

CHARTER SCHOOL FOOD SERVICE AGREEMENT

THIS AGREEMENT is made and entered as of this _____, 201__, by and between the School Board of Palm Beach County, a Florida public body corporate (School Board), and _____, a Florida nonprofit, d/b/a/_____, a charter school pursuant to Section 1001.33, Florida Statutes (Charter School).

WHEREAS, the School Board and the Charter School entered a Charter School Contract on _____ (Contract); and

WHEREAS, the above Contract provided that separate agreements may be entered into for the provision of school food services in accordance with federal and state laws and regulations; and

WHEREAS, the Charter School desires for the School Board, and the School Board desires through its Department of School Food Services, to provide meal services for breakfast, lunch, and/or the after school snack program.

NOW, THEREFORE, in consideration of the mutual covenants and conditions contained herein, the parties agree as follows:

I. RECITALS.

The above recitations of facts set forth in the preceding “whereas” clauses are expressly incorporated herein and form a part of the terms of this Agreement.

II. TERM OF AGREEMENT.

The term of this Agreement shall be for a school year, commencing on _____ and terminating on _____, unless otherwise terminated earlier as provided herein. This Agreement may be renewed at the sole discretion of the School Board.

III. SCOPE OF SERVICES.

- A. The School Board’s School Food Service Department shall have the exclusive right to operate the National School Lunch Program on behalf of the Charter School, which includes the following programs:
1. School Breakfast Program, as authorized by 7 CFR Part 220;

2. National School Lunch Program, as authorized by 7 CFR Part 210; *and*
 3. Afterschool Snack Program, as authorized by 7 CFR 210 Subpart C.
- B. The School Food Service Department of the School Board (hereinafter referred to as SFSD) will provide the Charter School with meals that meet the minimum meal pattern requirements for the National School Lunch Program and School Breakfast Program as to components and portion sizes specified by United States Department of Agriculture (USDA) guidelines.
- C. SFSD shall plan, prepare, and organize meals for the Charter School through an assigned base kitchen (i.e., the kitchen designated by the Director of SFSD to prepare the meals for the Charter School).
- D. Meals will be delivered by SFSD if the sustained daily lunch participation is maintained at 75 meals or greater for a period of thirty (30) consecutive school days. If the daily lunch participation is less than 75 meals, the Charter School is responsible for picking up the meals from the assigned base kitchen.

IV. CONDITIONS PRECEDENT TO OPERATION OF FOOD SERVICE PROGRAM.

- A. In order for the Charter School to provide a school food service program through SFSD, the following condition(s) shall be met prior to the commencement of the services provided in Paragraph 3 above.
1. The Charter School is responsible for obtaining a limited food service operating permit issued by the Palm Beach County Health Department (DOH).
 2. Acquire and maintain any required certification or permit for the duration of this Agreement as required by Title 7 CFR § 210.16 (c).
 3. Post all certifications, inspections, or permits as required by federal, state, and/or local law, or this Agreement.
 4. Furnish to SFSD a copy of any certificates, inspections, or permits, within five (5) days of receipt, required by this section which shall become automatically incorporated and included with this Agreement, as well as any amendments or renewals of the certification.
- B. The Charter School and SFSD shall agree to the meal times at least forty-five (45) days before the beginning of each school year. Any changes to the meal service times must be approved by SFSD.
- C. The Charter School will notify the SFSD 30 days prior to a location change. This will allow ample time to relocate the base kitchen if necessary.
- D. The DOH requires plan submittal and prior inspection of facility before meals service may be instituted. SFSD must be provided with a copy of the Operating Permit.

V. COLLECTION OF THE MEAL PRICE.

SFSD shall provide an employee to accurately collect cash, and record meal counts and categories during the meal service if meals are delivered to the site by SFSD. If meals are not delivered by the SFSD, the Charter shall provide an employee to accurately collect cash, and record meal counts and categories during the meal service. Any Charter School student being provided a paid or reduced price meal and any adult shall be charged daily, consistent with this agreement.

VI. SCHOOL FOOD SERVICES DEPARTMENT CONTROL OF THE CHILD NUTRITION PROGRAM.

SFSD will maintain its responsibilities for administration of the food service program, in accordance with regulations and policies for USDA School Nutrition Programs. Specifically, SFSD will:

- A. Retain control of the quality, extent, and general nature of the food service, including counting and claiming meals, and ordering and accounting for USDA commodities.
- B. Ensure that the Child Nutrition Program conforms to the School Board's Agreement with the Florida Department of Agriculture and Consumer Services to participate in federally-funded Child Nutrition Programs.
- C. Retain control of the nonprofit school food service account and overall financial responsibility for the nonprofit Child Nutrition Program.
- D. Retain signature authority for the annual School Nutrition Programs State application and monthly claims by electronically submitting required information to the Florida Department of Agriculture and Consumer Services.
- E. Retain control of the establishment of all prices, including price adjustments, for meals served under the nonprofit Child Nutrition Program account, e.g., pricing for reimbursable meals, a la carte service, and adult meals.
- F. Retain title to USDA donated foods, ensuring that all USDA donated foods made available to the SFSD accrue only to the benefit of SFSD's nonprofit Child Nutrition Program.

- G. Provide on-line application as determined by the SFSD, processing web site, and where applicable, provide free and reduced-price applications to the Charter School administration prior to the beginning of each school year.
- H. Retain responsibility for the review, approve or deny, certify and verify applications for free and reduced-price school meals in accordance with 7 CFR 245. Provide hearings related to eligibility determinations in accordance with 7 CFR 245.7. Provide hearings related to adverse actions resulting from verification in accordance with 7 CFR 245.6(e).
- I. Consolidate and file claims for reimbursement for meals served, and other responsibilities as required or assigned.
- J. Maintain all applicable health certifications and assure that all state and local health regulations are being met for the preparation of foods in the base school.
- K. Comply with Federal regulations for accommodating students with special dietary needs and will provide specific meal preparation instructions to the Charter School to ensure reimbursable meals are prepared that meet the child's specific dietary restrictions.
- L. Maintain full and accurate records to include Production Records, Daily Sales and Meal Count, and Edit Check Reports to comply with program requirements.
- M. Assign a base school food service manager to provide oversight and manage the food service program for the Charter School, including monitoring to ensure compliance and the provision of technical assistance. Prior to the beginning of its services, SFSD shall provide in writing to the Charter School the name of the base school food service manager.
- N. Assign a food service representative to be responsible for the overall food service satellite operation at the Charter School, if meals are delivered by SFSD.
- O. Monitor the Charter School food service program through periodic visits to ensure compliance with applicable federal and state laws and regulations, and local policies and procedures.

VII. CHARTER SCHOOL RESPONSIBILITIES.

- A. Certification of Charter School Staff Person in ServSafe. Prior to the commencement of the food services under this Agreement, the Charter School shall, at its own expense, have one or more of its employees certified in ServSafe for its food service program. When available, Charter Schools can attend trainings provided by the SFSD which would reduce the cost of the class.
- B. Support During the Provision of Meals.

1. If the sustained daily lunch participation is maintained at seventy-five (75) meals or greater for a period of thirty (30) consecutive school days.

For the provision of meals, the Charter School shall:

- a. Provide one (1) or more employees/volunteers to assist the food service assistant with serving the meals provided by SFSD and loading and unloading food supplies.
 - b. Ensure that its students, staff, and guests participating in the meal program engage in appropriate conduct in the food service area.
 - c. Provide adult supervision during the meal service period(s).
2. If the sustained daily lunch participation is maintained at less than seventy-five (75) meals for a period of thirty (30) consecutive school days, meals will be picked up by the Charter.

For the provision of meals, the Charter School shall:

- a. Provide one (1) or more employees/volunteers to accurately record meal distribution to maintain required accountability documentation.
 - b. Provide an appropriate vehicle that can accept and transport food in commercial hot and/or cold-holding equipment to ensure food safety if meals are to be picked up by the Charter School.
3. Meals will be served only on school days approved by the School Board following the approved District calendar.

- C. Adequate Facilities and Space. The Charter School will make available, without any cost or charge to the School Board, area(s) of the premises agreeable to both parties in which SFSD shall render its services. The Charter School will make any structural changes needed to comply with federal, state, or local laws, ordinances, rules, and regulations. School must make parking areas available that are easily accessible for food delivery.
- D. Provision of Equipment. The Charter School will be responsible for providing and maintaining all necessary food service equipment needed to operate a kitchen to serve and heat meals as outlined in **Exhibit "A"**, attached and incorporated hereto. The Charter School will install any equipment needed to comply with federal, state, or local laws, ordinances, rules, and regulations. If equipment is not operating properly, meals will be adjusted to ensure food safety.
- E. Potable Water for Food Service Area. The Charter School shall have available potable water, at no charge, for students in the meal service area. The Charter School may implement this requirement by offering water pitchers and paper cups on lunch tables, a water fountain in the food service area, or a water fountain that allows students to fill their own bottles or cups

with drinking water. In accordance with law, whatever solution is chosen by the Charter School, the water must be made available without restriction in the food service area.

- F. Required Posting in Food Service Area. Annually the Charter School shall post *Justice for All* posters in the food service areas as required by USDA. Posters can be printed from the USDA website, <http://www.fns.usda.gov/cr/justice.htm>, or may be ordered from the USDA Southeast Regional Office, Attn: Jeffrey Hinton, Regional Civil Rights Director, 61 Forsyth St., SW, Room 8T36, Atlanta, GA 30303-3427; (404)562-0532; (404) 562-1807 (fax) or Email: Jeffrey.Hinton@fns.usda.gov.
- G. Free and Reduced Price Meals Applications. Free and Reduced Price Meal Applications will be provided by SFSD base school manager for all enrolled students if required by USDA; however, the preferred method for completing the applications is through the online application process. The Charter School shall return completed Free and Reduced Price Meal Applications to the SFSD on a daily basis. The Charter School's employee(s) must comply with the requirement of limited disclosure of individual student eligibility information.
- H. Meal Pricing. The Charter School shall follow the same meal pricing system established for all schools operated by the School Board. The School Board adopts the meal pricing for all meals.
- I. Notifications/Communications to SFSD. The Charter School is responsible for communicating with the base school food service manager on a daily basis or as needed concerning: daily counts, status of student payments, free and reduced meal applications, type(s) of meal service required, special needs, etc.
- J. Meal Service. To ensure the timely delivery of meals, the Charter School will notify the base school food service manager at a designated time determined by the base school food service manager. The Charter School shall communicate the number of meals needed via email, fax or scan to the school food service manager on a student roster to include other counts such as adult or guest meals.
- K. Meal Accountability. The Charter School shall follow procedures for assuring accuracy at the point of meal service (determined by the SFSD) and will comply with all federal, state, and local rules and ordinances pertaining to the administration of the program, including but not limited to, reporting any known student food allergies.
- L. Compliance with Laws and Regulations. The Charter School will comply with all applicable federal, state, and/or local laws, regulations, rules, procedures and guidelines, as now or hereafter amended, pertaining to the administration of the School Breakfast Program, National School Lunch Program, and the After School Snack Program.

- M. Competitive Foods Regulations. The sale of foods and beverages on school grounds shall be limited to those provided by SFSD, noted in the competitive food sales provided in School Board Policy **6.185** (School Food Service Management Policy), as now or hereafter amended. A failure of the Charter School to comply with the School Board's policy governing competitive food sales jeopardizes funding through the National School Lunch Program, and may result in immediate termination of this Contract.
- N. Pick-up of Meals, Required if Less Than 75 Meals. If the Charter School is required to pick up its meals from SFSD base school, due to the number of participants as provided herein, SFSD shall identify the base school kitchen for the pick-up of the meals. The Charter School shall transport the meals in approved commercial hot and/or cold-holding equipment.
- O. Maintenance of Reports. The Charter School will maintain the records necessary for the SFSD to complete any required monitoring, inspecting, or auditing activities under this Contract.
- P. Annual Training of Staff. The Charter School shall annually, at its own expense, provide an employee/volunteer to attend and participate in a mandatory training administered by SFSD to ensure the Charter School is up-to-date on all regulations and procedures. This training will cover accountability, safety and sanitation, the free and reduced application process, civil rights, and meal service requirements. This meeting is held in August of each new school year.

VIII. HEALTH AND SANITATION.

- A. Health Inspection Requirements. SFSD and the Charter School agree that federal, state, and local health and sanitation requirements will be met at all times. The Charter School will obtain and maintain all federal, state, and local health certifications and regulations that apply to its school eating facilities and any other facilities in which meals are prepared and/or served. SFSD will maintain applicable health certifications for any base school in which meals are prepared. All food at the base schools will be properly stored, prepared, packaged, and transported free of contamination and at appropriate temperatures.
- B. Safekeeping of Food. All food that is delivered by the SFSD base school will arrive at the school site at the required temperatures for safe consumption. All food temperatures shall be verified and documented upon delivery by the SFSD. All food will arrive free of contamination and in sanitary, temperature-controlled containers. Food items that have been delivered by the SFSD base school must be placed in hot and/or cold-holding units that maintain proper temperatures. The Charter School shall provide the hot and/or cold-holding units. If the Charter School is required to pick-up its meals as provided by

this contract, all food temperatures shall be verified and documented before the items leave the SFSD base school.

- C. Inspection. The School Food Service Department, the Florida Department of Agriculture and Consumer Services, and the US Department of Agriculture reserve the right to inspect the Charter School's kitchen and dining facilities without notice, at any time.

IX. RECORDKEEPING.

The Charter School agrees that all records pertaining to the operation of meal service is the property of the SFSD.

X. TERMINATION/SUSPENSION.

- A. This Agreement may be terminated before expiration of its term upon any of the following grounds.
1. Automatic Termination. This Agreement shall automatically terminate upon the School Board's termination of the District's Charter School Agreement with the Charter School.
 2. By the Parties. Both parties may agree in writing to the termination of this Contract; or, any time by a party, upon the giving of a thirty (30) day written notice (delivered by certified mail, return receipt requested) to the other party.
 3. For Cause. This Agreement may be terminated in whole or in part by either party in the event of substantial failure by the other party to fulfill its obligations under this Agreement; provided that no such termination may be implemented unless and until the other party is given 1) at least thirty (30) days written notice (delivered by certified mail, return receipt requested) of intent to terminate, and 2) an opportunity for consultation with the terminating party, followed by a reasonable opportunity, of not more than ten (10) working days to rectify the defects in products or performance, prior to termination.

For purposes of this subparagraph, substantial failure will include, but is not limited to the Charter School or SFSD's failure to adhere to, or violation of, any of the provisions of this Agreement.

- B. This Agreement shall be suspended for the following reason.
1. Suspension for Cause. Upon direction of the Department of Health, meals may be suspended for an undetermined period of time if the facility is found to be out of compliance with health and safety regulations.

XI. LEGAL STATUS UPON TERMINATION.

Upon termination or revocation of this Agreement, all legal associations between the School Board, its SFSD, and the Charter School shall be severed.

In the event of termination of this Agreement, the School Board shall be entitled to be reimbursed for any and all funds owed to the SFSD, if any. The decision of the School Board regarding the amount to be paid shall be final.

XII. INDEMNITY.

The Charter School shall indemnify and hold harmless the School Board from and against all liabilities, claims, demands, suits, causes of action, loss, and expenses including attorneys fees, of any and every kind and nature arising from the negligent or intentional act of agents or employees of the Charter School in connection with the provision of breakfasts, lunches, and after school snacks under this Agreement. Nothing herein shall be deemed to constitute a waiver of sovereign immunity on the part of the School Board or to reduce any protection from suit or judgment afforded to the School Board under Florida law. This provision shall survive termination of this Agreement and shall be binding on the parties, successors, representatives, and assigns, and cannot be waived or varied.

XIII. ACCOUNTABILITY REQUIREMENTS.

- A. On-Site Inspections/ Reviews. Authorized representatives of the SFSD, the State of Florida, and USDA shall have the right to conduct on-site administrative inspections/reviews of the food service operation.
- B. Review of Invoices, Bills, and Pertinent Records. SFSD shall oversee all provisions of the contract, including but not limited to, Federal rules and regulations, crediting for and use of USDA Commodities, as applicable.
- C. Recordkeeping. The Charter School shall maintain such records as SFSD will need to support its claim for reimbursement under the National School Lunch Act and Child Nutrition Act including accurate records of student attendance. Attendance must be documented daily in the district's student information system.
- D. Inspections and Audits. The school district is subject to various audits that may require on-site inspections by representatives of the School Board, SFSD, Florida Department of Agriculture and Consumer Services, USDA,

the United States Comptroller General, or the United States General Accounting Office.

Charter School agrees and understands that the School Board's Office of Inspector General, or any other duly authorized representative of the School Board, shall have unrestricted access to all papers, books, records, documents and information, personnel and processes, data, computer hard drives, emails, instant messages, facilities, or other assets owned or used by Charter School with regards to this Agreement.

The Inspector General, or any other duly authorized representative of the School Board, Florida Department of Agriculture and Consumer Services or USDA, shall be entitled to audit the books and records of Charter School to the extent that such books, documents, papers, and records relate to any payment or the performance of this Agreement.

In the event Charter School maintains its records or Agreement information in electronic format, upon request of the School Board's Inspector General or auditors, Charter School will provide a download of its records or Agreement information in an electronic format allowing readership acceptable by the School Board's auditors.

XIV. NONDISCRIMINATION.

Both the Charter School and SFSD agree that no child who participates in the food service program will be discriminated against on the basis of race, color, national origin, age, sex, or disability, and shall comply with the USDA Food Nutrition Services Instruction 113-6, Civil Rights Compliance and Enforcement in School Nutrition Programs.

XV. MISCELLANEOUS.

- A. Headings. The headings contained herein are for convenience in reference and are not intended to define, limit, extend, or describe the scope of any provisions of this Agreement.
- B. Successors and Assigns. The provisions of this Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective officers, employees, successors, and assigns. Notwithstanding the foregoing, the rights and obligations of either party to this Agreement may not be subcontracted, transferred, conveyed, assigned or otherwise disposed of without the prior written consent of the other party hereto, which consent shall not be unreasonably withheld.
- C. Compliance with All Laws. Charter School shall comply with all applicable federal, state, and local ordinances pertaining to the Services under this Agreement.

- D. Severability. If any section, sentence, clause, phrase, provision, or other portion of this Agreement is, for any reason, held invalid or unconstitutional by a court or other body of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision and such holding shall not affect the validity of the remaining portions of the Agreement.
- E. Amendments. No amendment to this Agreement shall be binding on either party hereto unless such amendment is in writing and executed by both parties with the same formality as this Agreement.
- F. Applicable Law and Venue. This Agreement will be construed in accordance with the laws of the State of Florida. Venue for any actions brought pursuant to this Agreement will be in Palm Beach County, Florida, or in the U.S. District Court for the Southern District of Florida.
- G. Singular/Plural. Whenever used, the singular will include the plural, the plural the singular, and the use of any gender will include both genders.
- H. No Waiver of Rights. No failure or successive failures on the part of either party to enforce any covenant or agreement, and no waiver or successive waivers of any condition of this Agreement, shall operate as a discharge of such covenant, agreement, or condition, or render the same invalid, or impair the right of either party to enforce the same in the event of any subsequent breach or breaches. No failure on the part of either party to this Agreement to exercise, and no delay in exercising, any right, power, or remedy under this Agreement shall operate as a waiver thereof, nor shall any single or partial exercise of any right under this Agreement preclude any other or further exercise thereof or the exercise of any other right.
- I. Counterparts. This Agreement may be executed in one or more counterparts and each counterpart shall, for all purposes, be deemed as original, but all such counterparts shall together constitute but one and the same instrument.
- J. Entire Agreement. This Agreement, including any Exhibits hereto, contains all the terms and conditions agreed upon by the parties. No other agreements, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind either party hereto.
- K. Charter School Authority to Enter Into Contract. The Charter School expressly affirms that the signatories on its behalf who sign below have the authority to enter into this Agreement on behalf of the Charter School and that the Board of Directors of the Charter School has duly approved this contract.

IN WITNESS WHEREOF, the parties hereto have set their hands and seals effective as of the date and year first written above.

SCHOOL BOARD OF PALM BEACH COUNTY, FLORIDA, a public body corporate

By: _____

Print Name: _____

Title: _____

Witness

Witness

Approved as to form and legal sufficiency:

By: _____

Office of General Counsel Date: _____

CHARTER SCHOOL

_____,
a Florida nonprofit corporation,
d/b/a _____

By: _____

Print Name: _____

Title: _____

Witness

Witness