

INDEPENDENT CONTRACTOR AGREEMENT BETWEEN THE MALVERNE UNION FREE SCHOOL DISTRICT AND HMB CONSULTANTS, LLC

This agreement ("Agreement") between the Malverne Union Free School District (the "District") located at 301 Wicks Lane, Malverne, New York 11565, and HMB Consultants, LLC ("HMB"), located at 3 Douglas Lane, Voorheesville, New York 12186 (collectively the "Parties"), is hereby entered into for the provision of the following services.

NOW, THEREFORE, in consideration of the covenants, agreements, and consideration hereinafter expressed, it is mutually agreed between the Parties hereto as follows:

1. **Purpose**

(a) The District hereby engages HMB to provide consultants who have the training, skills, experience, knowledge, and competency to perform consulting services related to the District's Child Nutrition Program as outline in Section 3, below.

(b) HMB 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 the Agreement the District.

2. **Term**

The Agreement shall become effective once fully executed on the signature date below and shall remain effective through June 30, 2023, except as otherwise may occur pursuant to Section 5 of the Agreement. The Agreement may be extended for a period of one (1) year for a total of four (4) additional years. Each extension shall be executed prior the end of the preceding contract term. 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**

HMB will furnish consulting services and advice as specifically requested by the District's Primary Agent for the Child Nutrition Program. The services and advice will relate to work directed by the District in the area of Child Nutrition Programs and may include the following:

- (a) All tasks outlined in the Child Nutrition General Consultation Proposal ("Consultation Proposal");
- (b) Additional services at the request of the District.

4. **Compensation**

(a) HMB agrees that compensation for all services shall be limited to the amount specified in the Consultation Proposal and the Bid Proposal, as applicable, and that HMB shall not request, solicit or accept any additional compensation of any kind from

individuals including District employees, students, and/or their families for services provided pursuant to the Agreement.

(b) The District agrees to pay HMB in full for the agreed-upon services within the time frame specified in the Consultation Proposal and the Bid Proposal, as applicable.

5. **Termination**

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

- (i) Any material breach of the Agreement;
- (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 the Agreement.

(b) Without Cause.

- (i) The District shall have the right to terminate the Agreement, without cause, by providing HMB with thirty (30) days written notice of its intent to terminate the Agreement. All rights and obligations of both Parties under the Agreement shall immediately cease upon termination of the Agreement unless otherwise provided herein.
- (ii) HMB has the right to terminate the Agreement, without cause, by providing the District with fourteen (14) days written notice of its intent to terminate the Agreement. All rights and obligations under the Agreement shall immediately cease upon termination of the Agreement unless otherwise provided herein.
- (iii) The Parties shall perform under the Agreement in good faith during the notice of termination period and continue to perform all obligations under the Agreement until the expiration of the notice period. The District must fulfill its obligation to pay HMB for all services rendered until HMB ceases performing and the Agreement is terminated.

6. **Independent Contractor; Indemnification**

(a) HMB is an independent contractor and all services performed by HMB pursuant the 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. However, the District authorizes HMB to act on District's behalf as a limited agent of the District when performing services within the scope of the Agreement. As the District's limited agent, HMB may correspond and meet directly with Vendors, District employees, FSMC staff, and issue directives to such entities within the scope of the Agreement. However, HMB will seek District prior approval, whether written or oral, before making any decisions or issuing advice pertaining to actions that would impact District financials or the financial status of the Child Nutrition Program.

- (b) Nothing in the Agreement shall restrict HMB from providing its services, or otherwise engaging in business with, any other person and/or entity.
- (c) HMB shall be responsible for paying, when due, all income or other taxes incurred as a result of the compensation paid by the District for services under the Agreement. HMB 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 HMB or its relationship with the District. HMB further agrees to indemnify and hold the District harmless against any claim, cost, penalty, or expense 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 HMB performs its services under the Agreement except as provided herein and as required by federal, state, or local laws, rules, and regulations.
- (e) HMB agrees to defend, indemnify and hold harmless the District, its officers, directors, agents, or employees against all claims, demands, actions, lawsuits, costs, damages and expenses arising from any willful act, omission, error, recklessness or negligence of HMB, its officers, directors, agents, or employees in connection with the performance of services pursuant to the Agreement. The obligations pursuant to this provision shall survive the termination of the Agreement.

7.

Insurance

- (a) Upon the execution of this Agreement, HMB 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. Each policy naming the District as an additional insured must state that HMB's coverage is primary and non-contributory coverage for the District, its Board, employees and volunteers.
- (b) If the District is a member/owner of the New York Schools Insurance Reciprocal ("NYSIR"), then HMB agrees that the procurement of insurance coverage as required herein is intended to benefit not only the District but also NYSIR, as the District insurer.
- (c) HMB, at its sole expense, shall procure and maintain such policies of commercial general liability and other insurance as shall be necessary to insure the HMB 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 HMB in connection with the performance of District'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 One Million Dollars (\$1,000,000).
- (d) The insurance is to be underwritten by a licensed and/or admitted New York State Insurer with a minimum A.M. Best's rating of A-minus.
- (e) In the event any of the aforementioned insurance policies are cancelled or not renewed, HMB shall notify the District in writing within thirty (30) days of such cancellation or non-renewal.

8. **Confidentiality**

HMB acknowledges that in performing the Agreement it may have access to confidential information in the District's or others' possession, including, but not limited to names, facts, and information about individuals, students, businesses, and families. Contractor may also have access to confidential information including the student directory, personnel information, and records pertaining to sensitive, confidential, or internal District matters and other protected information. HMB agrees not to reveal any confidential information it may encounter. Disclosure of such information may be considered a breach of the Agreement. This section shall survive termination of the Agreement.

9. **HMB Work Product**

- (a) Any work product or materials drafted by HMB ("HMB Products") that HMB furnishes to the District are the sole and exclusive property of HMB. HMB Products include, but are not limited to, the bid specifications including all menus, schedules and addenda, vendor conference preparation materials, bid opening analysis documentation, menu review analyses, operating statement analyses, presentations for wellness or nutrition committees or other meetings, and any information or documents that HMB has authored or consulted in their preparation, etc. HMB Products have been created on a confidential basis and may be used by the District solely for their intended purpose.
- (b) Any public use and or dissemination of HMB Products without HMB prior written approval is explicitly prohibited. In the event that the District receives a FOIL Request pursuant to the New York State Freedom of Information Law (or the federal equivalent under the Freedom of Information Act or other applicable local laws) for HMB Products, the District must notify HMB within 5 business days of the District's receipt of such a request. The District may not release the requested material pursuant to such a request without HMB's written consent. HMB agrees to collaborate in a timely manner and in good faith with the District to approve the release of HMB Products whenever possible.
- (c) Reproduction of any part of HMB Products without the express written permission of HMB is prohibited. The termination of the Agreement does not and will not impact the proprietary nature of HMB Products and does not and will not toll the restrictions and responsibilities contained in this section. In the event that the District violates the restrictions and responsibilities contained in this section, HMB will take appropriate action as permitted by law.

10. **Cooperation in the Event of Litigation**

In the event that any claim, demand, suit or other legal proceeding arising out of any matter relating to the Agreement is made or instituted by any third party against either Party, the other Party shall, at its own cost and expense, provide all reasonable information, furnish documentation or discovery, and appear as needed in the defense or other disposition thereof.

11. **Notices**

All notice and communications under the Agreement shall be in writing and shall be given by personal delivery, overnight delivery service, or certified mail, return receipt requested, to the addresses found in Paragraph 1 of the Agreement, or at such other address as the Parties may designate in writing.

- (a) The District principal contact person shall be the District Business Manager, Assistant Superintendent for Business, or Business Official. HMB shall direct all notice, correspondence, reports, and inquiries stemming from performance under the Agreement to that person.
- (b) HMB's principal contact person shall be Heather M. Bigley, President of HMB Consultants, LLC. The District shall direct all notice, correspondence, reports, and inquiries stemming from performance under the Agreement to that person.

12. **Assignment**

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

13. **Entire Agreement; Amendment**

The 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. The Agreement may only be amended in writing with the consent of both Parties. It may not be amended orally.

14. **Waiver**

The failure of either Party to insist upon the strict performance of any provision, term, or covenant in the Agreement, or to exercise any right or remedy under the Agreement, or upon a breach of the Agreement shall not constitute a waiver of such provision or right. A Party's acceptance of services during the continuation of breach of the Agreement shall not constitute a waiver of any such breach or of any term, covenant, or provision of the Agreement. A waiver of any portion of the Agreement or responsibilities pursuant thereto may only be effectuated in writing by the waiving Party.

15. **Construction**

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

16. **Severability**

Should any provision of the Agreement be 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 the Agreement, in which case the Agreement shall be terminated.

17. **Governing Law**

The Agreement shall be governed by, interpreted, and enforced in accordance with the laws of the State of New York without regard to conflicts or choice of law provisions that would otherwise defer to the substantive laws of another jurisdiction. The Parties consent to the jurisdiction of the State court within the county of HMB's choosing, or applicable federal court within the federal district of HMB's choosing.

18. **No Punitive Damages**

HMB shall not be liable to the District for punitive damages for any alleged breach of the Agreement or other alleged action. The District hereby expressly waives its rights to claim punitive damages against HMB.

19. **Headings**

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

20. **Fingerprinting**

HMB agrees that its employees may be subject to fingerprinting and a criminal background check as may be required by the Education Law of the State of New York. In such instance, HMB agrees to cooperate with the District and to complete any and all necessary forms or procedures at no expense to the District.

IN WITNESS HEREOF, the Parties hereto have executed the Agreement as of the day and year written below:

Heather M. Bigley

HMB Consultants, LLC

By: 

June 7, 2022

Date


Malverne Union Free School District

By: Josephine Bottitta

6-14-2022
Date