

STATE OF OHIO  
DEPARTMENT OF ADMINISTRATIVE SERVICES  
GENERAL SERVICES DIVISION  
OFFICE OF PROCUREMENT SERVICES  
4200 SURFACE ROAD, COLUMBUS, OH 43228-1395

MANDATORY USE CONTRACT FOR: WHOLE GRAIN CHEESE LASAGNA ROLL UP AND WHOLE GRAIN CHEESE RAVIOLI

CONTRACT No.: OT00908314

EFFECTIVE DATES: 01/01/13 to 06/30/15  
Renewal through 06/30/17 \*

The Department of Administrative Services has accepted bids submitted in response to Invitation to Bid No. OT00908314 that opened on 11/21/12. The evaluation of the bid response(s) has been completed. The bidder(s) listed herein have been determined to be the lowest responsive and responsible bidder(s) and have been awarded a contract for the items(s) listed. The respective bid response, including [the Terms and Conditions for Bidding, Standard Contract Terms and Conditions, and Supplemental Contract Terms and Conditions](#), special contract terms & conditions, any bid addenda, specifications, pricing schedules and any attachments incorporated by reference and accepted by DAS become a part of this Requirements Contract.

This Requirements Contract is effective beginning and ending on the dates noted above unless, prior to the expiration date, the Contract is renewed, terminated or cancelled in accordance with the Contract Terms and Conditions.

This Requirements Contract is available to THE DEPARTMENT OF EDUCATION, OFFICE FOR CHILD NUTRITION 25 SOUTH FRONT STREET, COLUMBUS, OH, as applicable.

Agencies are eligible to make purchases of the listed supplies and/or services in any amount and at any time as determined by the agency. The State makes no representation or guarantee that agencies will purchase the volume of supplies and/or services as advertised in the Invitation to Bid.

SPECIAL NOTE: State agencies may make purchases under this Requirements Contract up to \$2500.00 using the state of Ohio payment card. Any purchase that exceeds \$2500.00 will be made using the official state of Ohio purchase order (ADM-0523). Any non-state agency, institution of higher education or Cooperative Purchasing member will use forms applicable to their respective agency.

Questions regarding this and/or the Requirements Contract may be directed to:

Senthan Mahendrarasa  
senthan.mahendrarasa@das.ohio.gov

This Requirements Contract and any Amendments thereto are available from the DAS Web site at the following address:

<http://www.ohio.gov/procure>

\* Denotes contract renewal for an additional twelve (12) months, effective July 1, 2016 through June 30, 2017, as a result of mutual agreement.

Signed: \_\_\_\_\_  
Robert Blair, Director Date

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SPECIAL CONTRACT TERMS AND CONDITIONS

AMENDMENTS TO CONTRACT TERMS AND CONDITIONS: The following Amendments to the Contract Terms and Conditions do hereby become a part hereof. In the event that an amendment conflicts with the Contract Terms and Conditions, the Amendment will prevail.

DELIVERY AND ACCEPTANCE: Purchase orders for any item(s) listed in a contract awarded pursuant to this bid will be placed directly with the successful contractor by the using agency. Product will be processed and delivered within one (1) month of receipt of the commodity order or as mutually agreed by the contractor and the Department of Education (ODE) and, in accordance with Article S-2, S8, S9 and S10 of the Supplemental Contract Terms and Conditions. Deliveries shall be made to the following Ohio sites. The delivery location will be noted on the purchase order issued by the participating agency. All shipments are to be in accordance with the quantities ordered. Quantities ordered may be to the nearest whole pallet, or as mutually agreed by the contractor and the Department of Education. Unloading of ordered product shall be by appointment only. The contractor shall contact the cold storage facilities to make an appointment for unloading prior to loading for shipment. The percentage of total product to be delivered to each location is also provided. The state reserves the right to add, delete, or change distribution centers and/or percentage usage during the term of the contract. Acceptance (transfer of title) will occur upon the inspection and written confirmation by the ordering agency that the supplies delivered conform to the requirements set forth in the Contract. Unless otherwise provided in the Contract, acceptance shall be conclusive except as regards to latent defects, fraud, or such gross mistakes as amount to fraud.

<u>CITY</u>	<u>WAREHOUSE</u>	<u>% OF PRODUCT</u>
Dayton, OH	Terminal Cold Storage	25%
Cincinnati, OH	SYSCO Food Storage	25%
Cleveland, OH	SYSCO Foodservice	25%
Columbus, OH	A T Xpress	25%

TRANSPORTATION CHARGES: Any item(s) ordered from a contract awarded pursuant to this bid shall be shipped F.O.B. destination, freight prepaid to the four (4) cold storage facilities listed above or any other cold storage facilities that ODE designates in the state of Ohio. Commodity shall be delivered to the contractor by the USDA, F.O.B. Destination.

PAYMENT: Shall be in accordance with Article III.B. of Contract Terms and Conditions with the following exception: payments will be due on the 90<sup>th</sup> calendar day rather than the 30<sup>th</sup> calendar day. If payment terms are listed on the invoice of the Ohio Department of Education, it must be consistent with the terms of the contract.

DOCUMENTATION:

1. The bidder shall submit a narrative of their processing and fabrication procedures as part of the bid response for all products to be produced under this contract. The processing and fabrication procedures are to describe the product and the exact method of processing.
2. Commodity Food Processing Agreement: The successful contractor shall complete and sign an Ohio processing agreement prior to the inception date of any ensuing contract. The processing agreement will be provided by the Department of Education (ODE), Office for Child Nutrition (OCN) and is the authority to process USDA commodity foods and adherence to its contents is mandatory. Failure to complete and return this document prior to inception date of any ensuing contract may result in immediate cancellation from contract.

Attachment A of the processing agreement, which is Page 11 to the bid, is "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – Lower Tier Covered Transactions" (Form AD-10-48 [11/97]). This page of the agreement only should be submitted as part of the bid response.

Processor shall furnish to Department of Education a surety bond obtained only from a surety company listed in the U.S. Department of Treasury Circular 570, "Surety Companies Acceptable on Federal Bonds", an irrevocable letter of credit, or an escrow account. Such bond, letter of credit, or escrow account shall be made payable to the Department of Education. The bond shall guarantee that the processor shall faithfully account for, return, or pay for all of the Commodity Food received or carried forward, in accordance with the processing agreement.

Inventory Protection is required by the Department of Education prior to the delivery of commodity food to the processor. The minimum amount of the bond, letter of credit, or escrow account shall be determined by: value of the commodity food on order minus anticipated usage rate during the processing agreement period. The bond shall remain in effect until all commodity food is properly accounted for, paid for, or returned in accordance with the processing agreement. Liability for loss is provided in Article 18 of the processing agreement.

SPECIAL CONTRACT TERMS AND CONDITIONS cont'd

3. Quality Control/Total Quality Control: Prior to contract inception, the contractor shall submit to the ODE, OCN a narrative of the quality control or total quality control program at the processing plant. The narrative of the quality control or total quality control program is not to be submitted as part of the bid response.
4. Nutritional Analysis: As part of the bid response, the bidder may be required to submit a nutritional analysis for all finished products proposed to be processed for the Department of Education, Office for Child Nutrition.

PRODUCT SAMPLES: A sample of product offered is required. A sample shall consist of two (2) cases each of whole grain cheese lasagna roll up and whole grain cheese ravioli and must include instructions for cooking or preparation. Product samples shall meet all requirements as specified herein and shall bear required labeling and markings. Samples shall be certified by the processor's quality control department as meeting the specifications contained herein. Certification shall be in form of a letter on company letterhead, signed by authorized company representative. Reheating and preparation instructions shall be included with the samples.

Samples must be submitted prior to 1:00 PM on Wednesday, November 21, 2012 to the address shown below. Failure to submit samples as specified will result in the bidder being deemed as not responsive.

Ohio Department of Education  
Office for Child Nutrition  
c/o AT Xpress  
3035 Charter Street  
Columbus, OH 43228  
Telephone: (614) 449-1801 ext. 1  
Attn: Ron Ciccarelli/Oji Ohajuruka

One case of the samples shall be used for bid evaluation. Samples will be evaluated on appearance, color, texture, taste and overall acceptability. The other case of samples shall be used to verify the consistency with the actual processed product received during the contract period. The samples shall not be returned to the processor.

EVALUATION: Bids will be evaluated in accordance with Article I-17 of the "Instructions, Terms and Conditions for Bidding". In addition, the bid will be evaluated according to the fee per pound for processing the specified finished product. There will be a taste test of the samples submitted to determine acceptability. There will be, at a minimum, a ten (10) member panel composed of members of the Office for Child Nutrition staff, members of the ODE Commodity Advisory Board and/or students in Ohio. Samples will be evaluated as earlier described. If the product is deemed unacceptable as a result of the taste test, no further consideration for award shall be given. If the product sample submitted for the taste test exceeds the specifications as stated in the bid and is presented as being the end product for the entire contract, then the sample shall be the standard for the entire contract with anticipated yields as projected and costs as stated.

CONTRACT AWARD: The contract will be awarded to the lowest responsive and responsible bidder meeting all bid specifications and requirements. Low lot total will be determined by multiplying the unit price for each item by the minimum yield per truckload of raw commodity for that item and then multiplying that figure by the number of truckloads of raw commodity to be processed annually in order to obtain a line item extended price. The line item extended prices will be added to obtain a low lot total. Failure to bid on all items may result in the bidder being deemed non responsive.

USAGE REPORTS: Every six (6) months the contractor must submit a report (written or on disk) indicating sales generated by this contract. The report shall list usage by customer, by line item, showing the quantities/dollars generated by this contract. The report shall be forwarded to the Office of Procurement Services, 4200 Surface Road, Columbus, OH 43228-1395, Attention: Jennifer Shaefer.

SPECIAL CONTRACT TERMS & CONDITIONS (Cont'd)

FDA REGISTRATION: Pursuant to the Public Health Security and Bioterrorism Preparedness and Response Act of 2002 (the Bioterrorism Act) all domestic and foreign facilities that manufacture, process, pack or hold food for human or animal consumption in the United States are required to be registered with the Food & Drug Administration (FDA) no later than December 12, 2003. This registration includes owners, operators, or agents in charge of domestic or foreign facilities that manufacture/process, pack, or hold food for human or animal consumption in the United States. All domestic facilities, whether or not food enters interstate commerce, are required to register. Facilities may complete their registration with the FDA online at: <http://www.cfsan.fda.gov/~furls/ovffreq.html>

When applicable, by signature affixed on Page 1, the bidder, or their supplier, certifies that they comply with this requirement.

DISCLOSURE OF SUBCONTRACTORS/JOINT VENTURES (See paragraph V.Q. of Standard Contract Terms and Conditions): List names of subcontractors who will be performing work under the Contract.

_____	_____
_____	_____
_____	_____

By the signature affixed to Page 1 of this Bid, Bidder hereby certifies that the above information is true and accurate. The Bidder agrees that no changes will be made to this list of subcontractors or locations where work will be performed or data will be stored without prior written approval of DAS. Any attempt by the Bidder/Contractor to change or otherwise alter subcontractors or locations where work will be performed or locations where data will be stored, without prior written approval of DAS, will be deemed as a default. If a default should occur, DAS will seek all legal remedies as set forth in the Standard Contract Terms and Conditions which may include immediate cancellation of the Contract. Failure to complete this page may deem your bid not responsive.

Bid Automobile Liability Checklist:

Contractor will indicate, by checking the appropriate box(es) below, which mode of transportation will apply to this contract.

- Bidder/Broker ("The Contractor") or their Sub Contractor will make delivery or be performing services using a vehicle that is owned, leased or rented. Provide Certificate of Insurance documenting automobile liability with a Combined Single Limit of \$500,000.00.
- Goods/Services will be delivered via common carrier.
- No employee or representative of the contractor will have cause to be on state property to make deliveries or to perform services.

NOTICE ON THE USE OF SOCIAL SECURITY NUMBERS AS FEDERAL TAX IDENTIFICATION NUMBERS

The Department of Administrative Services (Department) requires vendors and contractors wishing to do business with the State to provide their Federal Taxpayer Identification Number to the Department. The Department does this so that it can perform statutorily required "responsibility" analyses on those vendors and contractors doing business with the State and, under limited circumstances, for tax reporting purposes. If you are a vendor or contractor using your Social Security Number as your Federal Taxpayer Identification Number, please be aware that the information you submit is a public record, and the Department may be compelled by Ohio law to release Federal Taxpayer Identification Numbers as a public record. If you do not want to have your Social Security Number potentially disclosed as a Federal Taxpayer Identification Number, the Department encourages you to use a separate Employer Identification Number (EIN) obtained from the United States Internal Revenue Service's to serve as your Federal Taxpayer Identification Number.

SPECIFICATION

I. SCOPE AND CLASSIFICATION

A. Scope

The purpose of this bid is to obtain a contractor to process United States Department of Agriculture (USDA) commodity Barrel Cheese into Whole Grain Rich Lasagna and Whole Grain Rich Ravioli for the Ohio Department of Education (ODE), Office for Child Nutrition (OCN) Commodity Distribution Program. It is anticipated that about 150,000 lbs. of USDA Barrel Cheese will be made available by the USDA to the state of Ohio annually to be processed under the ensuing contract. Quantities of raw products specified are based on anticipated product availability from the USDA. The State of Ohio is not obligated to request processing in these or any other quantity. The commodity items to be processed shall be delivered to the contractor by the USDA and the contractor shall process and deliver finished products to the four (4) cold storage facilities specified herein, or to other facilities that ODE may enter into contract with for the provision of similar services. Bid pricing (fee for processing per pound of finished product) shall include all transportation charges for delivery of processed product to cold storage facilities, cost of USDA certification, and any other costs and charges associated with providing the specified products. The term of any ensuing contract shall be for twenty – nine (29) months, from January 1, 2013 through June 30, 2015.

B. End Product Classification

1. Whole Grain Rich Lasagna, Fully Cooked, IQF, Frozen
2. Whole Grain Rich Cheese Ravioli, Fully Cooked, IQF, Frozen

C. Child Nutrition (CN) Labeling Program

Both the Whole Grain Rich Lasagna and the Whole Grain Rich Ravioli may be Child Nutrition (CN) labeled, certifying that the products meet USDA standards for meal pattern requirements and that the production plant meets or exceeds the required quality control standards. The USDA CN labeling program requires the product formula be submitted to and reviewed by the USDA. The USDA then affirms that the product formula complies with its nutritional standards. The production plant shall receive periodic inspections from USDA/American Marketing Service (AMS) to assure compliance with CN labeling, quality control and sanitary requirements. Participation in the CN labeling program is voluntary. Only manufacturers who wish to place CN labels on their products must comply with program requirements.

II. REQUIREMENTS

A. Raw Product Description

1. USDA Barrel Cheese, 500 lb., 40,000 pounds per truckload, Material Code 100010 (B049)  
 Or, USDA Unfrozen Mozzarella Cheese, 40,320 pounds per truckload, Material Code 100042 (B077).
2. A bidder shall upon request, provide an updated copy of Summary End Data Schedule (SEPDS) to OCN. It is also important to note that any cheese ingredient that is used in the manufacture of any of the end products described under (II B1 and 2) below shall be substitutable with any of the raw products described under (II A1) above.

B. End Product Description

1. Whole Grain Rich Cheese Lasagna, Fully Cooked, IQF, Frozen

a. Formulation

<u>Ingredients</u>	<u>Percentages</u>
USDA Barrel Cheese (or Mozzarella cheese)	15.00% maximum
Fat-free ricotta cheese	40.00% minimum
Water	15.00% maximum
Whole grain rich pasta – must contain at least 8.0 g of whole grain per oz. equivalency	35.00% minimum
Other ingredients – seasonings, spices, etc.	6.00% maximum

SPECIFICATION Cont'd

- b. The fully cooked, Whole Grain Rich Cheese Lasagna Roll-up shall be prepared using USDA commodity cheddar cheese or mozzarella cheese in accordance with the above information. The finished product shall contain 2.0 oz. Meat/Meat Alternate and 1.0 bread serving.
- c. The product shall be produced using whole grain rich and enriched flour pasta. The whole grain rich pasta must contain 8g of whole grain or more per oz. equivalency of pasta. Only fat-free or low-fat natural cheeses shall be used.
- d. The lasagna shall have a creamy texture. The texture of the pasta shall be firm, not rubbery, mushy or pasty. The filling shall not be too thin or thick. The frozen lasagna shall have odor or flavor that is characteristic of filled pasta. There shall be no foreign odors or flavors, such as, but not limited to, burnt, scorched, stale, rancid or moldy.
- e. Product must not contain monosodium glutamate (MSG), artificial flavors, artificial colors or preservatives.
- f. Product shall have a shelf life of twelve (12) months if held frozen at zero degree F or below.

2. Whole Grain Rich Cheese Ravioli, Fully Cooked, IQF, Frozen

a. Formulation

<u>Ingredients</u>	<u>Percentages</u>
USDA Barrel Cheese (or Mozzarella Cheese)	15.00% maximum
Fat-free ricotta cheese	30.00% minimum
Water	20.00% maximum
Whole grain rich pasta – must contain at least 8.0g of whole grain per oz. equivalency	22.00% minimum
Other ingredients – seasonings, spices, etc.	7.00% maximum

- b. The fully cooked, Whole Grain Rich Cheese Ravioli shall be prepared using USDA commodity cheddar cheese in accordance with the above formulation. The finished product shall contain 2.0 oz. Meat/Meat Alternate and 1.0 bread serving.
- c. The Product shall be produced using whole grain rich and enriched flour pasta. The whole grain rich pasta must contain 8g of whole grain or more per oz. equivalency of pasta. Only fat-free or low-fat natural cheeses shall be used.
- d. The ravioli shall have a creamy texture. The texture of the pasta shall be firm, not rubbery, mushy or pasty. The filling shall not be too thin or thick. The frozen ravioli shall have odor or flavor that is characteristic of filled pasta. There shall be no foreign odors or flavors, such as, but not limited to, burnt, scorched, stale, rancid or moldy.
- e. Product must not contain monosodium glutamate (MSG), artificial flavors, artificial colors or preservatives.

C. Packaging: Product shall be bulk packed in shipping cartons with clear plastic liners. Case weight shall be 15-40 lbs., with all case weights being uniform. Please indicate case weight offered on bid pricing page.

1. General

- a. All packaging and packing materials must be new and clean, and must not impart objectionable odors or flavors to the product.
- b. Bags shall be securely closed. Metal wire ties, metal clips, paper-coated wire ties, or staples shall not be used for sealing plastic-film bags.

SPECIFICATION Cont'd

- c. Staples shall not be used as a final case closure. Case closure shall be accomplished by taping, strapping, or gluing. All boxes within the delivery unit of an individual product shall be of a uniform size and weight.
- d. Boxes shall be one piece, die-cut, regular slotted container (RSC) design. Fiberboard shall be testing not less than 200 lbs. No holes in boxes are permitted. Shipping cartons shall have necessary interior support to prevent crushing of product while in transit or in storage.

D. Labeling

1. The contribution value of a serving to the National School Lunch Program (NSLP) pattern, the nutritional analysis, and the reheating and serving size information shall be printed on the outside of the master case or may be included as an insert in each master case.
2. Product must have an approved CN label.
3. Each case shall bear the USDA contract compliance stamp and certificate number.

III. CONTRACTOR'S RESPONSIBILITIES

In addition to those responsibilities specified above, the contractor shall be responsible for the following:

- A. Prime Contractor Responsibilities: The prime contractor will be required to assume responsibility for all contractual activities offered in this agreement, whether or not that contractor performs them. Further, the state will consider the prime contractor to be the sole point of contact with regard to contractual matters, including payment of any and all charges resulting from the anticipated contract. If any part of the work is to be subcontracted, the contractor shall provide a list of subcontractors, including firm name and address, contact person, complete description of work to be subcontracted and descriptive information concerning subcontractor's organizational abilities. The state reserves the right to approve subcontractors and to require the primary contractor to replace subcontractors found to be unacceptable. The contractor is totally responsible for adherence by the subcontractor to all provisions of the contract. Any changes in subcontractors must be approved by the state, in writing, prior to such change.
- B. Accounting Records: The contractor and all subcontractors shall maintain all pertinent financial and accounting records and evidence pertaining to the contract in accordance with generally accepted principles of accounting and other procedures specified by the state of Ohio. Financial and accounting records shall be made available upon request by the state of Ohio, its designees or the Ohio Auditor of State at any time during the contract period and any extension thereof, and for three (3) years from expiration date and final payment on the contract or extension thereof.

BID PRICE PAGE

YOUR BID:

Bidders shall not insert a unit cost more than 3 digits after the decimal point. Digit(s) beyond 3, after the decimal point, shall be dropped by State Purchasing and not used in the evaluation and any subsequent award.

WHOLE GRAIN RICH LASAGNA

OAKS ITEM ID NO.	PRODUCT (PROCESSED AS SPECIFIED)	CASE PACK OFFERED	RAW COMMODITY WEIGHT (PER TRUCKLOAD)	*MINIMUM YIELD OF FINISHED PRODUCT PER 40,000 LBS. OF COMMODITY	FEE FOR PROCESSING (PER LB. OF FINISHED PRODUCT)
23392	USDA Barrel Cheddar Cheese or Mozzarella Cheese	28.53 lbs.	40,000 lbs.	101,134.35 lbs.	\$1.421 per lb.

Number of servings per case \_\_\_\_\_ 110 \_\_\_\_\_

\*\*Case price \$ 40.56 \_\_\_\_\_

\*\*Product packaging contains recycled material: Yes No (Please circle response), if yes, \_\_\_\_\_%

\* Minimum yield under this contract is the weight of finished product returned to the state on every 40,000 lbs. of raw commodity product.

\*\* Shall not be included in evaluation of this contract.

BID PRICE PAGE Cont'd

WHOLE GRAIN RICH RAVIOLI

OAKS ITEM ID NO.	PRODUCT (PROCESSED AS SPECIFIED)	CASE PACK OFFERED	RAW COMMODITY WEIGHT (PER TRUCKLOAD)	*MINIMUM YIELD OF FINISHED PRODUCT PER 40,000 LBS. OF COMMODITY	FEE FOR PROCESSING (PER LB. OF FINISHED PRODUCT)
23393	USDA Barrel Cheddar Cheese or Mozzarella Cheese	24.91 lbs.	40,000 lbs.	209,415.72 lbs.	\$1.743 per lb.

Number of servings per case 108

\*\*Case price \$ 43.44

\*\*Product packaging contains recycled material: Yes No (Please circle response), if yes, \_\_\_\_\_%

\* Minimum yield under this contract is the weight of finished product returned to the state on every 40,000 lbs. of raw commodity product.

\*\* Shall not be included in evaluation of this contract.

ATTACHMENT A

**U. S. DEPARTMENT OF AGRICULTURE**

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**Certification Regarding Debarment, Suspension, Ineligibility  
and Voluntary Exclusion - Lower Tier Covered Transactions**

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This certification is required by the regulations implementing Executive Order 12549, Debarment and Suspension, 7CFR Part 3017, Section 3017.510, Participants' responsibilities. The regulations were published as Part IV of the January 30, 1989, Federal Register (pages 4722-1733). Copies of the regulations may be obtained by contacting the Department of Agriculture agency with which this transaction originated.

**(BEFORE COMPLETING CERTIFICATION, READ INSTRUCTIONS ON REVERSE)**

The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

Tasty Brands

Organization

PR/Award or Project Name

David Horowitz - President

Name(s) and Title(s) of Authorized Representative(s)

On File

11/13/12

Signature(s)

Date

CONTRACTOR INDEX



207186  
Tasty Brands  
77 Newbridge Rd  
Hicksville, NY 11801

BID CONTRACT NO.: OT00908314-1

DELIVERY: As Specified

TERMS: Net 90 Days

CONTRACTOR'S CONTACT: Mr. Lois Curry

Telephone: (516) 938-4588 EXT. 213  
FAX: (516) 935-1825  
E-mail: [Lcurry@tastybrandsk12.com](mailto:Lcurry@tastybrandsk12.com)

SUMMARY OF AMENDMENTS

Amendment Number	Effective Date	Description
3	07/01/16	This amendment is issued to renew the contract for an additional twelve (12) months, effective July 01, 2016 through June 30, 2017.
2	10/01/15	This amendment is issued to renew the contract for an additional nine (9) months, effective October 01, 2015 through June 30, 2016, as a result of a mutual agreement.
1	07/01/15	This amendment is issued to renew the contract for an additional three (3) months, effective July 01, 2015 through September 30, 2015, as a result of a mutual agreement.