reports, and copies of invoices through the Ordering System.

2.2.10. Contractor must notify Child Nutrition Director in writing for all products that are discontinued and provide a recommendation in writing for a comparable product substitute.

2.2.11. Child Nutrition Director must be notified no less than thirty (30) days for discontinued Products and allowed to review and test Product substitutes for approval or denial of a Product substitute.

2.2.12. The Product substitute must be approved by the Child Nutrition Director before offering.

2.2.12.1. In the event the substitute is denied by the Child Nutrition Director, the District retains the right to request alternate Products.

2.2.13. The Child Nutrition Director will report all concerns to the Sales Representative within twenty-four (24) hours of identifying issue. Sales representative shall

provide a response within twenty-four (24) business hours, all issues shall be corrected within forty-eight (48) hours from initial report, including replacement of Products.

2.3. **Training.** Contractor shall provide on-site training to personnel identified by the Child Nutrition Director. Training will include use of the online system, placing orders, running reports and process for issues, at no cost to the District.

2.3.1. Contractor shall provide continuing training and new employee training as requested by the Child Nutrition Director, at no additional cost to the District.

2.3.2. Training guides, manuals and documentation shall be made available electronically to the District, at no additional cost.

2.4. The District must have direct access to product specialists and culinary experts, at no additional cost to the District, in areas such as recipe development, nutrition, merchandising, baking, beverages, culinary arts, produce, meat and seafood preparation, with the expectation that the specialist would provide expertise and training in these areas to improve the services provided by the District.

2.5. **Fill Rates.** District's aggregate order and delivery monthly fill rate shall not fall below 98.0%.

2.5.1. Fill rate will be calculated by taking the number of cases delivered, including approved substitutions and original items ordered, divided by the number of cases ordered per delivery location. The final number is represented as a percentage.

2.5.2. Product substitutions that have been approved by the designated District personnel will not negatively impact the required fill rate.

2.5.3. If the District's aggregate order and delivery monthly fill rate for the District drops below 98.0%, a notice of cure will be issued to the Contractor. Contractor will have thirty (30) calendar days from the date of issuance of the notice of cure to meet the 98.0% fill rate. Failure to will be considered in breach of contract and subject to cancellation under section 1.3.

2.5.4. The District reserves the right to utilize a secondary Distributor for food and non-food items if it is determined that it is in the best interest of the District to do so.

2.6. **Delivery of Product.** All deliveries of Products shall be Free On Board Destination to the District's central warehouse located at 1502 South Timberline Road, Fort Collins, Colorado 80524.

2.6.1. Contractor's employees delivering products shall wear contractor's uniform and clearly visible identification badge, to clearly identify them as a direct employee ("Delivery Driver").

2.6.2. Deliveries shall be made by a common carrier or Contractor's fleet vehicle.

2.6.3. Deliveries must take place between 6:00am and 9:00am MST, deliveries made before or after this established window will not be accepted. Violations of identified delivery times may lead to cancellation of that delivery.

2.6.4. Deliveries shall be transported in enclosed, clean and as necessary temperature-controlled Delivery Trucks, free of foul odors. All Products shall be maintained at their proper temperature throughout their staging, loading, transport, and delivery. Non-compliance will result in refusal of Product and replacement at Distributor's expense.

2.6.5. Products shall be maintained at the following temperatures based on the requirements below:

2.6.5.1. Frozen Foods 0 degrees Fahrenheit or frozen hard

2.6.5.2. Refrigerated Foods 35-40 degrees Fahrenheit

2.6.5.3. Grocery and Dry Goods 50-80 degrees Fahrenheit

2.6.6. For deliveries delayed due to poor weather conditions or unexpected traffic, the Delivery Drivers must contact the District's Child Nutrition Director or designee for approval or denial for delayed deliveries.

2.6.7. Child Nutrition Director reserves the right to request delivery to be rescheduled on an alternate date and time without penalty or fees.

2.6.8. Deliveries shall be scheduled Monday through Fridays during normal session days and summer school, as identified in K-12 Student Calendar, attached hereto as Exhibit D.

2.6.8.1. The District will not incur any costs for the redelivery of the orders, including but not limited to those denied by the Child Nutrition Director.

2.6.8.2. For missed deliveries or out of stock items, Contractor shall be required to provide an additional delivery to District Locations, at no additional expense to the District.

2.6.8.3. Correction for any deliveries that are missed, rejected, or rescheduled shall not exceed the following business day. Deliveries which exceed twenty-four (24) business hours from original delivery, may be cancelled at the discretion of the District and purchase substitute goods or service elsewhere and charge vendor with any loss incurred.

2.6.9. Each order shall be separated, packaged or palletized by the Contractor, as to not have any loose items.

2.6.10. Delivery charges and risk of loss shall be borne by the Contractor.

2.6.11. Delivery Driver is required to check in with the District's Child Nutrition Warehouse Supervisor or designee ("Nutrition Warehouse Supervisor"), upon arrival.

2.6.12. Delivery Driver will be fully responsible for off-loading all items and delivering the order to an interior ground floor or inside.

2.6.13. The Child Nutrition Director shall identify a fixed delivery location for off-loading and delivery of all items. Changes to location shall only be approved by Child Nutrition Director.

2.6.14. Delivery cartons shall be labeled with the following:

- 2.6.14.1. Purchase Order Number,
- 2.6.14.2. District Location,
- 2.6.14.3. District Location Address,
- 2.6.14.4. Contractor Name,
- 2.6.14.5. Statement of Contents, and
- 2.6.14.6. Attn: Child Nutrition Services.

2.6.15. All deliveries must be accompanied by delivery tickets or packing slips, and shall contain the following information for each item delivered:

- 2.6.15.1. Purchase Order Number,
- 2.6.15.2. Contractor Name,
- 2.6.15.3. Name and description of Delivered Item,
- 2.6.15.4. Item Number,
- 2.6.15.5. Quantity Ordered, and
- 2.6.15.6. Quantity Delivered.

2.6.16. After the off-loading of the delivery the Nutrition Warehouse Supervisor shall verify the quality of products received and accuracy of the order between the order placed and the Contractor's order sheet.

2.6.16.1. The Delivery Driver shall be present during the delivery verification process.

2.6.16.2. Any discrepancies, shortages, overages, damage, or additional issues must be documented by the Delivery Driver on the delivery slip.

2.6.16.3. Delivery slips must be verified, signed, and dated by Nutrition Warehouse Supervisor. The District reserves the right to refuse any

unsigned delivery slip or delivery slip which has been signed by unauthorized personnel.

2.6.16.4. Any discrepancies or damages relating to an order that are found later shall be communicated to the Sales Representative.

2.6.17. Contractor shall be responsible for picking up and hauling off pallets used to make deliveries to District sites, not being used by the District. Pallets are required to be removed by the vendor on the day of delivery but not to exceed the next scheduled delivery date.

2.6.17.1. The District will not be held responsible for lost or broken pallets.

2.6.18. Delivery Drivers are required to provide their own pallet jacks, dollies and means for bringing orders inside buildings. District equipment may not be used.

2.6.19. Contractor shall be responsible for all site cleanup, to include trash removal. District dumpsters are not to be used.

2.6.20. Contractor shall be solely responsible for the safety of its work, materials, equipment, personal safety equipment, portable lighting, tools, etc. on the site. Contractor shall, if deemed necessary or expedient, employ, at its own expense, the services of a competent watchman. Contractor is responsible for the materials, equipment, tools, etc. left on district sites for the duration of the project. The District disclaims all responsibility for the safety of the work, materials, equipment tools, etc. or for any damage which may be done to same due to theft or any other cause until such time as the District formally accepts the completed work.

2.7. **Returns and Missed Deliveries.** The Distributor shall notify the District at time of order as to any ordered item being out of stock or shorted. Balance of incomplete deliveries may be canceled by the District. Shorted items that cannot be supplied by the Distributor by the date required may be purchased elsewhere by the District. The Distributor shall be liable for the price difference between the contract price and the price of such emergency purchases.

2.7.1. To liquidate the effect of such charges, the Distributor agrees that such charges may be deducted from invoices payable to the Distributor. Any outstanding amount due to the District will be promptly tendered by check, within no less than thirty (30) days, from the Distributor to the District.

2.7.2. Distributor shall accept returns under the following, but not limited to, conditions:

2.7.2.1. Product shipped or ordered in error.

2.7.2.2. Product damaged in shipment.

2.7.2.3. Product with compromised packaging.

- 2.7.2.4. Product not in original packaging from manufacturer.
- 2.7.2.5. Product with concealed damage.
- 2.7.2.6. Product under recall.
- 2.7.2.7. Product with short expiration date.
- 2.7.2.8. Product that does not meet quality requirements.
- 2.7.2.9. Product in unsanitary condition.
- 2.7.2.10. Product that exceeds the minimum and/or maximum required temperature.

2.7.3. Restocking fees due to errors shall not be charged for any Products which are regularly stocked by the Contractor.

2.7.4. The District shall monitor any chronic occurrences of mis-orders, errors and returns, excessive errors may result in a breach as indicated under section 2.12.

2.8. **Product Information and Requirements.** Contractor shall ensure the District has access to all current nutrition labels and ingredient lists for all Products supplied by Contractor.

2.8.1. The nutrition label shall include but not limited to serving size, servings per container, calories, total fat, saturated fat, trans fat, monounsaturated fat, polyunsaturated fat, cholesterol, sodium, potassium, total carbohydrate, sugars, dietary fiber (soluble & insoluble), protein, Vitamin A, Vitamin C, iron, and calcium.

2.8.2. Complete ingredient lists should include but not limited to any food allergens that may be in products; including but not limited to, milk, egg, peanuts, tree nuts, fish, shellfish, soy, wheat or gluten.

2.8.2.1. Where available, Contractor shall provide nutrition and ingredients list on-demand through their Ordering System.

2.8.2.2. Contractor will ensure nutritional, ingredient and allergen information are correct and up to date.

2.8.3. Contractor shall provide Material Safety Data Sheets (“MSDS”) for all Products containing chemicals, included with orders and on-demand through their Ordering System.

2.8.3.1. MSDS information for chemicals shall include at a minimum; the physical, health, and environmental health hazards; protective measures; and safety precautions for handling, storing, and transporting the chemicals.

2.8.4. The Contractor's Hazard Analysis Critical Control Point Food Safety Program must be maintained and made available upon request by the District.

2.9. **Point of Contact.**

2.9.1. Sales Representative shall maintain a response time not to exceed two (2) hours.

2.9.2. Excluding the weekends, Sales Representative shall provide a secondary direct contact when out of the office for more than twenty-four (24) hours.

2.9.3. District reserves the right to request a change in Sales Representative.

2.9.4. Sales Representative shall provide Services including but not limited to:

2.9.4.1. Communicate any shortages and recommended substitutions.

2.9.4.2. Coordinate replacement of products which are not available for shipment, including but not limited to locating from other sources.

2.9.4.3. Assist with product research for new or replacement items.

2.9.4.4. Hold monthly meetings between August and May each year this Agreement is in effect.

2.9.4.5. Hold additional in person meetings at the District to address areas of concern, upon request.

2.9.4.6. Resolve and respond to issues including but not limited to: products, services, performance concerns, deliveries, invoicing and billing.

2.9.4.7. Coordinate credits or returns of any deficient and missed shipments.

2.9.4.8. Communicate detailed food recall information immediately on any products delivered or requested by the District.

2.9.5. Sales Representative must supply the Child Nutrition Director with an electronic version of the monthly fill rate report and a quarterly delivery report.

2.9.5.1. Delivery report shall be provided quarterly and include the percentage of all deliveries, percentage of on-time deliveries per site, and the aggregate number of deliveries.

2.9.6. Sales Representative, Child Nutrition Director and other designees shall hold quarterly meetings to review and resolve spend, fill and delivery rates, issues, provide training, discuss products, and any upcoming events.

2.10. **Acceptance of Services.** Services are considered complete, only after the District has inspected and formally accepted Services in writing. Payments will not be made until Services are formally accepted.

2.10.1. The District reserves the right to cancel Services at any time upon written notice, including Services which may have been requested and have not been completed.

2.11. **Purchasing Price.** The Contractor pricing shall be based a “Cost plus Fixed Fee” method.

2.11.1. “Cost” is defined from the most recent invoice cost to the Contractor’s distribution center of any Product. Cost as defined shall include any sales, use, excise or other taxes and governmental duties or assessments thereon, whenever assessed, plus applicable freight charges to deliver such Products to the Contractor’s distribution center. Storage and handling charges associated with forward purchases, if any, should also be included.

2.11.2. “Fixed Fee” is defined as the difference between cost, as defined above, and the selling price to the District. The Fixed Fee shall remain firm for the duration of the agreement regardless of Contractor invoice price.

2.11.3. As part of the “Cost plus Fixed Fee” method, the Contractor shall ensure that all discounts, rebates, credits, and allowances it receives are passed to the District. This includes, without limitation, discounts based on total order value; merchandising service fees; discounts for orders delivered directly by manufacturer to the District; allowances attributable to the District volume; performance-based allowances; fees for merchandising service, and performance-based discounts.

2.11.4. The Contractor shall maintain records and source documents in support of all costs, discounts, rebates, and credits.

2.11.5. The Contractor shall ensure any rebates, promotions, or other practices that result in free merchandise, reduced prices, marketing assistance or cost benefits, that are offered by manufacturers, brokers, distributors, or others, must be made available to the District exclusive of discounts for prompt payment of invoices.

2.11.5.1. The Contractor shall pass on to the District all promotional allowances, discounts or rebates. The Contractor shall keep the District informed of all rebates that could be redeemed by the District as an end-user account and provide tracking information on Product usage to facilitate the District’s efforts in capturing available rebates and promotional goods offered.

2.11.6. The Contractor shall provide credits or refunds to the District within 60 days of notification in writing from the District.

2.11.7. The Cost for Products and Services based on the Cost plus Fixed Fee shall not exceed pricing in the attached Exhibits B and C, unless authorized in writing by the District's Child Nutrition Director, due and payable by as outlined in Section 2.13.

2.11.8. Cost for Products and Services shall remain fixed through the term of this Agreement. Contractor's request to increase cost must be submitted in writing and received no later than sixty (60) days prior to the termination date of this Agreement, as outlined in section 1.1. The District reserves the right to approve or reject any requests to increase cost to Products and Services.

2.11.9. Deviations from pricing in section 2.11, which create an increase of cost, must be submitted and approved in writing by the Child Nutrition Director before Contractor is permitted to bill for increased pricing.

2.12. **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. Contractor shall be responsible for demonstrating that the frequency and adequacy of its efforts to obtain the best prices for goods covered by this Agreement are reasonable to accomplish this objective.

2.12.1. The Contractor shall furnish computer verification of costs for line items to be price verified quarterly. These reports will be due to the District by the 15th of the month following the calendar quarter through Contractor's invoices online. 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.

2.12.2. If an error rate in excess of 10 percent is found, a complete product list audit may be performed. The Contractor shall be able to provide cost data from purchases between divisions or departments within their own organizations and from cooperatives to which they belong.

2.12.3. The District expects full restitution of any mistakes found to be in its favor during an audit, and that full actions are taken to correct any procedures that allowed the mistake to happen.

2.13. **Invoices.** Invoices for Services provided shall be submitted through email to the District's Child Nutrition Director within thirty (30) days of deliveries of Services. Invoices for such Services shall include (a) date on which Services were provided, (b) the District location for which the Service were provided, (c) details of products delivered as identified in section 2.5.15 per date and purchase order number. All invoices must be submitted within 45 days of fiscal year end June 30 and may not include items received by the District outside of the fiscal year July 1 – June 30.

2.13.1. Payment for Services not approved by District in writing, shall not be considered valid and the District will not be responsible for covering associated costs.

2.14. **Tax Exemption.** The District is exempt from federal and state taxes under Colorado Tax Exempt Number 98-03335.

2.15. **Inspection.** Payment for Services furnished under the Contract shall not constitute acceptance thereof. The District shall have the right to inspect Services provided, the product of such Services, and to reject any or all of which are in the District's judgment defective or nonconforming. In addition to the District's other rights, Services rejected, and Services supplied in excess of quantities specified in the Contract may be returned to Contractor at Contractor's expense. The District may charge Contractor all expenses of examining, repairing and correcting such Services. In the event the District receives Services where defects or nonconformity is not apparent upon examination, the District may require replacement and/or payment of damages upon discovery of the defects or nonconformity. Nothing contained herein shall relieve, in any way, Contractor from the obligation of testing, inspection, and quality control.

2.16. **Individuals Providing Services for Contractor Under this Agreement.** In the event the District has reasonable grounds to believe that any individual assigned to perform work under this Agreement has a criminal record, is a registered sex offender, has exhibited violent behavior or is under the influence of alcohol or other illegal substance, including marijuana, while performing the Services or based upon other information the District deems reliable, the District may exclude such individual from any District property or impose reasonable conditions upon such individual's presence at any District location. In the judgement of the District, if the Services cannot be performed as a result of such action, the Agreement may be terminated in accordance with section 1.3 of this Agreement.

2.17. **Press Contacts/News Releases.** The Contractor shall not initiate any press, media, or social media, contact nor respond to press, media or social media requests regarding this Contract and/or any related matters concerning the District without the prior written approval of the District.

2.18. **Nondiscrimination.** In providing the Services and conducting its operations under this Agreement, the Contractor and its employees shall comply with all applicable federal, state and local laws prohibiting discrimination, including harassment, on the basis of race, creed, color, national origin, age, sex, sexual orientation, religion, ancestry and disability.

2.19. **Independent Contractor.**

2.19.1. The Contractor shall provide the Services under this Agreement as an independent contractor of the District. As such, the Contractor shall have the right to determine how and by whom the Services will be provided and the right to provide the Services free from the direction and control of the District, subject to and consistent with the terms and conditions of this Agreement.

2.19.2. The Contractor shall be exclusively responsible for: (a) all compensation, employment tax withholdings and payments, and all fringe benefits for its employees in full compliance with all applicable federal, state and local laws; (b) all insurance coverage and

benefits for its employees in full compliance with all applicable federal, state and local laws, including but not limited to pension or retirement benefits, workers' compensation, unemployment compensation, and Social Security benefits; and (c) all payments to its contractors and subcontractors for goods and/or services directly or indirectly related to this Agreement.

2.19.3. Nothing in this Agreement shall be construed as creating a single enterprise, partnership, joint venture or employer-employee relationship between the Contractor and the District. The Contractor is not a partner, agent or representative of the District and shall not represent itself to be a partner, agent or representative of the District. The District is not a partner, agent or representative of the Contractor and shall not represent itself to be a partner, agent or representative of the Contractor.

2.19.4. The Contractor shall not attempt or purport to extend the faith and credit of the District to any third party, person or entity. The Contractor acknowledges and agrees that it has no authority to enter into any contract with a third party that would bind or in any way obligate the District.

2.20. **Certification Regarding Illegal Aliens.**

2.20.1. The Contractor certifies, represents, warrants and agrees that it will not knowingly employ or contract with an illegal alien to provide services under this Agreement, and will not enter into a contract with a subcontractor that fails to certify to the Contractor that the subcontractor will not knowingly employ or contract with an illegal alien to provide services under this Agreement. The Contractor also certifies, represents, warrants and agrees that it will confirm the employment eligibility of all its employees who are newly hired for employment to provide services under this Agreement through the Contractor's participation in either: (a) the E-Verify Program created under federal law and jointly administered by the Department of Homeland Security and the Social Security Administration; or (b) the Colorado Department of Labor and Employment Program ("Department Program") established pursuant to C.R.S. § 8-17.5-102(5)(c).

2.20.2. The Contractor shall not use either the E-Verify Program or the Department Program procedures to undertake preemployment screening of job applicants while this Agreement is being performed. If the Contractor obtains actual knowledge that a subcontractor providing services under this Agreement knowingly employs or contracts with an illegal alien, the Contractor shall notify the subcontractor and the District within three (3) days that the Contractor has such actual knowledge, and terminate the subcontract within three (3) days of providing the notice if the subcontractor has not stopped employing or contracting with the illegal alien. The Contractor shall comply with any reasonable request made by the Department of Labor and Employment in the course of an investigation undertaken pursuant to the authority of C.R.S. § 8-17.5-102(5). If the Contractor participates in the Department Program, it shall: (a) notify the District and the Department of Labor and Employment of such participation as required by law; and (b) within twenty (20) days after hiring an employee to provide services under this Agreement, provide to the District a written notarized copy of an affirmation that it has examined the legal work status of such employee, retained file copies of

the documents required by 8 U.S.C. § 1324a, and not altered or falsified the identification documents for such employee.

2.21. **Insurance.** The Contractor shall procure and maintain the required insurance specified below for the duration of this Agreement, which insurance shall be written for not less than the amounts specified or greater if required by law. Specified coverage and amounts may be provided by a combination of a primary policy plus an umbrella or following form excess policy. If not otherwise required by law, lower amounts may be acceptable upon review and written approval by the District's Director of Records and Risk Management. All insurance shall be with a carrier licensed in the state of Colorado and shall have a minimum A.M. Best rating of A- VII. The Contractor shall furnish the District's Director of Records and Risk Management with certificates of the required insurance prior to the District's approval and signing of this Agreement, and with renewal certificates prior to the expiration of any required insurance that expires during the term of this Agreement. Any insurance and/or self-insurance carried by the District is excess of the coverage extended to the District by the Contractor. The Contractor shall provide at least thirty (30) days' advance written notice to the District prior to cancellation or change of coverage. The insurance requirements specified in this section 2.21 shall not reduce the indemnification liability that the Contractor has assumed in section 4.6 below.

Commercial General Liability

- | | | |
|----|--|-------------|
| a. | Each Occurrence Bodily Injury & Property Damage | \$2,000,000 |
| b. | Personal/Advertising Injury | \$2,000,000 |
| c. | General Aggregate | \$4,000,000 |
| d. | Products/Completed Operations Aggregate | \$2,000,000 |
| e. | Product Recall Expense | \$500,000 |
| f. | Coverage must be written on an "occurrence" basis. | |
| g. | Poudre School District and its elected officials and employees shall be named as additional insureds; copy of policy endorsement must be attached to the Certificate of Insurance. | |

Workers' Compensation

- | | | |
|----|--|--|
| a. | State of Colorado | Statutory |
| b. | Employer's Liability | \$500,000 Each Accident
\$500,000 Disease – Policy Limit
\$500,000 Disease – Each Employee |
| c. | Waiver of subrogation in favor of Poudre School District R-1; copy of policy endorsement must be attached to the Certificate of Insurance. | |

Commercial Automobile Liability Providing Coverage for Owned, Non-Owned, and Leased or Hired Vehicles

- a. Bodily Injury & Property
Damage Combined Single Limit \$2,000,000

2.22. The Contractor shall be responsible for damage caused to building, equipment, fixtures in vicinity of chemical storage and other such objects. If the damaged object is property of the District, the Contractor's liability shall be limited to the repair or replacement of the damaged object as soon as practical. In the event repairs are not made in a timely manner, and after seven (7) days written notice, the District shall have the right to repair or replace the damaged object and the Contractor shall reimburse the District the full cost of the repair or replacement.

3. **Notices and Communications.** All notices and communications required or permitted under this Agreement shall be in writing and shall be: (a) sent via certified mail, return receipt requested and postage prepaid, to the address of the other party set forth below; or (b) sent via e-mail to the other party via the e-mail address set forth below.

Poudre School District R-1
Attn: Tracy Stibitz
2407 LaPorte Avenue
Fort Collins, CO 80521
E-mail: tstibitz@psdschools.org

US Foods, Inc.
Attn: Lewis Huguen
9399 West Higgins Road, Suite 500
Rosemont, IL 60018-6600
Email: lewis.hughen@usfoods.com

Notices to the District's Child Nutrition Director shall be made in accordance with the following contact information:

Poudre School District R-1
Attn: Craig Schneider
1502 Timberline Road
Fort Collins, CO 80524
Email: cschneid@psdschools.org

Notices to the District's Child Nutrition Director shall be made in accordance with the following contact information:

Poudre School District R-1
Attn: Craig Schneider
2445 LaPorte Avenue
Fort Collins, CO 80521
Email: cschneid@psdschools.org

4. **Miscellaneous.**

4.1. **No Assignment.** The Contractor shall not assign this Agreement or any of its rights, interests or obligations under this Agreement without the prior written consent of the District, which consent may be withheld for any reason or no reason as determined by the District in its sole discretion.

4.2. **No Waiver.** The parties agree that no assent or waiver, express or implied, to any breach of any one or more of the covenants of this Agreement shall be construed as or deemed to be an assent to or a waiver of any subsequent breach.

4.3. **Conflict of Terms.** In the event of any conflict of terms found between this Agreement or any other terms and conditions, end user license agreements or privacy policies, the terms of this Agreement shall prevail.

4.4. **Amendment or Modification.** No amendment or modification of this Agreement shall be valid unless set forth in writing and executed by the District, with agreement by both parties in the same manner and with the same formality as was done for this Agreement.

4.5. **Governing Law and Venue.** This Agreement shall be governed by and construed in accordance with the laws of the State of Colorado. Venue of any and all actions at law or in equity concerning or arising out of this Agreement shall be solely in the District Court in and for Larimer County, Colorado.

4.6. **Indemnification.** The Contractor shall indemnify and hold harmless the District and the District's Board members, employees, representatives and agents from and against any and all liability arising from any suit, action, grievance, charge or proceeding brought in connection with or related to: (a) the Contractor's operations; (b) the Contractor's provision of the Services; (c) the Contractor's actual or alleged infringement of any third party's patent or copyright; and/or (d) the conduct of any of the Contractor's employees, volunteers, agents or representatives. The indemnification and hold harmless obligation hereunder shall include all attorney fees, costs and expenses incurred by the District and/or the District's Board members, employees, representatives and/or agents in defense of said suits, actions, grievances, charges and/or proceedings. Nothing in this section 4.6 or otherwise in this Agreement shall be construed in any way or applied in any manner as a compromise or waiver of the District's rights and protections under the Colorado Constitution or the Colorado Governmental Immunity Act.

4.7. **No Third-Party Beneficiary.** Enforcement of the terms and conditions of this Agreement, and all rights of action relating to such enforcement, shall be strictly reserved to the District and the Contractor. Nothing contained in this Agreement shall give or allow any claim or right of action whatsoever by any third person other than the District or the Contractor. It is the express intent of the parties that any person receiving services or benefits pursuant to this Agreement shall be deemed an incidental beneficiary only.

4.8. **Attorney Fees and Costs.** In the event it becomes necessary for either party to institute litigation or mutually agreed-upon arbitration proceedings to enforce any provision of this Agreement, the substantially prevailing party in such litigation or arbitration shall receive, as part of any judgment or award entered, its reasonable attorney fees and costs, including expert witness fees.

4.9. **Binding Effect.** This Agreement shall be binding upon and inure to the benefit of the parties and their respective heirs, legal representatives, successors and permitted assigns.

4.10. **Headings.** The headings used in this Agreement are for convenience only and shall have no effect upon the construction or interpretation of this Agreement.

4.11. **Entire Agreement.** This Agreement constitutes the entire agreement of the parties regarding the subject matter addressed herein and supersedes all prior agreements, whether oral or written, pertaining to said subject matter.

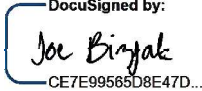
4.12. **Signatures.** This Agreement may be executed and delivered via portable document format (pdf), and the pdf signature of any party shall be considered valid, binding, effective and an original for all purposes.

4.13. **Warranty of Authority.** The individuals signing below represent and warrant that they have the authority to execute this Agreement on behalf of their respective organizations and bind their respective organizations to the terms of this Agreement.

IN WITNESS WHEREOF, the District and the Contractor have signed this Agreement with the intent that it be effective as of the date first set forth above.

US FOODS, INC.

POUDRE SCHOOL DISTRICT R-1

By: 
Name: Joe Bizjak
Title: VP National Sales
5/29/2020

By: _____
R. David Montoya
Executive Director of Finance

By: 
Craig Schneider
Director of Child Nutrition Services

SUPPLEMENT 1 - FEDERAL FUNDING PROVISIONS

The provisions of this Supplement 1 - Federal Funding Provisions are incorporated into and made a part of the attached agreement (the "Agreement" for purposes of this Supplement). The District has received federal funding for all or part of the Agreement purchase. The grant or other funding agreement between the District and the federal government requires that certain federal provisions be made a part of the Agreement. The District may change any of these provisions at any time in the District's discretion or at the request of an involved federal agency as approved by the Office of Federal Procurement Policy, or as otherwise mandated by federal law.

The party that is identified in the Agreement as entering into the Agreement with the District (the "Contractor" for purposes of this Supplement) certifies that, to the best of the Contractor's knowledge and belief, the Contractor, its principals, and its subcontractors are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department or agency (see, System for Award Management (SAM) at <https://www.sam.gov>). The Contractor SHALL COMPLY with the provisions of law listed below, all of which are hereby incorporated into the Agreement and are applicable as specified:

1. **Equal Employment Opportunity.** - *Applicable to contracts meeting the definition of "federally assisted construction contract" in 41 CFR Part 60-1.3.* Equal opportunity clause provided under 41 CFR 60-1.4(b), in accordance with Executive Order 11246 "Equal Employment Opportunity" (30 FR 12319, 12935, 3 CFR Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and implementing regulations at 41 CFR part 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor." Required by 200 CFR §326, Appendix II to Part 200 (C).
2. **Davis-Bacon Act.** - *When required by federal program legislation, applicable to construction contracts of more than \$2,000.* Davis-Bacon Act (40 U.S.C. 276a to a-7) and as supplemented by Department of Labor regulations (29 CFR Part 5--Labor Standards Provisions Applicable to Contracts Governing Federally Financed and Assisted Construction). In accordance with the statute, contractors are required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors are required to pay wages not less than once a week. The District will place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract is conditioned upon the acceptance of the wage determination. The District will report all suspected or reported violations to the Federal awarding agency. Required by 200 CFR §326, Appendix II to Part 200 (D).
3. **Copeland "Anti- Kickback" Act.** - *When required by federal program legislation, applicable to construction contracts of more than \$2,000* (18 U.S.C. 874 and 40 U.S.C. 276c)- " Anti- Kickback" Act (18 U.S.C. 874), as supplemented by Department of Labor regulations (29 CFR Part 3--Contractors and subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States).The Act

provides that the Contractor shall be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he is otherwise entitled. The District will report all suspected or reported violations to the Federal awarding agency. Required by 200 CFR §326, Appendix II to Part 200 (D)

4. **Contract Work Hours and Safety Standards Act.** (40 U.S.C. 327-333) - *Applicable to contracts in excess of \$100,000 that involve the employment of mechanics or laborers. Not applicable to the purchase of supplies and materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.* Sections 102 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-333), as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 U.S.C. 3702 of the Act, each contractor shall be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. Required by 200 CFR §326, Appendix II to Part 200 (E).
5. **Rights to Inventions Made Under a Contract or Agreement.** - *Applicable where the federal award funding the contract meets the definition of 'funding agreement' under 37 CFR §401.2(a).* Where the Contractor wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that "funding agreement," the Contractor and its subcontractors must comply with the requirements of 37 CFR Part 40 I, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by the awarding agency. Required by 200 CFR §326, Appendix II to Part 200 (F).
6. **Clean Air Act** (42 U.S.C. 7401 et seq.) and the **Federal Water Pollution Control Act** (33 U.S.C. 1251 et seq.), as amended. -*Applicable to contracts and subcontracts in amounts in excess of \$150,000.* "Contracts and subgrants of amounts in must contain a provision that requires the non-Federal award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401 - 7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251 - 1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA)." 200 CFR §326, Appendix II to Part 200 (G). Required by 200 CFR §326, Appendix II to Part 200 (G).
7. **Debarment and Suspension.** (E.O. 12549 and E.O. 12689). - "A contract award (see 2 CFR 180.220) must not be made to parties listed on the governmentwide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), 'Debarment and Suspension.' SAM Exclusions contains the names of

parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549." 200 CFR §326, Appendix II to Part 200 (H). Contractors with awards that exceed the small purchase threshold must provide the required certification regarding its exclusion status and that of its principal employees. Required by 200 CFR §326, Appendix II to Part 200 (H).

8. **Byrd Anti-Lobbying Amendment.** (31 U.S.C. 1352). *Applicable to contractors who apply or bid/or an award of \$100,000 or more.* Contractors shall file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant, or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. The disclosures are forwarded from tier to tier up to the recipient. Required by 200 CFR §326, Appendix II to Part 200 (I).
9. **Procurement of Recovered Materials.** *Applicable where the purchase price of an item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000.* §6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines. Required by 200 CFR §326, Appendix II to Part 200 (H).
10. **Access to Records.** - *Applies to all negotiated contracts except those for less than the small purchase threshold.* The District and the federal government, or any of their duly authorized representatives, must have access to any books, documents, papers and records of the Contractor which are directly pertinent to a specific program for the purpose of making audits, examinations, excerpts and transcriptions. The contractor shall make access available. The Contractor shall place the same provision (requiring access to records) in any subcontract which would have to have this provision were it awarded by the District. Required by L_3015.183).
11. **Retention of Records.** - The Contractor shall retain all required records for three years after final payment under the Contract and all subcontracts (if any) are made and all other pending matters are closed. If any audit, litigation, or other action involving the records is started before the end of the three-year period, the Contractor shall retain the records until all issues arising out of the action are resolved or until the end of the three-year period, whichever is later. Required by L_3015.138).

12. Age Discrimination Act of 1975, as amended 42 U.S.C. 6101, et seq.

13. **Age Discrimination in Employment Act of 1967 29 U.S.C., 621-634.**
14. **Americans with Disabilities Act of 1990 (ADA) 42 U.S.C. 12101, et seq.**
15. **Equal Pay Act of 1963 29 U.S.C. 206(d).**
16. **Federal Water Pollution Control Act, as amended 33 U.S.C. 1251, et seq.**
17. **Immigration Reform and Control Act of 1986 8 U.S.C. 1324b.**
18. **Section 504 of the Rehabilitation Act of 1973 as amended 29 U.S.C. 794.**
19. **Title VI of the Civil Rights Act of 1964, as amended 42 U.S.C. 2000d, et seq.**
20. **Title VII of the Civil Rights Act of 1964 42 U.S.C. 2000e.**
21. **Title IX of the Education Amendments of 1972 as amended 20 U.S.C. 1681.**
22. **State Laws Civil Rights Division Section 24-34-301, CRS, et seq.**
23. **Health Insurance Portability & Accountability Act of 1996 ("HIPAA").** - *Applicable to medical information.* Pursuant to federal law and regulations governing the privacy of certain health information, the Contractor, to the extent applicable, shall comply with the Health Insurance Portability and Accountability Act of 1996, 42 U.S.C. 1320d-I 320d-8 and its implementing regulations promulgated by the U.S. Department of Health and Human Services, 45 C.F.R. Parts 160 and 164 (the "Privacy Rule") and other applicable laws, as amended.
24. **Confidentiality of Records.** - The Contractor shall protect the confidentiality of all records and other materials containing personally identifying information that are maintained in accordance with the Agreement and comply with HIPAA and its rules and regulations. Except as provided by law, no information in possession of the contractor about any individual constituent shall be disclosed in a form including identifying information without the prior written consent of the person in interest, a minor's parent, or guardian. The Contractor shall have written policies governing access to, duplications and dissemination of, all such information. The Contractor shall advise its employees, agents and subcontractors, if any, that they are subject to these confidentiality requirements. The Contractor shall provide its employees agents and subcontractors, if any, with a copy of or written explanation of these confidentiality requirements before access to confidential data is permitted. No confidentiality requirements contained in the Contract shall negate or supersede the provisions of the federal Health Insurance Portability and Accountability Act of 1996.
25. **Conflicts of Interest.** - The Contractor shall maintain a written code of standards governing the performance of its employees engaged in the award and administration of the Contract. No employee, officer, or agent of the Contractor shall participate in the selection, or in the award or administration of a contract or subcontract supported by federal funds if a conflict of interest, real or apparent, would be involved. Such a conflict would arise when:

- The employee, officer or agent;
- Any member of the employee's immediate family;
- The employee's partner; or
- An organization which employs, or is about to employ, any of the above, has a financial or other interest in the firm selected for award. The Contractor's, subcontractor's, or sub-grantee's officers, employees, or agents will neither solicit nor accept gratuities, favors, or anything of monetary value from the Contractor, potential contractors, or parties to sub-agreements.

26. **Energy Efficiency.** - The Energy Policy and Conservation Act (Pub. L 94-163, 89 Stat. 871). The contractor shall comply with all mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act.
27. **Termination.** - The District, by written notice, may terminate the Contract at any time, in whole or in part, when it is in the District's or federal government's interest. If this Contract is terminated for any reason, the District shall be liable only for payment under this Contract for services rendered or goods provided before the effective date of termination.
28. **Materials.** - If applicable, all materials peculiar to the Work of Contractor under this Contract is the property of the District, for its exclusive use and re-use without further compensation and without restriction. Upon completion of the Work, or at such other time as the District requires, Contractor shall deliver to the District a complete, reproducible set of all such materials. For copyright ownership under the Federal Copyright Act, Contractor conveys to District and waives all rights, title and interest to all such materials in written, electronic or other form, prepared under this Agreement. District shall have worldwide reprint and reproduction rights in all forms and in all media, free of any claims by the contractor.
29. **Cost-Reimbursements in Food Contracts.** *Applicable to food service cost-reimbursable contracts subject to contracts.* The provisions concerning cost reimbursements set forth in 7 CFR §210.21 (f) are hereby incorporated herein. Required by 7 CFR §210.21.






2020-21 US Foods Agreement Final-Vendor Signed- Contract Only

Final Audit Report

2020-05-29

Created:	2020-05-29
By:	tstibitz@psdschools.org tstibitz@psdschools.org (tstibitz@psdschools.org)
Status:	Signed
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"2020-21 US Foods Agreement Final-Vendor Signed- Contract Only" History

-  Document created by tstibitz@psdschools.org tstibitz@psdschools.org (tstibitz@psdschools.org)
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