

Consulting Agreement

This Agreement made this 21st day of July, 2014, by and between the Waskom INDEPENDENT SCHOOL DISTRICT in the city of Waskom, Texas, hereinafter referred to as School Food Authority (SFA) and WALKER QUALITY SERVICES, a Texas company, hereinafter referred to as (WQS), who agrees as follows:

1. SCOPE AND PURPOSE

- 1.1. This Agreement sets forth the terms and conditions upon which the SFA retains WQS to consult for the district's "Food Service" program (i.e., food and beverage facilities including the preparation, service and sale of food, beverages, goods, merchandise, and other items), which are maintained as an integral part of SFA's educational activities solely for the use of students, faculty, staff, employees, invited guests, and others designated by the SFA.
- 1.2. The SFA retains WQS as its exclusive agent to consult for the SFA's Food Services as described in this Agreement.
- 1.3. WQS shall provide one (1) off-site Food Service Consultant to make recommendations to the SFA in the operations of SFA's Food Service program. All Food Service employees, including one (1) on-site Food Service Director, shall be employees of the SFA and shall be compensated directly by the SFA. SFA shall purchase food and supplies and shall process and pay the related invoices directly.
- 1.4. The SFA will supervise and control the daily operation of the food service with respect to all matters (including working conditions for the food service employees and the safety, sanitation, and maintenance of the food service facilities) in accordance with recommendations made by WQS's Food Service Consultant and as agreed to with the SFA. The SFA may make reasonable regulations with regard to all such matters.
- 1.5. The SFA shall retain control of the quality, extent, and general nature of the food service program and the prices to be charged.
- 1.6. The SFA shall have the right to use WQS marketing materials, signature programs, safety programs, and related materials during the term of this Agreement. SFA's use of such materials shall not create, right, title, interest or copyright in such materials, and SFA shall not retain such materials beyond the termination of the Agreement.
- 1.7. All income accruing to the SFA from the food service program shall remain in the program.
- 1.8. The SFA shall be legally responsible for the conduct of the food service program, and shall supervise the food service operations in such manner as will ensure compliance with the rules and regulations of the Texas Department of Agriculture (TDA) and the United States Department of Agriculture (USDA) regarding the school food service program.
- 1.9. WQS shall comply with the rules and regulations of the Board of Education and the USDA and any additions or amendments thereto.
- 1.10. WQS shall provide training and staff development programs and events shall be offered to the SFA's staff. All expenses shall be a direct cost of the operation including, travel related expenses. Such expenses shall be pre-approved by the SFA before invoiced by WQS.

2. FREE AND REDUCED MEAL POLICY

- 2.1. The written policy of the SFA requiring feeding of needy children free or at reduced price shall apply to the food service operation.
- 2.2. The SFA shall be responsible for the implementation of this policy.
- 2.3. The SFA shall make appropriate and adequate financial arrangements for funds to defray the necessary costs of the service of free or reduced price meals to needy children.
- 2.4. The SFA shall be responsible for the approval, establishment, and maintenance of the free and reduced price applications, including direct certification and verification activities.
- 2.5. Meals shall be served and proper accurate pupil participation records shall be maintained by the SFA.

3. MENUS

- 3.1. The SFA Food Service Director shall provide the menus using a licensed version of "Nutri-Kids Menu System ("System") in conformance with the TDA, and USDA's requirements. The System is proprietary to the SFA and shall remain proprietary. In no way does WQS's use of the System in providing services to the SFA convey any rights to operate outside of this system.
- 3.2. It is the responsibility of the SFA to assure that meals prepared, served and claimed for reimbursement comply with Federal and State requirements. WQS will assist in writing menus and creating new options.

4. EMPLOYEES

- 4.1. WQS shall comply with all wages and hours of employment requirements of federal and state law.
- 4.2. All employees of WQS shall be paid in accordance with the Fair Labor Standard Act, as amended, and any other applicable federal and state statutes.
- 4.3. WQS shall comply with the implementing regulations of the USDA issued hereunder and any additions of amendments thereto.
WQS shall comply with the laws, ordinances, rules and regulations of all applicable federal, state, county and city governments, bureaus and departments concerning the sanitation, safety and health of the food service operations, including but not limited to Titles VI and VII for the Civil Rights Act of 1964 and the implementing regulations of the USDA issued hereunder and any additions or amendments thereto.
- 4.4. WQS shall provide Worker's Compensation and unemployment insurance for its full-time employees.
- 4.5. WQS shall instruct its employees to abide by the policies, rules and regulations with respect to use of SFA premises as established by the SFA from time to time and which are furnished in writing to WQS.

5. LICENSES, FEES AND TAXES

- 5.1. WQS shall be responsible for paying all applicable taxes and fees, including but not limited to excise tax, state and local income taxes, payroll, and withholding taxes, unemployment taxes, and workers compensation payments for its employees and hold the SFA harmless for all claims arising under such taxes and fees.

- 5.2. The SFA shall obtain and post all licenses, permits and food handler's cards as required by federal, state, or local law.
- 5.3. The SFA shall maintain applicable health certification.
- 5.4. **INCOME AND REIMBURSEMENT FROM TEXAS DEPARTMENT OF AGRICULTURE.** The SFA shall receive all income from the program(s) and deposit it in the school food services fund accounts.
- 5.5. Authority to sign claims for reimbursement from the Texas Department of Agriculture remain with the SFA.
6. **ACCOUNTING REPORTS AND REIMBURSEMENT TO CONSULTANT**
 - 6.1. The SFA shall pay WQS' Administrative/Service Fee of Two Thousand Six Hundred Dollars (\$2600.00) to be billed monthly. This is for a twelve month contract. This price includes flights, mileage, hotel, meals, parking for normal travel.
 - 6.2. In the event these costs exceed our normal expected expenses, we will get approval from the district.
 - 6.3. The Business Manager or authorized representative designated by the SFA shall supervise and arrange for the audit of all administrative and financially related operations.
 - 6.4. The SFA shall make payment to WQS within twenty (20) days after receipt of monthly invoices for the direct costs of Food Service operation. SFA shall pay interest on amounts past due at the less of one and one-half percent (1.5%) per month or the highest interest rate allowed by applicable state law.
 - 6.5. Books and records of WQS pertaining to the school feeding operations shall be kept on file for five (5) years after the end of the federal fiscal year to which they pertain, or for such other period which the Secretary of Agriculture or appropriate state officials may from time to time determine; provided however, that if audit findings have not been resolved, the records shall be retained beyond the five (5) year period as long as required for the resolution of the issues raised by the audit.
7. **PERFORMANCE SECURITY, INSURANCE, HOLD HARMLESS**
 - 7.1. Indemnity
 - 7.1.1. WQS shall indemnify and hold harmless the SFA or any employee, director, or agent of the SFA, from and against all claims, damages, losses, and expenses (including attorney fees incurred to defend litigation), decrees or judgments whatsoever arising from any and all injuries, including death or damages or destruction of property, resulting to any third person or pensions, corporation, partnerships or associates caused by any act, omission, failure or neglect of WQS and its agents, servants, or employees, or other persons under its supervision or direction in performance of its obligations under the terms of this Agreement. ("Other persons" as used in the previous sentence includes the SFA employees under the supervision of WQS.) WQS shall not be required to indemnify or hold harmless the SFA from any liability or damages arising from the negligent acts of the SFA.
 - 7.1.2. The SFA shall indemnify and hold harmless WQS or any employee, director or agent of WQS, from and against all claims, damages, losses and expenses (including attorney fees incurred to defend litigation), decrees or judgments whatsoever arising from any and all injuries, including death or damages or

destruction of property, resulting to any third person or persons, corporation, partnerships or associations caused by any act, omission, failure or neglect of the SFA, its agents, servants or employees, or other persons under its supervision or direction to the extent that such liability results from the SFA's acts or omissions under the terms of this Agreement. The SFA shall not be required to indemnify or hold harmless WQS from any liability or damages arising from the negligent acts of WQS.

- 7.1.3. The foregoing provisions concerning contribution and indemnification shall not apply to WQS or the SFA's liability to their employees under applicable Worker's Compensation laws. Nor shall the foregoing be deemed a waiver of any defenses to which WQS or the SFA may be entitled under applicable Worker's Compensation laws. Nor shall the foregoing be deemed to be a relinquishment or waiver of any kind of the SFA's applicable limitations of liability under federal or Texas laws.
- 7.1.4. The SFA shall keep its buildings, including the premises, and all property contained therein insured against loss or damage by fire, explosion and similar casualties.
- 7.1.5. Each party hereto waives its rights, and the rights of its subsidiaries and affiliates, to recover from the other party hereto and its subsidiaries and affiliates for loss or damage to such party's building, equipment, improvements and other property of every kind and description resulting from fire, explosion or other cause normally covered in standard form fire insurance policies with extended coverage endorsements.

8. **TERM AND TERMINATION**

- 8.1. The term of this Agreement shall commence on July 21st 2014-July 20th, 2015, ("Agreement Period") and shall be subject to renewal on an annual basis, upon the mutual written agreement of the parties, unless terminated earlier as provided below.
- 8.2. In the event either party breaches a provision of the Agreement, the non-defaulting party may terminate the Agreement for cause by giving ten (10) days written notice in the case of non-payment and sixty (60) days written notice in the case of any other breach. If the default is remedied prior to the proposed termination date, the non-defaulting party has the option of revoking said termination.
- 8.3. WQS and the SFA may each terminate this Agreement without cause by providing sixty (60) days' written notice to the other party of its intent not to renew the Agreement. If contract is not terminated, it will automatically rollover for another year with same contract in place.
- 8.4. The rights of termination referred to in this Agreement are not intended to be exclusive and are in addition to any other rights available to either party at law or in equity.
- 8.5. Catastrophe.
 - 8.5.1. With the exception of payment obligations for prior performance under this Agreement, neither WQS nor the SFA shall be liable for the failure to perform their respective obligations under this Agreement when such failure is caused by fire, explosion, water, acts of God, civil disorder or disturbance, strikes, vandalism, war, riot, sabotage, governmental rules or regulations, or like

causes beyond the reasonable control of such party, nor for real or personal property destroyed or damaged due to such causes.

9. GENERAL

- 9.1. This Agreement shall be construed under the laws of the State of Texas. Any action or proceeding arising out of this Agreement shall be brought in the appropriate courts of the State of Texas.
- 9.2. WQS will, during the course of fulfilling its obligations under the Agreement, conform to federal procurement standards and use and document competitive procurement procedures for obtaining all goods and services under the terms of the Agreement.
- 9.3. No provision of this Agreement shall be assigned or subcontracted without prior written consent of the SFA, except that WQS may, without prior approval and without being released from any of its responsibilities hereunder, assign the Agreement to any affiliate or wholly-owned subsidiary of WQS.
- 9.4. This Agreement constitutes the entire Agreement between the SFA and WQS and may not be changed, terminated or extended orally or by course of conduct, unless such change is mutually agreed upon in the form of a written amendment to this Agreement.
- 9.5. No waiver of any default shall be construed to be or constitute waiver of any subsequent default.
- 9.6. Payments on any claim shall not preclude the SFA from making claim for adjustment on any item found not to have been in accordance with the provisions of this Agreement and bid specifications.
- 9.7. Any notice or communication required or permitted to be given under this Agreement shall be in writing and shall be either served personally or sent by United States registered or certified mail, postage prepaid with return receipt requested, addressed to the other party as follows:

To SFA: Waskom Independent School District
Attention: Mr. Jimmy Cox, Superintendent
P.O Box 748
Waskom, TX 75692
(903) 687-3361 Main

To WQS: Walker Quality Services
Attention: Mr. Alfred Walker, President
P. O. Box 1568
Richmond, TX 77406-1568
(832) 892-4404 Main
(713) 490-3197 Fax

And/or such other persons or places as either of the parties may hereafter designate in writing. All such notices shall be effective when received. Sent notices shall be considered received forty-eight (48) hours after the same are deposited in the United States mail.

- 9.8. A waiver of any failure under this Agreement shall neither be construed as nor constitute a waiver of any subsequent failure. This Agreement supersedes all prior negotiations, representations or agreements, if any. The article and paragraph headings are used solely for convenience and shall not be deemed to limit the subject of the articles and paragraphs or be considered in their interpretation. The appendixes referred to herein are made a part of this Agreement by the respective references to them. This Agreement may be executed in several counterparts, each of which shall be deemed an original.
- 9.9. If any provision is unenforceable or invalid for any reason, the remainder of this Agreement shall continue in effect.
- 9.10. Should any litigation be commenced between WQS and the SFA concerning any provision of this Agreement, the prevailing party shall be entitled to a reasonable sum from the non-prevailing party for its attorney fees and costs incurred in such litigation.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date and year first written above.

Waskom INDEPENDENT SCHOOL DISTRICT

By: Jimmy E. Cox
Name (printed): Jimmy E. Cox
Title: Waskom ISD Superintendent
Date: 7-22-14

WALKER QUALITY SERVICES

By: _____
Alfred Walker
President
Date: _____