

**PROTOTYPE**

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**FOOD SERVICE MANAGEMENT  
COMPANY AGREEMENT**

**School Year 2018-2019**

**Between:**       Westerly Public Schools  
                    **(Name of School Food Authority)**  
**And**             Aramark Educational Services LLC  
                    **(Name of Food Service Management Company)**

***Agreement Number:***

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Rhode Island Department of Education  
Office of Statewide Efficiencies  
Child Nutrition Programs

The program applicant hereby agrees that it will comply with:

- i. Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.);
- ii. Title IX of the Education Amendments of 1972 (20 U.S.C. 1681 et seq.);
- iii. Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794);
- iv. Age Discrimination Act of 1975 (42 U.S.C. 6101 et seq.);
- v. Title II and Title III of the Americans with Disabilities Act (ADA) of 1990 as amended by the ADA Amendment Act of 2008 (42 U.S.C. 12131-12189);
- vi. Executive Order 13166, "Improving Access to Services for Persons with Limited English Proficiency." (August 11, 2000);
- vii. All provisions required by the implementing regulations of the Department of Agriculture (USDA) (7 CFR Part 15 et seq.);
- viii. Department of Justice Enforcement Guidelines (28 CFR Parts 35, 42 and 50.3);
- ix. Food and Nutrition Service (FNS) directives and guidelines to the effect that, no person shall, on the grounds of race, color, national origin, sex, age, or disability, be excluded from participation in, be denied the benefits of, or otherwise be subject to discrimination under any program or activity for which the Program applicant receives Federal financial assistance from USDA; and hereby gives assurance that it will immediately take measures necessary to effectuate this Agreement.
- x. The USDA non-discrimination statement that in accordance with Federal civil rights law and U.S. Department of Agriculture (USDA) civil rights regulations and policies, the USDA, its Agencies, offices, and employees, and institutions participating in or administering USDA programs are prohibited from discriminating based on race, color, national origin, religion, sex, gender identity (including gender expression), sexual orientation, disability, age, marital status, family/parental status, income derived from a public assistance program, political beliefs, or reprisal or retaliation for prior civil rights activity, in any program or activity conducted or funded by USDA (not all bases apply to all programs).

This assurance is given in consideration of and for the purpose of obtaining any and all Federal financial assistance, grants, and loans of Federal funds, reimbursable expenditures, grant, or donation of Federal property and interest in property, the detail of Federal personnel, the sale and lease of, and the permission to use Federal property or interest in such property or the furnishing of services without consideration or at a nominal consideration, or at a consideration that is reduced for the purpose of assisting the recipient, or in recognition of the public interest to be served by such sale, lease, or furnishing of services to the recipient, or any improvements made with Federal financial assistance extended to the Program applicant by USDA. This includes any Federal agreement, arrangement, or other contract that has as one of its purposes the provision of cash assistance for the purchase of food, and cash assistance for purchase or rental of food service equipment or any other financial assistance extended in reliance on the representations and agreements made in this assurance.

*By accepting this assurance, the program applicant agrees to compile data, maintain records, and submit records and reports as required, to permit effective enforcement of nondiscrimination laws and permit authorized USDA personnel during hours of program operation to review and copy such records, books, and accounts, access such facilities and interview such personnel as*

*needed to ascertain compliance with the nondiscrimination laws. If there are any violations of this assurance, the Department of Agriculture, FNS, shall have the right to seek judicial enforcement of this assurance. This assurance is binding on the State agency, its successors, transferees and assignees as long as it receives assistance or retains possession of any assistance from USDA. The person or persons whose signatures appear below are authorized to sign this assurance on behalf of the State agency.*

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## **FOOD SERVICE MANAGEMENT AGREEMENT**

**This Management Agreement (Agreement) is made and entered into as of this 14<sup>th</sup> day of August 2019, between Westerly Public Schools, the School Food Authority ("SFA"), and Aramark, the Food Service Management Company ("FSMC").**

## ARTICLE 1 PURPOSE

**PURPOSE OF AGREEMENT:** This Agreement sets forth the terms and conditions upon which the SFA retains the FSMC to manage and operate the Food Service Program for the SFA. The Agreement is intended to assure a meal program that meets the best interests of the SFA and conforms to USDA, state, and local requirements in a cost effective manner. In accordance with 7 CFR 210.16, the Agreement may not be amended by an SFA and/or the FSMC without the prior written approval of the RI Department of Elementary and Secondary Education ("RIDE").

The FSMC agrees to provide all meals and services in the following Child Nutrition Programs (check all that apply):

- ☒ Fresh Fruit and Vegetable Program ("FFVP")
- ☒ National School Lunch Program ("NSLP")
- ☒ School Breakfast Program ("SBP")
- ☐ After School Snack Program ("ASSP")
- ☐ Special Milk Program ("SMP")
- ☒ Summer Food Service Program ("SFSP")
- ☐ Child and Adult Care Food Program ("CACFP")

and to operate the non-profit school food service program on the "Premises" of the SFA. "Premises" are defined as the Food Service facilities as set forth in Schedule P.

## ARTICLE 2 TERM

**TERM:** The term of the Agreement is one (1) year, commencing on July 1, 2018 and continuing until June 30, 2019. The Agreement is renewable for four (4) periods of one (1) year each upon mutual, written agreement of the SFA and the FSMC, unless terminated earlier as hereinafter provided. Any renewal of the Agreement must be approved by RIDE in accordance with Article 4.2.

## ARTICLE 3



## DEFINITIONS

The following capitalized terms shall have the respective meanings set forth below:

- 3.1 **Accounting Period**: The two (2) Accounting Periods of four (4) weeks each and one (1) Accounting Period of five (5) weeks which occur in each quarter. Twelve (12) Accounting Periods shall constitute an accounting year.
- 3.2 **Allowable Costs**: Those direct and indirect costs of operating the Food Service Program of the SFA which are allowed in the operation of the applicable program pursuant to USDA regulations (7 CFR parts 210, 215, 220, 3016, and 3019) and Office of Management and Budget ("OMB") Cost Circulars (A-87 Cost Principles for State, Local Governments and Indian Tribal Governments of A-122 Cost Principles for non-profit organizations) as applicable. Only allowable costs may be paid from the nonprofit food service account.
- 3.3 **Child Nutrition Programs ("CNP")**: National School Lunch Program ("NSLP"), School Breakfast Program ("SBP"), After School Snack Program ("ASSP"), Special Milk Program ("SMP"), Summer Food Service Program ("SFSP"), Child and Adult Care Food Program ("CACFP"), Fresh Fruit and Vegetable Program ("FFVP").
- 3.4 **Contract Year**: July 1, 2018 - June 30, 2019.
- 3.5 **Direct Operating Costs**: All costs and expenses directly incurred in connection with the operation of the Food Service Program on the premises of the SFA, net of all discounts, rebates and applicable credits accruing to or received by the FSMC or its assignee to the extent those credits are allocable to the portion of the costs billed to the SFA. Direct Operating Costs consist of invoiced amounts to the FSMC for goods (food, beverages, merchandise, supplies, and small equipment) used directly in the Food Service Program of the SFA; labor costs for non-management employees who work in the SFA's Food Service Program, i.e. salaries, wages, taxes and benefits; labor costs (reasonably allocated) for management employees of the FSMC who work directly in the SFA's Food Service Program, i.e., salaries, wages, taxes and benefits; such other costs as are directly incurred in the operation of the SFA's Food Service Program, including sales, use and other taxes on the purchase of goods for the SFA's Food Service Program, cost of utilities directly allocable to the operation of the Food Service Program, menu/ticket printing, office supplies, program promotions, stationery; postage, costs of required licenses, permits, health certifications, RI Department of Health approved food safety kitchen inspections, uniforms and linen, smallwares, repair and maintenance of equipment.
- 3.6 **Discounts, Rebates and Other Applicable Credits**: All discounts, rebates and other applicable credits (as defined in 7 CFR 210.2) accruing to or received by the FSMC or any

assignee of the FSMC, to the extent those credits are allocable to the allowable portion of the costs billed to the SFA.

**3.7 Equipment:** Articles of nonexpendable, tangible personal property with a useful life of more than one year, and a per-unit acquisition cost of \$5,000 or more.

**3.8 Food Service Program:** The preparation, service and sale of food, beverages, goods, merchandise and other items at the Premises. The Food Service may include the NSLP, SBP, ASSP, SMP, SFSP, FFVP, CACFP, a la carte food service and other sales.

**3.9 Gross Sales:** All sales of food, beverages, goods, merchandise and services (including vending machines) in the Food Service Program.

**3.10 Indirect Operating Costs:** Overhead costs and expenses incurred by the FSMC and apportioned to the operation of the SFA's Food Service Program for purposes of determining a "General Support Services Fee" to be paid by the SFA to the FSMC. All indirect costs and overhead costs of the FSMC must be included in the "General Support Services Fee" and not be allocated and/or charged as additional costs or expenses to the SFA.

**3.11 Meal Equivalent:** One reimbursable "Meal Equivalent" shall be: One (1) USDA reimbursable lunch or one (1) USDA reimbursable supper served under the CACFP or SFSP or four (4) USDA reimbursable after school snacks. Two "Reimbursable Meal Equivalents" shall be: Three (3) breakfasts.

**3.12 Net Sales:** All sales of food, beverages, goods, merchandise, and services (including vending machines) in the Food Service Program excluding sales and use taxes.

**3.13 Premises:** The food service facilities as described in Schedule P.

**3.14 Reimbursable Meal:** A breakfast, lunch, supper, or snack eligible for Federal reimbursement.

**3.15 Surplus:** The excess of Net Sales over the total of Direct Operating Costs, General Support Services Fee, and Management Services Fee.

## **ARTICLE 4**

### **EXECUTION AND EXCLUSIVITY**

**4.1 SUBMISSION OF AGREEMENT.** An unsigned copy of the Agreement will be submitted no later than June 1<sup>st</sup> to RIDE's Office of Statewide Efficiencies, Child Nutrition Programs for its review and approval. After RIDE approves the Agreement (as required under 7 CFR 210.16), the SFA shall submit a fully-executed copy to RIDE no later than June 30, 2018.

**4.2 SUBMISSION OF RENEWALS:** An unsigned copy of the Annual Renewal of the Agreement (the "Annual Renewal") will be submitted no later than May 1<sup>st</sup> of each successive year to RIDE's Office of Statewide Efficiencies, Child Nutrition Programs for its review and approval. After RIDE's approval, a fully-executed copy of the Annual Renewal will be submitted to RIDE no later than June 30<sup>th</sup> of each successive year.

**4.3 FOOD SERVICE EXCLUSIVE:** The SFA grants the FSMC the exclusive right to operate the nonprofit school Food Service Program on or from the Premises. For school functions that are not part of the nonprofit school food service program, the FSMC shall have the first option to provide such food service.

## **ARTICLE 5**

### **SFA RESPONSIBILITIES**

**5.1 SFA OVERSIGHT AND ACCESS:** The SFA will supervise and monitor the FSMC's daily operation of the Food Service Program with respect to all matters (including working conditions for the food service employees and safety, sanitation, and maintenance of the food service facilities). The SFA will make reasonable regulations with regard to all such matters, and shall give the FSMC written notice thereof. The SFA's authorized representatives shall have access to the Premises at all times. The SFA grants the FSMC approval to use its promotional, informational or marketing activities or materials including the names, trademarks, logos and symbols of the FSMC at the Premises.

**5.2 CONTRACT DOCUMENTS:** The SFA retains the responsibility for preparing all contract documents. These documents include, but are not limited to, the Request for Proposals, the Agreement, and the Annual Renewal.

**5.3 CONFORMANCE WITH THE CONTRACT:** The SFA ensures that the Food Service Program is operated in conformance with all provisions of the Agreement. The enforcement of all contractual agreements entered into in connection with the CNPs rests with the SFA.

**5.4 MONITORING RESPONSIBILITIES:** The SFA shall monitor the Food Service Program operation through periodic on-site visits to ensure that the Food Service Program is in conformance with program regulations, and that program review and audit findings are resolved. The SFA has procedures in place to monitor the FSMC's compliance with the Agreement and the SFA maintains documentation of its monitoring, any corrective action required, and whether corrective action was implemented.

**5.5 CONTROL OF FOOD SERVICE PROGRAM:** While the SFA may want to consider the FSMC's recommendations, the SFA shall retain control of the quality, extent and general nature of its Food Service Program. For example, the SFA shall:

A. Retain control of the nonprofit school food service account and overall financial responsibility for the nonprofit CNPs. The SFA is required to limit expenditures from the nonprofit school food service account to Allowable Costs.

B. Establish prices (and price adjustments) for all meals served under the nonprofit school food service account (e.g., pricing for reimbursable meals, a la carte food service including vending machine items, and adult meals, as applicable); and

C. Convey menu adjustment requirements to the FSMC and monitor implementation of those adjustments (e.g. meal pattern changes issued by RIDE and USDA).

D. In the event the SFA determines a specific product/product line is necessary for its Food Service Program, it shall direct the FSMC to negotiate for such product. If within six (6) weeks, the FSMC does not secure such product, the SFA reserves the right to make such purchase and the FSMC must use such product in the SFA's Food Service Program.

5.6 SIGNATURE AUTHORITY: The SFA retains signature authority on the SFA's agreement to participate in the CNPs, including the SFA's free and reduced-price policy statement and the monthly Claim for Reimbursement.

5.7 FREE AND REDUCED-PRICE MEAL PROCESS: The SFA shall determine eligibility for free and reduced-price meals and milk in accordance with 7 CFR Part 245. Such responsibilities include the conduct of any hearings related to such determinations and verification of eligibility applications for free and reduced-price meals.

5.8 HEALTH REGULATIONS: The SFA shall maintain all applicable health certifications and assure that all State and local regulations are being met by the FSMC in its preparation and/or service of meals on the Premises, including twice-yearly RI Department of Health approved Food Safety Kitchen Inspections.

5.9 ADVISORY BOARD/STUDENT, PARENT AND COMMUNITY INVOLVEMENT: The SFA shall maintain and operate an Advisory Board composed of parents, teachers and students whose activities may include menu planning, enhancement of the eating environment, program promotion, and related student-community support activities, education related to good nutrition practices, and involving the school faculty and community to enhance the program.

5.10 INTERNAL CONTROLS: The SFA shall establish internal controls that ensure the accuracy of meal counts prior to the submission of the monthly Claim for Reimbursement.

**5.11 PROGRAM OPERATION OVERSIGHT:** The SFA shall retain control of the quality, extent and general nature of its Food Service Program including, but not limited to, the following:

A. The SFA shall have the ability to elect any menu-planning option in the standardized 21 day cycle menu templates as developed by RIDE and as reflected in Schedules A, B, C, D, E, F, G, H, I and J.

B. The SFA shall develop or approve the 21-day cycle menu and the 11 day a-la-carte rotation menu in accordance with the Rhode Island Nutrition Requirements ("RINR") and *R.I.G.L 16-21-7*.

C. The SFA shall provide detailed specifications for each food component or menu item as specified in 7 CFR Part 210. The minimum USDA specifications are set forth in Schedule L of the RFP and additional SFA specifications are set forth in Schedule N of the RFP and are incorporated herein. Detailed product specifications must cover items such as grade, purchase units, style, condition, weight, ingredients, formulations, and delivery time and must meet RI Nutrition Requirements ("RINR") set forth in Schedule M of the RFP and incorporated herein.

D. The SFA shall not pay for meals that are spoiled or unwholesome at the time of delivery, do not meet detailed specifications, or do not otherwise meet the requirements of the Agreement.

**5.12 USDA DONATED FOODS (ENTITLEMENT AND BONUS):** The SFA retains title to USDA donated foods and ensures that all USDA donated foods received by the SFA and made available to the FSMC, including processed USDA donated foods, accrue only to the benefit of the SFA's nonprofit school food service program and are fully utilized therein. This provision also applies to any refunds received from the processors.

A. The SFA shall monitor USDA donated foods to assure maximum usage by the FSMC of the SFA's entitlement and bonus allotments.

B. The SFA shall monitor documented savings resulting from commodity usage.

C. The SFA is required by regulation to take action to obtain restitution in connection with claims for improper distribution, use or loss of, or damage to USDA donated foods.

D. The SFA, distributing agency, sub-distributing agency, the Comptroller General, the Department of Agriculture, or their duly-authorized representatives, may perform onsite reviews of the FSMC's food service operations, including the review of records, to ensure compliance with requirements for the management and use of donated foods.

**5.13 PROCUREMENT STANDARDS COMPLIANCE:** The SFA shall monitor the FSMC's procurement transactions to assure compliance with any applicable procurement standards set by Federal, State, or Municipal regulations and policy.

**5.14 RI NUTRITION REQUIREMENTS ("RINR") COMPLIANCE:** SFAs shall monitor compliance with RINR as set forth in Schedule M of the RFP and incorporated herein.

**5.15 CIVIL RIGHTS COMPLIANCE:** The SFA shall monitor compliance with the following, as amended: Title VI of the Civil Rights Act of 1964; Title IX of the Education Amendments of 1972; section 504 of the Rehabilitation Act of 1973; the Age Discrimination Act of 1975; 7 CFR Parts 15 15a and 15b; and FNS Instruction 113-1, Civil Rights Compliance and Enforcement in the CNP's.

**5.16 BUY AMERICAN PROVISION:** The SFA shall monitor compliance with the Buy American Provision (under 7 CFR Part 250) for contracts that involve the purchase of food by the FSMC.

**5.17** In the event that the SFA has opted to have the FSMC provide management services for the Fresh Fruit and Vegetable Program (FFVP), the SFA will ensure that the FFVP is operated in accordance with the requirements of Section 19 of the National School Lunch Act, all applicable regulations and policies, and the USDA/FNS FFVP Handbook for Schools, December 2010.

## **ARTICLE 6**

### **FSMC RESPONSIBILITIES**

**6.1 HEALTH CERTIFICATION:** The FSMC shall maintain all applicable State and/or local health certification(s) for the term of the Agreement for any facility outside the school in which it proposes to prepare meals. The FSMC must also meet all applicable State and local health regulations in preparing and serving meals on the Premises, including the development, adoption and implementation of a HACCP food safety plan. The cost of such certifications shall be a Direct Operating Cost.

**6.2 HEALTH EXAMINATIONS:** The FSMC shall have all of its employees assigned to duty on the Premises submit to periodic health examinations, if required by law, and shall submit satisfactory evidence of compliance with all health regulations to the SFA's medical section upon request. The cost of such examinations shall be a Direct Operating Cost.

**6.3 RI NUTRITION REQUIREMENTS ("RINR") COMPLIANCE:** The FSMC shall comply with RINR as set forth in Schedule M of the RFP and incorporated herein.

**6.4 21-DAY CYCLE MENU:** The FSMC shall adhere to the 21-day cycle menu attached hereto and incorporated herein (Schedules A, and B if menus developed by SFA, or Schedules



F and G if menus developed by FSMC) for the first 21 days of meal service. Changes thereafter may be made only with the approval of the SFA. If applicable, the FSMC shall adhere to the cycle menu developed or approved by the SFA for the SFSP (Schedule D if menu developed by SFA or Schedule I if menu developed by FSMC). If applicable, the FSMC shall adhere to the cycle menu developed or approved by the SFA for the CACFP (Schedule E if menu developed by the SFA or Schedule J if menu developed by the FSMC).

**6.5 A LA CARTE MENU/ROTATION PLAN:** The FSMC shall adhere to the attached 11-day a la carte rotation menu (Schedules A and B if menus developed by SFA or Schedules F and G if menus developed by FSMC) for the first 11 days of meal service. Changes thereafter may be made only with the approval of the SFA.

**6.6 PROVISION OF FREE AND REDUCED-PRICE MEALS:** The FSMC must offer free, reduced-price and full price reimbursable meals to all eligible children in order to offer a la carte food service.

**6.7 USDA DONATED FOODS (ENTITLEMENT AND BONUS):**

**A.** The FSMC shall provide the following services in relation to commodity foods:

1. Preparing and serving meals
2. Ordering or selection of donated foods in coordination with and the approval of the SFA in accordance with 7 CFR 250.58(a)
3. Storage and inventory management of donated foods in accordance with 7 CFR 250.52
4. Payment of processing fees and/or submittal of refund requests to a processor on behalf of the SFA, or remittance of refunds for the value of donated foods in processed end products to the SFA, in accordance with subpart c of 7 CFR 250.

**B.** The FSMC must credit the SFA for the value of all donated foods received for use in the SFA's food service program in a school year (including both entitlement and bonus foods), including the value of donated foods contained in processed end products if the FSMC procures processed end products on behalf of the SFA, or acts as an intermediary in passing the donated food value in processed end products on to the SFA in accordance with the contingencies in 7 CFR 250.51(a).

**C.** The FSMC shall credit for donated foods by disclosure, i.e. the FSMC shall credit the SFA for the value of donated foods by disclosing, in its billing for food costs submitted to the SFA, the savings resulting from the receipt of donated foods for the billing period. Crediting by disclosure does not affect the requirement that the FSMC shall bill the SFA only for net allowable costs. The FSMC shall use the USDA's list of

commodity food values at the time the SFA receives the donated foods to report the value of donated foods in its disclosure of the value of donated foods on its invoices.

D. The FSMC shall maintain accurate and complete records with respect to the receipt, use/disposition, storage and inventory of USDA donated foods.

E. The FSMC accepts liability for any negligence on its part that results in any loss of, improper use of, or damage to USDA donated foods.

F. The FSMC shall not subcontract USDA commodities for further processing. The FSMC shall not enter into the processing agreement with the processor required in subpart C of 7 CFR 250.

G. The FSMC shall provide storage and inventory management in accordance with 7 CFR 250.52 and 7 CFR 250.14(b) and shall ensure that its system of inventory management will not result in the SFA being charged for donated foods.

H. The FSMC shall use all donated ground beef and ground pork products, and all processed end products, in the Food Service Program.

I. The FSMC shall use all other donated foods, or will use commercially purchased foods of the same generic identity, of U.S. origin, and of equal or better quality than the donated foods, in the Food Service Program.

J. The FSMC shall procure processed end products on the SFA's behalf and shall ensure compliance with the requirements of subpart C of 7 CFR part 250 and with the provisions of the distributing and/or the SFA's processing agreements in the procurement of processed end products on behalf of the SFA, and will ensure crediting of the SFA for the value of donated foods contained in such end products at the processing agreement value.

K. The FSMC shall maintain records to document its compliance with the requirements relating to donated foods in accordance with 7 CFR 250.54(b).

L. With respect to all the activities that the FSMC will be responsible for relating to donated foods, the FSMC shall ensure that such activities will be performed in accordance with the applicable requirements in 7 CFR 250.

M. Any extension or renewal of this Agreement is contingent upon the fulfillment of all contract provisions related to donated foods.

**6.8 FRESH FRUIT AND VEGETABLE PROGRAM:** In the event the SFA participates in the USDA Fresh Fruit and Vegetable Program ("FFVP") and has elected to have the FSMC provide



management services with respect to this Program, the FSMC shall operate the FFVP in accordance with the requirements of Section 19 of the National School Lunch Act, all applicable regulations and policies, and the USDA/FNS FFVP Handbook for Schools, December 2010.

**6.9 CHILD AND ADULT CARE FOOD PROGRAM:** In the event the SFA participates in the USDA Child and Adult Care Food Program ("CACFP") and has elected to have the FSMC provide services with respect to this Program, the FSMC shall operate the CACFP in accordance with the requirements of 7 CFR Part 226. The FSMC agrees to provide the CACFP Meals inclusive of milk and agrees to ☐ deliver meal or ☐ have meals available for pick-up (choose one and delete the other) at an agreed upon time. The Meals shall be made available ☐ unitized or ☐ non-unitized (choose one and delete the other). *RIDE approval is required for non-unitized meals.*

**6.10 SUMMER FOOD SERVICE PROGRAM:** In the event the SFA participates in the USDA Summer Food Service Program ("SFSP") and has elected to have the FSMC provide services with respect to this Program, the FSMC shall operate the SFSP in accordance with the requirements of 7 CFR Part 225. The FSMC agrees to provide the SFSP Meals inclusive of milk and agrees to ☐ deliver meal or ☐ have meals available for pick-up (choose one and delete the other) at an agreed upon time. The Meals shall be made available ☐ unitized or ☐ non-unitized (choose one and delete the other). *RIDE approval is required for non-unitized meals.*

**6.11 VENDED MEALS:** In the event that the SFA has entered in an "LEA to LEA" agreement to vend meals under the USDA Child Nutrition Programs, the FSMC agrees to provide said meals in accordance with the reimbursable meal standards as set forth in this agreement. The FSMC agrees to provide vended meals ☐ inclusive or ☐ exclusive of milk (choose one and delete the other) and agrees to ☐ deliver meals or ☐ have meals available for pick-up (choose one and delete the other). Vended meals shall be charged to the receiving LEA according to the prices established in Schedule S of this Agreement. All revenues associated with vended meals shall be deposited into the LEA's non-profit foodservice account. Costs associated with the production of vended meals will be included in the monthly FSMC invoice with other allowable program costs and fees shall be charged on these meals based on the fee structure as outlined in Article 7 of this agreement.

**6.12 RECORDKEEPING/REPORTING/RETENTION:** The FSMC shall maintain records, including, but not limited to: (a) records supporting the SFA's Claim for Reimbursement; (b) cost records including, but not limited to, source documentation, supporting charges for contractually approved costs that relate to approved annual budget (i.e., reasonable and necessary and with full disclosure of discounts, rebates and applicable credits); (c) cost breakdown of management and administrative fees, if applicable, to demonstrate there is no

double billing of charges (d ) time and attendance records for labor costs billed; (e) breakdown of special function costs, if applicable; (f) meal count records for meals not covered by the Claim for Reimbursement, e.g. adult meals, a la carte, etc.; and (g) revenue records broken down by source, type and category of meal or food service.

A. The FSMC shall make all records available to the SFA upon request and retain all records for a period of three (3) years after the SFA submits the final Claim for Reimbursement for the fiscal year for inspection and audit by representatives of the SFA, RIDE, USDA, and the Comptroller General, at any reasonable time and place. In instances where audit findings have not been resolved, the records must be retained beyond the three (3) year period until resolution of the issues raised by the audit.

B. The FSMC shall provide the SFA with quarterly and yearly financial reports that reconcile period revenues with period expenses. In addition, The FSMC shall prepare monthly, quarterly, and annual financial reports that compare actual revenue and expenditures to the annual budget for a current status of financial condition. The FSMC shall use the standardized budget and invoice forms in Schedule U.

C. The FSMC shall report Claim for Reimbursement information to the SFA promptly at the end of each month but no more than five (5) working days after the close of the preceding month.

D. All records pertaining to the SFA's Food Service Program are the property of the SFA and must be maintained at the SFA's premises.

**6.13 COMPLIANCE WITH PROGRAM REGULATIONS:** The FSMC shall conduct program operations in accordance with 7 CFR Parts 210, 215, 220, 225, 226, 245, and 250 and FNS instructions and policy.

**6.14 CIVIL RIGHTS COMPLIANCE:** The FSMC assures conformity with all Civil Rights requirements applicable to the SFA.

**6.15 BUY AMERICAN PROVISION:** The FSMC assures conformity with Buy American requirements applicable to the SFA.

**6.16 CLAIM LIABILITY:** The FSMC accepts liability caused by the FSMC's negligence for claims assessed as a result of Federal/State review/audits, corresponding with the SFA's period of liability.

**6.17 CONTRACT WORK HOURS AND SAFETY STANDARDS ACT:** The FSMC assures compliance with Sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 USC 327-330) as supplemented by Department of Labor regulations (29 CFR, Part 5).

**6.18 DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION:** This certification is attached to this Agreement as Schedule K as required by the regulations

implementing Executive Order 12549, Debarment and Suspension, 7 CFR Part 3017, Sections 3017.300, Participants' responsibilities. A new certification is required for each Renewal period.

**6.19 CERTIFICATION REGARDING LOBBYING:** This certification is attached to this Agreement as Schedule L as required by 7 CFR Part 3018. Submission of this certification is a prerequisite for making or entering into this Agreement and is imposed by section 1352, Title 31, U.S. Code. A new certification is required for each Renewal period.

**6.20 DISCLOSURE OF LOBBYING ACTIVITIES:** This certification is attached to this Agreement as Schedule M as required by 7 CFR Part 3018. Information requested through this form is authorized by section 1352, Title 31, U.S. Code. If there are material changes after the initial filing, updated reports must be submitted on a quarterly basis.

**6.21 PURCHASING:** The FSMC, as an authorized agent of the SFA, shall purchase and pay for, as a Direct Operating Cost, all food, supplies, and services utilized in the SFA's nonprofit food service program. Such purchases shall be made exclusively for the benefit of the SFA and shall be used solely in the SFA's nonprofit food service program. All food and related supplies purchased on behalf of the SFA shall be kept separate and apart and title thereto shall remain with the SFA at all times. All such purchases shall be made in the name of the SFA.

A. All Direct Operating Costs charged to the SFA shall be net of all Discounts, Rebates, and Other Applicable Credits, accruing to or received by the FSMC or any assignee of the FSMC, and these cost reductions shall be identified on the Accounting Period invoice and financial reports, as required, as a credit to the amount billed. Prompt payment discounts are excluded from the above only if the FSMC makes a purchase with its funds and receives reimbursement from the SFA (for such purchase) after the timeframe associated with the prompt payment discount.

B. The FSMC, as the agent of the SFA, will ensure that all procurement transactions meet any applicable procurement standards set by Federal, State, or Municipal regulations and policy.

C. The FSMC will maintain written procurement procedures including a written code of standards of conduct to prevent real or apparent conflicts of interest for employees engaged in the selection, award or administration of contracts as outlined in 7 CFR 200.318.

D. The FSMC will provide accounting period invoices that specifically comply with the USDA Procurement Requirements for the National School Lunch, Breakfast and Special Milk Programs, effective November 30, 2007, through the adherence to the following provisions:

1. Allowable costs will be paid from the nonprofit school foodservice account to the FSMC net of all discounts, rebates, and other applicable credits accruing to or received by the FSMC or any assignee under the contract, to the extent those credits are allocable to the allowable portion of the costs billed to the SFA.

2. The FSMC will exclude all unallowable costs from its billings and certify on each invoice that only allowable costs are submitted for payment by the SFA. Records must be established that maintain visibility of unallowable costs, including directly associated costs, in a manner suitable for contract cost determination and verification.

3. The FSMC's determination of its allowable costs must be made in compliance with the applicable USDA Departmental and Program regulations and Office of Management and Budget ("OMB") cost circulars.

4. The FSMC must identify the amount of each discount, rebate, and other applicable credit on invoices presented to the SFA for payment and individually identify the amount as a discount, rebate or in the case of other applicable credits, the nature of the credit, on no less than an accounting period basis.

5. The FSMC must maintain documentation of costs and discounts, rebates and other applicable credits, and must furnish such documentation upon request to the SFA, RIDE or USDA.

6. The FSMC will identify the method by which it will report discounts, rebates and other applicable credits, allocable to the SFA, as they become known during the term of the Agreement and for those that are not reported prior to the conclusion of the Agreement, and receive approval from the SFA prior to issuing its first invoice of the Agreement period. The FSMC's accounting system tracks the activity of a client's account for one (1) year after the conclusion of a contract year or the term of the Agreement, thus allowing for trailing discounts, rebates and allowances to be paid by the FSMC to the SFA.

E. Any silence, absence, or omission from the Agreement concerning any point shall be regarded as meaning that only the best commercial practices are to prevail, and that only materials (food, supplies, etc.) and workmanship of a quality that would normally be specified by the SFA are to be used.

F. In the event that the SFA and the FSMC agree that the FSMC is to provide or purchase additional products or services, such as facilities design services, for

enhancement of the SFA's Food Service Program, the cost to the SFA shall be competitive with the cost of such products or services from an independent source in the open market. Upon approval by the SFA, invoices for such products or services shall be paid and the cost of such products or services shall be a Direct Operating Cost.

G. The FSMC, as the agent of the SFA, will maximize the use of RI grown/locally grown products, including but not limited to, fruits, vegetable and dairy products, whenever possible, and when purchased by the SFA directly, such fruits, vegetables, and dairy products must be used by the FSMC in the SFA's Food Service Program.

H. The FSMC shall engage in RI's Farm-to-School initiative in an effort to connect schools (K - 12) with RI / local farms in order to serve healthy meals using locally-produced foods.

I. The FSMC shall produce a monthly report which documents the procurement of RI grown / locally grown products including the local farm source, the product(s) purchased and the value of the products purchased on behalf of the SFA.

J. The prices charged the SFA for food, supplies, services, etc. must be competitive, reasonable and necessary and the FSMC shall for each Accounting Period provide documentation that the prices charged for food, supplies, services, etc. are competitive, reasonable and necessary.

K. Purchases by the FSMC of beverages and snacks for use in the Food Service Program of the SFA shall comply with R.I.G.L. 16-21-7. To the extent that such purchases do not meet these requirements, the FSMC shall not charge the SFA for such purchases and such costs shall not constitute Direct Operating Costs.

6.22 DEPOSITS: Gross Sales shall be remitted to the SFA or deposited in the SFA's nonprofit school food service account no less than weekly.

6.23 EMPLOYEES: Management/professional and non-management Food Service employees.

A. The FSMC shall provide qualified management/professional employees to manage the Food Service Program and supervise all employees employed therein. All non-management Food Service employees shall be employees of the FSMC or shall be converted from SFA employees to FSMC employees at any point agreed to during the initial contract term and/or any Renewal Period. All FSMC Food Service Employees shall be subject to the rules and regulations of the SFA while on the Premises. The SFA may assign students for work experience in Food Service operations in such numbers as are agreed upon in furtherance of the SFA's policy to provide work experience for students. The FSMC shall supervise such students with the SFA's authorized representatives, as agent for the SFA. When possible, Food Service



employees will participate in the SFA's nutrition education activities to include cafeteria/classroom instruction. The FSMC's management/professional employees will serve on the Advisory Board established by the SFA. To the extent permitted and/or required by the SFA, the FSMC's management/professional employees will attend the SFA's meetings when Food Service matters are on the agenda or their participation is needed.

B. The FSMC shall apply to its employees and prospective employees assigned to work on the Premises the minimum standards of employability set forth under R.I.G.L. 16-2-18.1, relating to background checks of prospective employees, including the prohibition of employment of individuals with a record of conviction of certain enumerated offenses. In order to comply with the Rhode Island law, the SFA agrees that it will coordinate the submission of fingerprints of all FSMC Applicants to the authorities delineated under Rhode Island law in order for the requisite state and national background checks to be conducted. The SFA agrees to provide to the FSMC: (a) a copy of the letter for each Applicant confirming whether disqualifying information has been discovered so that the FSMC may comply with the minimum standards of employability set forth under Rhode Island law; and (b) a copy of any criminal background report sent to the SFA at the request of the Applicant as provided for under Rhode Island law. To the extent permitted by law, the FSMC and the SFA each agree to allow the other to inspect those background check records obtained in accordance with the Rhode Island law. Consistent with its Drug Free Workplace Act Policy, the FSMC shall also conduct pre-employment and reasonable suspicion drug and alcohol testing. All costs associated with the background checks and the pre-employment screenings shall be the responsibility of the FSMC and/or the Applicant.

6.24 POINT OF SERVICE (POS): The FSMC shall implement an accurate point of service count using the counting system submitted by the SFA in its application to participate in the CNPs and approved by RIDE. Such a counting system must eliminate the potential for the overt identification of free and reduced-price eligible students and report accurate meal counts by eligibility categories (free, reduced price and paid). If electronic POS systems are utilized in the Food Service Program, the FSMC shall ensure that meal claims are directly uploaded from the POS to RIDE's CNP Connect web-based claims system without passing through any other systems.

## **ARTICLE 7**

### **FINANCIAL TERMS, PAYMENTS AND FINANCIAL ASSUMPTIONS**

7.1 PAYMENT FOR DIRECT OPERATING COSTS: For each Accounting Period, the SFA will pay/reimburse the FSMC for all Direct Operating Costs less all applicable credits, discounts

and rebates. Detailed cost documentation must be submitted monthly to support what the SFA is charged for each cost. The FSMC must exclude all unallowable costs from its invoices and certify that only allowable costs are submitted for payment and that records have been established that maintain the visibility of unallowable costs, including directly associated costs in a manner suitable for contract cost determination and verification. The invoice will be submitted to the SFA by the seventh (7) day following the Accounting Period being billed.

**7.2 INVOICE DUE DATE AND INTEREST:** Invoices for Direct Operating Costs shall be paid within thirty (30) days of receipt of the invoice. The SFA shall pay interest on all amounts not paid when due at one (1) percent per month or the maximum contractual interest rate allowed by applicable state law, whichever is less. Such interest shall not be charged by the FSMC if the delay in payment is due to the FSMC's failure to provide supporting documentation requested by the SFA. Any interest paid is not an Allowable Cost and must be paid out of the general fund of the SFA. Upon termination of the agreement, all outstanding amounts shall become immediately due and payable.

**7.3 GENERAL SUPPORT SERVICES FEE:** The SFA will pay the FSMC a General Support Services Fee on the basis of the Indirect Operating Costs incurred by the FSMC in the operation of the SFA's Food Service Program. All Indirect Operating Costs and overhead costs of the FSMC must be included in the General Support Services Fee and may not be charged to the SFA in any other expenses. All Food Service Program expenses not defined as "Direct Operating Costs" in this Agreement will be Indirect Operating Costs and included in the General Support Services Fee. Indirect Operating Costs include, but are not limited to, the following costs of the FSMC and any travel related thereto:

- Human Resource and Labor Relations Services and Visitation
- Legal Department Services
- Purchasing and Quality Control
- Technical Research
- Costs Incurred in Hiring and Relocating
- FSMC Management Personnel
- Dietetic Services (Administrative & Nutritional)
- Test Kitchens
- Accounting and Accounting Procedures
- Tax Administration
- Technical Supervision
- Supervisory Personnel and Regular Inspection or Audit Personnel
- Teaching or Training Programs
- General Regional Support
- General National Headquarters Support
- Design Services

- Menu Development
- Information Technology and Support
- Payroll Documentation and Administrative Costs
- Personnel Advice
- Insurance

The SFA shall pay the FSMC a General Support Services Fee in an amount equal to \$0.1223 multiplied by the total of "Reimbursable Meal Equivalents" and "Meal Equivalents" served, computed for each Accounting Period and included in the invoice for Direct Operating Costs.

One "Reimbursable Meal Equivalent" shall be: One (1) lunch or one (1) USDA reimbursable supper served under the CACFP or SFSP or four (4) after school snacks. Two "Reimbursable Meal Equivalents" shall be: Three (3) breakfasts.

One "Meal Equivalent" shall be the result of dividing the total of Net Sales exclusive of reimbursable meals but inclusive of cash for adult meals, a la carte food and beverage sales, milk program reimbursements, vended meals and any other special functions or meal sales by the "Meal Equivalent" dollar amount set forth in Schedule Q of this Agreement.

**7.4 MANAGEMENT SERVICES FEE:** The SFA shall pay the FSMC a Management Services Fee in an amount equal to \$0.0473 multiplied by the total of "Reimbursable Meal Equivalents" and "Meal Equivalents" served, computed for each Accounting Period, and included in the invoice for Direct Operating Costs.

One "Reimbursable Meal Equivalent" shall be: One (1) lunch or one (1) USDA reimbursable supper served under the CACFP or SFSP or four (4) after school snacks. Two "Reimbursable Meal Equivalents" shall be: Three (3) breakfasts.

One "Meal Equivalent" shall be the result of dividing the total of Net Sales exclusive of reimbursable meals but inclusive of cash for adult meals, a la carte food and beverage sales, milk program reimbursements, vended meals and any other special functions or meal sales by the "Meal Equivalent" dollar amount set forth in Schedule Q.

**7.5 GUARANTEED RETURN:** The SFA and FSMC shall work together to ensure a financially sound operation. The FSMC guarantees that the SFA shall receive a shortfall/surplus of (\$23,181.00) (the "Guaranteed Return"). If the shortfall/surplus for the Food Service Program falls short of the Guaranteed Return, the FSMC shall pay the difference to the SFA, with the amount of any such payment not to exceed the annual amount of the FSMC's Management Services Fee and General Support Services Fee. Any Guaranteed Return received by the SFA must remain in the nonprofit food service account. (note: here the SFA must adjust this language if the terms of its Guaranteed Return are different, e.g. a Guaranteed Return that is not limited by the annual amount of the FSMC's Management Services Fee and General Support Services Fee)



**7.6 FEE ADJUSTMENTS:** Upon mutual written agreement of the SFA and FSMC, the Management Services Fee and General Support Services Fee may be adjusted annually. Except as otherwise agreed by the SFA and FSMC, such adjustment shall be by no more than the percentage of change in the Consumer Price Index ("CPI") for all Urban Consumers based on the previous year. Upon acceptance by the SFA such increase in fees shall be incorporated into any renewal of this agreement

**7.7 MAJOR EQUIPMENT PROCUREMENT:** The FSMC (SFA must indicate)

- € Shall purchase equipment on behalf of the SFA as specified in Schedule V; and/or
- € May purchase up to \$\_\_\_\_\_ in equipment dollar value per year for the Food Service Program with the agreement and prior approval of the SFA; or
- ~~x~~May Not purchase Equipment (as defined in Section 3.7 of this Agreement)

The FSMC shall be subject to the same procurement requirements to which the SFA is subject in purchasing Equipment and may not serve as a vendor when purchasing Equipment on behalf of the SFA. The SFA shall repay the FSMC at the rate agreed upon when the Equipment is purchased, which sum shall be charged to the SFA as a direct operating cost of the Food Service Program. An amortization schedule (providing for a minimum repayment period of five (5) years) will be provided to the SFA by the FSMC to document the schedule of payments. SFA payments may begin only once the equipment has been placed in service. Ownership of the Equipment will vest in the SFA immediately upon purchase of the Equipment. As per OMB Circular A-87, Attachment B, #19c, approval by the State Agency of the Equipment purchase is not necessary.

If this Agreement expires or is terminated prior to the complete repayment of the amount owed to the FSMC for Equipment purchased, the SFA shall, on the expiration date, or within five days after receipt by either party of any notice of termination under this Agreement, elect one of the following options: (a) retain the Equipment and continue to make payments to the FSMC in accordance with the amortization schedule (b) retain the Equipment and reimburse the FSMC the entire amount of the unpaid portion of the purchase price (c) retain the equipment and the successor FSMC shall pay off the remaining amount owed, continuing the original payment schedule with the SFA (d) deliver the Equipment to the FSMC in full release of the unpaid balance of the purchase price owed to the FSMC. The SFA shall provide the FSMC written notice of its election under this provision.

**7.8 (delete if not applicable) REFINANCING OF DEBT ON MAJOR EQUIPMENT:** At the commencement of the term of this Agreement, the FSMC shall pay the balance due to the prior FSMC on amortized loans for prior equipment purchases of the SFA and shall issue a loan to the SFA for the amount of said payment. Said loan shall be repaid by the SFA to the

FSMC without interest, and according to the same schedule and amount of payments as were made to the prior FSMC. A copy of the amortization schedule(s) is attached hereto as Schedule W. Payments made by the SFA to the FSMC pursuant to the amortization schedule shall be direct operating costs of the Food Service Program. If this Agreement expires or terminates prior to full repayment, the SFA, at its option, may either pay the full balance owed (at the time of expiration or termination) or continue to make payments according to the amortization schedule(s) until such time as the loan is paid in full.

**7.9 ASSUMPTIONS:** Financial terms of the Agreement are based on existing conditions and the following assumptions. If there is a change in the following assumptions, the financial terms of the Agreement shall be adjusted to compensate for such change.

1. **Financial Data and Conditions.** The data and information provided by the SFA to the FSMC is complete and accurate.
2. Reimbursement rates for reimbursable meals shall not be less than the rates in effect for the prior school year.
3. The entitlement rate of government-donated commodities received shall be as published annually in the Federal Register.
4. The cost of wages, salary and fringe benefits for the SFA's employees or the number of SFA's employees shall not exceed such levels as set forth in the Projected Food Service Budget attached hereto as Schedule R.
5. The State and Federal minimum wage rates and taxes in effect as of July 1st shall remain consistent throughout the Contract Year.
6. The food costs for the Contract Year shall not increase by an amount greater than 3% and a corresponding increase in the CPI published by the US Department of Labor, Bureau of Labor Statistics (1982 = 100% base period) Food Away From Home ("CPI"), or a comparable index if that index is not available occurs during the same Contract Year.
7. The SFA and its representatives, including, but not limited to, the SFA liaison, school principals, teachers and SFA employees shall fully cooperate with the FSMC and its representatives in the implementation and operation of the Food Service Program and any modifications to the Food Service Program.
8. It is the SFA's responsibility to collect any and all cash due from charged sales. To the extent that the SFA fails to collect such cash from charged sales, there shall be a corresponding adjustment to the amount of the Guaranteed Return.
9. The SFA shall charge the established selling prices for any and all reimbursable and non-reimbursable meals and a-la-carte sales provided at all school locations set forth

in the list attached hereto as Schedule P. The established selling prices for the Contract Year for lunch, breakfast, after school snacks, and milk are set forth on Schedule S. To the extent the SFA decides not to charge the established selling prices for any and all reimbursable and non-reimbursable meals and a-la-carte sales, such as, for example, when the SFA decides to offer free breakfast for all students who attend a school location which is not designated as a Universal Free site, there shall be a corresponding adjustment to the amount of the Guaranteed Return for such uncharged amounts.

10. Meal periods for breakfast and lunch meals during the Contract Year shall not be less than those in effect at the time of this Agreement.
11. There is no change in the SFA's policies, practices and/or service requirements that is proven to have a direct impact on the financial performance of the Food Service Operation (e.g., a high school changing from two lunch periods to one.)
12. Legislation, rules, or regulations that impact the financial performance of the non-profit food service program shall remain constant.
13. The meal components and quantities shall be those required under RINR.
14. There shall be no competitive food and beverage sales that are not part of the non-profit food service program during the meal service times.
15. There shall be at least the following numbers of full service days during the Contract Year in which breakfast and lunch are served at the SFA's locations participating in the National School Lunch Program and the School Breakfast Program: Elementary 180 days; Middle/Jr.: 180 days; and High School: 180 days. A listing of the SFA's locations participating in the National School Lunch Program, the School Breakfast Program, the ASSP and/or the Summer Food Service Program during the Contract Year is attached hereto as Schedule P.
16. There shall be at least 180 full service days during the Contract year in which ASSP and/or Child/Adult Care Food Program meals are served at the SFA's locations participating in the SFA's program as set forth in the listing attached hereto as Schedule P.
17. The average student enrollment for the Contract Year shall be at least 2631.
18. The average daily student attendance for the Contract Year shall be at least 2420. The average daily student attendance per school and the number of schools shall remain relatively constant with the average daily student attendance and number of schools from the immediately prior school year.

## **ARTICLE 8 GENERAL TERMS**

**8.1 INDEPENDENT CONTRACTOR:** The FSMC shall be an independent contractor and shall retain control over its employees and agents. Nothing in this Agreement shall be deemed to create a partnership, agency, joint venture or landlord-tenant relationship between the FSMC and the SFA except that the FSMC shall act as the SFA's agent pursuant to 6.21.

**8.2 CONFIDENTIALITY:** The SFA and FSMC agree to maintain as confidential any material relating to this Agreement for which confidentiality may properly be claimed under R.I.G.L. 38-2-1, et seq. (Access to Public Records Act) including, but not limited to, trade secrets and proprietary information. Trade secrets and proprietary information shall not include any personnel (labor costs, staffing patterns, staff scheduling for employees), financial, or other information necessary for the SFA to solicit competitive FSMC proposals at the expiration of this Agreement.

**8.3 ENERGY POLICY AND CONSERVATION ACT:** The SFA and FSMC shall recognize mandatory standards and policies relating to energy efficiency which are contained in the State energy conservation plan issued in compliance with the Energy Policy and Conservation Act (PAL 94-163).

**8.4 EQUAL EMPLOYMENT OPPORTUNITY:** The SFA and FSMC shall comply with Executive Order 11246, entitled "Equal Employment Opportunity" as amended by Executive Order 11375, and as supplemented in Department of Labor regulations (41 CFR Part 60).

**8.5 CERTIFICATION OF INDEPENDENT PRICE DETERMINATION:** The SFA and FSMC certify that the prices in the offer have been arrived at independently, without consultation, communication or agreement for the purpose of restricting competition. The required Certification of Independent Price Determination is attached hereto as Schedule N.

**8.6 CLEAN AIR ACT, CLEAN WATER ACT, AND ENVIRONMENTAL PROTECTION AGENCY REGULATIONS:** If applicable, the SFA and FSMC shall comply with all applicable standards, orders, or requirements issued under section 306 of the Clean Air Act (42 USC 1857 (h)), Section 508 of the Clean Water Act (33 USC 1368), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR, Part 15) which prohibit the use under non-exempt Federal contracts, grants, or loans of facilities included on the EPA List of Violating Facilities. The provision requires reporting of violations to the grantor agency and to the USEPA Assistant Administrator for Enforcement (EN-329). The Clean Air and Water Certificate is attached in Schedule O.

**8.7 SPECIAL FUNCTIONS:** Special Functions shall include services such as catering or offsite meal services.

- A. Special Functions will be billed separately and receipts deposited to the nonprofit school food service account.
- B. The use of USDA donated foods or processed end products containing USDA donated foods is prohibited for Special Functions conducted outside of the nonprofit school food service.
- C. The costs for Special Functions are to be separately identified in the FSMC's Accounting Period invoice to the SFA.

**8.8 MEAL EQUIVALENT DETERMINATION:** The same procedures used to determine the cost of adult meals must be used to determine a meal equivalency factor for all sales other than pattern meals (*NSFMI Financial Management Information System*, 2005, National Food Service Management Institute). In lieu of cost data, the minimum Meal Equivalent will reflect the USDA reimbursement rate for a free lunch meal, the per-meal State Match, and the per meal donated food assistance (entitlement and bonus). The Meal Equivalent will be updated for each Renewal Period. In the event the Meal Equivalent changes in any Renewal Period, the FSMC shall receive a mutually-agreed upon adjustment to its General Support Services Fee and Management Services Fee to equitably compensate the FSMC for the loss of General Support Services Fees and Management Services Fees due to the change in the Meal Equivalent. The FSMC and the SFA shall use Schedule Q of the Agreement for the Meal Equivalent Determination Formula.

**8.9 INVENTORIES OF FOOD, BEVERAGES, AND SUPPLIES:** For purposes of inventory control (protection from non-service time pilferage), and for the SFA to properly match food, beverage and supply costs to appropriate school year revenues, the SFA and the FSMC shall jointly inventory all food, beverages and supplies, record and value those items at the beginning and ending of each Contract Year.

**8.10 INSURANCE:** The School Food Authority and FSMC shall maintain insurance as follows:

- A. Each party shall maintain workers' compensation coverage as required by State law covering all of its employees employed in connection with the Food Service Program.
- B. The FSMC shall maintain during the term of the Agreement, Comprehensive or Commercial General Bodily Injury and Property Damage Liability Insurance with a Combined Single Limit of not less than One Million Dollars (\$1,000,000) for each occurrence, including, but not limited to, Personal Injury Liability, Broad Form Property Damage Liability for third party property, Blanket Contractual Liability and



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Products Liability, covering only the operations and activities of the FSMC under this Agreement.. The FSMC shall provide the SFA with a certificate evidencing such policies. The insurance policies shall contain covenants by the issuing company that the policies shall not be canceled without thirty (30) days prior written notice of cancellations. The SFA shall be included as an additional insured under the FSMC's policies of insurance to the extent the SFA is indemnified pursuant to Section 8.10 D. The SFA shall receive a certificate of insurance and endorsement evidencing the SFA as an additional insured.

C. The SFA shall maintain a system of coverage (either through purchased insurance, self insurance, or a combination thereof) to keep the SFA's buildings, including the Premises, and all property contained therein insured against loss or damage by fire, explosion or other cause normally covered by standard broad form property insurance.

D. Except as otherwise expressly provided in this Agreement , the SFA and FSMC shall defend, indemnify and hold each other harmless from and against all claims, liability, loss, and expense, including reasonable costs, collection expenses, attorneys' fees, and court costs which may arise because of the negligence, misconduct, or other fault of the indemnifying party, its agents or employees in performance of its obligations under this Agreement. This clause shall survive the expiration or termination of this Agreement for any reason.

**8.11 PERSONNEL OBLIGATIONS:** The SFA and FSMC shall each be solely responsible for all personnel actions and all claims arising out of injuries occurring on the job with respect

to employees on its respective payroll. Each party shall withhold all applicable Federal, State, and local employment taxes and payroll insurance with respect to its employees, insurance premiums, contributions to benefit and deferred compensation plans, licensing fees, and worker's compensation costs and shall file all required documents and forms. Each party shall indemnify, defend and hold the other harmless from and against any claims, liabilities and expenses related to or arising out of the indemnifying party's responsibilities set forth herein.

**8.12 SPECIAL DIETS:** The FSMC shall supply any special diets for students required for medical reasons when prescribed in writing by a medical doctor. The SFA will approve Special Diet requests.

**8.13 ASSIGNMENT:** With written approval, the FSMC may, without being released from any of its responsibilities hereunder, assign this Agreement to any affiliate or wholly owned subsidiary of the FSMC as long as there is no material change to the Agreement.

**8.14 CONDITION OF PREMISES AND EQUIPMENT:** The Premises and equipment provided by the SFA for use in the Food Service Program shall be in good condition and maintained by the SFA to ensure compliance with applicable laws concerning building conditions, sanitation, safety, and health (including, without limitation, any applicable OSHA regulations). The SFA agrees to indemnify the FSMC against any liability of assessment, including related interest and penalties, arising from the SFA's breach of the aforementioned obligations, and the SFA shall pay reasonable collections expenses, attorneys' fees and court costs incurred in connection with the enforcement of such indemnity. Interest and/or penalties are not allowable costs of the nonprofit school food service account and would be paid out of a general fund. The SFA further agrees that any modifications or alterations to the workplace or the premises (whether structural or non-structural) necessary to comply with any statute or governmental regulation shall be the responsibility of the SFA and shall be at the SFA's expense. This provision shall survive the expiration or termination of the Agreement.

**8.15 PERFORMANCE BOND:** A Performance Bond from a company licensed to do business in Rhode Island in the amount of (SFA inserts amount of Performance Bond) \$3,800 shall be submitted for the first year of the Agreement. Any Performance Bond renewal in years two through five shall be determined by the SFA.

**8.16 Duties Responsibilities Summary:** The SFA and FSMC agree to allocate responsibilities as indicated on Schedule T. Schedule T details responsibilities of the parties for duties associated with the Food Service Program.

**8.17 GIFTS FROM FSMC:** Neither RIDE nor the SFA, their officers, employees, or agents shall solicit or accept gratuities, favors, or anything of monetary value from contractors or potential contractors. To the extent permissible under State law, rules, or regulations, such standards shall be applied and shall provide for appropriate penalties, sanctions, or other disciplinary actions to be imposed for violations of such standards either by RIDE or the SFA, their officers, employees, or agents, or by the FSMC or its agents.

## **ARTICLE 9**

### **RESTRICTIVE COVENANTS**

**9.1 AGREEMENT NOT TO HIRE:** The SFA shall not solicit to hire, or hire, or make any agreement with, or permit the employment in any operation providing Food Service, any person who has been an FSMC salaried employee providing Food Service within one (1) year after said employee terminates employment with the FSMC or within one (1) year after expiration or termination of the Agreement for any reason. The SFA acknowledges and

agrees that the FSMC's salaried employees have acquired special knowledge, information, skill and contacts as a result of being employed with and trained by the FSMC. If the SFA hires, or makes any agreement with or permits the employment of any such FSMC salaried employee, in any operation providing Food Service within the restricted period, it is acknowledged and agreed by the SFA that the FSMC shall suffer damages and the SFA shall pay the FSMC as liquidated damages an amount equal to the FSMC salaried employee's annual gross management salary. This sum has been determined to be reasonable by both parties after due consideration of all relevant circumstances. This provision shall survive the expiration or termination of the Agreement.

9.2 **TRADE SECRETS AND PROPRIETARY INFORMATION:** During the term of this Agreement, the FSMC may grant to the SFA a non-exclusive right to access certain proprietary materials of the FSMC including menus, signage, Food Service Program surveys and studies, software (both owned by and licensed to the FSMC) and similar compilations regularly used in the FSMC's business operations ("Proprietary Materials"). In addition the SFA may have access to certain non-public information of the FSMC, including recipes, management guidelines and procedures, operating manuals, personnel information, purchasing and distribution practices, pricing and bidding information, financial information, surveys and studies, and similar compilations regularly used in the FSMC's business operations ("Trade Secrets"). Trade Secrets and/or Proprietary Materials shall not include personnel (labor costs, staffing patterns, staff scheduling for employees), financial information and other information necessary for the SFA to solicit competitive FSMC proposals at the expiration of this Agreement.

The SFA shall not disclose any of the FSMC's Trade Secrets or disseminate any Proprietary Materials directly or indirectly, during or after the term of this Agreement. The SFA shall not photocopy or otherwise duplicate any such material without the prior written consent of the FSMC. All Trade Secrets and Proprietary Materials shall remain the exclusive property of the FSMC and shall be returned to the FSMC immediately upon the expiration or termination of the Agreement. The SFA shall not use any confusingly similar names, marks, systems, insignia, symbols or procedures and methods. Without limiting the foregoing, the SFA specifically agrees that all software associated with the operation of the Food Service Program, including without limitation, menu systems, food production systems, accounting systems, and other software, are owned by or licensed to the FSMC and not the SFA. Furthermore, the SFA's access or use of such software shall not create any right, title, interest, or copyright in such software, and the SFA shall not retain such software beyond the expiration or termination of this Agreement. In the event of any breach of this provision, the FSMC shall be entitled to equitable relief, including an injunction or specific performance, in addition to all other remedies otherwise available. This provision shall survive the expiration or termination of this Agreement.



## **ARTICLE 10 TERMINATION**

**10.1 TERMINATION FOR CAUSE:** If the FSMC breaches a material provision of this Agreement, the SFA shall give the breaching party written notice specifying the default. The breaching party shall have thirty (30) days to remedy the default. If the default is not corrected within the thirty (30) day time frame, the SFA shall have the right to terminate this Agreement by giving the breaching party sixty (60) days prior written notice of its intention to terminate this Agreement. The right of termination referred to herein is not intended to be exclusive and is in addition to any other rights available to the SFA at law or in equity.

**10.2 TERMINATION WITHOUT CAUSE:** The SFA may terminate this Agreement at any time upon sixty (60) days prior written notice to the FSMC of its intention to terminate the Agreement.

**10.3 TERMINATION FOR CATASTROPHE:** Neither party shall be liable for the failure to perform its respective obligations hereunder when such failure is caused by fire, explosion, water, act of God, civil disorder or disturbances, strikes, vandalism, war, riot, sabotage, weather and energy-related closings, governmental rules or regulations, or like causes beyond the reasonable control of such party, or for real or personal property destroyed or damaged due to such causes.

**10.4 NONPERFORMANCE SANCTIONS:** In the event the FSMC violates or breaches the terms and conditions of this Agreement, or if the breach is one that constitutes "Cause" but the SFA does not elect to give notice of termination, the SFA shall give the FSMC written notice specifying the default. The FSMC shall have thirty (30) days to remedy the default. Should the FSMC fail to remedy the default, the SFA in writing may impose the following sanctions: (a.) For the first violation, a written reprimand; (b.) For the second violation, a written reprimand and a penalty of \$1,000.00; (c.) For the third and each additional violation, a written reprimand and a penalty of \$5,000.00. For the purposes of the foregoing, a single breach means an event of the same or similar kind or numbers of personnel, equipment, students or meals involved. The breach or violation will be multiplied by the number of days or other units of time over which the breach or violation extends from the date of written notice if not corrected in the first thirty (30) days).

## **ARTICLE 11 AGREEMENT**

**11.1 SEVERABILITY:** If any term or provision of this Agreement or the application thereof to any person or circumstance shall, to any extent or for any reason be invalid or

unenforceable, the remainder of the Agreement and the application of such term or provision to any person or circumstance other than those as to which it is held invalid or unenforceable shall not be affected thereby, and each remaining term and provision of the Agreement shall be valid and enforceable to the fullest extent permitted by law.

**11.2 WAIVER: HEADINGS; COUNTERPARTS:** A waiver of any failure to perform under this Agreement shall neither be construed as nor constitute a waiver of any subsequent failure. The article and section headings used herein are used solely for convenience and shall not be deemed to limit the subject of the articles and sections or be considered in their interpretation. Any exhibits or schedules referred to herein are made a part of the Agreement by reference, provided that in the event of a conflict between the terms of such exhibit and/or schedule and the terms of this Agreement, the terms of the Agreement shall govern. This Agreement may be executed in several counterparts, each of which shall be deemed an original.

**11.3 CONFLICTS:** The SFA's Request for Proposals and the FSMC's Proposal (Excluding the Exceptions List) are hereby incorporated by reference into this Agreement (the "Contract Documents"). In the event of a conflict between the Contract Documents, the following order of precedence shall prevail:

- A. the signed Agreement
- B. the SFA's Request for Proposal
- C. the FSMC's Proposal (Excluding the Exceptions List)

**11.4 ENTIRE AGREEMENT; AMENDMENTS:** This Agreement and its attachments and other documents specifically incorporated by reference therein, contain the entire understanding and agreement of the parties concerning the matters contained therein, and supersedes and replaces any prior or contemporaneous oral or written contracts or communications concerning the matters contained therein. All provisions of the Agreement shall remain in effect throughout its term unless the parties agree, in a written document signed by both parties, to amend, add or delete any provision. The Agreement may not be changed other than by an agreement in writing signed by the parties hereto. Email correspondence shall not qualify as a written document signed by an authorized signatory.

**ARTICLE 12**  
**NOTICES**

Any notice or communication required under this Agreement shall be in writing and sent by United States registered or certified mail, postage prepaid with return receipt requested, addressed to the other party as follows:

To SFA:

Mark Garceau, Superintendent  
45 Highland Ave.  
Westerly, RI 02891

With copy to:

Finance Director  
Westerly Public Schools  
45 Highland Ave  
Westerly, RI 02891

To FSMC:

With a copy to:

All such notices shall be effective when received by the other party.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be signed by their duly authorized representatives.

SFA

By: 

Name (printed): Barbara J. Perino

Title: Director of Finance and Operations

Date: 10/19/18

FSMC

By: 

Name (printed): Mark R. Adams

Title: VP Finance & CFO

Date: November 8, 2018