

AGREEMENT

Revised 3/3/15

THIS AGREEMENT, made and entered into this 19th day of November, 2019, by and between Independent School District No. 709, a public corporation, hereinafter called ISD 709, and, **Upper Lakes Foods, 801 Industry Avenue, Cloquet, MN 55720** an independent contractor, hereinafter called Contractor.

THE PURPOSE OF THE AGREEMENT is to set out the terms and conditions whereby Contractor will provide programs or services for ISD 709 at the times and locations set forth in this Agreement.

The terms and conditions of this Agreement are as follows:

1. This Agreement shall be deemed to be effective as of November 19, 2019, and shall remain in effect until June 30, 2021, unless terminated earlier as provided for herein, or unless and until all obligations set forth in this Agreement have been satisfactorily fulfilled, whichever occurs first. As approved by the School Board November 19, 2019.
2. **Value.** The contract has an estimated purchase price value of \$35,000 per week when school is in full session. All products shall meet local and state regulations and be nutritious, tasteful and visually appealing. ISD 709 will determine what products are selected from the available list provided by Upper Lakes Foods. Substitutions will only be allowed with prior approval by ISD 709.
3. **Pricing.** Prices will be per case with a net cost plus a distributor markup of \$1.09 per case.
4. **Delivery.** Deliveries will be made directly to approximately (15) fifteen locations.
5. **Insurance.** Upper Lakes Foods shall maintain General Liability Insurance, Worker Compensation and Automobile Liability Insurance per the attached "Supplemental Conditions and Insurance Requirements for Independent Contractors." ISD 709 shall be named as additional insured.
6. **Reimbursement.** Contractors are required by Minnesota Statutes, Section 270.66, subd. 3, to provide their Taxpayer Identification Number (TIN) used in the enforcement of Federal and State tax laws. The TIN will be available to Federal and State tax authorities and State personnel involved in the payment of State obligations. This Agreement will not be approved unless the TIN is provided.
7. **Requests for Reimbursement.** The terms of payment under this Agreement are as follows:
 - a. Payment shall be made by ISD 709 within 30 days of submission of a proper invoice by the Contractor;
 - b. Any other terms of payment in the performance of services are incorporated by reference in this Agreement.

8. **Propriety of Expenses.** The fact that ISD 709 has reimbursed Contractor for any expense claimed by Contractor shall not preclude ISD 709 from questioning the propriety of any such item. ISD 709 reserves the right to offset any overpayment or disallowance of any item or items at any time under this Agreement by reducing future payments to Contractor. This clause shall not be construed to bar any other legal remedies ISD 709 may have to recover funds expended by Contractor for disallowed costs, or to seek other damages.
9. **Ownership of Materials.** ISD 709 reserves the rights to reproduce the documents that are the subject of the Contract, in any form, in any fashion, or appropriate the contents of the documents, or any portion thereof, to its own use for any and all programs, forms and other materials that Contractor has provided, prepared, or utilized in performance of the terms of this Agreement.
10. **Independent Contractor.** Both ISD 709 and Contractor agree that the Contractor will act as an independent contractor in the performance of its duties under this Agreement and is not an employee of ISD 709. Nothing contained in this Agreement shall be construed as in any manner creating a relationship of joint venture between the parties, which shall remain independent contractors with respect to all actions performed pursuant to this Agreement.

Accordingly, Contractor shall be responsible for payment of all taxes, including Federal, State, and local taxes, arising out of Contractor's activities in accordance with this Agreement, including by way of illustration, but not limited to, Federal and State income tax, Social Security tax, Unemployment Insurance taxes, workers compensations, and any other taxes or business license fees as required.

11. **Indemnity and defense of ISD 709.** Contractor shall indemnify, hold harmless and defend ISD709, its employees, agents, successors and assigns, and their respective shareholders, directors, officers, employees and agents against and in respect to any and all claims, suits, actions, proceedings, investigations, judgments, deficiencies, damages, settlements, liabilities, general losses, costs and reasonable attorneys' fees, court costs and litigation expenses (collectively "Liabilities") which may arise out of, relate to or result from any act or omission of the Contractor.

In the event that Contractor breaches its obligation to defend, indemnify and hold ISD 709 harmless, then in addition to its other damages ISD 709 shall be entitled to recover its attorney's fees and costs and disbursements incurred in enforcing this Agreement.

12. **Notices.** All notices to be given by Contractor to ISD 709 shall be deemed to have been given by depositing the same in writing in the United States Mail care of Tony Kelekovich, ISD 709, Duluth Public Schools, 215 North 1st Avenue East, Duluth, MN 55802. All notices to be given by ISD 709 to Contractor shall be deemed to have been given by depositing the same in writing in the United States Mail to: Upper Lakes Foods, 801 Industry Avenue, Cloquet, MN 55720.
13. **Assignment.** Contractor shall not in any way assign or transfer any of its rights, interests or obligations under this Agreement in any way whatsoever without the prior written approval of ISD 709.

14. **Modification or Amendment.** No amendment, change or modification of this Agreement shall be valid unless in writing signed by the parties' hereto.
15. **Governing Laws.** This Agreement, together with all its paragraphs, terms and provisions is made in the State of Minnesota and shall be construed and interpreted in accordance with the laws of the State of Minnesota without regard to conflict of laws considerations.
16. **Compliance with Laws.** The Contractor shall comply with all governing laws, rules and regulations, whether federal, state, local or those of ISD 709. Those governing laws include but are not limited to Minnesota Statute 16C.05 (5) (formerly 1998 Minnesota Laws Ch. 386, Art. 1 Section 6) which Statute presently provides that the books, records, documents and accounting procedures and practices of the vendor or other party, that are relevant to the Contractor transaction, are subject to examination by the contracting agency and either the legislative auditor or the state auditor, as appropriate, for a minimum of six years. The other provisions of the Statute also apply.

The Contractor recognizes that, to the extent that competitive bidding requirements apply to this Contract that those requirements apply to the award and performance of this Contract.

The Regulations of ISD 709 are incorporated into this Contract by reference and must be complied with whether or not specifically identified in this Contract.

17. **Entire Agreement.** This Agreement contains the entire understanding of the parties hereto with respect to the subject matter hereof and shall not be changed or otherwise altered except by written agreement of the parties.
18. **Cancellation.** The contract may be terminated by either party upon sixty (60) days written notice. In the event of termination, the vendor shall be entitled to payment for satisfactorily performed services until the date of termination.
19. **Data Practices.** Contractor further understands and agrees that it shall be bound by the Minnesota Government Data Practices Act (Minnesota Statutes 13.03-13.04) with respect to "data on individuals"; as defined in 13.02, subd. 5 of that Statute) which it collects, receives, stores, uses, creates or disseminates pursuant to this Agreement.
20. **Representatives of ISD 709.** The Contractor shall perform work pursuant to this Agreement pursuant to the request and authority of the following persons:

<u>ISD 709 Employee</u>	<u>Position</u>
Cathy Erickson	CFO/ Executive Director of Business Services

21. **Protection of ISD 709.** To the extent that work by the Contractor or others on behalf of ISD 709 is to be planned, conducted, supervised or reviewed by the Contractor, the Contractor shall advise ISD 709 if such work:
- is not being performed pursuant to the plans and specifications, according to the best practice or in accordance with industry standards;
 - should be rejected or modified;

- c. should be performed in a different manner and whether other work should be performed;
- d. requires ISD 709 to be advised of any other facts or opinions regarding that work.

In all respects, the Contractor shall represent the interests of ISD 709 and act to protect those interests and endeavor to guard ISD 709 against defects, deficiencies and omissions in the performance of the work.

22. **Negotiation, Mediation and Arbitration.** Any disputes between the parties shall first be negotiated. If the parties are not successful in negotiation, they then shall subject the dispute to mediation. If mediation is not successful, then any disputes between ISD 709 and the Consultant shall be resolved through binding arbitration. The arbitration shall be conducted in the State of Minnesota, and Minnesota law shall apply. Unless otherwise agreed by the parties, the arbitration shall be conducted pursuant to the rules of the American Arbitration Association.

At the option of ISD 709, the arbitration shall include in one consolidated arbitration proceeding, all claims and disputes regarding the Contractor and any architects, contractors, subcontractors, material men and other consultants as may be involved in the dispute. Contractor shall include this paragraph in all its subcontracts dealing with the work of ISD 709.

Following the issuance of a demand for arbitration, any party to the arbitration shall be entitled to use all discovery methods permitted in the Minnesota Rules of Civil Procedures for ISD 709 courts. Once selected, the arbitrator shall hear any discovery disputes regarding discovery unless otherwise agreed by the parties.

AS EVIDENCE OF THEIR ASSENT TO THE TERMS AND CONDITIONS OF THIS AGREEMENT, set forth above, the parties hereto have caused this Agreement to be executed by their duly authorized officers as of the day and year first above written.

INDEPENDENT SCHOOL DISTRICT NO. 709

CONTRACTOR

Signature

Rosalie Loeffler-Kemp
Chair, Board of Education

Signature

Name – Please Print

Title – Please Print

Signature

Alanna Oswald
Clerk of the Board

Taxpayer Identification Number

or Designee _____