

VENDOR CONTRACT

AGREEMENT between the BOARD OF EDUCATION OF THE PORT JERVIS CITY SCHOOL DISTRICT (hereinafter referred to as the "SCHOOL DISTRICT"), as the party of the first part, having its principal place of business located at 9 Thompson Street, Port Jervis, New York 12771, and the MONTAGUE BOARD OF EDUCATION (hereinafter referred to as "MONTAGUE"), as the party of the second part, having its principal place of business for purposes of this Agreement at 475 Route 206, Montague, New Jersey 07827.

WHEREAS, SCHOOL DISTRICT operates a food service program and has the capability to provide food services to MONTAGUE; and

WHEREAS, MONTAGUE desires that SCHOOL DISTRICT provide food services as set forth in this Agreement; and

NOW THEREFORE, in consideration of the mutual promises and covenants contained in this Agreement, the parties hereto mutually agree as follows:

1. **TERM OF AGREEMENT:** This Agreement shall be in effect for the period September 1, 2017 through June 30, 2018, unless terminated earlier, as set forth herein. Thereafter, the Agreement may be renewed for additional one (1) year terms upon the mutual written consent of the parties.
2. **SCOPE OF SERVICES:** the SCHOOL DISTRICT will provide MONTAGUE services as follows:
 - a. **Preparation of Food:** The SCHOOL DISTRICT shall order, prepare and provide sufficient food and milk for the number of meals and milk required each day by MONTAGUE, provided the SCHOOL DISTRICT receives adequate notice of such requirements and subject to any unscheduled school closings per the terms of the VENDOR CONTRACT.
 - b. **Menus/Meals Pattern Conformance:** All meals supplied by the SCHOOL DISTRICT will conform to the requirements of the Child and Adult Care Food Program as determined by the New York Department of Health. The SCHOOL DISTRICT shall provide a menu to MONTAGUE a minimum of one week in advance of the meals being provided, or as mutually agreed by the parties.
 - c. **Orders:** MONTAGUE shall submit daily telephone orders to the Central Kitchen maintained by the DISTRICT setting forth the number of breakfasts, lunches and milk half pints required by MONTAGUE by 5 pm the prior school day, or as mutually agreed by the parties.
 - d. **Unscheduled closings:** The DISTRICT shall not provide any food or milk to MONTAGUE on days the SCHOOL DISTRICT is unexpectedly closed, even if MONTAGUE remains open.

3. **PAYMENT SCHEDULE:** In full consideration for the services to be rendered by SCHOOL DISTRICT to MONTAGUE for the term of the VENDOR CONTRACT, MONTAGUE agrees to pay SCHOOL DISTRICT monthly at the rate of \$ 2.05 per breakfast and \$3.55 per lunch meal pattern. Milk which is shipped in addition to the milk half pints which accompany a menu pattern meal will be invoiced on a monthly basis at a rate of \$.40 per half pint. Any increase in the price of foodstuffs during the contract term will be incurred by MONTAGUE, provided that if any increase renders this Agreement no longer financially feasible, either party may terminate the Agreement in accordance with the terms stated herein. There will be no credit of meals and/or milk left over by MONTAGUE, or for the value of government commodities described below.
4. **INVOICE DUE ON MONTHLY BASIS:** SCHOOL DISTRICT will submit an invoice to MONTAGUE for services rendered on a monthly basis, and payment to SCHOOL DISTRICT shall be made within twenty (20) days from receipt of invoice from SCHOOL DISTRICT. MONTAGUE shall give SCHOOL DISTRICT notice of any invoice dispute within twenty (20) days of its receipt.
5. **INDEPENDENT CONTRACTOR:** All employees of MONTAGUE shall be deemed employees of MONTAGUE for all purposes and MONTAGUE alone shall be responsible for their work, personal conduct, direction, and compensation. MONTAGUE acknowledges that it will not hold itself, its officers, employees and/or agents out as employees of SCHOOL DISTRICT. Employees of MONTAGUE shall not be considered as having SCHOOL DISTRICT employee status and shall not be entitled to participate in any of SCHOOL DISTRICT's workers' compensation, retirement, fringe benefits, unemployment insurance, liability insurance, disability insurance, or other similar employee benefit programs. Similarly, MONTAGUE, its officers, its employees and/or agents shall not be considered as having employee status for the purposes of any other rights, privileges or benefits derived from employment by SCHOOL DISTRICT. MONTAGUE agrees that the VENDOR CONTRACT does not confer benefits of any nature whatsoever upon it other than the services provided herein. MONTAGUE shall not assert any claim for additional benefits of any nature, including, but not limited to, unemployment compensation benefits, by reason of the services to be performed pursuant to the VENDOR CONTRACT. Employees of MONTAGUE shall not be entitled to assert any claim to entitlements pursuant to any collective bargaining agreement now or hereafter in effect between SCHOOL DISTRICT and its employees.
6. **EXPENSES OF MONTAGUE:** MONTAGUE shall be responsible for all costs and expenses incurred by MONTAGUE that are incident to the performance of services by SCHOOL DISTRICT, including, but not limited to, all supplies and vehicles to be used by MONTAGUE in the pick up or delivery of food and milk items, all fees, fines, licenses, bonds or taxes required of or imposed against MONTAGUE and all other of MONTAGUE costs of doing business.
7. **INCOME TAX DESIGNATION AND INDEMNIFICATION:** MONTAGUE shall not withhold from sums becoming payable to SCHOOL DISTRICT under the VENDOR CONTRACT any amounts for Federal, State, or local taxes including Federal or State income taxes, employment taxes (including Social Security and Medicare taxes), and

unemployment taxes. MONTAGUE agrees that any tax obligation of MONTAGUE arising from the payments made under the VENDOR CONTRACT will be MONTAGUE's sole responsibility. MONTAGUE will indemnify SCHOOL DISTRICT for any tax liability, interest, and/or penalties imposed upon SCHOOL DISTRICT by any taxing authority based upon Montague's failure to withhold any amount from the payments for tax purposes.

8. **AUTHORIZATION OF SCHOOL DISTRICT:** MONTAGUE shall coordinate all services through the Assistant Superintendent for Business Office or any other authorized office of SCHOOL DISTRICT.
9. **TERMINATION NOTICE:**
 - a. The VENDOR CONTRACT may be terminated by either party upon seven (7) days' written notice to the other party. In the event of such termination, the parties will adjust the accounts due and payable to SCHOOL DISTRICT for services rendered. Neither party will incur any additional expenses upon receipt of notification that services have been terminated. Upon any such termination, the parties shall endeavor in an orderly manner to wind down activities hereunder. In the event of termination, all reports and services due must be completed within thirty (30) days of the termination date.
 - b. This Agreement may be terminated by either party upon three (3) days' written notice to the other party in the event of a material breach by the other.
10. **INDEMNIFICATION and HOLD HARMLESS:** MONTAGUE further agrees that it shall defend, indemnify and hold harmless SCHOOL DISTRICT, its officers, directors, agents and employees for all loss, costs, damages and expenses, including attorneys' fees, judgments, fines and amounts paid in settlement in connection with a terminated, pending or completed action, suit or proceeding arising from any act, error or omission, misstatement, misleading statement, neglect or breach of duties by MONTAGUE or any of its officers, directors, agents or employees taken or made with respect to the VENDOR CONTRACT. It is expressly acknowledged that MONTAGUE shall be solely responsible for ensuring the safety of students with food borne allergies. The SCHOOL DISTRICT shall not be liable for any damages resulting from student allergies. Notwithstanding the foregoing, the SCHOOL DISTRICT will comply with all applicable food safety and health regulations. To the extent possible and feasible, SCHOOL DISTRICT will respond to reasonable requests to identify the ingredients in menu items provided to MONTAGUE. While the District warrants that it shall comply with applicable food storage and handling requirements, the SCHOOL DISTRICT assumes no liability or obligation for contaminated or spoiled food products.
11. **INSURANCE:** MONTAGUE shall purchase from and maintain in a company or companies lawfully licensed to do business in the State of New York such insurance as will protect MONTAGUE and SCHOOL DISTRICT from claims set forth below for which MONTAGUE may be legally liable, whether such operations be by MONTAGUE or by

anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable. Notwithstanding any terms, conditions or provisions, in any other writing between the parties, MONTAGUE hereby agrees to effectuate the naming of SCHOOL DISTRICT as an additional insured on MONTAGUE's insurance policies, with the exception of workers' compensation, N.Y. State disability and professional liability. If the policy is written on a claims-made basis, the retroactive date must precede the date of the VENDOR CONTRACT. The policy naming SCHOOL DISTRICT as an additional insured shall:

- a. Purchase an insurance policy from an A.M. Best rated "secured" insurer, licensed in New York State.
- b. State that the organization's coverage shall be primary and non-contributory coverage for SCHOOL DISTRICT, its Board, employees and volunteers.
- c. State that the policy affirmatively provides coverage for claims of negligent hiring, training and supervision, which may arise in the context of sexual molestation, abuse harassment, or similar sexual conduct.
- d. SCHOOL DISTRICT shall be listed as an additional insured by using endorsement CG 2026 or equivalent. A completed copy of the endorsement must be attached to the certificate of insurance.
- e. The certificate of insurance must describe the specific services provided by the MONTAGUE that are covered by the commercial general liability policy and the umbrella policy.

At SCHOOL DISTRICT's request, MONTAGUE shall provide a copy of the declaration page of the liability and umbrella policies with a list of endorsements and forms. If so requested, MONTAGUE will provide a copy of the policy endorsements and forms.

Required Insurance:

- i. Commercial General Liability Insurance: \$1,000,000 per occurrence/ \$2,000,000 aggregate.
- ii. Workers' Compensation and N.Y.S. Disability: Statutory Workers' Compensation, Employers' Liability and N.Y.S. Disability Benefits Insurance for all employees. Proof of coverage must be on the approved specific form, as required by the New York State Workers' Compensation Board. ACORD certificates are not acceptable. A self-employed person and certain partners and corporate officers are excluded from the definition of "employee" pursuant to Workers' Compensation Law Section 2(4). As such, individuals in such capacity are excluded from Workers' Compensation Law coverage requirements. A person seeking an exemption must file a CE-200 form with the state. The form may be completed and submitted online:
 1. http://www.wcb.ny.gov/content/ebiz/wc_db_exemptions/requestExemptionOverview.jsp

- iii. Professional Errors and Omissions Insurance: \$2,000,000 per occurrence/ \$2,000,000 aggregate for the professional acts of MONTAGUE performed under the contract for SCHOOL DISTRICT. If written on a "claims-made" basis, the retroactive date must pre-date the inception of the contract or agreement. Coverage shall remain in effect for two (2) years following the completion of work.
- iv. Excess Insurance: \$1,000,000 each occurrence and aggregate. Excess coverage shall be on a follow-form basis.

MONTAGUE acknowledges that failure to obtain such insurance on behalf of SCHOOL DISTRICT constitutes a material breach of the VENDOR CONTRACT. MONTAGUE is to provide SCHOOL DISTRICT with a certificate of insurance, evidencing the above requirements have been met, prior to the commencement of work or use of facilities. The failure of SCHOOL DISTRICT to object to the contents of the certificate or the absence of same shall not be deemed a waiver of any and all rights held by SCHOOL DISTRICT.

SCHOOL DISTRICT is a member/owner of the NY Schools Insurance Reciprocal (NYSIR). MONTAGUE further acknowledges that the procurement of such insurance as required herein is intended to benefit not only SCHOOL DISTRICT but also the NYSIR, as SCHOOL DISTRICT's insurer. In the event that any of the insurance coverage to be provided by MONTAGUE contains a deductible, MONTAGUE shall indemnify and hold SCHOOL DISTRICT harmless from the payment of such deductible, which deductible shall in all circumstances remain the sole obligation and expense of MONTAGUE.

MONTAGUE shall provide SCHOOL DISTRICT with evidence of the above insurance requirements upon execution of the VENDOR CONTRACT. MONTAGUE further acknowledges that its failure to obtain or keep current the insurance coverage required by the VENDOR CONTRACT shall constitute a material breach of the VENDOR CONTRACT and subjects MONTAGUE to liability for damages including, but not limited to, direct, indirect, consequential, special and any other damages SCHOOL DISTRICT sustains as a result of this breach. In addition, MONTAGUE shall be responsible for the indemnification to SCHOOL DISTRICT of any and all costs associated with such lapse in coverage including, but not limited to, reasonable attorneys' fees.

Prior to commencement of its services, MONTAGUE shall obtain and pay for insurance as may be required to comply with the indemnification and hold harmless provisions outlined under the VENDOR CONTRACT and RIDER.

12. **NOTICES:** Any notices to be given under the VENDOR CONTRACT by either party to the other may be effected by personal delivery in writing, recognized overnight courier service which provides a receipt against delivery, or by mail, registered or certified, postage prepaid with return receipt requested. Each party may change the address by written notice in accordance with this paragraph. Notices delivered personally will be deemed communicated as of actual receipt; mailed notices will be deemed communicated as of two (2) days after mailing. Notice shall be delivered or mailed to:

MONTAGUE SCHOOL DISTRICT
475 Route 206
Montague, New Jersey 07827

PORT JERVIS CITY SCHOOL DISTRICT
9 Thompson Street
Port Jervis, New York 12771
Attn: Assistant Superintendent for Business

13. **ASSIGNMENT OF AGREEMENT:** Neither SCHOOL DISTRICT nor MONTAGUE shall assign, transfer or convey any of its respective rights or obligations under the VENDOR CONTRACT without the prior written consent of the other party.
14. **DISCRIMINATION PROHIBITED:** Neither SCHOOL DISTRICT nor MONTAGUE will discriminate against any individual because of his/her age, race, creed, color, national origin, sexual orientation, military status, sex, disability, predisposing genetic characteristics or marital status and will ensure that each individual is afforded equal opportunities without discrimination because of his/her age, race, creed, color, national origin, sexual orientation, military status, sex, disability, predisposing genetic characteristics or marital status.
15. **GOVERNING LAW:** The VENDOR CONTRACT shall be governed by, and 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 defer to the substantive laws of another jurisdiction. Each of the parties hereto consents to the jurisdiction of any state court located within the County of Orange, State of New York, or federal court in Federal District Court for the Southern District of New York located in the County of Westchester, State of New York, and irrevocably agrees that all actions or proceedings relating to the VENDOR CONTRACT must be litigated in such courts, and each of the parties waives any objection which it may have based on improper venue or *forum non conveniens* to the conduct of and proceeding in any such court.
16. **SEVERABILITY:** If any term, provision, covenant or condition of the VENDOR CONTRACT, or the application thereof to any person, place or circumstance, shall be held by a court of competent jurisdiction to be invalid, unenforceable or void, the remainder of the VENDOR CONTRACT and such term, provision, covenant or condition as applied to other persons, places and circumstances shall remain in full force and effect.
17. **NO PRIOR AGREEMENTS:** The VENDOR CONTRACT constitutes the full and complete agreement between SCHOOL DISTRICT and MONTAGUE, and supersedes all

prior written and oral agreements, commitments or understandings with respect thereto. The VENDOR CONTRACT may not be altered, changed, added to, deleted from or modified except through the mutual written consent of the parties.

18. **AGREEMENT CONSTRUCTION:** The VENDOR CONTRACT has been arrived at mutually and is not to be construed against any party hereto as being the drafter hereof or causing the same to be drafted.
19. **REPRESENTATIONS AND WARRANTIES:** MONTAGUE represents and warrants: 1) that MONTAGUE has no obligations, legal or otherwise, inconsistent with the terms of this Agreement; 2) that the performance of the services to be provided in this Agreement does not and will not violate any applicable law, rule or regulation or any proprietary or other right of any third party; and 3) that MONTAGUE has not entered into or will not enter into any Agreement (whether oral or written) in conflict with this Agreement.
20. **AMENDMENT:** The VENDOR CONTRACT may be amended only in writing and signed by the parties.
21. **NON-WAIVER:** No course of dealing of any party hereto, no omission, failure or delay on the part of any party hereto in asserting or exercising any right hereunder, and no partial or single exercise of any right hereunder by any party hereto shall constitute or operate as a waiver of any such right or any other right hereunder. No waiver of any provision hereof shall be effective unless in writing and signed by or on behalf of the party to be charged therewith. No waiver of any provision hereof shall be deemed or construed as a continuing waiver, as a waiver in respect of any other or subsequent breach or default of such provision, or as a waiver of any other provision hereof unless expressly so stated in writing and signed by or on behalf of the party to be charged therewith.
22. **AUTHORIZATION TO ENTER AGREEMENT:** The undersigned representative of MONTAGUE hereby represents and warrants that the undersigned is an officer, director, or agent of MONTAGUE with full legal rights, power and authority to enter into the VENDOR CONTRACT on behalf of MONTAGUE and bind MONTAGUE with respect to the obligations enforceable against MONTAGUE in accordance with its terms.

IN WITNESS WHEREOF, the parties hereto have executed this VENDOR CONTRACT RIDER the day and year first above written.

PORT JERVIS CITY SCHOOL DISTRICT

Date: _____

By: _____

MONTAGUE SCHOOL DISTRICT

Date: _____

By: _____