

EXHIBIT
"A"

CITY OF ROUND ROCK
AGREEMENT FOR
FOOD SERVICE DISTRIBUTION
WITH
US FOODS INC.

THE STATE OF TEXAS

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CITY OF ROUND ROCK

KNOW ALL BY THESE PRESENTS:

COUNTY OF WILLIAMSON

COUNTY OF TRAVIS

THAT THIS Agreement for food service distribution and related goods and services (referred to herein as the "Agreement"), is made and entered into on this the ____ day of the month of _____, 2023, by and between the CITY OF ROUND ROCK, TEXAS, a home-rule municipality whose offices are located at 221 East Main Street, Round Rock, Texas 78664 (referred to herein as the "City") and US FOODS INC., whose offices are located at 9399 West Higgins Road, Suite 100, Rosemont, Illinois 60019 (referred to herein as the "Vendor").

RECITALS:

WHEREAS, City desires food service distribution and related goods and services; and

WHEREAS, City is a member of Sourcewell Cooperative and Vendor is an approved Sourcewell vendor; and

WHEREAS, the City desires to purchase certain goods and services from Vendor through Sourcewell Cooperative Contract No. 040522-USF to receive pricing and services as set forth herein; and

WHEREAS, the parties desire to enter into this Agreement to set forth in writing their respective rights, duties, and obligations;

NOW, THEREFORE, WITNESSETH:

That for and in consideration of the mutual promises contained herein and other good and valuable consideration, sufficiency and receipt of which are hereby acknowledged, it is mutually agreed between the parties as follows:

1.01 DEFINITIONS

A. **Agreement** means the binding legal contract between City and Vendor whereby City agrees to buy specified goods and/or services and Vendor is obligated to provide said goods/services. The Agreement includes any exhibits, addenda, and/or amendments thereto.

B. **City** means the City of Round Rock, Williamson and Travis Counties, Texas.

C. **Effective Date** means the date upon which the binding signatures of both parties to this Agreement are affixed.

D. **Force Majeure** means acts of God, strikes, lockouts, or other industrial disturbances, acts of the public enemy, orders of any kind from the government of the United States or the State of Texas or any civil or military authority, insurrections, riots, epidemics, landslides, lightning, earthquakes, fires, hurricanes, storms, floods, restraint of the government and the people, civil disturbances, explosions, or other causes not reasonably within the control of the party claiming such inability.

E. **Goods and services** mean the specified services, supplies, materials, commodities, or equipment.

2.01 EFFECTIVE DATE AND TERM

A. This Agreement shall be effective on the date it has been signed by both parties hereto, and shall remain in full force and effect, unless and until it expires by operation of the term stated herein, or until terminated as provided herein.

B. The term of this Agreement shall be from the effective date of the Agreement through June 3, 2026. City reserves the right to review the relationship at any time, and may elect to terminate this Agreement, with or without cause, or may elect to continue.

3.01 CONTRACT DOCUMENTS AND EXHIBITS

City selected Vendor to supply the goods and services as outlined in Exhibit “A,” attached hereto and incorporated herein by reference.

The goods and services which are the subject of this Agreement are described in Exhibit “A” and, together with this Agreement, comprise the Contract Documents.

4.01 ITEMS AWARDED

When taken together with the appended exhibit, this Agreement shall evidence the entire understanding and agreement between the parties and shall supersede any prior proposals, correspondence or discussions. Vendor shall satisfactorily provide all goods and services described under the attached Exhibit “A” at the sole request of the City. Vendor provide goods and services in accordance with this Agreement, in accordance with the appended exhibits, in accordance with due care, and in accordance with prevailing industry standards for comparable services.

5.01 COSTS

A. City agrees to pay for goods during the term of this Agreement at the pricing set forth in Exhibit "A."

B. The City is authorized to pay the Vendor an amount not-to-exceed **Four Hundred Seventy-Five Thousand and No/100 Dollars (\$475,000.00)** for the term of this Agreement.

6.01 INVOICES

All invoices shall include, at a minimum, the following information:

- A. Name and address of Vendor;
- B. Purchase Order Number;
- C. Description and quantity of items received or services provided; and
- A. Delivery or performance dates.

7.01 NON-APPROPRIATION AND FISCAL FUNDING

This Agreement is a commitment of City's current revenues only. It is understood and agreed that City shall have the right to terminate this Agreement at the end of any City fiscal year if the governing body of City does not appropriate funds sufficient to purchase the services as determined by City's budget for the fiscal year in question. City may affect such termination by giving Vendor a written notice of termination at the end of its then current fiscal year.

8.01 PROMPT PAYMENT POLICY

In accordance with Chapter 2251, V.T.C.A., Texas Government Code, payment to Vendor will be made within thirty (30) days of the day on which City receives the performance, supplies, materials, equipment, and/or deliverables, or within thirty (30) days of the day on which the performance of services was complete, or within thirty (30) days of the day on which City receives a correct invoice for the performance and/or deliverables or services, whichever is later. Vendor may charge interest on an overdue payment at the "rate in effect" on September 1 of the fiscal year in which the payment becomes overdue, in accordance with V.T.C.A., Texas Government Code, Section 2251.025(b); however, this Policy does not apply to payments made by City in the event:

- A. There is a bona fide dispute between City and Vendor, a contractor, a subcontractor or supplier about the goods delivered or the service performed that cause the payment to be late; or

- B. The terms of a federal contract, grant, regulation, or statute prevent City from making a timely payment with federal funds; or
- C. There is a bona fide dispute between Vendor and a subcontractor or between a subcontractor and its supplier about the goods delivered or the service performed that causes the payment to be late; or
- D. Invoices are not mailed to City in strict accordance with instructions, if any, on the purchase order or the Agreement or other such contractual agreement.

9.01 GRATUITIES AND BRIBES

City may, by written notice to Service Provider, cancel this Agreement without liability to Vendor if it is determined by City that gratuities or bribes in the form of entertainment, gifts, or otherwise were offered or given by Vendor or its agents or representatives to any City officer, employee or elected representative with respect to the performance of this Agreement. In addition, Vendor may be subject to penalties stated in Title 8 of the Texas Penal Code.

10.01 TAXES

City is exempt from Federal Excise and State Sales Tax; therefore, tax shall not be included in Service Provider's charges.

11.01 ORDERS PLACED WITH ALTERNATE SERVICE PROVIDERS

If Vendor cannot provide the goods as specified, City reserves the right and option to obtain the products or services from another supplier or suppliers.

12.01 INSURANCE

Vendor shall meet all requirements required by the City as set forth at:
https://www.roundrocktexas.gov/wp-content/uploads/2014/12/corr_insurance_07.20112.pdf

13.01 CITY'S REPRESENTATIVE

City hereby designates the following representatives authorized to act in its behalf with regard to this Agreement:

Chad McKenzie
Director of Sports Management and Tourism
221 East Main Street
Round Rock, Texas 78664
(512) 218-5488
cmckenzie@roundrocktexas.gov

14.01 RIGHT TO ASSURANCE

Whenever either party to this Agreement, in good faith, has reason to question the other party's intent to perform hereunder, then demand may be made to the other party for written assurance of the intent to perform. In the event that no written assurance is given within the reasonable time specified when demand is made, then and in that event the demanding party may treat such failure as an anticipatory repudiation of this Agreement.

15.01 DEFAULT

If Vendor abandons or defaults under this Agreement and is a cause of City purchasing the specified goods elsewhere, Vendor agrees that it may be charged the difference in cost, if any, and that it will not be considered in the re-advertisement of the service and that it may not be considered in future bids for the same type of work unless the scope of work is significantly changed.

Vendor shall be declared in default of this Agreement if it does any of the following:

- A. Fails to make any payment in full when due;
- B. Fails to fully, timely and faithfully perform any of its material obligations under this Agreement;
- C. Fails to provide adequate assurance of performance under the "Right to Assurance" section herein; or
- D. Becomes insolvent or seeks relief under the bankruptcy laws of the United States.

16.01 TERMINATION AND SUSPENSION

A. City has the right to terminate this Agreement, in whole or in part, for convenience and without cause, at any time upon thirty (30) days' written notice to Vendor.

B. In the event of any default by Vendor, City has the right to terminate this Agreement for cause, upon ten (10) days' written notice to Vendor.

C. Vendor has the right to terminate this Agreement only for cause, that being in the event of a material and substantial breach by City or by mutual agreement to terminate evidenced in writing by and between the parties.

D. In the event City terminates under subsections (A) or (B) of this section, the following shall apply: Upon City's delivery of the referenced notice to Vendor, Vendor shall discontinue all services in connection with the performance of this Agreement and shall proceed to cancel promptly all existing orders and contracts insofar as such orders and contracts are chargeable to this Agreement. Within thirty (30) days after such notice of termination, Vendor

shall submit a statement showing in detail the goods and/or services satisfactorily performed under this Agreement to the date of termination. City shall then pay Vendor that portion of the charges, if undisputed. The parties agree that Vendor is not entitled to compensation for services it would have performed under the remaining term of the Agreement except as provided herein.

17.01 INDEMNIFICATION

Vendor shall defend (at the option of City), indemnify, and hold City, its successors, assigns, officers, employees and elected officials harmless from and against all suits, actions, legal proceedings, claims, demands, damages, costs, expenses, attorney's fees, and any and all other costs or fees arising out of, or incident to, concerning or resulting from the fault of Service Provider, or Service Provider's agents, employees or subcontractors, in the performance of Vendor's obligations under this Agreement, no matter how, or to whom, such loss may occur. Nothing herein shall be deemed to limit the rights of City or Vendor (including, but not limited to the right to seek contribution) against any third party who may be liable for an indemnified claim.

18.01 COMPLIANCE WITH LAWS, CHARTER AND ORDINANCES

A. Vendor, its agents, employees and subcontractors shall use best efforts to comply with all applicable federal and state laws, the Charter and Ordinances of the City of Round Rock, as amended, and with all applicable rules and regulations promulgated by local, state and national boards, bureaus and agencies.

B. In accordance with Chapter 2271, Texas Government Code, a governmental entity may not enter into a contract with a company for goods and services unless the contract contains written verification from the company that it: (1) does not boycott Israel; and (2) will not boycott Israel during the term of the contract. The signatory executing this Agreement on behalf of Vendor verifies Vendor does not boycott Israel and will not boycott Israel at any time during the term of this Agreement.

C. In accordance with 2274, Texas Government Code, a governmental entity may not enter into a contract with a company with at least ten (10) full-time employees for a value of at least One Hundred Thousand and No/100 Dollars (\$100,000.00) unless the contract has a provision verifying that it: (1) does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association; and (2) will not discriminate during the term of the contract against a firearm entity or firearm trade association. The signatory executing this Agreement on behalf of Vendor verifies Vendor does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association, and it will not discriminate during the term of this Agreement against a firearm entity or firearm trade association.

D. In accordance with 2274, Texas Government Code, a governmental entity may not enter into a contract with a company with at least ten (10) full-time employees for a value of at least One Hundred Thousand and No/100 Dollars (\$100,000.00) unless the contract has a

provision verifying that it: (1) does not boycott energy companies; and (2) will not boycott energy companies during the term of this Agreement. The signatory executing this Agreement on behalf of Vendor verifies Vendor does not boycott energy companies, and it will not boycott energy companies during the term of this Agreement.

19.01 ASSIGNMENT AND DELEGATION

The parties each hereby bind themselves, their successors, assigns and legal representatives to each other with respect to the terms of this Agreement. Neither party shall assign, sublet or transfer any interest in this Agreement without prior written authorization of the other party.

20.01 NOTICES

All notices and other communications in connection with this Agreement shall be in writing and shall be considered given as follows:

1. When delivered personally to the recipient's address as stated in this Agreement;
or
2. Three (3) days after being deposited in the United States mail, with postage prepaid to the recipient's address as stated in this Agreement.

Notice to Vendor:

US Foods Inc.
9399 West Higgins Road, Suite 100
Rosemont, IL 60018

Notice to City:

City Manager	AND TO:	Stephanie L. Sandre, City Attorney
221 East Main Street		309 East Main Street
Round Rock, TX 78664		Round Rock, TX 78664

Nothing contained herein shall be construed to restrict the transmission of routine communications between representatives of City and Vendor.

21.01 APPLICABLE LAW; ENFORCEMENT AND VENUE

This Agreement shall be enforceable in Round Rock, Texas, and if legal action is necessary by either party with respect to the enforcement of any or all of the terms or conditions herein, exclusive venue for same shall lie in Williamson County, Texas. This Agreement shall be governed by and construed in accordance with the laws and court decisions of the State of Texas.

22.01 EXCLUSIVE AGREEMENT

This document, and all appended documents, constitutes the entire Agreement between Vendor and City. This Agreement may only be amended or supplemented by mutual agreement of the parties hereto in writing, duly authorized by action of the City Manager or City Council.

23.01 DISPUTE RESOLUTION

City and Vendor hereby expressly agree that no claims or disputes between the parties arising out of or relating to this Agreement or a breach thereof shall be decided by any arbitration proceeding, including without limitation, any proceeding under the Federal Arbitration Act (9 USC Section 1-14) or any applicable state arbitration statute.

24.01 SEVERABILITY

The invalidity, illegality, or unenforceability of any provision of this Agreement or the occurrence of any event rendering any portion or provision of this Agreement void shall in no way affect the validity or enforceability of any other portion or provision of this Agreement. Any void provision shall be deemed severed from this Agreement, and the balance of this Agreement shall be construed and enforced as if this Agreement did not contain the particular portion or provision held to be void. The parties further agree to amend this Agreement to replace any stricken provision with a valid provision that comes as close as possible to the intent of the stricken provision. The provisions of this section shall not prevent this entire Agreement from being void should a provision which is of the essence of this Agreement be determined void.

25.01 MISCELLANEOUS PROVISIONS

Standard of Care. Vendor represents that it employs trained, experienced and competent persons to perform all of the services, responsibilities and duties specified herein and that such services, responsibilities and duties shall be performed in a manner according to generally accepted industry practices.

Time is of the Essence. Vendor understands and agrees that time is of the essence and that any failure of Vendor to fulfill obligations for each portion of this Agreement within the agreed timeframes will constitute a material breach of this Agreement. Vendor shall be fully responsible for its delays or for failures to use best efforts in accordance with the terms of this Agreement. Where damage is caused to City due to Service Provider's failure to perform in these circumstances, City may pursue any remedy available without waiver of any of City's additional legal rights or remedies.

Force Majeure. Neither City nor Vendor shall be deemed in violation of this Agreement if it is prevented from performing any of its obligations hereunder by reasons for which it is not responsible as defined herein. However, notice of such impediment or delay in performance must be timely given, and all reasonable efforts undertaken to mitigate its effects.

Multiple Counterparts. This Agreement may be executed in multiple counterparts, any one of which shall be considered an original of this document; and all of which, when taken together, shall constitute one and the same instrument.

IN WITNESS WHEREOF, City and Vendor have executed this Agreement on the dates indicated.

City of Round Rock, Texas

By: _____
Printed Name: _____
Title: _____
Date Signed: _____

US Foods Inc.

By:  _____
Printed Name: Theresa Madden
Title: VP National Sales
Date Signed: March 27, 2023

Attest:

By: _____
Meagan Spinks, City Clerk

For City, Approved as to Form:

By: _____
Stephanie L. Sandre, City Attorney



US Foods #040522-USF for Government Agencies and C&U

The prime Vendor Lead Agency Award is a best value program that offers off invoices discount and rebates for program utilization and performance. No fees to participate.

This program leverages aggregated purchases totaling more than \$2.2 billion annual foodservice spend from thousands of members operating in education, healthcare, corporate, and municipality trades. This program not only factors in the volume of your organization but adds that to the largest national volume scale optimizing your pricing and enhanced qualitative offerings.

This program offers access to nationally contracted food and supply products through the US Foods contract with Vizient. Firm pricing on many contracts and choice in product selection provides you with unparalleled value.

The financial value of this program is realized by members at the time of invoice in the form of discounts and rebate credits. This value is immediate, truly reducing food cost at the time of delivery, no waiting for rebate checks.

Program Discounted Manufacturer Agreements Key Benefits

- Financial Value is OFF INVOICE Upfront Savings
- 310+ Manufacturer Agreements Products You Know and are Using
- More than 50,000 contracted products with savings on average of 20%
- Insulate against Market Swings with Inflation Protection - contracts provide price protection, often firm pricing and pre-negotiated price increase caps helping to hedge against un-sustained price increases and inflation swings.
- Program offers product and brand choices, and you determine quality price value that is best for your operation and menu

A US Foods representative will work with you to identify your specific requirements and review the options available to meet your goals and priorities. Upon request, US Foods will provide a competitive analysis of your particular requirements for both service and pricing. This analysis would be based on the agency's current purchasing method compared with the structured and measurable pricing available.

*Pricing for contract #040522-USF offers Sourcewell participating **Government agencies and College and University** customers a cost-plus annual rate per case pricing model with potential discounts for Volume, Prompt pay, and Drop size as follows:

US Foods Pricing Model:

US Foods uses a Delivered Price Plus Markup Methodology (commonly referred to as Cost Plus % markup). All products purchased by participating SOURCEWELL member are covered by a firm markup by category. US Foods calculates the price at which we sell each product under this RFP to SOURCEWELL members, with a percentage mark up, using the following definitions and calculations.

Operational incentives: Volume, Drop Size and Payment incentives are applied off-invoice as a line-item deduction off the total invoice as earned.

Volume Incentive: This incentive may be earned by individual customers with annual spend of \$1M or greater. Districts and multi-unit customers who make purchasing decisions as a group are considered one entity and may earn volume incentive based on group, district, or system total annual spend. **Volume Incentive for K-12 and Early Learning determines their mark-up schedule and are reflected in the schedule.**

Volume Annual	Incentive %
\$1-\$2,000,000	0.25%
\$2-\$3,000,000	0.40%
\$3-\$5,000,000	0.60%
\$5,000,000 +	0.75%

Prompt Pay Incentive:

US Foods offers SOURCEWELL members a Prompt Pay off invoice incentive. This incentive can be applied off invoice in the form of a line-item deduction off the total invoice or can be paid in the form of a credit memo upon request. The payments incentives listed below would be applied as a percentage to each invoice as earned and are re-evaluated on a quarterly basis. A program upcharge for DSO performance of 31 days+ would be reflected as an increase in the applicable program fee per case schedule.

Prompt Payment/Prepay	Incentive %
Prepayment	-0.60%
0-10 days	-0.30%
11-15 days	-0.25%
16-20 days	-0.10%
21-30 days	0.00%
31-45 days (up charge)	0.25%
46-60 days (up charge)	0.50%

Exhibit "A"

Average Delivery Size: This incentive is calculated using each delivery location's average delivery size over a period of one quarter, based on purchasing practices for the previous quarter. This incentive can be applied off invoice in the form of a line-item deduction off the total invoice or can be paid in the form of a quarterly credit memo upon request.

Average Delivery Size	Incentive %
\$3,000 - \$3,499	-0.15%
\$3,500 - \$3,999	-0.25%
\$4,000 - \$5,499	-0.35%
\$5,500 - \$6,999	-0.50%
\$7,000 - \$10,999	-0.65%
\$11,000 - \$15,999	-0.95%
\$16,000 +	-1.20%

New Customer Rebate:

US Foods offers a rebate to any new member of SOURCEWELL that elects to transition from another distributor to US Foods under the terms and conditions of an awarded agreement. The New Member Rebate will be calculated at .85% of total purchases for the first twelve (12) months starting from the date of the first delivery. This is paid as a credit memo or a check in two 6-month intervals.

US Food Exclusive Brand (EB) Product Rebate:

Rebate of 1% on all USF exclusive brands that are not VMA contracted, paid directly to members bi-annually as a credit memo on each customer number.

IMPACT Standardization Rebate Program:

Provides valuable quarterly rebate for purchases of participating items.

Minimum Order:

Minimum order of \$600 per delivery.

*see contract for full details.

Paula Bruck

815-674-1646

Paula.Bruck@usfoods.com

James Vondrasek

708-945-4490

James.Vondrasek@usfoods.com