

Consulting Agreement

This Agreement made this 4th day of March 2024 by and between the Robstown Independent School District in the city of Robstown, Texas, hereinafter referred to as School Food Authority (“SFA”) or “District” and WALKER QUALITY SERVICES, a Texas company, hereinafter referred to as (“WQS” or “Consultant”), and the jointly referred to as the “Parties” agrees as follows:

1. SCOPE AND PURPOSE

- 1.1. The District desires that the Consultant provide advice and assistance to the District under the terms and conditions of this Agreement.
- 1.2. The SFA wishes to engage WQS as an Independent Contractor for the purpose of providing professional services for the District’s “Food Service” program (the “Services”).
- 1.3. WQS agrees to perform the consultant services, which are more specifically defined in Exhibit A (the “Services”) in a professional, timely, and workmanlike manner with personnel who are skilled, competent, and experienced in the tasks assigned. The District may amend Exhibit A from time to time. Consultant will render the Services at such times and places as mutually agreed to by Consultant and the District.

2. RESPONSIBILITIES OF THE PARTIES

- 2.1. The District agrees to do each of the following:
 - a. Maintain one (1) on-site Food Service Director or equivalent food services management employee and to directly compensate that employee.
 - b. Purchase all food and supplies as part of its food services program and maintain payment responsibility for related invoices.
 - c. Supervise and control the daily operation of the food services program with respect to all matters (including working conditions for the food service employees and the safety, sanitation, and maintenance of the food service facilities). The SFA will retain its sole authority and control to make policies with regard to all such matters.
 - d. 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, as applicable, including but not limited to the Free and Reduced Meal Program
 - e. Retain control of the quality, extent, and general nature of the food service program and the prices to be charged.
 - f. Retain the authority to sign claims for reimbursement from the Texas Department of Agriculture.

- g. Maintain compliance with regulatory requirements for food service establishments, to the extent applicable, including applicable food handlers requirements, applicable permits, and applicable health and sanitation requirements.

2.2. WQS agrees to do each of the following:

- a. WQS agrees to perform the consultant services and responsibilities, which are more specifically defined in Exhibit A (the “Services”), as may be amended by the District from time to time, in a professional, timely and workmanlike manner with personnel who are skilled, competent, and experienced in the tasks assigned.
- b. WQS will comply with the rules and regulations of the Texas Department of Agriculture and the USDA and any additions or amendments thereto, as applicable.
- c. WQS will comply with Board Policies and instructions of the District, including with respect to on-site conduct, usage of District equipment, District technology, District resources, and entry onto District property.
- d. WQS agrees that income, accounts receivables, and monies from the School Food Services program, including any income and reimbursement the District is entitled to by consumers or local, state, and federal agencies belong to and are for deposit only into District accounts.
- e. WQS agrees to collaborate with the District on meeting the goals of the Food Services Program and to consider any District requests for information, feedback, evaluations, recommendations, and suggestions regarding the provision of Services.

3. TERM.

- 3.1. This Agreement shall commence on March 4, 2024 and end on August 31, 2024, unless sooner terminated as provided in this Agreement. This Agreement shall be subject to renewal on an annual basis, upon the mutual written agreement of the parties, unless terminated as provided in this Agreement.

4. TERMINATION

- 4.1. This Agreement may be terminated by either Party on provision of 30 days written notice to the other Party, with or without cause; provided that if WQS terminates this Agreement, WQS shall, in accordance with the Agreement, nevertheless wind up the Services in an orderly fashion so as to minimize disruptions to the District’s food services program.
- 4.2. 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.

5. COMPENSATION

- 5.1. In consideration of the Service to be provided by Consultant to the District as per this Agreement, the District shall pay to Consultant a monthly service fee (“Consultant’s Fee”) of Three Thousand Eight Hundred Fifty Dollars (\$3,850.00) to be billed monthly in arrears.
- 5.2. Consultant shall submit to the District a complete and detailed invoice describing the Services rendered each month.
- 5.3. Payment shall be made in accordance with District policy upon receipt of invoice from Consultant.
- 5.4. The SFA shall make payment to WQS within twenty (20) days after receipt of monthly invoices.
- 5.5. Any changes to the Compensation or reimbursable expenses under this Agreement shall be effective only in writing and upon agreement of the District.
- 5.6. Payment shall be made in accordance with any and all applicable provisions and rules governing procurement and purchasing as set forth by District policy, Robstown ISD Board Policies, local, state, and federal laws, the Texas Education Code, the Texas Education Agency, the Education Department General Administrative Regulations, and the U.S. Department of Education.

6. REIMBURSABLE EXPENSES

- 6.1. District will reimburse WQS for all travel and lodging expenses (excluding meals and entertainment) that are reasonable, actual, documented, and necessary for the provision of Services under this Agreement. Any expenditures shall be pre-approved by the District. Mileage and lodging will be billed at local area rates and IRS mileage rates. The District reserves the right to cap reimbursable expenses at any time during the term of the Agreement and shall advise Consultant of any reimbursement caps.
- 6.2. The District reserves the right to refuse reimbursement of any expense that was not preapproved, that District reasonably determines is unnecessary for the provision of Services or inconsistent with the Agreement, or that is unlawful under local, state, or federal procurement laws.
- 6.3. WQS must separately identify each reimbursable expense as a separate line item on monthly statements and waives reimbursement for expenses that are not identified in the succeeding months’ invoice. Upon the District’s request, WQS will provide documentation and receipts substantiating the reimbursable expense.
- 6.4. In the event that the District engages WQS to fill the Director of Food Services for the District, WQS may invoice the District for a one-time Recruiters Finder’s Fee equal to five (5) percent of the one-year full time salary for the Director of Food Services position.

- 6.5. The District's Business Manager, Chief Financial Officer or his or her designee, or an authorized representative designated by the SFA shall supervise and arrange for the audit of all administrative and financial related operations. WQS agrees to comply with requests for audit records, financial information, receipts, and other documents as may be reasonably requested for purposes of the District's or third-party audits and to provide any requested records and documents within no later than twenty (20) days after the District's request.
- 6.6. Books and records of WQS pertaining to the District's Food Services program shall be kept on file and available to the District for five (5) years after the Termination of the Agreement 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.
- 6.7. All income accruing to the SFA from the food service program shall remain in the program.

7. INDEPENDENT CONTRACTOR

- 7.1. Consultant is an independent contractor and is not an employee, partner, or co-venturer of, or in any other service relationship with the District. The Consultant acknowledges and agrees that the District will not provide Consultant with any employee benefits, including without limitation any social security, unemployment, medical, or pension payments. No workers' compensation insurance shall be obtained by District covering Consultant or Consultant's employees. Consultant shall be responsible for all taxes arising from compensation paid under this Agreement, and shall be responsible for all payroll taxes and fringe benefits of Consultant's employees. Neither federal, nor state, nor local income tax, nor payroll tax of any kind, shall be withheld or paid by the District on behalf of Consultant or his employees. Consultant understands that he is responsible to pay, according to a law, Consultant's taxes and Consultant shall, when requested by the District, properly document to the Company that any and all federal and state taxes have been paid. In addition, the parties acknowledge that neither party has, or shall be deemed to have the authority to bind the other party.

8. SURVIVAL

- 8.1. The provisions of Section 9 of this Agreement shall survive the termination of the is Agreement and remain in full force and effect thereafter.

9. CONFIDENTIALITY

- 9.1. **Obligation of Confidentiality.** In performing consulting services under this Agreement, Consultant may be exposed to and will be required to use certain "Confidential Information" (as hereinafter defined) of the District. Consultant agrees that Consultant will not and Consultant's employees, agents, or representatives will not use, directly, or indirectly, such Confidential Information for the benefit of any person, entity, or organization other than the District, or disclose such Confidential Information without the written authorization of the District, either during or after the term of this Agreement, for as long as such information retains the characteristics of Confidential Information.
- 9.2. **Definition.** "Confidential Information" means information not generally known and proprietary to the District or to a third party for whom the District is performing work, including, without limitation, information concerning past, present, and future athletic plans, materials, analysis, techniques, any vendor names, supplier lists, databases, management systems, or any other confidential or proprietary aspects of the District. All information developed by Consultant or by others, which Consultant has a reasonable basis to believe to be Confidential Information, or which is treated by the District as being Confidential Information, shall be presumed to be Confidential Information.
- 9.3. **Property of the District.** Consultant agrees that all plans, manuals, and specific materials developed by the Consultant on behalf of the District in connection with services rendered under this Agreement, are and shall remain the exclusive property of the District. Promptly upon the expiration or termination of this Agreement, or upon the request of the District, Consultant shall return to the District all documents and tangible items provided to Consultant or created by Consultant for use in connection with services to be rendered hereunder, including without limitation, all Confidential Information, together with all copies and abstracts thereof.
- 9.4. The SFA shall have the right to use WQS marketing materials, proprietary and copyrightable signature programs, proprietary and copyrightable safety programs, and related proprietary and copyrightable 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 except as otherwise agreed to by the Parties or as expressly authorized under this Agreement.

10. HOLD HARMLESS AND INDEMNIFICATION.

- 10.1. The Consultant agrees to defend, indemnify and hold harmless the Board of Trustees, a body corporate politic, and its officers, employees, and agents, from and against all liability, claims, and demands on account of injury, loss, damage, or expense including defense cost, court costs, and attorney fees, which arise out of or are any manner connected with this Agreement, if such injury, loss, damage, or expense is caused or is claimed to be caused in whole or in part by the act, omission, error, professional error, mistake, negligence, or willful act of the Consultant or of any employee of the Consultant.
- 10.2. The Consultant agrees to investigate, handle, respond to, and provide defense for any defend against, any such liability, claims, and demands at the sole expense of the Consultant, or at the option of District, agrees to pay to or District for the defense costs incurred by District in connection with any liability claims, or demands.
- 10.3. The obligations of this Section shall not extend to any injury, loss, damage, or expense that is caused solely by the act, omission, or other fault of the District or its Board of Trustees, its officers, employees, agents, or volunteer.

11. INSURANCE

- 11.1. With respect to performance of work under this Agreement, Consultant shall maintain and shall require its subcontractors/employees, if any, to maintain insurance as described below:
 - (1). Worker's Compensation insurance with statutory limits, any employer's liability insurance with limits not less than \$1,000,000 per accident.
 - (2) Commercial general liability insurance or equivalent form, with a combined single limit of not less than \$1,000,000 per occurrence. Such insurance shall (a) name District, its Board of Trustees, officers, agents, representatives, volunteers and employees as additional insureds; (b) be primary with respect to insurance or self-insurance programs maintained by the District; and (c) contain standard separation of insureds provisions; and (d) give to District prompt and timely notice of claim made or suit instituted arising out of Consultant's operations hereunder.
 - (3). Professional liability (errors and omissions) insurance, with a combined single limit of not less than \$1,000,000 per occurrence. Such insurance will cover all professional services rendered by or on behalf of Consultant and its subcontractors and its employees under this Agreement.

- (4). Commercial auto liability insurance covering all owned, non-owned or hired automobiles, with limits of not less than \$1,000,000 Single Limit of Liability per accident for Bodily Injury and Property Damage.
- 11.2. Consultant shall (a) furnish properly executed certificates of insurance and additional insured endorsement to the District prior to commencement of work under this Agreement, which shall clearly evidence all coverage required above and provide that such insurance shall not be materially changed or terminated except on 30 days prior written notice to District; (b) maintain such insurance from the time work first commences until completion of the work under this Agreement; and (c) replace such certificates for policies expiring prior to completion of work under this Agreement.
- 11.3. The District may waive in writing or reduce in writing the requirements of this section if and to the extent the District determines them to be unreasonably burdensome to the Consultant and not necessary for the protection of District. The District may likewise reinstitute these requirements at any time during the term of the Agreement by providing notice to Consultant.

12. GENERAL PROVISIONS.

- 12.1. **Use of District Property.** The Consultant is permitted to use the District's facilities, equipment, technology, staff, or other resources owned or administered by the District only to the extent necessary for the performance of the Services as set forth herein. The Consultant shall follow the District's instructions and policies in its use of the equipment, technology, staff, or other resources owned or administered by the District. The District reserves the right to revoke consent for Consultant's use of any District facilities, equipment, technology, staff or other resources.
- 12.2. **Catastrophe.** With the exception of payment obligations for prior performance under this Agreement, neither WQS nor the District shall be liable for the failure to perform their respective obligations under this Agreement when such failure is caused by fire, pandemics, 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.
- 12.3. **Modifications.** No alteration or modification of this Agreement, including Exhibit "A" hereto shall be valid unless made in writing and executed by Consultant and the District.

- 12.4. **No Conflict.** The Consultant and District mutually represent that to the best of their knowledge neither currently has any agreement with, or any other obligation to, any third party that conflicts with terms of this Agreement. The parties agree that they shall not intentionally and knowingly enter into such agreement.
- 12.5. **Governing Law.** The laws of the State of Texas govern this Agreement. Venue for any litigation or mediation shall be in Nueces County, Texas.
- 12.6. **Notices.** Any notice or other communication by one party to the other hereunder shall be in writing and shall be given, and be deemed to have been given, if either hand delivered or mailed, postage prepaid, certified mail (return receipt requested) as follows:

If to Consultant:

Walker Quality Services
Attn: Mr. Alfred Walker, President
17411 Wild Rose Trail
Cypress, TX 77429
(832) 892-4404 Main
(713) 490-3197 Fax

If to District:

Robstown Independent School District
Attn: Dr. Marc Puig, Superintendent of Schools
801 North First Street
Robstown, Texas 78380

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.

- 12.7. **Assignment.** The parties expressly agree that no party may assign or subcontract this Agreement without prior written consent of the other Party.
- 12.8. **Amendment.** This Agreement constitutes the entire Agreement between the SFA and WQS and may not be amended unless such change is mutually agreed upon by the Parties and evidenced in the form of a written amendment to this Agreement.
- 12.9. **Construction of Terms.** If any provision of this Agreement is held unenforceable by a court of competent jurisdiction, that provision shall be severed and shall not affect the validity or enforceability of the remaining provisions.

12.10. **Complete Agreement.** This Agreement constitutes the complete agreement and sets forth the entire understanding and agreement of the parties as to the subject matter of this Agreement and supersedes all prior discussions and understandings in respect to the subject of this Agreement, whether written or oral.

12.11. **Waiver of Breach.** The waiver by a party of a breach of any provision of this Agreement by the other part shall not operate or be construed as a waiver of any other or subsequent breach by the party in breach.

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

ROBSTOWN INDEPENDENT SCHOOL DISTRICT

By: _____
Name (printed): _____
Title: _____
Date: _____

WALKER QUALITY SERVICES

By: _____
Alfred Walker
President
Date: _____

EXHIBIT A
CONSULTING SERVICES (“SERVICES”)

OVERVIEW OF SERVICES TO BE PROVIDED BY WQS.

1. WQS will provide one (1) off-site Food Service Consultant to make recommendations to the SFA in the operations of SFA’s Food Service program.
2. WQS will make available a Consultant without significant lead times and the Consultant will maintain regular and ongoing communication with the District on the progress of its Services.
3. WQS will provide training and staff development programs and events to the SFA’s designated employees. 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.
4. WQS will provide Consulting Services on the Culinary Program’s hands on approach to day-to-day operations.
5. WQS will provide financial training to the Food Service managers on data and costs: “Can’t Manage What you Can’t Measure”.
6. WQS will identify and track opportunities for Continuous Improvement.
7. WQS will provide ongoing, “just in time” Training and Best Practices.
8. WQS will provide customer service training to improve morale with in-house program vs. outsourcing.
9. WQS will customize the program provided to District based on District’s guidance and goals/objectives.
10. WQS will collaborate with the District on commodity ordering to enhance food menus and food costs.
11. WQS will provide recommendations with real solutions and provide coaching during and after recommendations implementation.
12. WQS will collaborate with the District’s kitchen planner or similar designee and District’s designated architect or facilities planner on kitchen plans and designs.
13. WQS will provide professional development training to designated District employees with a focus on food, food presentation, and food costs.
14. WQS will assist in writing menus and creating new menu options for the food services program.
15. WQS may use the Nutri-Kids Menu System or the District’s selected menu system for purposes of providing services to the District.
16. The District reserves the right to expand the scope of Services during the initial Term or renewal terms.
17. The District reserves the right to examine and conduct evaluations of the Services during the term of the Agreement and for the purpose of determining whether to renew the Agreement.