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Smoky Hill ESC *Volume Purchasing Program Cafeteria Food Prime Vendor Agreement* With **Food Vendor.**

This Agreement is made effective the **1st day of August 2018**, by and between **Food Vendor** and Smoky Hill Education Service Center, herein after referred to as "SHESC".

WHEREAS, **Food Vendor** is a national supplier that offers sales and service of a comprehensive line of food supplies along with product information seminars and on-staff consultants.

WHEREAS, SHESC is an education service center organized to provide services to its eligible members.

ARTICLE 1. PURPOSE AND INTENT

The purpose of this Agreement is to define a comprehensive program that will provide competitive pricing for *food supplies* with significant cost savings, exceptional service and delivery, and access to shows and seminars for eligible SHESC Volume Purchasing Members.

ARTICLE 2. DEFINITIONS

2.1 Food Vendor - As used herein, all references to **Food Vendor** its subsidiaries, affiliates and any of its future subsidiaries, or organizations controlled by, controlling or under common control with it.

2.2 SHESC - As used herein, all references to "SHESC" shall mean and include Smoky Hill Education Service Center, its subsidiaries, or organizations controlled by, controlling or under common control with them.

2.3 Eligible Members - For the purpose of this Agreement, "Eligible Members" are defined as schools, other educational facilities, and government facilities that the SHESC has deemed eligible for participation.

2.4 Monthly - As used herein, all references to "monthly" shall mean the first day of the calendar month through the last day of the calendar month.

2.5 Weekly - As used herein, all references to “weekly” shall mean Monday through Friday of each calendar week.

ARTICLE 3. Food Vendor RESPONSIBILITIES

The **Food Vendor** shall be responsible for the following functions:

3.1 Providing salespeople to contact all eligible members and establishing a schedule for regular salesperson visits and product deliveries to SHESC volume purchasing members.

3.2 If requested, establishing a schedule for seminars, workshops, and buying shows in all aspects of food service with SHESC. **Food Vendor** and SHESC will jointly provide staff to plan and carry out this event.

3.3 Submit monthly and/or quarterly sales volume reports or purchase orders to SHESC detailing products and quantities of products sold.

3.4 Submit to eligible members and SHESC a product catalog with firm pricing for eight weeks and updates every eight weeks with any price changes. Product areas with eight week product lists will remain firm for eight weeks. It is understood that seafood, meat, produce, and dairy products will be listed as “market value” and will be priced weekly through the salespeople.

3.5 Invoicing and delivering products directly to eligible SHESC members.

3.6 Submit a monthly and/or quarterly administrative maintenance fee as outlined in **Article 12**.

3.7 Assist those SHESC members that wish to use the Food Vendor computer ordering and inventory systems as well as other electronic resources.

ARTICLE 4. SHESC RESPONSIBILITIES

SHESC shall be responsible for the following functions:

4.1 Assist **Food Vendor** to jointly plan and carry out product shows, seminars, and marketing events to promote all aspects of the program.

4.2 Providing **Food Vendor** with lists of eligible SHESC volume purchasing members.

4.3 Assist **Food Vendor** with general marketing of the program to make eligible SHESC members aware of the program.

4.4 Audit **Food Vendor** to establish that total compliance with the contract is met.

4.5 Work as a liaison between the school districts and **Food Vendor** to assure that the program remains running smoothly.

4.6 Help direct and encourage participating districts to purchase as many products as possible from **Food Vendor**.

ARTICLE 5. AGREEMENT PERIOD

The period of this Agreement is from **August 1, 2018 to July 31, 2019.**

ARTICLE 6. ORDERING AND BILLING

SHESC members may place their individual orders with **Food Vendor** at any time during the term of this Agreement. **Food Vendor** shall service all eligible SHESC volume purchasing members unless a member drops below a reasonable amount of ordering volume for an extended period of time and is submitted in writing to SHESC a request and justification for not servicing that particular member. Service shall be defined as regular contact by a **Food Vendor** salesperson and regular delivery of products to the SHESC member. All invoices for payment shall be sent directly to the SHESC member ordering under the terms and conditions of this agreement. The SHESC member will make payment directly to Food Vendor.

All freight and delivery charges must be clearly stated in all catalogs and price lists. (Delivery should always be by the most economical means possible.) Information about how to qualify for free delivery and details on minimum orders must be included as well.

ARTICLE 7. PRICING TO SHESC MEMBERS

The pricing method for determining product prices is “cost” plus “fixed fee”. “Cost” is defined as vendor’s invoice price from suppliers, plus any inbound freight charges to vendor, minus any other “off invoice” allowances (i.e. manufacturers rebate coupons, etc). “Fixed fee” is defined as the difference between cost, as defined above, and the selling price to the districts. **Food Vendor** will apply a fixed fee to products purchased by participating SHESC districts. No cost plus a percentage will be allowed. If there are manufacturers rebate coupons and similar pricing promotions, they must be provided to the SHESC members.

ARTICLE 8. PRICE LISTS

Food Vendor will transmit two month price lists to all SHESC members and SHESC starting with the first day of August, and these shall be updated every two months if necessary. Price lists shall consist of products most commonly ordered by members, as jointly defined by Food Vendor and SHESC. Price lists shall be transmitted weekly for weekly priced items, and every eight weeks for two month pricing.

ARTICLE 9. PRICE CHANGES

9.1 Firm prices will prevail for two months for all food with the exception of seafood, dairy, and produce, which will prevail for one week.

9.2 On dry grocery goods and frozen items, **Food Vendor** may increase or decrease their prices on a two month basis. On seafood, dairy and produce, **Food Vendor** may increase or decrease its prices on a weekly basis.

9.3 The following conditions apply to all price changes: All changes will be based on increases or decreases from the manufacturer or shipper only. All changes must be transmitted to the SHESC in the same format as to the member. All price changes will be submitted to SHESC, 605 E. Crawford ST, Salina, KS 67401 at the same time price changes take effect.

ARTICLE 10. REPORTS

Food Vendor shall submit monthly and/or quarterly sales reports to SHESC of the total dollar purchases of each SHESC member made under this Agreement. This report will be submitted to SHESC by the 15th day of the month following the reporting month.

ARTICLE 11. AUDITS

Food Vendor agrees that a Smoky Hill Education Service Center volume purchasing representative may audit its records to establish that total compliance of this contract is met. Vendor agrees to provide verifiable documentation tracking goods from manufacturer to each member upon request. Approximately 5 to 10 items and 5 to 10 school's billings might be audited monthly based on random sampling.

ARTICLE 12. ADMINISTRATIVE MAINTENANCE FEE

12.1 **Food Vendor** agrees to pay SHESC an administrative maintenance fee of two percent (2%) of the total gross dollar volume of goods purchased from the SHESC volume purchasing members.

12.2 The Administrative Maintenance Fee shall be submitted to the SHESC offices at 605 E. Crawford ST, Salina, KS 67401 by the 15th day of the month following the prior reporting month.

ARTICLE 13. INVOICING

Food Vendor agrees to bill and ship directly to each participating SHESC member. Payment terms are net 30 days.

ARTICLE 14. MINIMUM ORDER

Details on minimum orders must be clearly communicated to all purchasers and be published in all catalogs and price lists. Information about how to qualify for free delivery (if applicable) must be included as well.

All freight and delivery charges must be clearly stated in all catalogs and price lists. (Delivery should always be by the most economical means possible.)

ARTICLE 15. DELIVERY

Food Vendor agrees to deliver and unload goods directly to the member during normal operating hours or at other mutually agreed times.

ARTICLE 16. LABEL/PACK CHANGES

All specifications listed on the food catalog must be followed. If **Food Vendor** delivers a product that does not meet specifications, the product may be refuted by the district and will have to be picked up at **Food Vendor's** expense within 7 days. Whenever a label or pack size is changed from the price list then current, those changes must be submitted to SHESC and each member district under the same conditions that apply to transmitting price changes.

ARTICLE 17. DEFECTS

Food Vendor shall issue full credit and pay for return shipping charges on any item received by any SHESC member that is found to be deficient in quality or defective in packaging. If **Food Vendor** has substituted items other than those that were ordered, without permission by the member, the merchandise so designated shall be replaced at **Food Vendor's** expense within seven (7) calendar days. **Food Vendor** will be notified of defective products immediately so that arrangements can be made for pickup and return.

ARTICLE 18. SALES REPRESENTATION/MARKETING

18.1 **Food Vendor** agrees to provide salespeople to visit all members on a regular basis, along with providing support from its marketing staff. SHESC agrees to assist **Food Vendor** with its marketing efforts as mutually agreed upon by **Food Vendor** and SHESC.

18.2 If requested by SHESC or SHESC Members, **Food Vendor** agrees to sponsor a product show and seminar for member personnel at no charge.

ARTICLE 19. RENEWAL

The period of this contract is **August 1st, 2018 to July 31st, 2019**, with the option to renew at the end of the agreement period. A one year renewal by SHESC volume purchasing program administrators at the same or better terms, for one (1) successive year, based on a successful performance review, may be awardable. Performance renewal criteria will be determined by the SHESC volume purchasing program administrators in agreement with the vendor.

ARTICLE 20. RELATIONSHIP AND LIABILITY

20.1 Each party is an independent entity under the terms of this Agreement. Neither party, by virtue of this Agreement, will have any right, power or authority to act or create any obligation, expressed or implied, on behalf of the other party. Except as otherwise provided, or as may hereafter be established by a written agreement executed by authorized representatives of the parties. All operational expenses incurred by either party will be borne by the party incurring the expense.

20.2 Each party agrees to hold the other harmless from any and all claims and demands of SHESC members which may result from the negligence of the other in connection with their duties and responsibilities under this Agreement unless such action is a result of intentional wrongdoings of the other party.

ARTICLE 21. TERMINATION

This agreement may be terminated by either party, with or without cause, upon sixty (60) days' written notice to the other party at the following addresses:

Smoky Hill Education Service Center
Attn: Chris Modellmog
605 E. Crawford
Salina, Kansas 67401

Food Vendor
Attn:
Street Address
City, State, Zip

ARTICLE 22. RIGHT TO ASSIGNMENT

SHESC specifically reserves the right, in its sole discretion, to assign and transfer its interest in this Agreement, consistent with the terms and conditions of said Agreement, to any organization, along with all of the corresponding duties, responsibilities for both parties and provisions contained herein.

IN WITNESS WHEREOF, this Agreement is effective the first day of August, 2018.

On behalf of Food Vendor.

Name, Title

Date: _____

On behalf of the Smoky Hill Education Service Center:

Chris Modellmog, Executive Director

Date: _____