STATE OF TEXAS §
COUNTY OF TRAVIS §

Division	Food and Nutrition	**Location:**	Austin
Payee Name:	ProValley Foods LLC	**Program Name:**	USDA Foods & Commodity Operations
Payee TINS No:	82-1660513	**Legal/Funding Authority:**	Sections 12.0011 and 12.0025 of the Texas Agriculture Code
Contract #:	551-20-FN-00687	**PO #:** 511RH	

TEXAS DEPARTMENT OF AGRICULTURE STANDARD CONTRACT

FOR DISTRIBUTION, STORAGE AND WAREHOUSING OF USDA FOODS
REGION 5

ARTICLE I. PARTIES TO CONTRACT

This agreement ("Contract") is entered into by and between the Texas Department of Agriculture ("TDA"), a Texas State Agency and ProValley Foods, LLC, located at 8101 S. 23rd Street, Suite #3, McAllen, Texas 78530 ("Contractor") pursuant to TDA's authority under Title 2, Chapter 12, Section 12.0011 of the Agriculture Code.

ARTICLE II. PERIOD OF CONTRACT

The Contract Period shall begin May 1, 2020 and end May 31, 2021, unless extended or terminated as otherwise provided for in this Contract. Unless terminated in accordance with the provisions of an awarded Contract, TDA has the option to renew the Contract for up to three (3) consecutive one (1) year periods, one year at a time for all regions. The term of each renewal option is beginning on June 1 following the expiration of the preceding one-year term, through May 31 of the succeeding year of the Contract. TDA will notify Contractor of the intent to exercise the renewal term option through email to a Contractor provided address that will remain active during the term of this agreement. Upon exercising an option to renew this Contract, a written contract amendment will be executed by all parties. In case of a renewal or extension, all original contract terms and conditions survive the termination or expiration of the initial contract term. The duration of the Contract is subject to change as mandated by federal laws or regulations. Contractor's obligation is to cooperate with TDA and assist the agency and state with all transition deliverables and tasks, which transition provision survives the expiration or termination of this Contract.

ARTICLE III. PURPOSES OF CONTRACT

The Contractor shall perform all of the services, functions and duties required by this Contract and TDA's Request for Proposal (RFP) No. 551-20-00687 for Commercial Distribution and Warehousing of USDA Foods, which RFP is incorporated by reference herein the same as if fully copied and set forth at length.

ARTICLE IV. PAYMENT UNDER CONTRACT

There will be no direct funding provided from TDA to Contractor under this Contract. Contractor shall be paid by the applicable regional Contracting Entity (CE) according to the approved specified rates for the region as set forth below.

Contractor shall store and deliver USDA Foods pursuant to this Contract at the approved delivery and private storage rates accepted and approved by TDA for Region 5.

The Contractor's rate to deliver USDA Foods is the rate schedule shown in Contractor's Proposal, Pricing Forms I and J, dated March 31, 2020. The per-case price for storage, handling and pick-up and delivery is $3.00. The private storage rates per case (after 45 days of allocation of USDA Foods) for Contractor and accepted by TDA are as follows:

1. For Dry Foods: $2.00 per case
2. For Chilled Foods: $2.00 per case
3. For Frozen Foods: $4.00 per case

Contractor's payments will be made by the CE in accordance with the foregoing rates and as outlined in the Description of Services in Sections 2.1 and 2.2 inclusive and following of the RFP and shall not exceed the prices or rates identified in this Contract above. Contractor must:

1. Invoice CEs at the approved delivery and pick-up rates either monthly or after each pick-up or delivery of USDA Foods;
2. Not bill CEs until after the pick-up or delivery is complete; and
3. Bill CEs for private storage charges monthly by the fifth (5th) calendar day of the month.

Contractor's Invoice must include a summary of tickets for each pick-up or delivery at each delivery site. Contractor must number the pick-up and delivery tickets sequentially, listing the total number of units, cases, or packages. Only with prior approval of TDA, Contractor may impose "C.O.D." (Cash on Delivery) or cease shipments on those CEs with frequent payment delays or checks returned because of "insufficient funds". C.O.D. or "no-ship status" will be removed once payment history improves.

ARTICLE V. GENERAL AND SPECIAL PROVISIONS OF CONTRACT

Attached hereto and incorporated herein by reference are the General Provisions and the Special Provisions indicated below with an "X" beside each:

☐ Special Provisions A, Program Specific
☐ Special Provisions B, Debarment (required if utilizing federal funds)
☐ Special Provisions C, Lobbying (required if utilizing federal funds & over $100,000)

The Contractor must make full disclosure of its intent to employ or subcontract with an individual who is a former employee or retiree of TDA. Within the twenty four (24) months of leaving employment at TDA, a former employee or retiree selected by the Contractor for employment or subcontracting, shall not perform services on a project or fill a position that the former employee or retiree worked on while employed at TDA.

The Contractor shall be an independent contractor for matters relating to this Contract. The Contractor and its employees are not employees of TDA for any purpose and shall not be entitled to participate in any plan, arrangement, or distribution by TDA pertaining to or in connection with any pension, bonus, or other benefit extended to TDA employees.

ARTICLE VI. ENTIRE CONTRACT

This Contract specifically includes all general terms and conditions in TDA's RFP No. 551-20-00687, together with the documents attached hereto and incorporated by reference herein, specifically, Appendix I; and Appendix II, containing Contractor's Proposal and all TDA General Contract Terms, Conditions, and Provisions. The Contract, RFP, Appendix 1, and Appendix II, containing Contractor's Proposal, contain the entire agreement between the parties relating to the matters addressed in the Contract and the scope of work to be performed pursuant to this Contract. Any oral representations or modifications concerning this Contract shall be of no force or effect. This Contract may only be modified or revised by a written amendment executed by both parties.

In the event of conflicts in the interpretation of wording and/or meaning of the various sections, parts, appendices, general provisions, special provisions, and attachments of this Contract, such conflicts or inconsistencies shall be resolved by reference to the documents in the following order of priority: this signed Contract and attachments; TDA's RFP No. 551-20-00687 together with any addenda, questions and attachments; and followed last by Contractor's Proposal.

ARTICLE VII. NO WAIVER OF TDA DEFENSES, LIMITATIONS OR IMMUNITIES

Neither the terms of the Contract nor any conduct by a TDA representative under or in connection with the Contract shall be considered a waiver of any common law, constitutional or statutory defenses, immunities, limitations or privileges that would otherwise apply to the Contract, including sovereign immunity to suit.

ARTICLE VIII. AUTHORITY TO BIND

Each person signing the Contract represents and warrants that he or she is authorized to execute and bind such party to the Contract. In the event the individual lacks such authority, the Contract shall be null and void and of no force whatsoever.

AGREED and accepted on behalf of the Contractor effective beginning on the date of the Contract as specified above and as indicated by signature below of a person authorized to bind Contractor.

PROVALLEY FOODS LLC

Typed name: Ruben Hinojosa Jr.
Typed title: General Manager

Authorized Signature

This section reserved for TDA use.
I, an authorized official of the Texas Department of Agriculture, hereby certify that this contract is within TDA's statutory authority and in compliance with applicable laws and regulations.

AGREED and accepted on behalf of Agency on MAY 14, 2020 (month/day/year) by a person authorized to bind Agency.

Return contract to:
Segundo Sanchez
Texas Department of Agriculture
Purchasing and Contracts Division
1700 North Congress Avenue, Rm. 1125E
Austin, Texas 78701
Electronic version may be submitted to:
Segundo.Sanchez@TexasAgriculture.gov

Jason Fearneyhough, Deputy Commissioner
TAK

APPENDIX I

A. "Contractor" means the entity selected to engage in the distribution, storage and warehousing of USDA Foods in accordance with 7 CFR Part 250 and 2 CFR Part 200 relating to emergency contracts awarded on a noncompetitive basis, as well as this Contract and TDA's RFP. "Contracting Entity" or "CE" means a nonprofit organization, school, or school food authority that has the authority to receive and utilize USDA Foods pursuant to this Contract.

C. Description of Services/Activities:

See Sections 2.1 and 2.2 inclusive, which is entitled: "Statement of Work (SOW); Specifications; Deliverables," RFP No. 551-20-00687. All terms, conditions, specifications and deliverables set forth in RFP No. 551-20-00687, along with the agreed terms and conditions set forth in Contractor's Proposal dated April 1, 2020, are incorporated into this Appendix I of this Contract for all purposes. All signed certifications included in Contractor's Proposal are incorporated herein as required by law.

D. Budget:

There is no funding directly from TDA associated with this Contract. The approved Delivery Rate Schedule for this Contract is the Rate Schedule set forth in Contractor's Proposal dated April 1, 2020, for Region 5 and as set forth above.

APPENDIX II

Contractor's Proposal dated April 1, 2020, is attached to this Appendix II and is hereby incorporated into this Appendix II and this Contract for all purposes. The Contractor's Rate Schedule for Region 5, Forms I and J, dated March 31, 2020, of Contractor's Proposal, is incorporated into this Appendix II by reference and such is incorporated into this Contract for all purposes. The HUB Subcontract Plan of Contractor's Proposal is incorporated by reference into this Appendix II of this Contract for all purposes.