

INDEPENDENT CONTRACTOR AGREEMENT BETWEEN THE WALLKILL CENTRAL SCHOOL DISTRICT AND H.M.B. CONSULTANTS, LLC.

This is the record of an agreement (“this Agreement”) between the Wallkill Central School District (“District”) located at 1500 Route 208, Wallkill, New York 12589, and H.M.B. Consultants, LLC (“Consultant”), located at 3 Douglas Lane, Voorheesville, New York 12186.

1. Purpose of the Agreement

(a) H.M.B. Consultants represents that it will provide consultants who have the training, skills, experience, knowledge and competency to perform consulting services related to the Child Nutrition Program at the District.

(b) H.M.B. Consultants represents that neither it nor its employees have any relationship with the District that would, directly or indirectly, impair or otherwise restrict its ability to provide consulting services under this Agreement for the District.

2. Term

This Agreement shall be effective January 19, 2023 and shall remain in effect through August 31, 2023. However, notwithstanding Section 5, nothing herein shall be deemed a limitation on either Party’s right to terminate the Agreement, at any time, consistent with applicable laws.

3. Services

H.M.B. Consultants shall provide to the District but is not limited to the following:

1. Consultant will furnish consulting services and advice as specifically requested by Mr. Brian Devincenzi, Assistant Superintendent for Business, Client’s Primary Agent. The services and advice will relate to work directed by Client in the area of Child Nutrition Programs and will specifically include the following:
 - (a) The contents in the Proposal for the Development of Bid Specifications, submitted on January 6, 2023 by HMB and accepted by the District.
 - (b) An on site evaluation of your existing facilities, meeting with the Administration of the School District to incorporate any new concerns into the specifications. Details of all child nutrition related programs need to be identified fully, enabling H.M.B. to articulate their specific needs into the bid specifications for breakfast, lunch, snack and summer if applicable.
 - (c) An analysis of all the existing meals and the development of a spreadsheet for inclusion into the specifications.

- (d) A specific timetable for the entire bid process that is customized around the School District's requirements.
- (e) Evaluation of the existing contract and revision of any areas to prevent ambiguities for all potential bidders. Review of the exact pricing structure for not only next year but also future years. (including a la carte pricing) Address the portion sizes of all items at each building to ensure that they meet and exceed NYS requirements and the Healthy Hunger Free Kids Act of 2010.
- (f) Evaluations of the guaranteed financial return for the Wallkill Central School District making sure all District costs are covered. Additional expenses such as new point of service computer system, new equipment, any district food service labor, and the cost of the food service consultant should be included as well.
- (g) HMB will ensure that the proposed 21-day menu for breakfast, lunch, snack, and summer if applicable, meets with the new Healthy Hunger Free Kids Act requirements.
- (h) HMB will deliver a comprehensive food service bid specification draft to the Assistant Superintendent for Business for final approval prior to solicitation of bids. It is here that HMB will make sure that ALL District concerns are included but not limited to:
 - Wellness Criteria and any new HHFKA requirements
 - Retention of existing food service staff members
 - USDA Food Usage
 - Insurance requirements
 - Sanitation standards
 - Billing procedures
 - Performance security
 - Evaluation of the guaranteed return
 - Promotional requirements
 - Food service vehicle needs
 - Vending Assessment
 - Any remaining COVID-19 protocols
 - Any other District approved requirements
- (i) HMB will solicit only professional food service contractors who are recommended by the New York State Bureau of Child Nutrition.
- (j) HMB will conduct a pre-bid conference that will assemble all of the contractors for an informational session to discuss the approved specifications as they relate to the Wallkill Central School District. HMB will then take all contractors on a tour of the District, both buildings, to afford each contractor the ability to see for themselves the environment that they will be working in, should they be awarded the contract.

- (k) HMB will oversee the opening of the bids on the specified bid opening date.
- (l) HMB will evaluate all of the contractors' proposals and bid amounts in detail. We will ensure that each contractor has met all specifications and requirements. After thorough review, H.M.B. will make a recommendation to the Assistant Superintendent for Business of the contractor that is the lowest RESPONSIBLE bidder.
- (m) Should the bid result in a change of contractor, HMB will strive for a smooth and uneventful transition to the new FSMC.
- (n) After the award has been made HMB will work with the Assistant Superintendent for Business in completing the checklist that is required by SED, and submit the specified number of copies of the contract for approval to NYS Bureau of Child Nutrition.
- (p) Insurance
 - a. CONSULTANT, at its sole expense, shall procure and maintain such policies of commercial general liability and other insurance as shall be necessary to insure the CONSULTANT and the DISTRICT, including the Board of Education, employees and volunteers, as additional insured, against any claim for liability, personal injury, or death occasioned directly or indirectly by CONSULTANT in connection with the performance of CONSULTANT's responsibilities under this Agreement; each such policy shall provide a minimum coverage of One Million Dollars (\$1,000,000) per occurrence subject to an annual aggregate of Two Million Dollars (\$2,000,000). HMB shall also acquire Professional Errors and Omissions Insurance at a rate of \$1,000,000 per occurrence/\$1,000,000 aggregate for the consulting services being performed under the Agreement for the District, either directly or through sub-consultants.
 - b. The insurance is to be underwritten by a licensed and/or admitted New York State Insurer with a minimum Bests rating of A-minus.
 - c. In the event any of the aforementioned insurance policies are cancelled or not renewed, the CONSULTANT shall notify the DISTRICT in writing within thirty (30) days of such cancellation or non-renewal.
 - d. Upon the execution of this Agreement, CONSULTANT will supply the DISTRICT with a Certificate of Insurance including the DISTRICT, Board of Education, Employees and Volunteers as Additional Insured, a copy of the Declaration pages of the policies, and a copy of the additional insured endorsement.

4. **Compensation:**

(a) The fee for services for the development of the Food Service Bid Specifications for use in the upcoming 2023-24 Food Service Bid for the Wallkill Central School District will be \$10,500.00.

(b) This fee is inclusive of ALL expenses including on-site visits, lodging, fees, copying, postage etc. and will be billed after the service is performed.

(c) H.M.B. Consultants agrees that compensation for all services shall be limited to the terms and conditions provided for in this Agreement and that it shall not request, solicit or accept any additional compensation of any kind from individual students and/or their families for services provided pursuant to this Agreement.

5. **Termination**

(a) For Cause. A party may terminate this Agreement effective immediately by providing written notice of termination for cause. "For cause" shall mean:

- (i) Any material breach of this Agreement; or
- (ii) Any act exposing the other party to liability to others for personal injury or property damage; or
- (iii) Any act of fraud, theft or dishonesty in the course of performing services under this Agreement.

(b) Without Cause.

- (i) The District shall have the right to terminate this Agreement, without cause, by providing H.M.B. Consultants with two (2) weeks written notice of its intent to terminate the Agreement. All rights and obligations under this Agreement shall immediately cease upon termination of the Agreement unless otherwise provided herein.
- (ii) H.M.B. Consultants has the right to terminate this Agreement, without cause, by providing the District with twenty-one (21) days written notice of its intent to terminate the Agreement. All rights and obligations under this Agreement shall immediately cease upon termination of the Agreement unless otherwise provided herein.
- (iii) The parties shall deal with each other in good faith during the notice of termination period and continue to perform all obligations under this

Agreement until the expiration of the notice period. No monies shall be due to H.M.B. Consultants for work performed following the receipt of a termination notice except as specifically authorized in writing by the District.

6. **Independent Contractor Indemnification**

- (a) The relationship of the parties is that of independent contractor and any and all services performed by H.M.B. Consultants under this Agreement shall be performed in such capacity. Neither party shall hold itself out as, nor claim to be, an officer or employee of the other party, nor make any claim, demand, or application to or for any right or privilege applicable to an officer or employee of the other party, including, but not limited to, workers' compensation coverage, unemployment insurance benefits, social security coverage, or retirement membership or credit. Neither party shall have, or hold itself out as having, the authority or power to bind or create liability for the other by its intentional or negligent acts or omissions.
- (b) Nothing in this Agreement shall restrict H.M.B. Consultants from providing his services, or otherwise engaging in business with, any other person and/or entity, provided it satisfactorily fulfills its obligations under this Agreement.
- (c) It is agreed by H.M.B. Consultants and the District that neither federal, state or local income taxes nor payroll taxes of any kind, including, but not limited to F.I.C.A. or F.U.T.A., will be withheld or paid by the District on behalf of any consultant provided by H.M.B. Consultants. Said payments are to be made by H.M.B. Consultants in compliance with all federal, state, and local laws. H.M.B. Consultants agrees to pay all self-employment and other applicable taxes, including income taxes, workers' compensation insurance, unemployment insurance payment and/or any other payments that may be required under the laws, rules, or regulations of any government agency having jurisdiction over H.M.B. Consultants or its relationship with the District. H.M.B. Consultants further agrees to indemnify and hold the District harmless against any claim, cost, penalty, or expense (including reasonable attorneys' fees) related to either party's nonpayment or underpayment of any such taxes or payments, as well as penalties and interest thereon.
- (d) The District acknowledges that it shall have no ability to control the manner, means, details or methods by which H.M.B. Consultants performs its services under this Agreement except as provided herein and as required by federal, state, or local laws, rules, and regulations.
- (e) H.M.B. Consultants shall coordinate with Mr. Brian Devincenzi, Assistant Superintendent for Business, an agreeable schedule for performing services under this Agreement.

- (f) The District shall provide H.M.B. Consultants desk space as needed on a day-to-day basis. H.M.B. Consultants acknowledges that it is responsible for obtaining any other necessary equipment or supplies including but not limited to computer equipment necessary to adequately fulfill its obligations under this Agreement.

8. **Notices**

All notices and communications under this Agreement shall be in writing and shall be given by personal delivery, overnight delivery service, or certified mail, return receipt requested. Overnight delivery and mailed notices and communications shall be sent to the other party at its respective address as set forth above, or at such other address as the parties may designate by written notice from time to time.

9. **Assignment**

This Agreement and its respective duties and obligations hereunder may not be assigned, delegated, subcontracted, or transferred without the prior written consent of the other party.

10. **Entire Agreement; Amendment**

This Agreement represents the entire understanding of the parties with respect to its subject matter, and it supersedes all prior agreements, understandings, or representations, whether oral or written, by either party except as otherwise set forth herein. This Agreement may only be amended by a further written document signed by the parties. It may not be amended orally.

11. **Waiver**

The failure of any party to insist on the strict performance of any provision in this Agreement or to exercise any right under this Agreement shall not constitute a waiver of such provision or right. A waiver is effective only if in writing and signed and delivered by the waiving party.

12. **Governing Law**

This Agreement shall be governed by, and construed in accordance with, the laws of the State of New York, without regard to its choice of law principles. In the event of any controversy between the parties relating to this Agreement, the controversy shall be resolved in a court of appropriate subject matter jurisdiction located in Orange County, New York, unless the parties shall otherwise agree in writing. The parties consent to the personal jurisdiction of such court over them.

13. **Ratification**

This Agreement shall not become effective unless and until ratified by the Board of Education.

14. **Construction**

The language of all parts of this Agreement shall be construed as a whole, according to its fair meaning, and not strictly for or against either party, regardless of who drafted it.

15. **Severability**

Should any provision of this Agreement be finally determined by any court of competent jurisdiction to be invalid or unenforceable for any reason, the invalidity or unenforceability of such provision shall not affect the validity of the remaining provisions of the Agreement, unless such invalidity or unenforceability would defeat an essential purpose of this Agreement, in which case the Agreement shall be terminated.

16. **Headings**

The headings set forth herein have been inserted for convenience only and are not to be considered when construing the provisions of this Agreement.

Heather M. Bigley

H.M.B. Consultants, LLC

Date

January 9, 2023

Wallkill Central School District

Date