

| Board Office Use: Legislative File Info. | |
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| File ID Number | 21-1403 |
| Introduction Date | 6/16/21 |
| Enactment Number | 21-1021 |
| Enactment Date | 6/16/2021 lf |



Board Cover Memorandum

To Board of Education

From Kyla Johnson-Trammell, Superintendent
Preston Thomas, Chief Systems and Services Officer
Irene Reynolds, Executive Director, Nutrition Services

Meeting Date June 16, 2021

Subject Amendment No. 1 - Common Vision – Nutrition Services Department

Action Requested Approval by the Board of Education of Amendment No. 1 to Agreement between Oakland Unified School District and Common Vision, Ukiah, CA, to extend the term of the Agreement June 30, 2021 through August 26, 2021 for an amount not to exceed \$50,000.00.

Background Nutrition Services advertised RFP #20-05 and one vendor responded to the RFP. This vendor was interviewed, and the responsive response was evaluated on the following criteria: experience, cost of goods, and service including qualifications of staff.

On February 10, 2021, the Board of Education approved an agreement with Common Vision for Home Food Delivery Services for an initial term which expires on June 30, 2021.

Discussion Staff recommend extending the term of the Agreement with Common Vision to ensure that home food delivery services are available to families throughout summer break. The term will be extended from June 30, 2021 to August 26, 2021 for an amount not to exceed \$50,000.00.

Fiscal Impact Funding resource: 991-5310 in an amount not to exceed \$50,000.00.

Attachment(s)

- Amendment No. 1
- Agreement with Common Vision for home food delivery

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AMENDMENT NO. 1
to
Home Food Delivery Agreement

This Amendment amends the attached legal agreement (“Original Agreement”) and any prior amendments (“Prior Amendments,” together with Original Agreement, “(Amended) Agreement”), incorporated herein by reference, which includes the following information:

- The (Amended) Agreement is between the Oakland Unified School District (“OUSD”) and the below named entity or individual (“VENDOR,” together with OUSD, “PARTIES”):

Common Vision

- The Parties entered into the Original Agreement on the below date: February 10, 2021
- The Enactment Number of the Original Agreement is below: 21-0167.

The PARTIES hereby agree to amend the (Amended) Agreement as stated herein.

1. **Services:**
 - The scope of work of the (Amended) Agreement is unchanged.
 - The scope of work of the (Amended) Agreement has changed. If the scope of work has changed: Provide brief description of revised scope of work including measurable description of expected final results, such as services, materials, products, and/or reports; select the appropriate option below:
 - Revised scope of work attached
 - VENDOR agrees to provide the following amended services:

2. **Term (duration):**
 - The term of the (Amended) Agreement is unchanged
 - The term of the (Amended) Agreement has changed.

If the term has changed: The parties agree to amend the below original End Date of the (Amended) Agreement to the below new End Date:

Original End Date: June 30, 2021

New End Date: August 26, 2021

3. **Compensation:** The annual not-to-exceed amount in the (Amended) Agreement is unchanged
 The not-to-exceed amount in the (Amended) Agreement has changed. If the not-to-exceed amount has changed: The not-to-exceed amount in the (Amended) Agreement is amended as follows:

Increase not-to-exceed amount by:

Decrease not-to-exceed amount by:

The new not-to-exceed amount under the (Amended) Agreement, as herein amended, is \$50,000.00

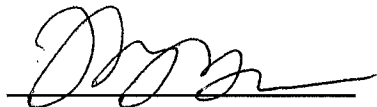
4. **COVID-19:** To the extent that the Amendment did not contain the following guarantees, by signing this Amendment, **VENDOR** agrees that:
- a. Through its execution of this Amendment, **VENDOR** declares that it is able to meet its obligations and perform the Services required pursuant to this Amendment in accordance with any shelter-in-place (or similar) order or curfew (or similar) order ("Orders") issued by local or state authorities and with any social distancing/hygiene (or similar) requirements.
 - b. **VENDOR** agrees to notify OUSD within twelve (12) hours if **VENDOR** or any employee, subcontractor, agent, or representative of **VENDOR** tests positive for COVID-19, shows or reports symptoms consistent with COVID-19, or reports to **VENDOR** possible COVID-19 exposure.
 - c. **VENDOR** agrees to immediately adhere to and follow any OUSD directives regards health and safety protocols including, but not limited to, providing OUSD with information regarding possible exposure of OUSD employees to **VENDOR** or any employee, subcontractor, agent, or representative of **VENDOR** and information necessary to perform contact tracing.
 - d. **VENDOR** shall bear all costs of compliance with this Paragraph.

5. **Remaining Provisions:** All other provisions of the (Amended) Agreement remain unchanged and in full force and effect as originally stated.
6. **Amendment Publicly Posted.** This Amendment, its contents, and all incorporated documents are public documents and will be made available by OUSD to the public online via the Internet.
7. **Signature Authority.**
 - a. Each PARTY has the full power and authority to enter into and perform this Amendment, and the person(s) signing this Amendment on behalf of each PARTY has been given the proper authority and empowered to enter into this Amendment.
 - b. Notwithstanding subparagraph (a), only the Superintendent, Chiefs, Deputy Chiefs, and the General Counsel has authority to sign contracts for OUSD and only under limited circumstances, which required ratification by the OUSD Governing Board. VENDOR agrees not to accept the signature of another other OUSD employee as having the proper authority and empowered to enter into this Amendment or as legally binding in any way.
8. **Amendment Contingent on Governing Board Approval.** OUSD shall not be bound by the terms of this Amendment unless and until it has been (i) formally approved by OUSD's Governing Board or (ii) validly and properly executed by the OUSD Superintendent, the General Counsel, or a Chief or Deputy Chief authorized by the Education Code or Board Policy, and no payment shall be owed or made to VENDOR absent such formal approval or valid and proper execution.

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IN WITNESS WHEREOF, the PARTIES hereto agree and execute this Amendment and to be bound by its terms and conditions:

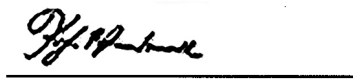
VENDOR

Name: Kenneth (Grey) Kolevsov Signature: 
Position: Co-Director Date: 5/20/2021

By its signature, VENDOR acknowledges and agrees not to expect or demand compensation pursuant to this Amendment prior to the PARTIES, particularly OUSD, validly and properly executing this Amendment until this Amendment is validly and properly executed and shall not rely on verbal or written communication from any individual, other than the President of the OUSD Governing Board, the OUSD Superintendent, or the OUSD General Counsel, stating that OUSD has validly and properly executed this Amendment. VENDOR specifically acknowledges and agrees to this term/condition on the above date.

OUSD

Name: Shanthi Gonzales Signature: 
Position: President, Board of Education Date: 6/17/2021
 Board President
 Superintendent
 Chief/Deputy Chief

Name: Kyla Johnson-Trammell Signature: 
Position: Secretary, Board of Education Date: 6/17/2021



| Board Office Use: Legislative File Info. | |
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| File ID Number | 21-0239 |
| Introduction Date | 2-10-2021 |
| Enactment Number | 21-0167 |
| Enactment Date | 2/10/2021 lf |

Memo

To Board of Education

From Kyla Johnson-Trammell, Superintendent
Preston Thomas, Chief Systems and Services Officer
Irene Reynolds, Executive Director, Nutrition Services

Board Meeting Date February 10, 2021

Subject Approval of Agreement with Common Vision for Home Food Delivery Services

Action Requested Approval by the Board of Education of Resolution 2021-0149 - Award of Bid (RFP No. 20-05) for vehicle delivery services and contract between the District and Common Vision, Berkeley, CA, for the latter to provide home delivery service of District prepared meals and produce boxes, as the responsive, responsible bidder in an amount not to exceed \$864,000, for the term February 15, 2021 through June 30, 2021.

Discussion On March 4, 2020, the Governor of California declared a State of Emergency due to the outbreak and spread of the COVID-19 virus. On March 13, 2020 at 6:00 p.m., all District schools were closed in response to the outbreak and spread of this global pandemic.

The District started a home delivery meal service to support families who were unable to go to District food hubs to pick up District provided meals. Families receive a week's worth of OUSD meals for each child in the house: 7 breakfasts, 7 lunches, 5 dinners. During the first week of the pilot program, approximately 198 students were served. By the last week of October, over 2,780 students were served via the meal delivery program. Since the pilot of this program, community need has increased exponentially. Therefore, Nutrition Services advertised RFP #20-05. One vendor responded to the RFP. This vendor was interviewed and the responsive proposal was evaluated on the following criteria: experience and cost service.

The community need for home delivery services increased exponentially. Leading into the week of Thanksgiving, over 8,000 students received meals via the delivery program. Additionally, in November the District started delivering boxes of fresh fruits and vegetables in addition to prepackaged meals. Approximately, 12,000 students per week rely on District meal delivery services. As Oakland families continue to be

disproportionately impacted by the ongoing health, housing, and financial ramifications of the COVID-19 Pandemic, the District has prepared to extend the provision of the home delivery meal service to meet the increasing needs of the Oakland community.

Recommendation

Approval by the Board of Education of Resolution 2021-0149 - Award of Bid (RFP No. 20-05) for vehicle delivery services and contract between the District and Common Vision, Berkeley, CA, for the latter to provide home delivery service of District prepared meals and produce boxes, as the responsive, responsible bidder in an amount not to exceed \$864,000, for the term February 15, 2021 through June 30, 2021.

Fiscal Impact

Fund 13 (5310-Child Nutrition).

Attachments

- Resolution 2021-0149
- RFP/Bid #20-05
- Meal Delivery Contract

| Legislative File Info. | |
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**RESOLUTION
 OF THE
 BOARD OF EDUCATION
 OF THE
 OAKLAND UNIFIED SCHOOL DISTRICT
 NO. 2021-0149**

Award of Bid (RFP No. 20-05) for Vehicle Delivery Services and Contract to Common Vision

WHEREAS, Education Code section 49531 prescribes that a school district may provide nutritionally adequate breakfast or lunch, or both, to pupils each school day at each school in the district; and

WHEREAS, Oakland Unified School District (“OUSD”) has an agreement with the California Department of Education Nutrition Services Division to provide meals under the Child Care Food Program and the National School Lunch Program; and

WHEREAS, on March 4, 2020, the Governor of California declared a State of Emergency due to the outbreak of and spread of the COVID-19 virus;

WHEREAS, on March 13, 2020 at 6:00 p.m., District schools were closed in compliance with Executive Orders and guidance issued by the California Department of Education in response to the COVID-19 pandemic;

WHEREAS, despite school closures, the District still provides meal service to students;

WHEREAS, some families became unable to pick up prepackaged meals and produce boxes from District food distribution sites and therefore the District developed a pilot meal delivery program for students/families unable to pick up their meals;

WHEREAS, the pilot program delivered meals to approximately 198 students during its first week but the community need for such meal delivery service seemed to be far greater;

WHEREAS, approximately 350 families enrolled in the meal delivery pilot program each week for the first eight (8) weeks of the program;

WHEREAS, Nutrition Services advertised RFP #20-05 Contract for Vehicle Delivery Services; and

WHEREAS, the District received one response to the RFP; and

WHEREAS, Common Vision provided a responsive proposal to the RFP and was evaluated on the following criteria: experience and cost of service; and,

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NOW, THEREFORE, BE IT RESOLVED, that the Board acknowledges that Common Vision was responsive to the RFP and constituted a responsive vendor based upon experience and cost of service; and

BE IT FURTHER RESOLVED, that the Board hereby accepts the recommendation of Nutrition Services and does award a contract to Common Vision in an amount not to exceed \$864,000 as the lowest, responsive, responsible bidder for a contract for meal delivery services from February 15, 2021 through June 30, 2021 unless terminated sooner because schools are able to re-open and student meal delivery service is rendered unnecessary; and

BE IT FURTHER RESOLVED, that the Superintendent of Schools is hereby authorized and directed to have Nutrition Services issue a Purchase Order to the above company, for said services.

Passed by the following vote:

PREFERENTIAL AYE: Jessica Ramos (Student Director)

PREFERENTIAL NOE: None

PREFERENTIAL ABSTENTION: None

PREFERENTIAL RECUSE: None

AYES: Aimee Eng, VanCedric Williams, Gary Yee, Mike Hutchinson, Clifford Thompson, Benjamin "Sam" Davis and President Shanthi Gonzales

NOES: None

ABSTAINED: None

RECUSED: None

ABSENT: Samantha Pal (Student Director)

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| File ID Number: | 21-0239 |
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CERTIFICATION


We hereby certify that the foregoing is a full, true and correct copy of a Resolution passed at a Regular Meeting of the Board of Education of the Oakland Unified School District held on February 10, 2021.

| Legislative File | |
|--------------------|--------------|
| File ID Number: | 21-0239 |
| Introduction Date: | 2/10/2021 |
| Enactment Number: | 21-0167 |
| Enactment Date: | 2/10/2021 lf |
| By: | |

OAKLAND UNIFIED SCHOOL DISTRICT

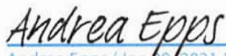


Shanthi Gonzales
President, Board of Education



Kyla Johnson-Trammell
Superintendent and Secretary, Board of Education

Approved as to Form



Andrea Epps (Jan 29, 2021 14:51 PST)

Deputy General Counsel



**OAKLAND UNIFIED
SCHOOL DISTRICT**

Community Schools, Thriving Students

RFP/Bid # 20-05

**Nutrition Services
Contract for Vehicle Delivery Services**

**Oakland Unified School District
Nutrition Services
Kristen Hickman, Procurement Specialist
2850 West Street
Oakland, California 94608
(510) 879-1700**

**Oakland Unified School District, Request for Proposal/Bid No. 20-05
Contract for Vehicle Delivery Services**

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NOTICE TO BIDDERS

REQUEST FOR PROPOSAL/BID # 20-05

The Oakland Unified School District is requesting bids from providers of vehicle delivery services to provide service for the District's meal service program.

In an effort to ensure students of the Oakland Unified School District have access to school meals during the COVID-19 global pandemic, the District has recently added a home delivery model to the operations of the Nutrition Services Department. The District is seeking the services of a vehicle delivery service to transport foods/beverages from District Schools within the District's jurisdiction to families with children ages 18 years of age or younger or special needs adults between 18 and 22 years of age. An estimated 12,000 units (bags or boxes of food) from 5 schools, designated as home delivery hubs, located across the city of Oakland are expected to be delivered each week Monday through Friday. The vehicle delivery service should be able to provide services to both dedicated routes as well as special requests.

Submission Deadline:

Bids must be received prior to **10:00 A.M., on October 30, 2020.** Bids must be submitted in a sealed envelope, marked with the RFP/Bid number and title, and returned to:

Oakland Unified School District
Nutrition Services
2850 West Street
Oakland, CA 94608

Attention: Kristen Hickman, Procurement Specialist

Bids received later than the designated time and specified date will be returned to the proposer unopened. **Facsimile (FAX) copies of the proposal will not be accepted.**

The District reserves the right to accept or reject any or all proposals or any combination thereof and to waive any irregularity in the bidding process.

Copies of the RFP/Bid documents may be obtained from **Oakland Unified School District, Nutrition Services Department, 2850 West Street, Oakland, CA 94608** or if preferred can be emailed by request. Refer any questions to: **Kristen Hickman, Procurement Specialist, e-mail: kristen.hickman@ousd.org.**

Published: October 23, 2020

RFP/Bid Introduction: This solicitation is requesting sealed proposals from qualified vendors in accordance with applicable state and federal laws governing federally funded child nutrition programs. It is the intent of the Oakland Unified School District's Nutrition Services Department, hereinafter referred to as the School Food Authority (SFA or District), to award a contract to procure specified services listed in this document. Vendors are invited to submit a proposal to provide specified services to the SFA. A vendor who submits a proposal in response to this solicitation will be hereinafter referred to as "Proposer".

Schedule of events:

- October 23, 2020 - RFP Released
- October 27, 2020 - Deadline to Receive Questions
- October 30, 2020 - Proposals Due, 10:00 a.m. deadline
- November 2, 2020 - Bid Opening, 10:00 a.m.
- November 12, 2020 - Board of Education Meeting
- November 16, 2020 - Contract Start Date

Submission of Proposals: Proposers may mail sealed proposals, to the address and staff member designated by the proposal submission deadline defined on the NOTICE TO BIDDERS page. It is the Proposer's responsibility to assure that its proposal is received by this deadline, no exceptions. Proposers may also request confirmation of receipt by emailing Kristen Hickman, kristen.hickman@ousd.org. Regardless of submission method, it is the responsibility of the Proposer to confirm and ensure that the sealed proposal was received by the submission deadline. Proposals will be accepted up to, and no proposals will be accepted after, the RFP/Bid submission deadline. Time is Pacific Standard Time as indicated on the designated clock at the SFA. Proposals that arrive after the submission deadline will not be considered. It is the responsibility of the Proposer to ensure that the proposal arrives at the required location by the submission deadline.

The SFA will not be responsible for the opening of, post-opening of, or failure to open a proposal not properly addressed or identified.

The SFA will not assume responsibility for any delay as a result of failure of the mail or other delivery service to deliver proposals on time.

Proposal Withdrawal: Proposals may be withdrawn by the Proposer prior to the time denoted for opening the submissions, but after the opening, submissions may not be withdrawn for a period of sixty (60) days. A successful Proposer shall not be relieved of the submitted proposal without the consent of the SFA or recourse through Public Contract Code Section 5100 et. seq.

Correction of Mistakes: Do not erase, correct, or write over any prices or figures necessary for the completion of the proposal. Corrections should be made by drawing a line through the unwanted text(s) or number(s) and rewriting the correct text(s) or number(s). If a correction is necessary, the Proposer shall initial each correction. Failure to comply with the requirements may cause your proposal to be disqualified. No proposals shall be altered or amended after the specified time for opening.

Signatures: All proposals must show the firm name and must be signed by a responsible officer or employee fully authorized to bind the organization to the terms and conditions herein. Obligations assumed by such signature must be fulfilled. All signatures must be original.

Cost of Preparing Proposal: Proposers are responsible for the costs of preparing and submitting the Bid. Materials submitted as part of the proposal will become the property of the SFA unless otherwise noted.

Reservation of Rights: The SFA expressly reserves the following rights:

1. To reject any and all proposals;
2. To reject any part of a proposal not meeting the specifications set forth in the RFP/Bid documents;
3. To waive any irregularities and technicalities and may, at its sole discretion, request a clarification or other information to evaluate any or all proposals;
4. To re-award the solicitation to another Proposer in the event the Proposer whose Bid is selected defaults in executing the formal agreement; and
5. In the best interests of the SFA, accept or reject any and all portions thereof, select the next most responsive proposal, or if necessary, issue a new solicitation or take other action as the SFA deems appropriate.

Non-Collusion: By submission of the proposal, the Proposer certifies that the proposal has been arrived at independently and submitted without collusion with any other Proposer and that the contents of the proposal have not been communicated, to the best of its knowledge and belief, by any one of its employees or agents, to any person not an employee or agent of the Proposer and will not be communicated to any person prior to the official opening of the proposal.

Prices: Proposers are encouraged to submit the most competitive pricing possible because the SFA will be soliciting multiple bids from Bidders to achieve the lowest possible price for the specifications and requirements outlined in this solicitation. Prices should be stated and shown as instructed on the Proposer Pricing Sheet. Taxes shall not be included. If during the contract period there should be a decrease in the prices, a corresponding decrease in prices on the balance of services shall be made to the District for as long as the lower prices are in effect. At no time shall the prices charged the District exceed the prices in the Bid. The District shall be given the benefit of any lower prices which may, for comparable services be given by the contractor to any other school district or any other state, county, municipal or local governmental agency in Alameda County for products listed herein.

The Selected Vendor shall be responsible for automatically requesting to renew any expiring bid pricing at the time of expiration. The District shall supply the Selected Vendor proper documentation authorizing them to do so on behalf of the District.

Selected Vendor must maintain documentation of costs and discounts, rebates, and other applicable credits, and must furnish such documentation upon request to the SFA and the State agency. (7 CFR §210.21.)

Delivery Schedule: The District will provide the Selected Vendor with a schedule of deliveries. The Vendor shall furnish all labor, materials, costs incurred and equipment necessary for the delivery of items specified herein to the District's facilities on a scheduled basis. All work shall be performed in a thorough and workman-like manner under the administration of, and to the approval of the District.

Perishables may not be enroute for more than 2 hours before reaching their destination. Drivers will pick up the first round of meals at approximately 8:00 a.m. and circle back to the originating delivery pick up location multiple times until the route is completed. Deliveries are to be made according to the assigned route, in a reasonable and timely manner with the final drop off no later than 3:00 p.m.

Experience and Service: Proposers are advised they must demonstrate the ability to provide the necessary services required under the contract. Proposers are required to submit three references. Experience and service are factors in the award of this contract. A vendor's recent delivery and performance under any previous or

existing agreement or contract may be examined. Poor performance or references of current or past customers may be used in the evaluation. Proposers, therefore, release the organizations and individuals listed from any claim or liability, because of responses given to requests for information by the District regarding the Proposer and/or the Proposer's performance of work.

Method of Award: Proposals that are submitted timely and are not subject to disqualification will be reviewed in accordance with the evaluation criteria set forth in this solicitation. In addition, the SFA may conduct a pre-award audit. A contract will be awarded to the responsive and responsible Proposer with the highest total score based on the criteria set forth in this solicitation. Winning Proposer will be herein referred to as the "Selected Vendor." If the Selected Vendor to whom an award is made fails or refuses to execute a contract and provide the required certificates, licenses and permits, the District may award the contract to the next responsive and responsible proposer, reject all bids, call for new bids or disqualify the bid.

- A "responsive Proposer" will be able to meet the requirements described in this solicitation.
- A "responsible Proposer" is willing and capable of furnishing the goods or services described in this solicitation.

RFP/Bid Protest Procedures: If any Proposer who submitted a proposal has an objection to the award of the contract to the apparent Selected Vendor, the objecting Proposer shall furnish that protest, in writing, to the SFA within five (5) business days of the date of the Proposer notification of the awarded contract. The protest shall describe in detail the basis for the protest, and shall request a determination under this section. If a protest is filed in a timely fashion, the SFA will review the basis for the protest and relevant facts under such terms and conditions as the SFA considers proper. Upon completion of the review, the SFA shall submit its findings and recommendations to the District's Governing Board, which shall then review the matter under such terms and conditions as deemed proper. Upon receipt of authority to act from the Governing Board, the SFA will notify those Proposers involved of its decision. The decision shall be final and binding on the objecting Proposer.

Debarment and Suspension: To ensure that the SFA does not enter into a contract with a debarred or suspended company or individual, each vendor must include a certification statement with each bid on each contract. By signing the certification statement, the Vendor certifies that neither it nor any of its principals (e.g., key employees) have been proposed for debarment, debarred or suspended by any State or Federal Agency. It is the responsibility of each Vendor to sign the attached certification statement and submit it with the bid. Failure to comply with this requirement will cause your bid to be disqualified, and declared non responsive.

Risk of Loss: The Selected Vendor assumes the following risks: (1) all risks of loss or damage to delivery vehicles, employees, work in process, materials, and equipment; (2) all risks of loss or damage to third persons and their property.

Insurance: The Selected Vendor shall maintain, during the entire term of this contract, adequate insurance to protect itself from claims under Workmen's Compensation Acts and from claims for damages or personal injury, including death and damage to property that may arise from operations under the order. The following outline the minimum insurance requirements and other required documentation:

- a. Comprehensive General Liability Insurance for Combined Single Limit Bodily Injury and/or Property Damage of not less than \$1,000,000 per occurrence and \$5,000,000 aggregate.
- b. Workers' Compensation Insurance in such amounts as required by law
- c. Motor vehicle liability insurance - minimum limits of \$250,000 per person and \$500,000 per occurrence for bodily injury liability and \$100,000 for property damage liability is required on

each vehicle owned, non-owned, or hired to be used in conjunction with the awarded contract.

The Selected Vendor may be required to provide proof of such insurance, naming Oakland Unified School District as additionally insured by separate endorsement.

Drug Free Workplace Policy: The Vendor acknowledges that pursuant to the Federal Drug-Free Workplace Act of 1989, the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited on District premises. Any violation of this prohibition by the Vendor, its employees, agents or assigns shall be deemed a material breach of contract.

Force Majeure Clause: The parties to the order shall be excused from performance during the time and to the extent that they are prevented from obtaining, delivering or performing by act of God, fire, strike, loss, shortage, transportation facilities, walkout, or commandeering of materials, products, plants, or facilities by the government, provided that the non-performance is not due to the fault or neglect of the supplier. In such cases, however, satisfactory evidence thereof must be presented.

Hold Harmless Clause: The awarded vendor shall hold harmless and indemnify the SFA/School District, its officers, and employees from every claim or demand which may be made by reason of:

- a. Any injury to person or property sustained by the supplier or by a person, firm or corporation employed directly or indirectly by him, in connection with his performance under the order.
- b. Any injury to person or property sustained by any person, firm or corporation caused by any act of neglect, default, or omission of the supplier or of any person, firm or corporation employed directly or indirectly employed by him in connection with his performance under the purchase order.
- c. Any liability that may arise from the furnishing of the use of any copyrighted or uncopied composition, secret process, or patented, or unpatented invention in connection with his performance under the order.

Food Safety: Deliveries of foods/beverages shall be expected to comply with all federal, state, and local mandates regarding food safety and are expected to have adequate controls in place to ensure the safety of the foods/beverages being delivered. Vendor will define their food safety policy and procedures on a separate document to be submitted along with the Proposal.

Equal Opportunity Employer / Federal Non-Discrimination Statement: In accordance with Federal civil rights law and U.S. Department of Agriculture (USDA) civil rights regulations and policies, the USDA, its Agencies, offices, and employees, and institutions participating in or administering USDA programs are prohibited from discriminating based on race, color, national origin, sex, disability, age, or reprisal or retaliation for prior civil rights activity in any program or activity conducted or funded by USDA.

Persons with disabilities who require alternative means of communication for program information (e.g. Braille, large print, audiotope, American Sign Language, etc.), should contact the Agency (State or local) where they applied for benefits. Individuals who are deaf, hard of hearing or have speech disabilities may contact USDA through the Federal Relay Service at (800) 877-8339. Additionally, program information may be made available in languages other than English.

To file a program complaint of discrimination, complete the USDA Program Discrimination Complaint Form, (AD-3027) found online at: http://www.ascr.usda.gov/complaint_filing_cust.html, and at any USDA office, or write a letter addressed to USDA and provide in the letter all of the information requested in the form. To request a copy of the complaint form, call (866) 632-9992. Submit your completed form or letter to USDA by:

- (1) mail: U.S. Department of Agriculture
Office of the Assistant Secretary for Civil Rights
1400 Independence Avenue, SW
Washington, D.C. 20250-9410;
- (2) fax: (202) 690-7442; or
- (3) email: program.intake@usda.gov

This institution is an equal opportunity provider.

Proposer Agreement: Oakland Unified School District will sign the proposal of the selected vendor which will serve as the notice of intent to award. The contract will include all terms and conditions as described in this RFP/Bid, including the terms and conditions included in the Sample Contract (Attachment K), submission responses from the Selected Vendor and any other negotiated terms and conditions agreed to by both parties. The complete contractual requirements for both the SFA and Selected Vendor will be approved in open session by the Board of Education.

Contract Maintenance: The SFA will monitor the awarded contract for vendor compliance of the contract and communicate with the Selected Vendor if/when necessary to discuss product shortages, delivery times, product quality including other options, billing issues, special orders, or other selected issues.

Contract Modification: The SFA reserves the right to modify the awarded contract by mutual agreement between the SFA and Selected Vendor, so long as such modification would not result in a material change to the solicitation and awarded contract. Such modifications will be evidenced by the issuance of a written authorized amendment by the SFA.

Contract Term: The initial awarded contract period shall be November 16, 2020 to June 30, 2021. This awarded contract may be renewed under the same prices, terms, and conditions for up to two (2) additional one-year terms by mutual agreement of the SFA and Selected Vendor after the SFA has conducted an annual Vendor Performance and Evaluation.

| | |
|----------------|------------------------------------|
| Initial term: | November 16, 2020 to June 30, 2021 |
| Option Year 2: | July 1, 2021 to June 30, 2022 |
| Option Year 3: | July 1, 2022 to June 30, 2023 |

Vendor Performance and Evaluation: The SFA will evaluate the Selected Vendor's performance status and product quality. The awarded contract will not automatically renew but will be based upon the SFA evaluating and analyzing Selected Vendor performance.

Mutual Agreement Termination: With mutual agreement of both parties to a contract, upon receipt and acceptance of not less than thirty (30) days written notice, the contract may be terminated on an agreed upon date before the end of the contract period without penalty to either party.

Termination for Convenience or Non-Performance: The SFA may terminate the awarded contract prior to the expiration of the term without cause and without penalty, upon thirty (30) days' written notice to the

Selected Vendor. The SFA reserves the right to immediately terminate the awarded contract if the circumstances are detrimental to the health and welfare of the students and/or school personnel, the quality of services are seriously affected, or the vendor ceases operations. In the event of such a termination, the SFA may award the contract to the next-lowest bidder provided that such an award complies with Public Contract Code § 5106.

Invoices and Payments: Invoices are to be provided upon delivery of services performed. Quantities, item descriptions, unit prices, date and pick up location must be on all invoices. Payment terms shall be net sixty (60) days. The District shall make payment for materials, supplies, or services furnished under the contract within a reasonable and proper time after acceptance thereof and approval of the invoices by the authorized District Representative.

The vendor shall issue credits for the following:

- Undeliverable product
- Food Safety and/or Sanitation violations
- Specifications set forth in this RFP/Bid

Discount for Prompt Payment: Discounts/terms for prompt payment will not be considered in the evaluation of proposals. However, any offered discount will form a part of the awarded contract and will be taken if payment is made within the discount period indicated in the proposal by the Proposer. As an alternative to offering a prompt payment discount in conjunction with the proposal, Proposer may include prompt payment discounts on individual invoices, if awarded the contract.

Quantity and Quality of Services: The Selected Vendor shall deliver the products/services designated by the contract. All services furnished under the contract shall be in accordance with the District specifications.

Recordkeeping: Any and all documents, books, records, invoices, and/or quotations of SFAs' purchases shall be made available, upon demand, in an easily accessible manner for a period of at least five (5) years from the end of the contract term (including renewals) to which they pertain and after all other pending matters are closed, for audit, examination, excerpts and transcriptions by the SFA, State, and Federal representatives and auditors in accordance with Federal regulations. Selected Vendor must ensure that any such records held by a subcontractor are likewise subject to these provisions.

Award Criteria:

The District intends to award to the responsible Proposer whose proposal is most advantageous to the District's program(s) with price and other factors considered.

| Criteria | Points |
|---|------------|
| Pricing | 40 |
| Customer Service, Satisfaction and Previous Performance | 25 |
| Delivery System | 25 |
| Bilingual Staff | 10 |
| Total Points | 100 |

Proposers will be considered responsible if they score 80 or more total points. The award will go to the responsible Proposer with the highest criteria score.

RFP/BID RESPONSE PACKET REQUIREMENTS

Bid Requirements: The SFA assumes no responsibility for errors or misinterpretations resulting in incomplete solicitation documents. It is the Proposer's responsibility to use a complete set of RFP/Bid documents in the preparation and submission of its proposal. The forms furnished as part of this solicitation **MUST** be used for the proposal and must be signed by the proposer. No proposals will be considered unless made on the forms provided and must not be detached from the solicitation document of which it forms a part. Failure to follow these instructions may result in your proposal being disqualified.

1) Proposer will need to complete, sign, and return all attachments:

- ATTACHMENT A: PROPOSER CHECKLIST
- ATTACHMENT B: VENDOR CONTACT INFORMATION
- ATTACHMENT C: NON COLLUSION AFFIDAVIT
- ATTACHMENT D: SUSPENSION AND DEBARMENT CERTIFICATION
- ATTACHMENT E: CERTIFICATION REGARDING LOBBYING
- ATTACHMENT F: DISCLOSURE OF LOBBYING ACTIVITIES
- ATTACHMENT G: REFERENCES FORM
- ATTACHMENT H: FOOD SAFETY PROCEDURES
- ATTACHMENT I: DELIVERY SPECIFICATIONS AND CONDITIONS
- ATTACHMENT J: PROPOSER PRICING SHEET

2) Proposals must be delivered no later than Friday, October 30, 2020, 10:00 a.m.

- Proposals must be delivered in a **sealed envelope** and identified with the **RFP/Bid #20-05**. Emailed or faxed RFP's will not be accepted.

Deliver proposals to the following location:

Oakland Unified School District
Nutrition Services Department
Attention: Kristen Hickman, Procurement Specialist
2850 West Street, Oakland, CA 94608

ATTACHMENT A: PROPOSER CHECKLIST
Oakland Unified School District
Request for Proposal No. 20-05

This checklist is provided as a convenience to assist proposers in ensuring that a complete proposal is submitted. It is not represented as being comprehensive and compliance therewith does not relieve the proposer of responsibility of compliance with any requirements which may not be mentioned specifically in this checklist. **Original documents with original signatures are required.** Failure to comply with this requirement will constitute proposer disqualification due to non-responsiveness. Faxed or emailed documents will not be accepted under any circumstances.

All of the items listed must be returned to constitute a complete response. Please check the box and initial in the appropriate column to signify compliance.

| Check <input checked="" type="checkbox"/> | Initials | Required Document |
|---|----------|---|
| <input checked="" type="checkbox"/> | KK | Attachment A: Proposer Checklist (this form). All items are checked, initialed, signed, and included in the complete response package. Return completed hard copy with initials |
| <input checked="" type="checkbox"/> | KK | Attachment B: Vendor Contact Information Return completed hard copy |
| <input checked="" type="checkbox"/> | KK | Attachment C: Non Collusion Affidavit Return completed hard copy with original signature |
| <input checked="" type="checkbox"/> | KK | Attachment D: Suspension and Debarment Certification Return completed hard copy with original signature |
| <input checked="" type="checkbox"/> | KK | Attachment E: Certification Regarding Lobbying Return completed hard copy with original signature |
| <input checked="" type="checkbox"/> | KK | Attachment F: Disclosure of Lobbying Activities Return completed hard copy with original signature |
| <input checked="" type="checkbox"/> | KK | Attachment G: References Form Return completed hardcopy |
| <input checked="" type="checkbox"/> | KK | Attachment H: Food Safety Plan/Procedures Return completed hard copy |
| <input checked="" type="checkbox"/> | KK | Attachment I: Delivery Specifications and Conditions Return completed hard copy with original signature |
| <input checked="" type="checkbox"/> | KK | Attachment J: Proposer Pricing Sheet Return completed hard copy with original signature |

ATTACHMENT B: VENDOR CONTACT INFORMATION

The following information is required when submitting a response to this solicitation. Please complete ALL areas.

Mark "N/A" for those which are not applicable. Type or print legibly.

LEGAL NAME OF BUSINESS: Common Vision
DBA OR BUSINESS NAME (IF DIFFERENT) Growing Together

ADDRESS OF BUSINESS
STREET ADDRESS: Po Box 638
CITY: UKIAH **STATE:** CA **ZIP:** 95482

PAY OR REMIT ADDRESS
LEGAL NAME OF BUSINESS: ~~XXXXXXXXXXXXXXXXXXXX~~ Common Vision
STREET ADDRESS: Po Box 638
CITY: UKIAH **STATE:** CA **ZIP:** 95482

TELEPHONE NUMBER: (510) 665-1665
TOLL FREE NUMBER: () _____
FAX NUMBER: () _____
EMAIL: wanda@commonvision.org
BUSINESS FEDERAL IDENTIFICATION NUMBER: 80-0615097
(SELF-EMPLOYED VENDORS ARE REQUIRED TO SUBMIT THE FEDERAL IRS W-9 FORM)

ACCOUNT MANAGER: Grey Kolvezon
TELEPHONE NUMBER: (510) 776-5556
CELL PHONE NUMBER: (510) 776-5556
FAX NUMBER: () _____
EMAIL: Greyloom@gmail.com

CUSTOMER SERVICE REPRESENTATIVE: ERIC TITON
TELEPHONE NUMBER: (510) 459-0671
CELL PHONE NUMBER: (510) 459-0671
FAX NUMBER: () _____
EMAIL: ERICJITON20018@gmail.com

BILLING QUESTIONS CONTACT PERSON: Grey Kolvezon
TELEPHONE NUMBER: (510) 776-5556
CELL PHONE NUMBER: (510) 776-5556
FAX NUMBER: () _____
EMAIL: Greyloom@gmail.com

EMERGENCY CONTACT PERSON FOR BEFORE/AFTER HOURS: Grey Kolvezon
TELEPHONE NUMBER: (510) 776-5556
CELL PHONE NUMBER: (510) 776-5556

FAX NUMBER: () _____
EMAIL: GREYLOOM@GMAIL.COM

ATTACHMENT C: NON COLLUSION AFFIDAVIT

TO BE EXECUTED BY PROPOSER AND SUBMITTED WITH THE PROPOSAL

(Public Contract Code Section 7106)

STATE OF CALIFORNIA)

COUNTY OF ALAMEDA)

Wanda Stewart, being first duly sworn, deposes and says
(name)
that he or she is Executive Director of
(position title)
Common Vision
(the proposer)

the party making the foregoing bid; that the bid is not made in the interest of, or on behalf of, any undisclosed person, partnership, company, association, organization, or corporation; that the bid is genuine and not collusive or sham; that the bidder has not directly or indirectly induced or solicited any other bidder to put in a false sham bid, and has not directly or indirectly colluded, conspired, connived, or agreed with any bidder or anyone else to put in a sham bid, or that anyone shall refrain from bidding; that the bidder has not in any manner, directly or indirectly, sought by agreement, communication, or conference with anyone to fix the bid price of the bidder or any other bidder, or to fix any overhead, profit, or cost element of the bid price, or of that of any other bidder, or to secure any advantage against the public body awarding the contract of anyone interested in the proposed contract; that all statements contained in the bid are true; and, further, that the bidder has not, directly or indirectly, submitted his or her bid price or any breakdown thereof, or the contents thereof, or divulged information or data relative thereto, or paid, and will not pay, any fee to any corporation, partnership, company, association, organization, bid depository, or to any member or agent thereof to effectuate a collusive or sham bid.

DATED: 10/29/2020

By Wanda Stewart
Person signing for proposer

ATTACHMENT D: SUSPENSION AND DEBARMENT CERTIFICATION

U. S. DEPARTMENT OF AGRICULTURE

INSTRUCTIONS: SFA to obtain from any potential vendor or existing contractor for all contracts in excess of \$100,000. This form is required each time a bid for goods/services over \$100,000 is solicited or when renewing/extending an existing contract exceeding \$100,000 per year. (Includes Food Service Management and Food Service Consulting Contracts.)

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion Lower Tier Covered Transactions

This certification is required by the regulations implementing Executive Order 12549, Debarment and Suspension, 7 CFR Part 3017, Section 3017.510, Participants' responsibilities. The regulations were published as Part IV of the January 30, 1989, Federal Register (pages 4722 - 4733). Copies of the regulations may be obtained by contacting the Department of Agriculture agency with which this transaction originated.

(BEFORE COMPLETING CERTIFICATION, READ INSTRUCTIONS)

The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

Oakland Unified School District

612500

Name of School Food Authority

Agreement Number

Potential Vendor or Existing Contractor (Lower Tier Participant):

Wanda Stewart

Executive Director

Printed Name

Title

Wanda Stewart

Signature

10/29/2020

Date

DO NOT SUBMIT THIS FORM TO THE CDE. RETAIN WITH THE APPLICABLE CONTRACT OR BID RESPONSES.

INSTRUCTIONS FOR CERTIFICATION (INSTRUCTIONS FOR ATTACHMENT D)

1. By signing and submitting this form, the prospective lower tier participant (one whose contract for goods or services exceeds the Federal procurement small purchase threshold fixed at \$100,000) is providing the certification set out in accordance with these instructions.
2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.
3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
4. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.
5. The prospective lower tier participant agrees by submitting this form that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.
6. The prospective lower tier participant further agrees by submitting this form that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transactions," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List.
8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

ATTACHMENT E: CERTIFICATION REGARDING LOBBYING

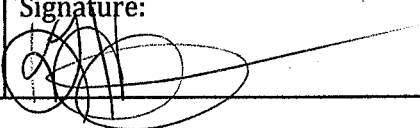
INSTRUCTIONS: To be completed and submitted ANNUALLY by any child nutrition entity receiving Federal reimbursement in excess of \$100,000 per year and potential or existing contractors/vendors as part of an original bid, contract renewal or extension when the contract exceeds \$100,000.

**Applicable to Grants, Subgrants, Cooperative Agreements, and Contracts
Exceeding \$100,000 in Federal Funds**

Submission of this certification is a prerequisite for making or entering into this transaction and is imposed by section 1352, Title 31, U.S. Code. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

The undersigned certifies, to the best of his or her knowledge and belief, that:

- (1) No Federal appropriated funds have been paid or will be paid by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of a Federal contract, the making of a Federal grant, the making of a Federal loan, the entering into a cooperative agreement, and the extension, continuation, renewal, amendment, or modification of a Federal contract, grant, loan, or cooperative agreement.
- (2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal grant or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- (3) The undersigned shall require that the language of this certification be included in the award documents for all covered subawards exceeding \$100,000 in Federal funds at all appropriate tiers and that all subrecipients shall certify and disclose accordingly.

| | | |
|---|--|---------|
| Name of School Food Authority Receiving Child Nutrition Reimbursement In Excess of \$100,000: | Agreement Number: | |
| Oakland Unified School District | 612500 | |
| Address of School Food Authority: | | |
| 2850 West Street, Oakland, CA 94608 | | |
| Printed Name and Title of Submitting Official: | Signature: | Date: |
| Kristen Hickman, Procurement Specialist |  | 11/9/20 |

OR

| | | |
|---|------------|-------|
| Name of Food Service Management or Food Service Consulting Company: | | |
| N/A | | |
| Printed Name and Title: | Signature: | Date: |
| N/A | | |

ATTACHMENT F: DISCLOSURE OF LOBBYING ACTIVITIES

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352
(See public burden disclosure)

| | | |
|--|---|--|
| <p>1. Type of Federal Action:</p> <p>a. contract b. grant c. cooperative agreement d. loan e. loan guarantee f. loan insurance</p> | <p>2. Status of Federal Action:</p> <p>a. bid/offer/application b. initial award c. post-award</p> | <p>3. Report Type:</p> <p>a. initial filing b. material change</p> <p>For material change only: Year _____ Quarter _____ Date of last report _____</p> |
| <p>4. Name and Address of Reporting Entity: ___ Prime ___ Subawardee Tier____, if Known:</p> <p>Congressional District, if known:</p> | <p>5. If Reporting Entity in No. 4 is Subawardee, Enter Name and Address of Prime:</p> <p>Congressional District, if known:</p> | |
| <p>6. Federal Department/Agency:</p> | <p>7. Federal Program Name/Description:</p> <p>CFDA Number, if applicable: _____</p> | |
| <p>7. Federal Action Number, if known:</p> | <p>9. Award Amount, if known:</p> <p>\$ _____</p> | |
| <p>10. a. Name and Address of Lobbying Registrant (if individual, last name, first name, MI):</p> | <p>b. Individuals Performing Services (including address if different from No. 10a) (last name, first name, MI):</p> | |
| <p>11. Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.</p> | <p>Signature: <u>Wanda Stewart</u> Print Name: <u>Wanda Stewart</u> Title: <u>Executive Director</u> Telephone No.: <u>510.665.1665</u> Date: <u>10/29/2020</u></p> | |
| <p>Federal Use Only</p> | <p>Authorized for Local Reproduction Standard Form - LLL (Rev. 7-97)</p> | |

ATTACHMENT G: REFERENCES FORM

References

Proposers must submit three references. Proposers, therefore, release the organizations and individuals listed in this form from any claim or liability, because of responses given to requests for information by the District regarding the vendor and/or vendor's performance of work.

Name: OAKLAND UNIFIED SCHOOL DISTRICT

Address: 1000 BROADWAY, OAKLAND 94607

Telephone: 510-435-3271

Contact: CARMELITA REYES, DIRECTOR

Start/End Date: JUNE 1, 2020 TO PRESENT

Name: NUMI FOUNDATION

Address: 400 23RD ST, OAKLAND, CA 94612

Telephone: 415-637-5062

Contact: DARIAN RODRIGUEZ-HEYMAN, E-D.

Start/End Date: 3/15/20 TO PRESENT

Name: ~~DO~~ HUMAN GOOD/ALLEN TEMPLE SENIORS

Address: 8135 INTERNATIONAL BLVD, OAKLAND, CA 94621

Telephone: 510-867-5634

Contact: DONNA MURPHY, DIRECTOR

Start/End Date: 9/1/20 TO PRESENT

Food Safety Plan/Procedures

Delivery routes are planned so as to ensure that time from product leaving warehouse to arrival at destination is 2 hours or less (20 orders per leg from depot to each group of destinations, and total of approx. 80 orders per 8-hour shift per driver)

Warehouse support staff are constantly working alongside Nutrition Services staff and managers to ensure that product is handled with utmost care from when it is packaged from when it is given to delivery drivers – that storage is proper, that safe food handling rules are followed, and that timely transfers from refrigeration to delivery drivers take place. Warehouse support staff have extensive food service experience on a management level, are working under the constant supervision of OUSD cafeteria managers, and are in constant communication with both OUSD staff and delivery drivers throughout the course of each shift

Delivery drivers are given clear rules regarding safe food handling practices: 1) delivery vehicles' interiors are to be maintained in clean condition; 2) food products are to remain packaged at all times, and shielded from contact with delivery vehicle surfaces by neutral mediums; 3) when handling packaged food products, drivers maintain safe distance from recipients, wear masks/gloves, and do not enter residences; 4) deliveries are not to be left at a location, unless given specific instructions to do so by the recipient (by phone, text, or written instructions); 5) all undelivered packaged food items are to be returned to the depot at the end of the approximately 2-hour leg, and turned over to the warehouse manager and food services staff for proper handling; 6) a report of how many total packages were unable to be delivered at the end of the shift will be turned in to the warehouse manager by each driver

ATTACHMENT I: DELIVERY SPECIFICATIONS AND CONDITIONS

Delivery Specifications and Conditions: In an effort to ensure students of the Oakland Unified School District have access to school meals during the COVID-19 global pandemic, the District has recently added a home delivery model to the operations of the Nutrition Services Department. The District is seeking the services of a vehicle delivery service to transport foods/beverages from District Schools within the District's jurisdiction to families with children ages 18 years of age or younger or special needs adults between 18 and 22 years of age. An estimated 12,000 units (bags or boxes of food) from 5 schools, designated as home delivery hubs, located across the city of Oakland are expected to be delivered each week Monday through Friday. The vehicle delivery service should be able to provide services to both dedicated routes as well as special requests.

The Selected Vendor shall furnish all equipment, supplies and personnel necessary to provide transportation of foods/beverages between District Schools and enrolled families homes.

Pricing: Contract prices awarded as a result of this price request shall remain firm for the contract period. **Any changes (up or down) in price must be announced to school district officials 30 days preceding the effective price change.** The District reserves the right to request verification of any change in prices, the price per unit percentage markup must remain firm for the full contract period. In the event of a price change effective between the opening date of this price request and the inception date of the contract, the successful vendor shall reflect any decrease and may reflect any increase at the beginning of the contract.

Delivery: The District reserves the right to make additions to, or deletions from, the lists of homes to be served at any time during the period of the contract, and revise delivery times as required. Awarded vendor(s) will be required to make direct deliveries to approximately 6,500 homes. Deliveries shall be made utilizing adequate vehicles. All deliveries shall occur between the hours of 8:00 a.m. and 3:00 p.m.

1. All deliveries are considered complete when delivery drivers have ensured recipients have received the goods.
2. Deliveries shall not be made if recipients are not available to receive goods.
3. All deliveries must be accompanied by a computerized invoice. Invoice is to include, for each route: quantity of units delivered, unit price, price extension and total price of delivery. Invoices must be signed in order to be paid.

Manda Stewart
10/29/2020

GROWING TOGETHER/COMMON VISION – RFP Bid # 20-05

Description of Service

Growing Together proposes to work in close partnership with Oakland Unified School District Nutrition Services directors, managers, staff, and other OUSD department leaders to operate a home delivery service, transporting up to 12,000 units of foods and beverages from 5 school delivery hubs to residences of families with children under 18 or special needs adults between 18 and 22. The vehicle delivery service will be able to serve both dedicated routes as well as special requests.

For the past 2 months, Growing Together has operated a home delivery service for OUSD families identical to that proposed in this bid, working in direct collaboration with OUSD leaders. Despite the need for rapid growth, the program has been extremely successful, enrolling over 4,000 families from schools across Oakland and carrying out weekly deliveries of school lunches/meals/snacks as well as supplementary food boxes. Much of the program's logistical and personnel infrastructure were developed and refined during the past summer's home delivery program, providing weekly orders of farm-fresh organic produce for up to 3,000 OUSD families.

Having operated education-based programs in over 40 of the targeted OUSD schools, spanning a period of nearly a decade, Growing Together's leadership team has extensive networks in the diverse school communities that the program is serving. At this point, our delivery team has grown to 20 highly experienced members, over 75% of whom have children in the Oakland schools we are partnering with; over 90% are conversational or fluent in English and Spanish, and 15% are also fluent in Maam. Our customer service and outreach team, which supports program growth and implementation, consists of 10 OUSD parents from most of the city's flatland neighborhoods and includes fluent bi-lingual speakers of Vietnamese, Cantonese, Mien, Maam, and Spanish. Under the guidance of the OUSD department leaders in charge of program development, Growing Together will continue recruit, hire, train, and supervise delivery drivers, as well as warehouse support staff, customer service representatives, and administrators, as needed to support the expansion of the existing program to the expected scale.

Qualifications

Founded in Oakland in 2013, Growing Together is an Oakland-based organization which is a sponsored project of Common Vision, a tax-exempt 501C3 corporation. Its mission is to build the health and sustainability of our communities by greening our community's schools and neighborhoods, and connecting young people with the living world. Our leadership team has a combined 60 years' local experience in the development of innovative healthy food enterprises and related education and training programs, carried out in partnership with Oakland Unified School District's school communities, leadership departments, and allied

community-based organizations. Our staff person managing the delivery program has co-founded 8 fresh food enterprises over the past 25 years (6 of which are still operating), and was a founding member/leader of several successful food systems initiatives partnering with local schools.

Some of our most notable recent accomplishments include:

- Operating organic farm-fresh produce stands at 3 low-income schools, while offering nutrition/health education and training programs for their students, in partnership with after-school service providers.
- Supporting healthy food education and fresh food promotion programs taking place at 40 schools in OUSD, and 20+ other East Bay public schools, through technical assistance, trainings, infrastructure development, curriculum, and fundraising.
- Supporting the design and implementation of CTE programs, dual-enrollment classes, and job training internships for youth, preparing them for careers advancing community health and sustainability.
- When the pandemic closed schools, designing and operating a CSA home delivery service which provided weekly orders of farm-fresh organic produce at no cost to over 250 OUSD families who had lost work. As the pandemic worsened, we worked collaboratively with local school districts, foundations, and businesses to expand the program to 3,000 OUSD families, as well as seven low-income senior housing complexes in Oakland, and to public schools in Richmond and San Francisco.

Procedures Detail

An internal customer registry is continually updated through regular communications with OUSD department representatives. All data is treated as confidential in accordance with signed MOU, to adhere to state law and OUSD policy, and all staff handling data are trained in procedures for handling data.

Delivery routes are continually updated and refined to correspond to registry updates, program growth, and neighborhood distribution site logistics, in order to optimize efficiency for drivers.

Experienced warehouse managers work alongside OUSD nutrition services staff and managers at all packing sites on all packing days, to ensure product safety, system accountability, and a continuously high level of support for delivery personnel, closely monitoring inventory to ensure a safe and reliable supply of orders throughout the shift. An experienced bilingual dispatcher (who is constantly available by cell on all delivery shifts) ensures that all delivery drivers receive continuous support with regards to customer information and providing excellent customer service.

All customers receive both an email and text message on delivery days informing approximate time for delivery and real-time tracking through a clickable link. A live customer

support line enables customers to directly call the cell phone of a bilingual Growing Together delivery manager (Spanish/English), who answers any questions, provides instant real-time service updates, remediates any issues in service delivery, and makes changes to orders as requested by customers. Changes in orders are relayed weekly to OUSD staff who are responsible for administering the registry of customers.

A program manager creates daily records of completed deliveries for each driving route, collects written information from drivers regarding delivery issues (such as a changed address) on a daily basis, makes any needed updates in the customer registration system, and conveys information OUSD representatives as needed on a regular basis.

Program managers are in regular dialogue with OUSD staff and department leaders regarding how to optimize implementation, and are collaborating with OUSD to continuously align implementation systems to best support the program's path of growth.

Pricing Detail

Barring significant changes in either program logistics or state law, Growing Together is prepared to offer the service at the rate of \$3 per unit. However, should potential legal changes arise from the result of Proposition 22 or the related court case which mandate conversion to an employee model, the price per unit would have to be renegotiated with OUSD and might depend on the number of weekly orders, the predictability of schedule, and other factors. In addition, should the weight/volume/composition of orders significantly change, or the partnership which is funding the fresh fruit/veg boxes that are accompanying the orders cease to exist, these would be factors that could significantly influence the price per order and also require renegotiation. We appreciate OUSD's willingness to consider these unexpected circumstances.

ATTACHMENT J: PROPOSER PRICING SHEET

The District intends to award one Agreement for the Scope of Services, as detailed in this RFP/Bid, to the most qualified Proposer.

| Item Description & Specifications | Unit | Estimated Units to be delivered | Frequency of Delivery | Quoted Price per Unit | Extended Delivery Price per Estimation |
|-----------------------------------|------|---------------------------------|-----------------------|-----------------------|--|
| Food/Beverage bags and/or boxes | EACH | 12,000 | Weekly for 24 weeks | \$3.00) UNIT | \$864,000. 00 |

COVID-19 clause:

Due to the crisis of the global pandemic COVID-19, some or all estimated unit amounts for the initial contract term may vary. The current operation of the Nutrition Services Department is in a constant state of change due the uncertainty surrounding this global pandemic. We are asking for flexibility in units and frequency due to the unknown foreseeable future of alternative operations.

In accordance with the contract documents, the undersigned propose to supply all of the product and perform all work specified in the contract documents in accordance with the proposal.

Vendor Signature *Tranda Stewart* Date *10/29/2020*

Oakland Unified School District Signature *Gene Reynolds* Date *11/9/2020*
(If awarding contract)

ATTACHMENT K: SAMPLE CONTRACT

1. DEFINITIONS

- a. "District" and "OUSD" each mean the Oakland Unified School District.
- b. "Contractor" means the entity doing business with the District.
- c. "Purchaser" means a representative of the District's Nutrition Services Department.
- d. "Parties" means the District and Contractor together, and "Party" means either the District or the Contractor in the singular and depending upon the context in which the term is used.
- e. "Contract" "Agreement" and "Purchase Agreement" shall each mean this Agreement entered into between the District and the Contractor.

2. TERM; EFFECTIVE DATE; AMOUNT OF AGREEMENT

- a. The term of this Agreement shall be for the 2020-2021 fiscal year, unless terminated earlier pursuant to Section 17 (Termination). This Agreement may be extended for a two (2) additional fiscal years at the sole discretion of the District.
- b. Notwithstanding the foregoing, this Agreement shall be effective only upon execution of this Agreement by the duly authorized representatives of the Parties, and approval by the Board of Education.
- c. The dollar amount of this Agreement shall be set forth in the approved Board of Education Memo that shall be attached and incorporated into this Agreement as though fully set forth herein, once approved, and shall be based upon Contractor's bid and the pricing provisions set forth in this Agreement. It shall be the responsibility of the Contractor to ensure that the approved not-to-exceed amount of the Agreement is not exceeded. Any products or services provided in excess of said amount shall not be compensated.

3. BUDGET AND FISCAL PROVISIONS

- a. This Agreement is subject to the budget and fiscal policies, regulations and practices of the District, and Board of Education approval and appropriation of funds for this Agreement. Charges will accrue only after written authorization is provided by the District's Board of Education and proper execution of this Agreement by the parties.
- b. The amount of the District's obligation hereunder shall not at any time exceed the terms herein stated.
- c. The District has no obligation to renew this Agreement after expiration of its term. If funds are appropriated for a portion of a fiscal year, this Agreement will terminate, without penalty, at the end of the term for which funds are appropriated.
- d. Contractor's assumption of risk of possible non-appropriation is part of the consideration for

this Agreement.

e. This section controls against any and all other provisions of this Agreement.

4. PAYMENT FOR PRODUCTS AND SERVICES PROVIDED

a. The District agrees to pay and the Contractor agrees to accept as full payment for its performance of this Agreement, the Contractor's actual cost of the food and food supplies provided to District, as provided for in this Agreement, plus Contractor's fixed percent in accordance with the Contractor's bid price, provided however that the District's obligations under this Agreement shall not exceed the not-to-exceed amount of this Agreement approved by the Board of Education pursuant to Section 2 ("Term; Effective Date; Amount of Agreement").

b. Payment to the Contractor by the District will be made monthly in arrears for food and food supplies provided as requested by the District pursuant to this Agreement, and after receipt of properly documented invoices. Invoices submitted by Contractor must be in an invoicing form acceptable to the District pursuant to Section 46 ("Invoicing").

c. Promotional Discounts and Rebates. The District shall receive the benefit of any promotional and or quantity discounts offered to other customers by the Vendor during the Contract period if such discounts would result in a lower selling price to the District. If during the Contract period there should be a decrease in the price of the items bid, a corresponding decrease shall be made to the District for as long as the price reduction is in effect, but at no time shall the prices charged to the District exceed not-to-exceed amount of this Agreement. Manufacturers may offer rebates directly to the District as an incentive to use their products (as opposed to rebates from manufacturers to the successful bidder). The District will be the sole beneficiary of such offers.

5. CHANGE ORDERS. The District may order a change, addition, alteration, modification, or extra in the products or services herein required (hereinafter "Change"), and may order extra materials and extra work in connection with the performance of the Contract, and the Contractor must comply with such Change orders, except that if any such Change order is of such a nature as to exceed the not-to-exceed amount of the Agreement pursuant to Section 2 ("Term; Effective Date; Amount of Agreement"), no such Change shall be valid unless pursuant to a written instrument executed, approved, and certified as provided for in Section 24 ("Modification of Agreement"). It shall be the responsibility of the Contractor to ensure that the not-to-exceed amount of the Agreement, pursuant to Section 2 ("Term; Effective Date; Amount of Agreement"), is not exceeded. Any products or services provided in excess of said amount shall not be compensated.

6. PAYMENT DOES NOT IMPLY ACCEPTANCE OF PRODUCTS. No payment shall in any way lessen the liability of Contractor to remedy or replace unsatisfactory work, service, products, equipment, or materials, if the unsatisfactory character of such work, service, products, equipment or materials was not detected at the time of payment. Service, products, materials, equipment, components, or workmanship that do not conform to the requirements of this Agreement may be rejected by the District and in such case must be remedied or replaced by Contractor without delay at no additional cost to the District. Nothing in this Section shall preclude, limit, or waive any other remedy or remedies available to the District.

7. **TAXES.** The District is exempt from federal excise tax except on articles for resale. Contractor will enter state and local sales or use tax, and excise tax if applicable on invoices, but neither should be included in any invoice presented for payment. Payment of any taxes, including California Sales and Use Taxes, levied upon this Contract, the transaction, or the services delivered pursuant hereto, shall be the obligation of the Contractor and at no additional cost to the District.

8. **SUBCONTRACTING.** The Contractor is permitted to subcontract the delivery of food and food supplies from Contractor's facility to the designated District delivery locations under this Contract, as detailed in "Table A - Oakland Unified School District School and Delivery List". If the Contractor will in fact subcontract this portion of this Contract, Contractor shall ensure that its subcontractor shall comply with all applicable requirements of this Contract including but not limited to Section 14 ("Insurance"), Section 40 ("Criminal Background Check; Subsequent Arrest; Tuberculosis Testing"), Section 48 ("Personnel/Vehicles"), and Section 49 ("Facilities"). Other than the permitted subcontracting detailed immediately above in this Section, the Contractor is prohibited from subcontracting this Contract or any services provided pursuant to this Contract unless such subcontracting is agreed to in writing and executed and approved in the same manner as this Contract. No Party on the basis of this Contract shall in any way contract on behalf of or in the name of the other Party of this Contract, and violation of this provision shall confer no rights on any Party and any action taken shall be void.

9. **ASSIGNMENT.**

a. The Contractor shall not assign or transfer by operation or law or otherwise any or all of its rights, including the right to receive payment, burdens, duties or obligations without the prior written consent of the District's Purchaser. The District's consent shall be by resolution of the Board of Education.

b. Any assignment of the Contract by the Contractor with the approval of the District shall be subject to the terms and conditions hereof and to the rights of the District contained in this Contract. No transfer or assignment of the Contract by the Contractor shall release the Contractor from its obligations hereunder.

10. **CONSULTATION SERVICES.**

a. The Contractor agrees to act as a consultant to the District on matters concerning routine organization and operations related to this Agreement at no additional cost to the District.

b. Any interest of the Contractor in studies, reports, memoranda, computation sheets or other documents prepared by the Contractor in connection with services to be performed under this Agreement shall become the property of and will be transmitted to the District. However, the Contractor may retain and use copies for reference and as documentation of its experience and capabilities, but only to the extent Contractor's use does not violate Section 22 of this Agreement ("Proprietary or Confidential Information of the District").

11. **COVID-19.** Through its execution of this Agreement, Contractor declares that it is able to meet its obligations and perform the Services required pursuant to this Agreement in accordance with any

shelter-in-place (or similar) order or curfew (or similar) order ("Orders") issued by local or state authorities and with any social distancing/hygiene (or similar) requirements.

- a. To the extent that Contractor provides Services in person and consistent with the requirements of Paragraph 46 (Invoicing), Contractor agrees to include additional information in its invoices as required by OUSD if any Orders are issued by local or state authorities that would prevent Contractor from providing Services in person.
- b. Contractor agrees to report to District within twelve hours if Contractor or any employee, subcontractor, agent, or representative of Contractor tests positive for COVID-19.
- c. Contractor agrees to immediately adhere to and follow any OUSD directives regards health and safety protocols including, but not limited to, providing OUSD with information regarding possible exposure of OUSD employees to Contractor or any employee, subcontractor, agent, or representative of Contractor and information necessary to perform contact tracing.
- d. Contractor shall bear all costs of compliance with this Paragraph, including but not limited to those imposed by this Agreement.

12. **FORCE MAJEURE CLAUSE.** The Contractor will be excused from performance hereunder during the time and to the extent that they are prevented from obtaining or performing the service by an act of God, fire, commandeering of materials and equipment, products, plants or facilities by the Federal or State Government. Satisfactory evidence must be presented to the District demonstrating that the non-performance was not due to the fault or negligence of the Contractor and could not have been avoided by the Contractor.

13. **DISASTER RECOVERY.** Contractor acknowledges that in the event of a major catastrophe such as an earthquake, pandemic, etc., the District will receive priority service over non-governmental users. In the event of a major disaster, in coordination with the District, the Contractor will fulfill the obligations of this Agreement to the extent requested by the District and feasible under the circumstances, in the estimation of the District in consultation with the Contractor.

14. **INSURANCE.** Without in any way limiting Contractor's liability pursuant to the "Indemnification" section of this Agreement, prior to award, Contractor shall procure and maintain during the full term of this Agreement, at the Contractor's expense, insurance acceptable to the District and as follows:

- i. Commercial General Liability Insurance with limits not less than \$1,000,000 (one million dollars) each occurrence Combined Single Limit for Bodily Injury and Property Damage (including coverage for claims of sexual abuse and molestation). If sexual abuse and molestation coverage carries a sub-limit, that limit must be identified and not less than \$500,000 per occurrence.

- ii. Automobile Liability Insurance with limits not less than \$250,000 per person and \$500,000 per occurrence for bodily injury liability and \$100,000 for property damage liability is required on each vehicle owned, non-owned, or hired to be used in conjunction with the awarded contract.

- iii. Workers' Compensation Insurance, with Employer's Liability

limits not less than \$1,000,000 (one million dollars) each accident.

b. Commercial General Liability and Business Automobile Liability policies must provide the following:

i. Name as Additional Insured "The Oakland Unified School District, its Board, officers and employees."

ii. That such policies are primary insurance to any other insurance available the Additional Insured, with respect to any claims arising out of this Agreement and that such policies apply separately to each insured against who claim is made or suit is brought.

c. All policies shall provide thirty (30) days advance written notice to the District of cancellation, nonrenewal or reduction in coverage to the following office:

Oakland Unified School District
Attn: Risk Management
1000 Broadway, Suite 440
Oakland, CA 94607

d. If any policies are written on a claims-made form, Contractor agrees to maintain such coverage continuously throughout the term of this Agreement and, without lapse, for the period of this Agreement, such that should occurrences during the Agreement term give rise to claims made after expiration of the Agreement, such claims shall be covered.

e. Should any of the required insurance be provided under a form of coverage that includes a general annual aggregate limit or provides that claims investigation or legal defense costs are included in such general annual aggregate limit, such annual aggregate limit shall be double the occurrence or claims limits specified above.

f. Should any required insurance lapse during the term of this Agreement, requests for payments originating after such lapse shall not be processed until the District receives satisfactory evidence of reinstated coverage as required by this Agreement, effective as of the lapse date. If insurance is not reinstated, the District may, at its sole option, terminate this Agreement effective on the date of such lapse of insurance.

g. Before commencing any operations under this Agreement, Contractor must provide the District with the certificates of insurance, an endorsement showing the additional insured policy, all with insurers satisfactory to the District, evidencing all coverage set forth above, and shall furnish complete copies of policies promptly upon the District's request. Contractor also understands and agrees that the District may withhold payment for products / services performed for any violations of the insurance provisions of this Agreement.

h. Approval of the insurance by the District shall not relieve or decrease the liability of Contractor hereunder.

15. **FAILURE TO DELIVER.** When Contractor fails to deliver an article or service of the quality, in the manner or within the time called for in the Contract, such article or service may be bought from any source by the Purchaser and if a greater price than that named in the Contract be paid for such article or service the excess price will be charged to and collected from the Contractor or sureties on Contractor's bond if bond has been required; or the District may terminate the Contract for default; or the District may return deliveries made and receive a refund. Nothing in this Section shall preclude, limit, or waive any other remedy or remedies available to the District.

16. **CONTRACTOR DEFAULT; REMEDIES.** If the Contractor fails to fulfill its obligations under this Contract, whether or not said obligations are specified in this Section, such failure shall constitute an event of default. On or after any event of default, District shall have the right to exercise its legal and equitable remedies, including without limitation, the right to: (a) seek specific performance of all or any part of this Contract, (a) terminate this Contract at no cost to District in accordance with Section 17 ("Termination") herein; or (c) exercise any other legal or equitable remedy. In addition, the District shall have the right (but no obligation) to cure (or cause to be cured) on behalf of the Contractor any event of default. Contractor shall pay to District on demand all costs and expenses incurred by District in effecting such cure, with interest thereon from the date of incurrence at the maximum rate then permitted by law. District shall have the right to offset from any amounts due to Contractor under this Contract or any other contract between District and Contractor all damages, losses, costs or expenses incurred by District as a result of such event of default and any liquidated damages due from Contractor pursuant to the terms of this Contract or any other contract between District and Contractor. Any such offset by District will not constitute a waiver of any other remedies the District may have against Contractor for financial injury or otherwise. All remedies provided for in this Contract may be exercised individually or in combination with any other remedy available hereunder or under applicable laws, rules and regulations. The exercise of any remedy shall not preclude or in any way be deemed to waive any other remedy.

17. **TERMINATION.**

a. In the event of Contractor default pursuant to Section 16 ("Contractor Default; Remedies") of this Contract, wherein Contractor fails to perform any of its obligations under this Contract, in addition to any other remedies available to the District, the District through the Purchaser may terminate this Agreement, and all of the Contractor's rights hereunder ended. Termination shall be effective ten (10) days after Contractor's receipt of written notice of termination from the District delivered pursuant to Section 41 ("Notice to the Parties"). No new work will be undertaken, and no new deliveries will be made, as of the effective date of termination. In the event of termination for cause, the Contractor shall be paid for those services performed under this Contract to the satisfaction of the District up to the effective date of the termination. . However, pursuant to Section 16 ("Contractor Default; Remedies") herein, District may offset from any such amounts due Contractor any costs to District arising from Contractor's default and may otherwise demand payment from Contractor of such costs.

b. The District may terminate this Contract in whole or in part for District's convenience and without cause at any time by giving Contractor thirty (30) days written notice of such termination. The notice shall specify the date on which termination shall become effective. In no case shall the termination become effective in fewer than thirty (30) days from the date that the notice is deemed received pursuant to Section 41 ("Notice to the Parties"). In event of termination for convenience,

Contractor will be paid for those services performed, or deliveries made, pursuant to this Contract and to satisfaction of District up to the specified date of termination. In no event will District be liable for costs incurred by Contractor after the specified date termination. Such non recoverable costs include, but are not limited to, anticipated profits on this Contract, post-termination employee salaries, post-termination administrative expenses, or any other costs which are not reasonable or authorized under this Section. This Section shall not prevent Contractor from recovering costs necessarily incurred in discontinuing further work, or canceling further deliveries, under the Contract after receipt of the termination notice.

18. INDEMNIFICATION.

a. Contractor shall indemnify and hold harmless the District, its Board, officers, employees and agents from, and, if requested, shall defend them against any and all claims, demands, liabilities, obligations, losses, damages, judgments, costs or expenses (including legal fees, consultants and costs of investigation) (collectively "Claim"), whether actual or alleged, arising directly or indirectly from or in any way connected with the performance of this Agreement, including but not limited to any Claim for personal injury, death, property damage, loss of profits, infringement upon intellectual property rights, failure to comply with the criminal background check requirements of California Education Code Section 45125.1 and/or disclosure of confidential information which might be obtained by Contractor or Contractor's agents or employees during the performance of this Agreement.

b. Notwithstanding the foregoing, Contractor shall have no obligation under this Section with respect to any Claim that is caused by the active negligence or willful misconduct of District and which is not contributed to by any act or omission (including any failure to perform any duty imposed by law) by Contractor or Contractor's agents or employees.

19. LIABILITY OF DISTRICT. District's payment obligations under this agreement shall be limited to the payment of the compensation provided under this contract. Notwithstanding any other provision of this agreement, in no event shall the District be liable, regardless of whether any claim is based on contract or tort, for any special, consequential, indirect, or incidental damages, including, but not limited to, lost profits, arising out of or in connection with this agreement or the services performed in connection with this agreement.

20. INDEPENDENT CONTRACTOR. Contractor or any agent or employee of Contractor shall be deemed at all times to be an independent contractor and not an employee of the District. Contractor shall be wholly responsible for the manner in which it performs the services required by District under this Contract. Contractor or any agent or employee of Contractor shall not have employee status with the District, nor be entitled to participate in any plans, arrangements, or distributions by District pertaining to or in connection with any retirement, health, or other benefits that District may offer its employees. Contractor or any agent or employee of Contractor is liable for the acts and omissions of itself, its employees and its agents. Contractor shall be responsible for all obligations and payments, whether imposed by federal, state or local law, including but not limited to, FICA, income tax withholdings, unemployment compensation, insurance and other similar responsibilities related to Contractor's performing services and work, or any agents or employee of Contractor providing same. Nothing contained in this Agreement shall be construed as creating an employment or agency relationship between the District and Contractor or any agent or

employee of Contractor. Any terms in this Contract referring to direction from District shall be construed as providing for direction as to policy and the result of Contractor's work only, and not as to the means by which such a result is obtained. District does not retain the right to control the means or the method by which Contractor performs work under this Agreement. If any governmental authority should, nevertheless, determine that Contractor is an employee, then the District's payment obligations hereunder shall be reduced so that the aggregate amount of payments directly to Contractor and to the applicable governmental authority does not exceed the maximum amount of compensation specified in this Agreement. Contractor shall refund any amounts necessary to effect such reduction.

21. CONFLICT OF INTEREST.

- a. Contractor understands and certifies that it does not know of any facts which constitute a violation of the California Political Reform Act, which states in part that "[N]o public official at any level of state or local government shall make, participate in making or in any way attempt to use his/her official position to influence a governmental decision in which he/she knows or has reason to know that he/she has a financial interest." (Cal. Govt. Code Section 87100 *et seq.*) Furthermore, Contractor certifies that no such current or former Board member or employee will derive any compensation, directly or indirectly, from this Agreement.
- b. Contractor also hereby certifies that to its knowledge, no current Board member or employee of the Oakland Unified School District, and no one who has been a Board member or an employee of the District within the last two years, has influenced or sought to influence the awarding of this Agreement to Contractor, except as allowed under his/her official duties. Contractor understands that any violation of this Section shall make the Agreement voidable by the District.

22. PROPRIETARY AND CONFIDENTIAL INFORMATION OF THE DISTRICT.

- a. In connection with this Agreement, the Contractor may have access to private or confidential information which may be owned or controlled by the District and that such information may contain proprietary details, the disclosure of which to third parties will be damaging to the District, its employees or students. Contractor also understands and agrees that the disclosure of such information may violate state and/or federal law and may subject the Contractor to civil liability. Consequently, Contractor agrees that all information disclosed by the District to the Contractor shall be held in strict confidence and used only in performance of the Agreement, unless disclosure is required by law or court order. Contractor shall exercise the same standard of care to protect such information as is used to protect its own proprietary data.
- b. Contractor shall comply at all times with the requirements of the Family Educational Records Privacy Act ("FERPA") and relevant state law regarding the confidentiality and handling of confidential student information, including but not limited to California Education Code Sections 49073 and sequential. Contractor shall only access personally identifiable student information pursuant to parent consent, legitimate educational interest pursuant to the performance of this Contract, and/or other applicable provisions federal and state law allowing access to personally identifiable student information. Contractor shall not re-disclose personally identifiable student information unless pursuant to federal and state law. Contractor shall not use such student information or data for any purpose other than the District's purposes as specified in this

Agreement. Failure to comply with this Section may constitute a material breach if so deemed by the District.

23. **ENTIRE CONTRACT; SEVERABILITY.** All of the agreements between the Parties are included herein and no warranties, expressed or implied, representations, promises or statements have been made by either Party except as expressly provided for herein. Should the application of any provision of this Contract to any particular facts or circumstances be found by a court of competent jurisdiction to be invalid or unenforceable, then (a) the validity of the other provisions of this Contract shall not be affected or impaired thereby, and (b) such provision shall be enforced to the maximum extent possible so as to effect the intent of the Parties and shall be reformed without further action by the Parties to the extent necessary to make such provision valid and enforceable.

24. **MODIFICATION OF AGREEMENT.**

- a. No oral statement of any person whatsoever shall in any manner or degree modify, alter, or otherwise affect the terms of this Agreement.
- b. The parties may amend this Agreement in writing by mutual consent, provided that such writing shall only be effective upon execution by the duly authorized representatives of the Parties and approval by the Board of Education.

25. **CONTRACT INTERPRETATION; CHOICE OF LAW/VENUE.**

- a. Should any questions arise as to the meaning and intent of this Agreement, the matter shall be referred to the Purchaser who shall decide the true meaning and intent of the Contract.
- b. This Contract shall be deemed to be made in, and shall be construed in accordance with the laws of the State of California. The Alameda County Superior Court shall have jurisdiction over any litigation initiated to enforce or interpret this Agreement.

26. **SUBMITTING FALSE CLAIMS; MONETARY PENALTIES.** Pursuant to Government Code §12650 et. seq., any person, including a contractor, subcontractor or a consultant, who submits a false claim, shall be liable to the District for three times the amount of damages which the District sustains because of the false claim. A person who commits a false claim act shall also be liable to the District for the costs of a civil action brought to recover any of those penalties or damages, and may be liable to the District for a civil penalty of up to ten thousand dollars (\$10,000) for each false claim. A person will be deemed to have submitted a false claim to the District if the person:

- a. knowingly presents or causes to be presented to an officer or employee of the District, a false claim for payment or approval;
- b. knowingly makes, uses, or causes to be made or used a false record or statement to get a false claim paid or approved by the District;
- c. conspires to defraud the District by getting a false claim allowed or paid by the District;
- d. has possession, custody, or control of public property or money used or to be used by the District and knowingly delivers or causes to be delivered less property than the amount for which

the person receives a certificate or receipt;

- e. is authorized to make or deliver a document certifying receipt of property used or to be used by the District and knowingly makes or delivers a receipt that falsely represents the property used or to be used;
- f. knowingly buys, or receives as a pledge of an obligation or debt, public property from any person who lawfully may not sell or pledge the property;
- g. knowingly makes, uses, or causes to be made or used a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to the District; or
- h. is a beneficiary of an inadvertent submission of a false claim to the District, subsequently discovers the falsity of the claim, and fails to disclose the false claim to the District within a reasonable time after discovery of the false claim.

27. INCIDENTAL AND CONSEQUENTIAL DAMAGES. The Contractor shall be responsible for incidental and consequential damages resulting in whole or in part from Contractor's acts or omissions, or from the acts or omissions of its permitted subcontractor pursuant to Section 8 ("Subcontracting"). Nothing in this Section shall constitute a waiver or limitation of any rights that the District may have under applicable law.

28. NON-DISCRIMINATION; COMPLIANCE WITH AMERICANS WITH DISABILITIES ACT.

- a. Contractor agrees that it shall not discriminate on the basis of sex, race, religious creed, national origin, age, marital status, sexual orientation, gender identity, AIDS/ARC/HIV status, or disability, in its performance under this Contract.
- b. Contractor acknowledges that, pursuant to the Americans Disabilities Act (ADA), programs, services and other activities provided by a public entity to the public, whether directly or through a contractor, must be accessible to the disabled public. Contractor shall provide the services specified in this Agreement in a manner that complies with the ADA and any and all other applicable federal, state and local disability rights legislation. Contractor agrees not to discriminate against disabled persons in the provision of services, benefits or activities provided under this Agreement and further agree that any violation of this prohibition on the part of Contractor, its employees, agents or assigns will constitute a material breach of this Agreement.

29. LAWS AND REGULATIONS. In the performance of this Contract, Contractor shall keep itself informed of, and at all times comply with, all applicable Federal, State, and Local laws, ordinances, regulations and other legal requirements that are in effect as of the commencement of the term of this Agreement and as may be amended from time to time, including but not limited to the Safety Orders of the California Division of Industrial Safety. It is the responsibility of the Contractor to obtain, at its sole expense, any required permit(s) and license(s).

30. DAMAGES CAUSED BY CONTRACTOR. Any damage to the District's property arising from the acts or omissions of the Contractor or of Contractor's permitted subcontractor ("Subcontracting") related to the performance of this Agreement shall be repaired or replaced at Contractor's expense. Corrections shall be

made within 72 hours of the incident or the District may make the repairs and back-charge the Contractor.

31. BANKRUPTCY.

- a. In the event that either Party shall cease conducting business in the normal course, become insolvent, make a general assignment for the benefit of creditors, suffer or permit the appointment of a receiver for its business or assets or shall avail itself of, or become subject to, any proceeding under the Federal Bankruptcy Act or any other statute of any state relating to insolvency or the protection of rights of creditors, then at the option of the other Party this Agreement shall terminate and be of no further force and effect, and any property or rights of such other Party, tangible or intangible, shall forthwith be returned to it.
- b. The Contractor shall notify the District within ten (10) days of filing a bankruptcy petition under the Federal Bankruptcy Act.

32. SUSPENSION AND DEBARMENT CERTIFICATION. Through its execution of this Agreement, Contractor certifies to the best of its knowledge and belief, that it and its principals are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency according to Federal Acquisition Regulation Subpart 9.4, and by signing this contract, certifies that this vendor does not appear on the Excluded Parties List (<https://www.sam.gov/>).

33. SECTION HEADINGS. The Section headings contained herein are for convenience of reference and are not intended to define or limit the scope of any provision of the Contract.

34. NON-WAIVER OF RIGHTS. The omission by either party at any time to enforce any default or right reserved to it, or to require performance of any of the terms, covenants or provisions hereof by the other party at the time designated, shall not be a waiver of any such default or right to which the party is entitled, nor shall it in any way affect the right of the party to enforce such provisions thereafter.

35. QUALIFIED PERSONNEL. Work under this Agreement shall be performed only by competent personnel under the supervision of and/or in the employment of the Contractor. The Contractor will conform to the District's reasonable requests regarding assignment of personnel, but all personnel, including those assigned at District's request, and shall be supervised by the Contractor. To the extent that Contractor staff member's work performance is unsatisfactory, the District reserves the right to request substitution of another staff member that would take this position and perform adequately. The Contractor agrees to replace staff members who are not performing effectively. Verification of staff members' qualifications should be made available to the District upon request.

36. DRUG FREE WORKPLACE POLICY. No drugs, alcohol, and/or smoking are allowed at any time in any buildings and/or grounds on OUSD property. No students, staff, visitors, contractors, or subcontractors are to use controlled substances, alcohol or tobacco on these sites. Any violation of this prohibition by the Contractor, its employees, agents or assigns shall be deemed a material breach of contract.

37. RESPONSIBILITY FOR EQUIPMENT. The District shall not be responsible for any damage to persons or property as a result of the use, misuse or failure of any equipment used by the Contractor, or by any of its employees, even though such equipment be furnished, rented or loaned to the Contractor by the District.

The acceptance or use of such equipment by the Contractor or any of its employees shall be construed to mean that the Contractor accepts full responsibility for and agrees to exonerate, indemnify, defend and save harmless the District from and against any and all claims for any damage or injury of any type arising from the use, misuse or failure of such equipment, whether such damage be to the Contractor, its employees, District employees or third parties, or to property belong to any of the above.

38. **AUDIT AND INSPECTION OF RECORDS.** The Contractor agrees to maintain and make available to the District, during business hours, accurate books and accounting records including computer records relative to its activities under this Agreement. The Contractor will permit the District to audit, examine and make copies and transcripts from such books and records, and to make audits of all invoices, materials, payrolls, records or personnel and other data related to all other matters covered by this Agreement, whether funded in whole or in part under this Agreement. The Contractor shall maintain such data and records in an accessible location and condition for a period of not less than five years after final payment under this Agreement or until after final audit has been resolved, whichever is later. The State of California or any federal agency having an interest in the subject of this Agreement shall have the same rights conferred upon the District by this Agreement.

39. **CONTRACTOR AUDIT PROCEDURES.** The District has the discretion to make price verification audits of the purchases made during the Contract year. The purpose of these verifications is to ascertain that the Contractor's actual markup does not exceed that quoted in this bid. The Contractor will furnish verification of costs for the products to be price verified. The District will give the Contractor fifteen (15) days' notice for each verification audit. The period of time for which price verification can be made will not exceed 24 months prior to the audit.

40. **CRIMINAL BACKGROUND CHECK; SUBSEQUENT ARREST; TUBERCULOSIS TESTING.**

Criminal Background Check

i. Contractor is required to comply with the criminal background check provisions of California Education Code ("EC") section 45125.1. Contractor will conduct criminal background checks with the California Department of Justice (CDOJ) for all Contractor employees, agents, and volunteers assigned to the District, and will certify that no employees, agents, or volunteers who have been convicted of a serious or violent felony as described in EC 45125 .1 (citing 45122.1), a sexual offense as defined by EC 44010 or a controlled substance offense as described in EC 44011 (consistent with EC 45123), will have contact with District pupils pursuant to this Agreement. This prohibition does not apply to a conviction for which the employee, agent or volunteer has obtained a certificate of rehabilitation and pardon pursuant to California Penal Code Section 4852.01 et seq. for a serious or violent felony listed under EC 45122.1.

ii. Contractor will provide the District with a list of all employees, agents and volunteers who have cleared the criminal background check, as detailed above, and who will have contact with District pupils pursuant to this Agreement and specify to which sites they will be assigned.

iii. Contractor will be responsible for the costs of the criminal background checks.

iv. As written certification of its compliance with this Section, Contractor will complete and

submit the Criminal Background Check/ Tuberculosis Clearance Certification Form ("CBC/TB form").

v. For any Contractor employees, agents or volunteers that Contractor hires/ assigns subsequent to Contractor's initial submission of the CBC/TB form to District, Contractor will conduct background checks and submit additional CBC/TB forms to District, as required.

vi. The criminal background check requirement applies only to Contractor's employees, agents or volunteers who will have more than limited contact with students. Contractor's employees, agents or volunteers who will have no contact or only limited contact with students are not required to meet criminal background check requirements. If Contractor asserts that all of its employees, agents or volunteers will have no contact with District students or only limited contact with District students, the District's Administrator supervising this Agreement has the responsibility to make a reasonable determination of whether Contractor, its employees, agents or volunteers will have only limited contact with students.

Subsequent Arrest Notification

i. In addition to the initial criminal background check, Contractor will obtain from the CDOJ subsequent arrest notification to monitor future arrests of employees, agents and volunteers who will have contact with students, and is responsible for all costs associated with these subsequent notifications.

ii. Upon receipt of notice that any of its employees, agents, or volunteers that have contact with students has been arrested or convicted of a serious or violent felony as described in EC 45125 .1 (citing 45122.1), a sexual offense as defined by EC 44010 or a controlled substance offense as described in EC 44011 (consistent with EC 45123), Contractor will immediately prohibit such employee, agent, or volunteer from having any contact with pupils, and will immediately notify the District.

Tuberculosis Testing

i. Contractor agrees that all employees, agents or volunteers whose functions require frequent or prolonged contact with students will complete tuberculosis testing the same as the testing that is described in California Education Code Section 49406. The examination shall consist of an approved intradermal tuberculin test, which, if positive, shall be followed by an x-ray of the lungs. Thereafter, the Contractor shall ensure that its employees, agents or volunteers who are skin test negative have undergone the foregoing examination at least once every four (4) years if the Contractor is still rendering services to the District pursuant to this Contract, and such employees, agents, and volunteers shall be listed by name on the Criminal Background Check/ Tuberculosis Clearance Written Certification Form with a notation of the date of each individual's testing/clearance. Contractor shall maintain on file in its offices documentation of tuberculosis clearance for its employees, agents, and volunteers who shall have more than limited contact with students under this Contract.

ii. The Contractor shall be responsible for the costs of the examination.

- iii. The District shall be the final arbiter of what constitutes "limited contact".
- iv. The District may also, in its sole discretion, waive the provisions of this section for a specified time period if it determines that emergency or exceptional circumstances exist which threaten student or staff safety if the work is delayed pending clearance.
- v. Contractor must complete, sign and submit the Criminal Background Check/ Tuberculosis Clearance Written Certification Form as written certification of its full compliance with the provisions of this Section.

41. NOTICE TO THE PARTIES. District and Contractor understand and agree that notice to the Parties shall be as follows:

- a. Except as otherwise expressly provided herein, any notices given under this Agreement shall be effective only if in writing and given by delivering the notice in person, by sending it via first class mail or certified mail with a return receipt requested, or via nationally-recognized overnight courier that guarantees next day delivery and provides a receipt therefore, with postage prepaid, addressed as in Subsection D of this Section, below.
- b. Notices herein shall be deemed to have been received two (2) business days after the date when they shall have been mailed if sent by first class mail, certified mail or overnight courier, or upon the date personal delivery is made.
- c. Either party may change the address to which notice is to be sent by giving written notice thereof to the other party.
- d. Notice to the Parties shall be addressed as follows (or such alternative address as may be provided in writing):

NOTICE TO THE DISTRICT:

Nutrition Services Department

Attn: Kristen Hickman, Procurement Specialist

2850 West Street

Oakland, CA 94608

EMAIL ADDRESS: kristen.hickman@ousd.org

NOTICE TO THE CONTRACTOR:

CONTRACTOR

CONTACT NAME

STREET ADDRESS

CITY, STATE, ZIP

TELEPHONE/FAX

EMAIL ADDRESS:

42. **CIVIL RIGHTS ASSURANCES.** In accordance with Federal civil rights law and U.S. Department of Agriculture (USDA) civil rights regulations and policies, the USDA, its Agencies, offices, and employees, and institutions participating in or administering USDA programs are prohibited from discriminating based on race, color, national origin, sex, religious creed, disability, age, political beliefs, or reprisal or retaliation for prior civil rights activity in any program or activity conducted or funded by USDA. Persons with disabilities who require alternative means of communication for program information (e.g. Braille, large print, audiotape, American Sign Language, etc.), should contact the Agency (State or local) where they applied for benefits. Individuals who are deaf, hard of hearing or have speech disabilities may contact USDA through the Federal Relay Service at (800) 877-8339. Additionally, program information may be made available in languages other than English.

To file a program complaint of discrimination, complete the USDA Program Discrimination Complaint Form,

(AD-3027) found online at: http://www.ascr.usda.gov/complaint_filing_cust.html, and at any USDA office, or write a letter addressed to USDA and provide in the letter all of the information requested in the form.

To request a copy of the complaint form, call (866) 632-9992.
Submit your completed form or letter to USDA by:

(1) mail: U.S. Department of Agriculture Office of the Assistant Secretary for Civil Rights

1400 Independence Avenue, SW

Washington, D.C. 20250-9410;

(2) fax: (202) 690-7442; or

(3) email: program.intake@usda.gov.

This institution is an equal opportunity provider.

43. **CLEAN AIR ACT.** Title 42 of the United States Code sections 7401-7671q and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387), as amended, requires that contracts and sub grants of amounts in excess of \$150,000 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).

44. **BYRD ANTI-LOBBYING AMENDMENT.** Title 31 of the United States Code section 1352 requires that Contractors that apply or bid for an award exceeding \$100,000 must 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. Such disclosures are forwarded from tier to tier up to the non-Federal award.

45. **DELIVERIES TO DISTRICT.** Food items should be clearly labeled and palletized by school name. The Contractor shall be responsible for delivery to all school locations designated by the District (F.O.B. Destination). The number and location of delivery sites is subject to change. The District will provide Contractor with a schedule of deliveries. The Contractor shall furnish all labor, materials, costs incurred and equipment necessary for the delivery of items specified herein to the District's facilities on a scheduled basis. All work shall be performed in a thorough and workman-like manner under the administration of, and to the approval of the District. Two copies of an itemized delivery form will be left with the site representative. Shortages, damaged and unacceptable items will be noted on the delivery slip. Items not accepted must not be billed to the District. The District reserves the right to reject any product. The Contractor shall notify SNS at least 72 hours prior to the regular delivery of any unfilled order to allow sufficient time to order a substitute item. Emergency next day deliveries may occasionally be required.

46. **INVOICES.** Invoices shall be summarized monthly by school in a format approved by the District representative. Payment terms shall be net sixty (60) days. Summary items must be available to the District no later than the 10th working day of the month following delivery. A three-part copy of the invoice shall be furnished at the time of delivery with the name of the District and school clearly stated. The person receiving the material must sign the invoice.

The invoices shall contain the following; purchase order number, site location, date, item number, SNS item number, description, commodity designation, quantity, price and extended totals. Failure to provide the above information may result in delay of payment.

Invoices shall be matched to SNS purchase order by item, quantities and case price. For any invoice that does not match, SNS will correct the invoice based on the receiving documents at time of delivery.

47. **ALLOWABLE COSTS.** The costs incurred by Student Nutrition Services for the benefit of school children are deemed allowable within the National School Lunch Program. Allowable cost will be paid from the nonprofit school food service account to the Contractor net of all discounts, rebates and other applicable credits accruing to or received by the Contractor or any assignee under the contract to the extent those credits are allocable to the allowable portion of the costs billed to the school food authority. (7 CFR 210.21(f)(i)). The Contractor must separately identify for each cost submitted for payment to the school food authority the amount of that cost that is allowable (can be paid from the nonprofit school food service account) and the amount that is unallowable (cannot be paid from the nonprofit school food service account); or that the Contractor must exclude all unallowable costs from its billing documents and certify

that only allowable costs are submitted for payment and records have been established that maintain the visibility of unallowable costs, including directly associated costs in a manner suitable for contract cost determination and verification. (7 CFR 210.21(f)(A)(B)).

48. PERSONNEL; VEHICLES. Contractor shall ensure that all personnel working under this Contract shall be identified by a distinctive nameplate, emblem, patch or badge displayed on the outer garment in a visible location. Contractor shall ensure that all vehicles shall have the name of the Contractor/permitted subcontract ("Subcontracting") prominently displayed and must be currently licensed throughout the term of this Contract. Contractor shall ensure that all personnel shall be qualified and properly trained to perform the work required under this Contract. Contractor shall ensure that any unusual conditions noted by any personnel providing services under this Contract (e.g. vandalism, fire, water damage) shall be reported to the District representative. The Contractor shall ensure that at all times a sufficient number of vehicles shall be furnished and maintained to perform the work of this Contract.

49. FACILITIES. Contractor shall ensure that all personnel, equipment and storage facilities used to provide the services under this Contract shall meet all federal, state, county, and city health code requirements. Proof of current compliance must be in public view at all such facilities. Upon request, the Contractor must provide documents supporting routine pest control maintenance of all facilities, both stationary and mobile, by a certified pest control operator, that will incur clean, sound and sanitary products.

50. REPORTS. The District must know the volume, cost and variety of items delivered for its food programs. Various reports will be required. Successful Contractor may be required to provide to Nutrition Services a computer-generated sales analysis. All reports must include locations, items purchased, aggregate quantities, year-to-date purchases quantities per item and average unit cost or case cost.

51. DOCUMENTATION. The District may require written documentation of those items, which are covered by the Child Nutrition Program. Additional information may be required, and must be provided, upon request by the District, regarding the National Labeling and Education Act (NLEA) of 1990.

52. LIMITATION OF OUSD LIABILITY. Other than as provided in this Agreement, OUSD's financial obligations under this Agreement shall be limited to the payment of the compensation described in Paragraph 8 (Compensation). Notwithstanding any other provision of this Agreement, in no event shall OUSD be liable, regardless of whether any claim is based on contract or tort, for any special, consequential, indirect or incidental damages, including, but not limited to, lost profits or revenue, arising out of, or in connection with, this Agreement for the services performed in connection with this Agreement.

53. AGREEMENT PUBLICLY POSTED. This Agreement, its contents, and all incorporated documents are public documents and will be made available by OUSD to the public online via the Internet.

GROWING TOGETHER/COMMON VISION – RFP Bid # 20-05

Description of Service

Growing Together proposes to work in close partnership with Oakland Unified School District Nutrition Services directors, managers, staff, and other OUSD department leaders to operate a home delivery service, transporting up to 12,000 units of foods and beverages from 5 school delivery hubs to residences of families with children under 18 or special needs adults between 18 and 22. The vehicle delivery service will be able to serve both dedicated routes as well as special requests.

For the past 2 months, Growing Together has operated a home delivery service for OUSD families identical to that proposed in this bid, working in direct collaboration with OUSD leaders. Despite the need for rapid growth, the program has been extremely successful, enrolling over 4,000 families from schools across Oakland and carrying out weekly deliveries of school lunches/meals/snacks as well as supplementary food boxes. Much of the program's logistical and personnel infrastructure were developed and refined during the past summer's home delivery program, providing weekly orders of farm-fresh organic produce for up to 3,000 OUSD families.

Having operated education-based programs in over 40 of the targeted OUSD schools, spanning a period of nearly a decade, Growing Together's leadership team has extensive networks in the diverse school communities that the program is serving. At this point, our delivery team has grown to 20 highly experienced members, over 75% of whom have children in the Oakland schools we are partnering with; over 90% are conversational or fluent in English and Spanish, and 15% are also fluent in Maam. Our customer service and outreach team, which supports program growth and implementation, consists of 10 OUSD parents from most of the city's flatland neighborhoods and includes fluent bi-lingual speakers of Vietnamese, Cantonese, Mien, Maam, and Spanish. Under the guidance of the OUSD department leaders in charge of program development, Growing Together will continue recruit, hire, train, and supervise delivery drivers, as well as warehouse support staff, customer service representatives, and administrators, as needed to support the expansion of the existing program to the expected scale.

Qualifications

Founded in Oakland in 2013, Growing Together is an Oakland-based organization which is a sponsored project of Common Vision, a tax-exempt 501C3 corporation. Its mission is to build the health and sustainability of our communities by greening our community's schools and neighborhoods, and connecting young people with the living world. Our leadership team has a combined 60 years' local experience in the development of innovative healthy food enterprises and related education and training programs, carried out in partnership with Oakland Unified School District's school communities, leadership departments, and allied

community-based organizations. Our staff person managing the delivery program has co-founded 8 fresh food enterprises over the past 25 years (6 of which are still operating), and was a founding member/leader of several successful food systems initiatives partnering with local schools.

Some of our most notable recent accomplishments include:

- Operating organic farm-fresh produce stands at 3 low-income schools, while offering nutrition/health education and training programs for their students, in partnership with after-school service providers.
- Supporting healthy food education and fresh food promotion programs taking place at 40 schools in OUSD, and 20+ other East Bay public schools, through technical assistance, trainings, infrastructure development, curriculum, and fundraising.
- Supporting the design and implementation of CTE programs, dual-enrollment classes, and job training internships for youth, preparing them for careers advancing community health and sustainability.
- When the pandemic closed schools, designing and operating a CSA home delivery service which provided weekly orders of farm-fresh organic produce at no cost to over 250 OUSD families who had lost work. As the pandemic worsened, we worked collaboratively with local school districts, foundations, and businesses to expand the program to 3,000 OUSD families, as well as seven low-income senior housing complexes in Oakland, and to public schools in Richmond and San Francisco.

Procedures Detail

An internal customer registry is continually updated through regular communications with OUSD department representatives. All data is treated as confidential in accordance with signed MOU, to adhere to state law and OUSD policy, and all staff handling data are trained in procedures for handling data.

Delivery routes are continually updated and refined to correspond to registry updates, program growth, and neighborhood distribution site logistics, in order to optimize efficiency for drivers.

Experienced warehouse managers work alongside OUSD nutrition services staff and managers at all packing sites on all packing days, to ensure product safety, system accountability, and a continuously high level of support for delivery personnel, closely monitoring inventory to ensure a safe and reliable supply of orders throughout the shift. An experienced bilingual dispatcher (who is constantly available by cell on all delivery shifts) ensures that all delivery drivers receive continuous support with regards to customer information and providing excellent customer service.

All customers receive both an email and text message on delivery days informing approximate time for delivery and real-time tracking through a clickable link. A live customer

support line enables customers to directly call the cell phone of a bilingual Growing Together delivery manager (Spanish/English), who answers any questions, provides instant real-time service updates, remediates any issues in service delivery, and makes changes to orders as requested by customers. Changes in orders are relayed weekly to OUSD staff who are responsible for administering the registry of customers.

A program manager creates daily records of completed deliveries for each driving route, collects written information from drivers regarding delivery issues (such as a changed address) on a daily basis, makes any needed updates in the customer registration system, and conveys information OUSD representatives as needed on a regular basis.

Program managers are in regular dialogue with OUSD staff and department leaders regarding how to optimize implementation, and are collaborating with OUSD to continuously align implementation systems to best support the program's path of growth.

Pricing Detail

Barring significant changes in either program logistics or state law, Growing Together is prepared to offer the service at the rate of \$3 per unit. However, should potential legal changes arise from the result of Proposition 22 or the related court case which mandate conversion to an employee model, the price per unit would have to be renegotiated with OUSD and might depend on the number of weekly orders, the predictability of schedule, and other factors. In addition, should the weight/volume/composition of orders significantly change, or the partnership which is funding the fresh fruit/veg boxes that are accompanying the orders cease to exist, these would be factors that could significantly influence the price per order and also require renegotiation. We appreciate OUSD's willingness to consider these unexpected circumstances.

MEAL DELIVERY CONTRACT

This Agreement is entered into by and between Oakland Unified School District (“OUSD”) and Common Vision dba Growing Together, (“Contractor” collectively, the “Parties”).

1. DEFINITIONS

- a. “District” and “OUSD” each mean the Oakland Unified School District.
- b. “Contractor” or “Vendor” means the entity doing business with the District.
- c. “Purchaser” means a representative of the District’s Nutrition Services Department.
- d. “Parties” means the District and Contractor together, and “Party” means either the District or the Contractor in the singular and depending upon the context in which the term is used.
- e. “Contract” “Agreement” and “Purchase Agreement” shall each mean this Agreement entered into between the District and the Contractor.

2. TERM; EFFECTIVE DATE; AMOUNT OF AGREEMENT

- a. The term of this Agreement shall be for February 15, 2021- June 30, 2021, unless terminated earlier pursuant to Section 11 (Termination).
- b. Notwithstanding the foregoing, this Agreement shall be effective upon execution of this Agreement by the duly authorized representatives of the Parties.
- c. This Agreement shall not exceed Eight Hundred Sixty Four Thousand Dollars (\$864,000). It shall be the responsibility of the Contractor to ensure that the approved not-to-exceed amount of the Agreement is not exceeded. Any products or services provided in excess of said amount shall not be compensated.

3. PAYMENT FOR PRODUCTS AND SERVICES PROVIDED

- a. The District agrees to pay Contractor for satisfactorily rendered delivery service of District prepared food boxes (“Services”) to District students and their families pursuant to this Agreement.
- b. The District agrees to pay Contractor \$3.00 for every successful or attempted delivery of District packaged food boxes (“Units”) and the Contractor agrees to accept this per Unit rate as full payment for its performance of this Agreement. Contractor agrees that prices are firm and will be in effect for the term of this Agreement.
- c. The Contractor shall establish all routes and delivery schedules in compliance with all schedules and other requirements of this Agreement.

d. Payment to the Contractor by the District shall be net sixty (60) days pursuant to this Agreement, and after receipt of properly documented invoices. Invoices submitted by Contractor must be in an invoicing form acceptable to the District pursuant to Section 33 ("Invoicing").

4. ESTIMATED USAGE. Delivery of 12,000-16,000 boxes per school week is estimated based on current trends or projected use. These quantities are not guaranteed by the District but are included for information and planning purposes only. The District reserves the right to require the delivery of more or less units. The District does not guarantee minimum compensation to be paid to Contractor. The District will provide Contractor with two weeks written notice of substantial increases or reductions to estimated usage.

5. PAYMENT DOES NOT IMPLY ACCEPTANCE. No payment shall in any way lessen the liability of Contractor to remedy unsatisfactory work or service, if the unsatisfactory character of such work or service was not detected at the time of payment. Services that do not conform to the requirements of this Agreement may be rejected by the District and in such case must be remedied by Contractor without delay at no additional cost to the District. Nothing in this Section shall preclude, limit, or waive any other remedy or remedies available to the District.

6. FOOD SAFETY. Contractor shall comply with all federal, state, and local mandates regarding food safety and Contractor is expected to have adequate controls in place to ensure the safety of the food and beverages provided for delivery.

7. TAXES. The District is exempt from federal excise tax except on articles for resale. Contractor will enter state and local sales or use tax, and excise tax if applicable on invoices, but neither should be included in any invoice presented for payment. Payment of any taxes, including California Sales and Use Taxes, levied upon this Contract, the transaction, or the services delivered pursuant hereto, shall be the obligation of the Contractor and at no additional cost to the District.

8. FORCE MAJEURE CLAUSE. The Contractor shall be excused from performance hereunder during the time and to the extent that it is prevented from performing in the customary manner by an act of God, fire, flood, war, riot, civil disturbance, terrorism, strike, lockout, labor dispute, oil or fuel shortage, provided that it is satisfactorily established that the non-performance is not due to the fault or neglect of Contractor.

9. INSURANCE.

a. Without in any way limiting Contractor's liability pursuant to the "Indemnification" section of this Agreement, prior to award, Contractor shall procure and maintain during the full term of this Agreement, at the Contractor's expense, insurance acceptable to the District and as follows:

i. Comprehensive General Liability Insurance for Combined Single Limit for Bodily Injury and/or Property Damage of not less than \$1,000,000 (one million dollars) per occurrence and \$4,000,000 (four million dollars) aggregate. Contractor shall maintain Commercial General Liability insurance, including automobile coverage which shall include coverage

for corporal punishment, sexual misconduct, harassment, bodily injury and property damage.

ii. Automobile Liability Insurance with limits not less than \$250,000 per person and \$500,000 per occurrence for bodily injury liability and \$100,000 for property damage liability is required on each vehicle owned, non-owned, or hired to be used in conjunction with the awarded contract.

iii. Workers' Compensation Insurance, with Employer's Liability in such amounts as required by law. If Contractor employs any person to perform work in connection with this Agreement, Contractor shall procure and maintain at all times during the performance of such work, Workers' Compensation Insurance in conformance with the laws of the State of California, as well as (when applicable) federal laws. Employers' Liability Insurance shall not be less than One Million Dollars (\$1,000,000) per accident or disease.

Contractor is aware of the provisions of Section 3700 of the Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and will comply with such provisions before commencing the performance of the Work of this Contract.

b. Commercial General Liability and Business Automobile Liability policies must provide the following:

- i. Name as Additional Insured "The Oakland Unified School District, its Board, officers and employees."
- ii. That such policies are primary insurance to any other insurance available the Additional Insured, with respect to any claims arising out of this Agreement and that such policies apply separately to each insured against who claim is made or suit is brought.
- iii. Endorsement of the District as an additional insured shall not affect the District's rights to any claim, demand, suit or judgment made, brought or recovered against Contractor. The policy shall protect Contractor and the District in the same manner as though each were separately issued. Nothing in said policy shall operate to increase the Insurer's liability as set forth in the policy beyond the amount or amounts shown or to which the Insurer would have been liable if only one interest were named as an insured.

c. All policies shall provide thirty (30) days advance written notice to the District of cancellation, nonrenewal or reduction in coverage to the following office:

Oakland Unified School District
Attn: Risk Management
1000 Broadway, Suite 440
Oakland, CA 94607

d. If any policies are written on a claims-made form, Contractor agrees to maintain such coverage continuously throughout the term of this Agreement and, without lapse, for the period of this Agreement, such that should occurrences during the Agreement term give rise to claims made after expiration of the Agreement, such claims shall be covered.

e. Should any of the required insurance be provided under a form of coverage that includes a general annual aggregate limit or provides that claims investigation or legal defense costs are included in such general annual aggregate limit, such annual aggregate limit shall be double the occurrence or claims limits specified above.

f. Should any required insurance lapse during the term of this Agreement, requests for payments originating after such lapse shall not be processed until the District receives satisfactory evidence of reinstated coverage as required by this Agreement, effective as of the lapse date. If insurance is not reinstated, the District may, at its sole option, terminate this Agreement effective on the date of such lapse of insurance.

g. Before commencing any operations under this Agreement, Contractor must provide the District with the certificates of insurance, an endorsement showing the additional insured policy, all with insurers satisfactory to the District, evidencing all coverage set forth above, and shall furnish complete copies of policies promptly upon the District's request. Contractor also understands and agrees that the District may withhold payment for products / services performed for any violations of the insurance provisions of this Agreement.

h. Approval of the insurance by the District shall not relieve or decrease the liability of Contractor hereunder.

10. CONTRACTOR DEFAULT; REMEDIES. If the Contractor fails to fulfill its obligations under this Contract, such failure shall constitute an event of default. On or after any event of default, District shall have the right to exercise its legal and equitable remedies, including without limitation, the right to: (a) seek specific performance of all or any part of this Contract, (a) terminate this Contract at no cost to District in accordance with Section 11 ("Termination") herein; or (c) exercise any other legal or equitable remedy. In addition, District shall have the right (but no obligation) to cure (or cause to be cured) on behalf of the Contractor any event of default. Contractor shall pay to District on demand all costs and expenses incurred by District in effecting such cure, with interest thereon from the date of incurrence at the maximum rate then permitted by law. District shall have the right to offset from any amounts due to Contractor under this Contract or any other contract between District and Contractor all damages, losses, costs or expenses incurred by District as a result of such event of default and any liquidated damages due from Contractor pursuant to the terms of this Contract or any other contract between District and Contractor. Any such offset by District will not constitute a waiver of any other remedies the District may have against Contractor for financial injury or otherwise. All remedies provided for in this Contract may be exercised individually or in combination with any other remedy available hereunder or under applicable laws, rules and regulations. The exercise of any remedy shall not preclude or in any way be deemed to waive any other remedy.

11. TERMINATION.

a. In the event of Contractor default pursuant to Section 10 (“Contractor Default; Remedies”) of this Contract, wherein Contractor fails to perform any of its obligations under this Contract, in addition to any other remedies available to the District, the District through the Purchaser may terminate this Agreement, and all of the Contractor's rights hereunder ended. Termination shall be effective ten (10) days after Contractor’s receipt of written notice of termination from the District delivered pursuant to Section 30 (“Notice to the Parties”). No new work will be undertaken, and no new deliveries will be made, as of the effective date of termination. In the event of termination for cause, the Contractor shall be paid for those services performed under this Contract to the satisfaction of the District up to the effective date of the termination. However, pursuant to Section 10 (“Contractor Default; Remedies”) herein, District may offset from any such amounts due Contractor any costs to District arising from Contractor’s default and may otherwise demand payment from Contractor of such costs.

b. The District may terminate this Contract prior to expiration of the term without cause and without penalty, in whole or in part for District’s convenience and without cause at any time by giving Contractor thirty (30) days written notice of such termination. The notice shall specify the date on which termination shall become effective. In no case shall the termination become effective in fewer than thirty (30) days from the date that the notice is deemed received pursuant to Section 30 (“Notice to the Parties”). The District reserves the right to immediately terminate the Agreement if the circumstances are detrimental to the health and welfare of the students and/or school personnel, the quality of services are seriously affected, or the Contractor ceases operations.

In event of termination for convenience, Contractor will be paid for those services performed, or deliveries made, pursuant to this Contract and to satisfaction of District up to the specified date of termination. In no event will District be liable for costs incurred by Contractor after the specified date termination. Such non recoverable costs include, but are not limited to, anticipated profits on this Contract, post-termination employee salaries, post-termination administrative expenses, or any other costs which is not reasonable or authorized under this Section.

c. With written mutual agreement of both Parties, this Contract may be terminated by giving not less than thirty (30) days written notice of such termination.

12. INDEMNIFICATION. Contractor shall indemnify and hold harmless the District, its Board, officers, employees, and agents from, and if requested, shall defend them against any and all claims, demands, liabilities obligations, losses, damages, judgments, costs or expenses (including legal fees and costs of investigation) (collectively “Claim”), whether actual or alleged, arising directly or indirectly from or in any way connected with the personal injury, death, property damage, loss of profits, failure to comply with criminal background check requirements of Education Code section 45125.1 and/or disclosure of confidential information which might be obtained by Contractor or Contractor’s agents in the performance of this Agreement. Notwithstanding the foregoing, Contractor shall have no obligation under this Section with respect to any Claim that is caused by the active negligence or willful misconduct of District and which is not contributed to by any act or

omission (including any failure to perform any duty imposed by law) by Contractor or Contractor's agents.

13. **LIABILITY OF DISTRICT.** District's payment obligations under this agreement shall be limited to the payment of the compensation provided under this Agreement. Notwithstanding any other provision of this Agreement, in no event shall the District be liable, regardless of whether any claim is based on contract or tort, for any special, consequential, indirect, or incidental damages, including, but not limited to, lost profits, arising out of or in connection with this Agreement or the services performed in connection with this Agreement.

14. **INDEPENDENT CONTRACTOR.** Contractor or any agent or employee of Contractor shall be deemed at all times to be an independent contractor and not an employee of the District. Contractor shall be wholly responsible for the manner in which it performs the services (including routing of deliveries) required by District under this Agreement. Contractor or any agent or employee of Contractor shall not have employee status with the District, nor be entitled to participate in any plans, arrangements, or distributions by District pertaining to or in connection with any retirement, health, or other benefits that District may offer its employees. Contractor or any agent or employee of Contractor is liable for the acts and omissions of itself, its employees and its agents. Contractor shall be responsible for all obligations and payments, whether imposed by federal, state or local law, including but not limited to, FICA, income tax withholdings, unemployment compensation, insurance and other similar responsibilities related to Contractor's performing services and work, or any agents or employee of Contractor providing same. Nothing contained in this Agreement shall be construed as creating an employment or agency relationship between the District and Contractor or any agent or employee of Contractor.

Any terms in this Agreement referring to direction from District shall be construed as providing for direction as to policy and the result of Contractor's work only, and not as to the means by which such a result is obtained. District does not retain the right to control the means or the method by which Contractor performs work under this Agreement.

If any governmental authority should, nevertheless, determine that Contractor is an employee, then the District's payment obligations hereunder shall be reduced so that the aggregate amount of payments directly to Contractor and to the applicable governmental authority does not exceed the maximum amount of compensation specified in this Agreement. Contractor shall refund any amounts necessary to effect such reduction.

15. **CRIMINAL BACKGROUND CHECK/SUBSEQUENT ARREST NOTIFICATION REQUIREMENTS.**

a) **Criminal Background Checks.**

Throughout the term of this Agreement, if Contractor or any of its employees, drivers, agents, or volunteers will have more than limited contact with District students, Contractor is required to comply with the fingerprinting and criminal background investigation requirements of Education Code section 45125.1. Contractor must conduct criminal background checks through the California Department of Justice ("CDOJ"), including both California Department of Justice and Federal Bureau of Investigation background checks, and must obtain subsequent arrest notification (as below), for all Contractor

employees, drivers, agents, or volunteers who will have more than limited contact with District students pursuant to this Agreement.

Contractor certifies that no Contractor employee, agent or volunteer who has been convicted of a serious or violent felony as defined by Education Code Section 45125.1 (citing Education Code Section 45122.1), a sexual offense as defined by Education Code Section 44010, a controlled substance offense as defined by Education Code Section 44011, or any other offense that renders Contractor's proximity to children or services to the District inappropriate, shall have contact with District students under this Agreement. This prohibition does not apply to an employee, agent or volunteer who has obtained a certificate of rehabilitation and pardon pursuant to California Penal Code Section 4852.01 et seq. for a serious or violent felony listed under Education Code Section 45122.1. 3) It is the Contractor's sole responsibility to comply with the CDOJ fingerprint and criminal background investigation requirements and maintain compliance throughout the duration of this Agreement. The District will not be responsible for the costs of the criminal background checks.

Contractor's employees, agents or volunteers who will have no contact or only limited contact with students are not required to meet criminal background check and subsequent arrest notification requirements. If Contractor asserts that all of its employees, agents or volunteers will have no contact or only limited contact with District students, the District Administrator supervising this Agreement will be required to affirm that Contractor has correctly disclosed the level of student contact associated with the services provided under this Agreement. The District's determination shall control.

b. Subsequent Arrest Notification.

In addition to the initial criminal background check, Contractor will obtain from CDOJ subsequent arrest notification to monitor future arrests of employees, drivers, agents and volunteers who will have more than limited contact with District students pursuant to this Agreement. District shall not be responsible for the costs associated with the subsequent arrest notifications.

Upon receipt of notice that any of its employees, agents, or volunteers who will have more than limited contact with District students pursuant to this Agreement has been arrested or convicted of a serious or violent felony as defined by Education Code Section 45125.1 (citing Education Code Section 45122.1), a sexual offense as defined by Education Code Section 44010, or a controlled substance offense as defined by Education Code Section 44011, or any other offense that renders Vendor's proximity to children or services to the District inappropriate Contractor will immediately prohibit such employee, driver, agent, or volunteer from having any contact with District students pursuant to this Agreement, and Contractor will immediately notify the District of such arrest.

Without limiting any other available legal remedies, failure by Contractor to comply with this Section may result in termination of this Agreement at the District's sole discretion. Contractor certifies that it will comply with all CDOJ fingerprint and criminal background investigation requirements of Education Code section 45125.1 et seq., and maintain compliance throughout the duration of this Agreement. Evidence of compliance with these requirements shall be available to the District upon request or audit.

16. TUBERCULOSIS SCREENING REQUIREMENTS. California law requires that school consultants working with students be free of infectious tuberculosis (TB). If Contractor, its employees and/or sub-contractors shall or may be on a District school site and have contact with District students three or more times per month during the term of this Agreement, then Contractor shall maintain compliance with the tuberculosis ("TB") certification requirements as set forth herein.

Vendor shall maintain on file documents confirming that applicable Contractor employees, sub-contractors, and agents received a TB test or TB assessment that complies with the requirements of California Education Code section 49406. These documents shall be regularly maintained and updated by Contractor and shall be available to District upon request or audit. Contractor further agrees and acknowledges that all new personnel hired after the Effective Date of this Agreement are subject to the TB certification requirements and shall be prohibited from having any contact with District students until the TB certification requirements have been satisfied. All costs to comply with the TB certification requirements are the Contractor's responsibility. Contractor shall indemnify, defend and hold harmless the District and its officers, directors, agents and employees from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from any failure to comply with these TB certification requirements. Evidence of compliance with these requirements shall be available to the District upon request or audit.

17. PERSONNEL REQUIREMENTS. The Contractor or subcontracted drivers must have all applicable state vehicle permits and licensing upon start of services. Be licensed in accordance with all applicable state regulations and policies. Drivers should drive in a careful and prudent manner, exercising at all times the highest degree of care, and observing and complying with state mandated rules of the road and traffic regulations.

The Contractor shall verify each driving record upon initiation of service and then every twelve (12) months thereafter. Such records shall be placed into the driver's file and must be accessible upon request.

The Contractor shall not use drivers to provide services who have accrued more than three (3) moving violations for any reason in the last two (2) years, and shall not use drivers who have had a DUI, DWI, or controlled substance-related violation. Contractor shall establish and maintain a record keeping system to assure that each driver meets these requirements. These records shall be available for review by the District within two (2) business days upon request.

Contractor shall not permit its drivers to smoke in the vehicle at any time while deliverable items are in the vehicle. Contractor shall require that drivers comply with all safety laws and regulations, including but not limited to the prohibition against driving under the influence of drugs or alcohol. Such prohibition shall extend to the use of prescription and non-prescription drugs that impair the safe operation of the vehicle.

The Contractor shall maintain records on all employees, drivers or sub-contractors that demonstrate that all requirements of this Agreement have been met. The file shall include but not necessarily be limited to applicable current copies of the following:

Department of Motor Vehicle Record's Check – historical driving record.

Department of Justice (DOJ) background checks that meet or exceed state laws.

Federal Bureau of Investigation (FBI) background check, to include Child Index.

Verification of enrollment in an on-going drug/alcohol testing at random, and “for cause” drug/alcohol testing as deemed appropriate for drivers authorized to perform services for this contract. All drivers must abstain from the use of alcohol and drugs in the performance of their duties under this contract. In addition, drivers will not be under the influence of alcohol or drugs during the performance of their duties under this contract. The Contractor shall be liable for all Drug and Alcohol Testing. No driver may be utilized for this contract that fails a drug and/or alcohol test.

Contractor shall be responsible for hiring and discharging personnel employed by Contractor, provided, however, that the District shall have the right to require Contractor to remove from service any employee, driver, sub-contractor who, in the District's sole discretion, is deemed unsuitable for the performance of delivery services for the District. The District may make a request in writing and state the reasons therefore. Reasons may include failure of any driver to operate a vehicle in a safe manner, in accordance with the laws of the state of California and the ordinances of any city in which such vehicle operates, or a finding by the District that the personal habits and/or conduct of an employee are detrimental to the best interests of the District.

18. SHARING OF STUDENT INFORMATION WITH CONTRACTOR. The District will provide Contractor with addresses and phone numbers as necessary for performance under the Agreement. Contractor agrees that it will use information only for the purpose of delivering meals and acknowledges that it is prohibited by law from sharing this information. Contractor further understands and agrees that pursuant to this Agreement it provides a service to the District that the District would otherwise provide itself, and therefore Contractor has legitimate educational interests in any student information which it receives, uses, maintains or to which it has access. All student information provided under this Agreement is subject to Section 19 of this Agreement. Contractor agrees to comply with the terms set forth in the California Student Data Privacy Agreement, herein incorporated by reference.

19. CONTRACTOR TO COMPLY WITH FERPA. Contractor and its agents, personnel, employees, and/or subcontractors shall maintain the confidentiality of all information received in the course of performing the services pursuant to the Agreement. Contractor and its agents, personnel, employees, and/or subcontractors shall maintain records in accordance with all applicable federal and state laws and regulations and agrees that

records relating to individual pupils provided by the District are subject to the Family Educational Rights and Privacy Act ("FERPA"). Such records shall be confidential to the extent required by FERPA, 20 U.S.C. § 1232g; 34 C.F.R. Part 99; and California Education Code §§ 49060, et seq.; and other state and federal law. This requirement to maintain confidentiality shall extend beyond the termination of this Agreement. Contractor and its agents, personnel, employees, and/or subcontractors will be permitted access to student data only where permissible under state and federal law.

20. **LICENSES AND PERMITS.** Contractor shall obtain and keep in force all licenses, permits, and certificates necessary for the performance of this Agreement.

21. **COMPLIANCE WITH THE LAW.** Notwithstanding any contrary provision in this Agreement, Contractor shall at all times be responsible for and will comply with all federal, state and local laws, rules and regulations applicable to Contractor's performance under this Agreement, including but not limited to: ensuring proper registration and insurance of vehicles used for the provision of the delivery services, verification of licensing of drivers, employment and purchasing practices and wages, hours and conditions of employment, including non-discrimination.

22. **NON-DISCRIMINATION.** Consistent with the policy of OUSD in connection with all work performed under Contracts, Contractor shall not engage in unlawful discrimination in employment on the basis of actual or perceived race, color, national origin, ancestry, religion, age, marital status, pregnancy, physical or mental disability, medical condition, veteran status, gender, sex or sexual orientation. Contractor agrees to comply with applicable Federal and California laws including, but not limited to, the California Fair Employment and Housing Act beginning with Government Code Section 12900 and Labor Code Section 1735 and OUSD policy. In addition, Contractor agrees to require like compliance by all its subcontractor(s). Contractor agrees to comply with applicable Federal and California laws prohibiting discrimination against students.

In addition, Contractor agrees to require like compliance by all its subcontractor(s).

23. **DRUG-FREE/SMOKE FREE POLICY.** No drugs, alcohol, and/or smoking are allowed at any time in any buildings and/or grounds on OUSD property. No students, staff, visitors, contractors, or subcontractors are to use controlled substances, alcohol or tobacco on these sites.

24. **ADHERENCE TO COVID-19 SAFETY GUIDELINES.** Contractor agrees to follow COVID-19 safety guidelines in performance of this Agreement, including use of face coverings/face shields, social distancing, and contact-free delivery. Contractor agrees to comply with District protocols for reporting confirmed cases of COVID-19 among Contractor's employees and independent contractors providing delivery services under this Agreement.

25. **ACCIDENT & OPERATIONAL REPORTS.** All accidents or incidents involving Contractor's personnel, sub-contractors, or drivers while operating for the District shall be reported in writing to the District within two (2) working days. A preliminary oral report shall be made to Nutrition Services following the accident or incident, and shall include whether any fatalities or injuries occurred and a general description of property damage and any law enforcement response. Follow-up accident written reports shall be made periodically until all the pertinent facts have been reported to the District. A legible

copy of both the responding police agency and the Contractor's accident investigator's final report shall be submitted to the District within ten working days following the accident or incident or when such report is completed, whichever occurs first.

The Contractor shall provide any and all operational records the District deems necessary within ten (10) business days of the District's request.

26. ENTIRE CONTRACT; SEVERABILITY. All of the agreements between the Parties are included in the Agreement and Contractor's attached proposal. No warranties, expressed or implied, representations, promises or statements have been made by either Party except as expressly provided. Should the application of any provision of this Contract to any particular facts or circumstances be found by a court of competent jurisdiction to be invalid or unenforceable, then (a) the validity of the other provisions of this Contract shall not be affected or impaired thereby, and (b) such provision shall be enforced to the maximum extent possible so as to effect the intent of the Parties and shall be reformed without further action by the Parties to the extent necessary to make such provision valid and enforceable.

27. MODIFICATION OF AGREEMENT. No oral statement of any person whatsoever shall in any manner or degree modify, alter, or otherwise affect the terms of this Agreement. Authorized modifications to this Agreement will be evidenced by the issuance of a written authorized amendment by the District.

28. CHOICE OF LAW/VENUE. This Contract shall be deemed to be made in, and shall be construed in accordance with the laws of the State of California. The Alameda County Superior Court shall have jurisdiction over any litigation initiated to enforce or interpret this Agreement.

29. SUSPENSION AND DEBARMENT CERTIFICATION. Through its execution of this Agreement, Contractor certifies to the best of its knowledge and belief, that it and its principals are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency according to Federal Acquisition Regulation Subpart 9.4, and by signing this contract, certifies that this vendor does not appear on the Excluded Parties List (<https://www.sam.gov/>).

30. NOTICE TO THE PARTIES. District and Contractor understand and agree that notice to the Parties shall be as follows:

a. Except as otherwise expressly provided herein, any notices given under this Agreement shall be effective only if in writing and given by delivering the notice in person, by sending it via first class mail or certified mail with a return receipt requested, or via nationally-recognized overnight courier that guarantees next day delivery and provides a receipt therefore, with postage prepaid, addressed as in Subsection D of this Section, below.

b. Notices herein shall be deemed to have been received two (2) business days after the date when they shall have been mailed if sent by first class mail, certified mail or overnight courier, or upon the date personal delivery is made.

c. Either party may change the address to which notice is to be sent by giving written notice thereof to the other party.

d. Notice to the Parties shall be addressed as follows (or such alternative address as may be provided in writing):

NOTICE TO THE DISTRICT:

Nutrition Services Department

Attn: Irene Reynolds

2850 West Street

Oakland, CA 94608

EMAIL ADDRESS Irene.reynolds@ousd.org

NOTICE TO THE CONTRACTOR:

CONTRACTOR: Common Vision

CONTACT NAME: Wanda Stewart

STREET ADDRESS: 2620 California Street

CITY, STATE, ZIP: Berkeley, CA 94703

TELEPHONE/FAX (510)665-1665

EMAIL ADDRESS: wanda@commonvision.org

31. CIVIL RIGHTS ASSURANCES. In accordance with Federal civil rights law and U.S. Department of Agriculture (USDA) civil rights regulations and policies, the USDA, its Agencies, offices, and employees, and institutions participating in or administering USDA programs are prohibited from discriminating based on race, color, national origin, sex, religious creed, disability, age, political beliefs, or reprisal or retaliation for prior civil rights activity in any program or activity conducted or funded by USDA. Persons with disabilities who require alternative means of communication for program information (e.g. Braille, large print, audiotope, American Sign Language, etc.), should contact the Agency (State or local) where they applied for benefits. Individuals who are deaf, hard of hearing or have speech disabilities may contact USDA through the Federal Relay Service at (800) 877-8339. Additionally, program information may be made available in languages other than English.

To file a program complaint of discrimination, complete the USDA Program Discrimination Complaint Form, (AD-3027) found online at: http://www.ascr.usda.gov/complaint_filing_cust.html, and at any USDA office, or write a letter addressed to USDA and provide in the letter all of the information requested in the form.

To request a copy of the complaint form, call (866) 632-9992.
Submit your completed form or letter to USDA by:

(1) mail: U.S. Department of Agriculture Office of the Assistant Secretary for Civil Rights

1400 Independence Avenue, SW

Washington, D.C. 20250-9410;

(2) fax: (202) 690-7442; or

(3) email: program.intake@usda.gov.

This institution is an equal opportunity provider.

32. DELIVERIES. The number and location of delivery sites is subject to change. The District will provide Contractor with a schedule of deliveries. The Contractor shall furnish all labor, materials, costs incurred and equipment necessary for the delivery of Units specified herein on a scheduled basis. Home delivery services are scheduled on school days, Monday-Friday between the hours of 8:00a.m. and 3:00p.m. Units shall be delivered to provided home addresses within two (2) hours of leaving the District facility. All work shall be performed in a thorough and workman-like manner to the approval of the District. An itemized delivery form will be left with the District representative. Shortages, damaged and undeliverable Units will be noted on the delivery slip. Units where delivery is attempted but not successful shall be billed to the District and the undelivered Unit shall be returned to the District facility. The Contractor shall notify the District representative no later than the end of the regular delivery day (3:00 p.m.) of any undeliverable Units. Emergency next day deliveries may occasionally be required.

33. INVOICES. Invoices shall be provided upon delivery of Units or services performed. Quantities, item descriptions, unit prices, date and delivery site name must be on all invoices. Payment terms shall be net sixty (60) days. The District shall make payment for materials, supplies, or services furnished under the Agreement within a reasonable and proper time after acceptance thereof and approval of invoices by the authorized District representative.

The invoices shall contain the following; date of delivery, time of pick up from District facility time of delivery, number of boxes delivered, and the delivery address. Failure to provide the above information may result in delay of payment.

34. ALLOWABLE COSTS. The costs incurred by Student Nutrition Services for the benefit of school children are deemed allowable within the National School Lunch Program. If applicable, allowable costs will be paid from the nonprofit school food service account to the Contractor net of all discounts, rebates and other applicable credits accruing to or received by the Contractor or any assignee under the contract to the extent those credits are allocable to the allowable portion of the costs billed to the school food authority. (7 CFR 210.21(f)(i)). The Contractor must separately identify for each cost submitted for payment to the school food authority the amount of that cost that is allowable (can be paid from the nonprofit school food service account) and the amount that is unallowable (cannot be paid from the nonprofit school food service account); or that the Contractor must exclude all unallowable costs from its billing documents and certify that only allowable costs are submitted for payment and records have been established that maintain the

visibility of unallowable costs, including directly associated costs in a manner suitable for contract cost determination and verification. (7 CFR 210.21(f)(A)(B)).

35. DOCUMENTATION. Any and all documents, books, records, invoices, and/or quotations of District's purchases shall be made available, upon demand, in an easily accessible manner for a period of at least five (5) years from the end of the contract term (including renewals) to which they pertain and after all other pending matters are closed, for audit, examination, excerpts and transcriptions by the District, State, and Federal representatives and auditors in accordance with Federal regulations. Contractor must ensure that any such records held by a subcontractor are likewise subject to these provisions.

The District may require written documentation of those items, which are covered by the Child Nutrition Program. Additional information may be required, and must be provided, upon request by the District, regarding the National Labeling and Education Act (NLEA) of 1990.

COMMON VISION



Signature

1/29/2021

Date

Kenneth (Ken) Kowron, Co-Director

Name Printed/Title

OAKLAND UNIFIED SCHOOL DISTRICT

President, Board of Education

Kyla Johnson-Trammell

Superintendent and Secretary, Board of Education

Date

Approved as to Form:

Andrea Epps

Deputy General Counsel

2/1/21

Date