



ORO GRANDE SCHOOL DISTRICT

240033

DONATION AGREEMENT

THIS AGREEMENT, made the **17** day of **July** in the year **2023**, in the county of San Bernardino, State of California, by and between the Oro Grande School District hereinafter called the "DISTRICT" and Community Schools-San Bernardino County Superintendent of Schools hereinafter called "CONTRACTOR".

WITNESSETH that the District and the Contractor for the considerations stated herein agree as follows:

WHEREAS, In accordance with SB 1383 the District will donate food to a food bank or to any other nonprofit organization for distribution to persons free of charge; and

WHEREAS, The Contractor is a food bank or nonprofit agency qualified to distribute food to needy persons in the community;

NOW, THEREFORE, the parties of this contract agree as follows:

TERM: This agreement is effective upon execution and shall remain in effect for a period not to exceed five (5) years unless terminated earlier by either party. This agreement may be terminated by either party by providing the other party five (5) days advance written notice.

DUTIES OF THE DISTRICT: The District shall make available to the Contractor at no cost and on a nonexclusive basis leftover food items from the District's Nutrition Services operation, for which the District has determined that it has no further use. Food that the District has served that remains unused shall be in compliance with California Food Retail Code ("CFRC"), Article 7, Section 114079, which provides as follows:

- A. "Except as specified in subdivision (b), after being served or sold and in the possession of a consumer, food that is unused or returned by the consumer shall not be offered as food for human consumption."
- B. "A container of food that is not potentially hazardous may be transferred from one consumer to another if the food is dispensed so that it is protected from contamination and the container is closed between uses, such as a narrow-neck bottle containing catsup, steak sauce, or wine, or if the food, such as crackers, salt, or pepper, is in an unopened original package and is maintained in sound condition, and if the food is checked periodically on a regular basis."

DUTIES OF THE CONTRACTOR:

- A. The Contractor shall pick up the food items at times and places mutually agreeable to the parties as specified in Paragraph 9, below, transport them as necessary, and provide them at no cost to needy persons, all in a manner that complies with applicable law and regulations.
- B. Contractor shall ensure that only containers of food that are not "POTENTIALLY HAZARDOUS" are transferred. Such food must be protected from contamination and the container must be closed between uses. In accordance with Health and Safety Code section 113871. "Potentially Hazardous" shall mean a food that requires time or temperature control to limit pathogenic microorganism growth or toxin formation. (b) "Potentially Hazardous Food" includes a food of animal origin that is raw or heat treated, a food of plant that is heat-treated or consists of raw seed sprouts, cut melons, cut tomatoes or organism growth or toxin formation, and garlic-in-oil mixtures that are not acidified or otherwise modified at a food processing plant in a way that results in mixtures that do not support growth or toxin formation as specified under subdivision(a).
- C. When food is transported, the Contractor shall be responsible for ensuring that food is transported to and from a facility within a period of less than 30 minutes in accordance with the requirements of CFRC Article 2, Section 113996.

COMPONENT PARTS OF THE CONTRACT: The Contract entered into by this Agreement consist of the following Contract Documents, all of which are component parts of the Contract as if herein set out in full or attached hereto:

- Signed Agreement
- W-9 Form
- Insurance Certificates and Endorsements
- Fingerprint and Background Certification: Business entities entering into a Service Agreement with the District shall comply with Education Code sections 45125.1. Such entities are responsible for ensuring full compliance with the law and should therefore review all applicable statutes and regulations.
 - ☐ Contractor and/or Contractor Parties will not be present on a District site and will not have limited or no contact with District students during the term of this Agreement.
 - ☒ The Contractor shall Certify that they have conducted the required criminal background check(s) of all persons who will be providing services to the Oro Grande School District on behalf of this business District, and that none of those persons have been reported by the Department of Justice ("DOJ") as having been convicted of a serious or violent felony as specified in Penal Code Sections 667.5 and/or 1192.7(c). Upon request, Contractor will provide a list of the names of the employees who may come in contact with pupils while providing Services under this Agreement. I agree to keep this list current and to notify Oro Grande School District of any additions/deletions as they occur.
- Megan's Law (Sex Offenders) I have verified and will continue to verify that the employees of the Contractor having contact with School students under this agreement are not listed on California's "Megan's Law" Website (<http://www.meganslaw.ca.gov/>).
- Anti Discrimination: It is the policy of the District that in connection with all work performed under Agreements, there be no discrimination against any prospective or active employee engaged in the work because of race, color, ancestry, national origin, religious creed, sex, age, or marital status. The 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. In accordance with Government Code section 12990, the Contractor shall give written notice of its anti-discrimination obligations to any labor organization with which the Contractor has a collective bargaining or other agreement. Contractor shall also require any subcontractor it hires to provide written notice of its anti-discrimination obligations to any labor organizations with which the subcontractor has a collective bargaining or other agreement.
- Covid-19 Certification:
 - ☐ Contractor and/or Contractor Parties will not be present on a District site and will not have limited or no contact with District students during the term of this Agreement.
 - ☒ Contractor and/or Contractor Parties shall or may perform services on a District school site when District students are present during the term of this Agreement and, at no cost to District The Contractor and/or Contractor Parties shall comply with the current COVID-19 certification requirements and safety standards in accordance with the Centers for Disease Control and Prevention (CDC) and local/county/state guidelines. Contractor further agrees and acknowledges that the District may at its sole discretion modify the requirements of this COVID-19 certification to ensure the health and safety of students.
- Tuberculosis Certification: The Contractor and/or Contractor Parties shall at all times comply with the tuberculosis ("TB") certification requirements of California Education Code Section 49406. Accordingly, by checking the applicable boxes below, Contractor hereby represents and warrants to District the following:
 - ☒ Contracted Parties shall only have limited or no contact (as determined by District) with District students at all times during the Term of this Agreement.
 - ☐ The following Contracted Parties shall have more than limited contact (as determined by District) with District students during the Term of this Agreement and, at no cost to District, have received a TB test in full compliance with

the requirements of California Education Code Section 49406:

Contractor shall maintain on file the certificates showing that the Contracted Parties were examined and found free from active TB. These forms shall be regularly maintained and updated by the Contractor and shall be available to the 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 and District determines whether any such contact is permissible.

- **Conflict of Interest Certification.** By signing below the Contractor and/or Contractor Parties hereby represents and warrants to the District they have read and understand the District's Conflict of Interest Code (Board Bylaw 9270) and, to the best of Contractor's knowledge, there are no conflicts of interest that must be disclosed pursuant to the Conflict of Interest Code. Contractor shall maintain on file statements of economic interests in accordance with applicable disclosure requirements. These records shall be regularly maintained and updated by Contractor and shall be available to the District upon request or audit.

INSURANCE: Contractor shall maintain the following insurance during the life of this Agreement and shall provide the District with a current certificate of insurance evidencing its insurance coverage. Oro Grande School District and California Schools Risk Management are to be named as additional insured by endorsement to the General Liability policy, with respect to liability arising out of work or operations performed by or on behalf of the Contractor including materials, parts or equipment furnished in connection with such work or operations. The District assumes no liability for workers' compensation or for loss, damage or injury to persons or property in the performance of the services rendered by the Contractor under this Agreement. The insurance shall protect the Contractor from the claims set forth below that may arise out of or result from the Contractor's performance of services or failure to perform services under this Agreement:

- General Liability (Additional Insured)
 - Personal Injury: Property Damage:
 - \$1,000,000 minimum Each Occurrence \$2,000,000 Aggregate
- Automobile Liability
 - Bodily Injury: Property Damage:
 - \$1,000,000 minimum Each Person/Occurrence
- Workman's Compensation (Waiver of Subrogation Required)
 - \$1,000,000 minimum per accident for bodily injury or disease
- Primary Coverage. For any claims related to this Agreement, the Contractor's insurance coverage shall be primary insurance as it respects the District, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the District, its officers, officials, employees, or volunteers shall be excess of the Contractor's insurance and shall not contribute with it
- Additional Insured. When requested we required that both Oro Grande School District and California Schools Risk Management be named as "Additional Insured" in Certificate of Insurance.
- Notice of Cancellation. Each insurance policy required above shall provide that coverage shall not be canceled, except with notice to the District.

HOLD HARMLESS AGREEMENT: Contractor shall indemnify and hold harmless DISTRICT, its officers, agents, and employees from every claim or demand made, and every liability, loss, damage, or expense, of any nature whatsoever, which may be incurred by reason of

- a. Liability for damages for (1) death or bodily injury to persons; (2) injury to, loss or theft of property; or (3) any

other loss, damage or expense arising under either (1) or (2) above, sustained by Contractor or any person, firm or corporation employed by Contractor upon or in connection with the work and/or delivery of equipment and/or supplies called for in the Agreement, except for liability resulting from the sole negligence, or willful misconduct of DISTRICT, its officers, employees, agents or independent Contractors who are directly employed by DISTRICT.

- b. Any injury to or death of persons or damage to property caused by any act, neglect, default or omission of Contractor, or any person, firm, or corporation employed by Contractor, either directly or by independent contract, including all damages due to loss or theft, sustained by any person, firm or corporation, including DISTRICT, arising out of, or in any way connected with the work and/or delivery of equipment and/or supplies covered by the Agreement, whether said injury or damage occurs either on or off DISTRICT property, if the liability arose from the negligence or willful misconduct of anyone employed by Contractor, either directly or by independent contract, and not by the active negligence of DISTRICT.
- c. Any dispute between Contractor and its subContractors/ suppliers.
- d. Contractor, at Contractor's own expense, cost and risk shall defend any and all actions, suits, or other proceedings that may be brought or instituted against DISTRICT, its officers, agents or employees, or any such claim or liability, and shall pay or satisfy any judgment that may be rendered against DISTRICT, its officers, agents or employees in any action, suit or other proceedings as a result thereof.

IN WITNESS WHEREOF, this Agreement has been duly executed by the above-named parties, on the day and year first above written.

Oro Grande Elementary School District

BY



William Flynn

CBO

DATE:

7-25-23

High Desert Second Chance

BY



Christina Keneti Kennedy

Print Name

TITLE: President/Executive Program Administrator

DATE:

7-18-2023

AGREEMENT