

FOOD SERVICE AGREEMENT

(For information only: This contract will be completed by the Town at time of award.)

THIS FOOD SERVICE AGREEMENT (“Agreement”) is made as of _____, by and between the Barnstable Public Schools (the “School Food Authority” or “SFA”), having a principal place of operations at 230 South Street, Hyannis, Massachusetts 02601, and _____ (“_____” or “FSMC”), collectively the “Parties”.

WITNESSETH:

WHEREAS, the SFA has advertised for and has solicited proposals for the purpose of managing and operating the Food Service Program for the SFA’s students, employees, visitors and guests at its Premises located at all of the campuses within the jurisdiction of the SFA (collectively, the “Facility”). And whereas FSMC was selected as the successful vendor in the proposal process, and whereas the parties agree that the terms and conditions of the Contract to provide such services shall be incorporated into a written agreement.

NOW, THEREFORE, in consideration of the mutual agreements set forth below and other good and valuable consideration, acknowledged by each of the parties to be satisfactory and adequate, FSMC and the SFA agree as follows:

1. Purpose of the Contract

- 1.1. Appointment of FSMC. The SFA hereby retains FSMC and grants to FSMC the exclusive right to provide and manage the SFA’s food service program at the Facility. FSMC shall render the Food Services within the facilities of the Premises, including but not limited to, the food preparation, serving, dining and storage areas designated for the Food Service Program.
- 1.2. General Purpose. FSMC will be responsible for all of the SFA’s food service operations and will act in good faith and according to industry standards to prepare and serve wholesome, nutritious and appetizing meals to the reasonable satisfaction of the SFA. FSMC shall comply with the applicable provisions of the National School Lunch Act as amended, the School Breakfast Program and the Department of Agriculture regulations and any requirements imposed by any applicable state agency.
- 1.3. Independent Contractor. FSMC shall be an independent contractor and shall retain control over its employees and agents. No employee, agent or representative of FSMC shall be entitled to receive any benefits of employment with the SFA, including, without limitation, salary, overtime, vacation pay, holiday pay, sick leave, health insurance, life insurance, pension or deferred compensation. FSMC shall be free to perform services for any other SFA, company or organization during the term of this Agreement; nothing herein, however, shall relieve FSMC of its contractual obligations under the remainder of this Agreement.

- 1.4. Regulation and Access. The SFA may supervise FSMC' daily operation of the Food Service with respect to all matters (including working conditions for the Food Service employees and safety, sanitation, and maintenance of the Food Service facilities). SFA may make reasonable regulations with regard to all such matters, and shall give FSMC written notice thereof.
- 1.5. FSMC shall perform the services and/or shall deliver the goods as set forth in the Specifications in the solicitation documents. The provisions of the solicitation documents, including, without limitation, the RFP, Instructions, Form for Proposal, General Conditions and Specifications, as applicable, are incorporated herein by reference. In the event of a conflict between a provision of any of those documents and a provision of this Contract, the provision of this Contract shall govern. To the extent any provision of this Agreement required by law is inconsistent with other, non-statutory sections in this agreement, any statutorily-mandated provisions contained herein shall control.

2. Definitions

- 2.1. Accounting Period – All accounting periods shall be based on actual calendar month.
- 2.2. Charge – A fee established by FSMC for goods or services provided by FSMC.
- 2.3. Surplus. The excess of Net Sales over the total of Operating Expenses and Management and Administrative fees.
- 2.4. Deficit – The excess of the total of Operating Expenses and Management & Administrative Fees over Net Sales.
- 2.5. Food Service – The preparation, service and sale of food, beverages, and other related items at the Premises.
- 2.6. General Support Services Allowance – Allowance for overhead services provided by FSMC for (i) the supervision of FSMC employees by executives not assigned to the Food Service operation; and (ii) General support provided by FSMC' accounting, tax, marketing, training, human resource, law and internal audit departments. Also referred to in this agreement as Administrative Fee.
- 2.7. Gross Hourly Wages. The total wages earned by an hourly employee (including overtime) without deducting taxes or other items.
- 2.8. Gross Management Salary. The total salary earned by a salaried employee without deducting taxes or any other items.
- 2.9. Gross Salaries and Wages. The total of Gross Management Salary and Gross Hourly Wages.
- 2.10. Gross Sales. All sales of food, beverages, and other related items in the Food Service operation, plus sales and use taxes and federal and state reimbursements.

- 2.11. Net Sales. Gross Sales less sales and use taxes.
- 2.12. Opening Expenses. All costs, charges and expenses relating to the opening of the Food Service operation including, but not limited to, pre-opening labor expenses, supervisory and training expenses including travel, meals, lodging expenses, charges for finance and operating manuals, advertising, forms opening promotions and opening office supplies.
- 2.13. Operating Expenses. All costs, charges and expenses incurred in connection with the Food Service operation including, but not limited to, the following: (i) Goods, including food, beverages, merchandise and supplies, and the distribution of such goods. FSMC shall credit SFA with any discounts obtained from vendors, suppliers or distributors for goods procured for the SFA's account. (ii) In the event that FSMC, either directly or indirectly or through one of its affiliates furnishes products or services necessary for the efficient operation of SFA's food service program, the charge to SFA shall be competitive with the cost of obtaining such products or services from an independent source in the open market. (iii) Labor, including salaries and bonuses, if any, wages, taxes, benefits, retirement plans and the cost of administering such plans and services. (iv) Other costs, charges and expenses including, but not limited to, medical benefits charges for workers' compensation and general liability insurance based on the actual annual rates for FSMC for the Premises and other insurance maintained pursuant to the Agreement; out-of-pocket travel and related expenses of employees assigned to the Premises subject to the mutual agreement of the parties; sales and use taxes; and costs of licenses, permits, information systems, software, promotional or proprietary materials, flowers, decorations, overnight delivery, if necessary, smallwares and other services related to the Food Service operation.
- 2.13.1. SFA will pay allowable costs from the non profit food service account to FSMC net of all discounts, rebates and other applicable credits accruing to or received by FSMC or any assignee under the contract, to the extent those credits are allowable to the allowable portion of the costs billed to the SFA.
- 2.13.2. FSMC must either (i) separately identify and provide sufficient information to permit the SFA to identify for each cost submitted for payment to SFA the amount of cost that is allowable (can be paid from the nonprofit school food service account) and the amount that is unallowable (cannot be paid from the nonprofit school food service account), or (ii) Exclude all unallowable costs from its billing documents and certify that only allowable costs are submitted for payments and records have been established that maintain the visibility of unallowable contracts, including directly associated costs in a manner suitable for contract cost determination and verification.
- 2.13.2.1. FSMC's determination of its allowable cost must be made in compliance with the applicable USDA and program regulations.

- 2.13.2.2. FSMC has identified the amount of each discount, rebate, and other applicable credit with the bills and invoices presented to 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.
- 2.13.2.3. FSMC has identified the method by which it will report discounts, rebates and other applicable credits allowable to the contract that are not reported prior to the conclusion of the contract
- 2.13.2.4. FSMC must maintain documentation of costs and discounts, rebates and other applicable credits, and must furnish such documentation upon request to SFA, the Massachusetts Department of Elementary & Secondary Education (MDESE) and the Department of Agriculture.

2.14. Pattern Meal. A meal eligible for government reimbursement.

2.15. Smallwares. Dishware, glassware, flatware, utensils and similar items.

3. Commencement & Termination

- 3.1. Commencement and Term. This term of this Agreement shall be for one (1) year beginning on July 1, 2010 and continuing until June 30, 2011, unless terminated by either party as hereinafter provided. The SFA, at its sole option, may renew this Agreement for up to two (2) successive one (1) year renewal periods. 7 CFR 210.16
- 3.2. Termination. Either party may terminate this Agreement without cause by giving sixty (60) days notice in writing to the other party of its intention to do so. 7 CFR 210.16(d)
- 3.3. Breach. If either party breaches a material provision hereof (“Cause”), the non-breaching party shall give the other party written notice of such Cause. If the Cause is remedied within thirty (30) days of receipt of notice, the notice shall be considered satisfied. If such Cause is not remedied within thirty (30) days of receipt of notice, the party giving notice shall have the right to terminate the Agreement thirty (30) days from the receipt of the notice. However, neither party shall be responsible to the other for any losses or failure to perform its respective obligations under the Agreement when such failure is caused by conditions beyond the party’s control or other force majeure event, such as fire, explosion, water, act of God, civil disorder or disturbances, labor disputes, vandalism, war, riot, sabotage, weather and energy related closings, governmental rules, and regulations or like causes beyond the reasonable control of such party or the damage or destruction of real or personal property of such causes. In addition, the parties agree that nothing in this paragraph modifies the parties’ right to terminate this Agreement by giving 60 days notice in accordance with Section 3.2 above. 7 CFR Part 3016

- 3.4. **Penalty Provision.** If FSMC has breached the terms of this Agreement, and FSMC has not cured the breach, the SFA may elect to pursue any and all available administrative, contract or legal remedy. The SFA may also pursue the following penalties for an uncured breach: (i) for a first violation, a written reprimand; (ii) for a second violation, a \$25.00 penalty; or (iii) for a third violation, a \$50.00 penalty . For the purposes of the foregoing, a single violation means an event of the same or similar kind, no matter the duration or numbers of personnel, equipment, students or meals involves. 7 CFR Part 3016

4. Management Services & Special Functions

- 4.1. **Management Services.** FSMC will provide all management, administrative services required for the efficient supervision and operation of SFA's food service programs. The resident food service director's salary and fringe benefits will be a direct reimbursable cost of operation.
- 4.2. **Special Functions.** FSMC will provide food services for administration and student related functions as reasonably requested by SFA. Such requests must be received at least ten (10) days prior to the date of the function. All food and labor costs for these functions will be billed directly to the school organization involved, unless otherwise specified by the SFA. Any special arrangements regarding other costs which might be incurred at these functions may be negotiated between FSMC and the organization.

5. Food Service

- 5.1. **Meal Program.** FSMC shall provide nutritional breakfasts (if applicable), lunches, milk service and à la carte items in accordance with the following terms and conditions: (i) Food shall be prepared in the SFA's Food Service facilities for service at the Premises. (ii) Prices to be charged for meals during the contract year shall be approved by the SFA. (iii) Prices for à la carte items, faculty and staff meals, snack foods and beverages shall be approved by the SFA. (iv) All free and reduced price lunches and all ticketed lunches shall be administered by FSMC on behalf of the SFA. The SFA shall be responsible for establishing and notifying parents and guardians of program criteria for providing free and reduced price meals for eligible students. It shall be the joint responsibility of SFA and FSMC to protect the anonymity of children receiving free or reduced price meals and to establish methods for insuring such anonymity. Nothing herein, however, shall allow either the SFA or FSMC to violate any provision of the Commonwealth's Public Records law, M.G.L. c. 66, §10 and M.G.L. c. 4, §7, the Federal Education Privacy Rights Act (FERPA), or any other federal or state law.
- 5.2. **Special Diets.** FSMC shall supply any special diets for students required for medical reasons when prescribed and approved in writing by a recognized medical authority for handicapped or non-handicapped students.

- 5.3. Food Committee and Advisory Board. FSMC shall participate in Food Committee meetings at dates and times agreed upon by FSMC and the Food Committee members. FSMC shall cooperate with the SFA in the establishment of an Advisory Board composed of parents, teachers, students and a FSMC' representative to assist in planning menus.
- 5.4. Menus. FSMC shall consult with an advisory board, comprised of such members as the SFA shall designate, regarding the overall operation of the SFA's food service program, including menus. FSMC will submit menus for approval to the SFA. Seasonal changes, special school programs, or shifts in student preferences shall be taken into consideration in menu preparation. All menus will be nutritionally acceptable to the SFA and in accordance with applicable regulations.
- 5.5. Control of Food Service. The SFA shall retain control of the quality, extent and general nature of its food service. 7 CFR 210.16(a)(4)
- 5.6. Food Specifications. The SFA must provide detailed specifications including, but not limited to, grade and weight for each food component or menu item as specified in by the USDA and include these specifications in all IFBs or RFPs. Specifications may also cover other items such as purchase units, style, condition, ingredients, formulations and delivery time. Such specifications shall be incorporated into this agreement. 7 CFR 210.16(c)(3)
- 5.7. Non-Payment By SFA. No payment shall be made for meals that are spoiled or unwholesome at the time of delivery, do not meet detailed specifications as developed by the SFA for each food component specified in the School Lunch Pattern or do not otherwise meet the requirements of the Agreement. 7 CF 210.16c(3)
- 5.8. Nutrition Education. FSMC shall promote the nutritional education aspects of the SFA's food service program and cooperate in the efforts of the SFA to coordinate these aspects with classroom instruction.

6. Employees

- 6.1. Personnel Obligations. FSMC shall be responsible for its employees on its payroll including, but not limited to, responsibility for recruitment, employment, promotion, payment of wages, pension benefits, layoffs and termination, and shall comply with all applicable laws and regulations related thereto. FSMC's employees and agents shall comply with and observe all applicable rules and regulations concerning conduct on the premises which the SFA imposes upon its employees and agents. FSMC shall prepare and process the payroll for its employees and shall withhold and pay all applicable federal and state employment taxes and payroll insurance relating to its employees including, but not limited to, income, social security and unemployment taxes and worker's compensation costs and charges. The SFA has no authority to resolve disputes between FSMC and its employees.
- 6.2. FSMC Employees. The SFA agrees to reimburse the FSMC for salary and benefits of the Food Service Director. Should the FSMC wish to provide an Assistant, or any

other additional personnel, FSMC will assume full responsibility for the cost of all salaries and benefits of such additional personnel as it may choose to provide.

- 6.3. Equal Opportunity Employer. Neither party shall discriminate because of race, color, religion, sex, age, national origin, disability, or status as a veteran, as defined and prohibited by applicable law, sexual orientation, provided that the object of such orientation is not a minor, genetic status, in the recruitment, selection, training, utilization, promotion, termination or other employment related activities concerning Food Service employees. In addition, FSMC affirms that it is an equal opportunity and affirmative action employer and shall comply with all applicable federal, state and local laws and regulations including, but not limited to, Executive Order 11246 as amended by 11375 and 12086; 12138; 11625; 11758; 12073; the Rehabilitation Act of 1973, as amended; the Vietnam Era Veterans Readjustment Assistance Act of 1975; Civil Rights Act of 1964; Equal Pay Act of 1963; Age Discrimination in Employment Act of 1967; Immigration Reform and Control Act of 1986; Public Law 95-507; the Americans with Disabilities Act; M.G.L. c. 151B, and any additions or amendments thereto.
- 6.4. Work Hours. FSMC is expected to recommend the number of work hours and number of positions at each school location. FSMC and the SFA shall comply with Section 103 and 107 of the Contract Work Hours and Safety Standards Act as supplemented by Department of Labor regulations. 7 CFR Part 3016
- 6.5. SFA Employees. FSMC shall direct and supervise the SFA employees assigned to Food Service operations, provided that SFA shall be responsible for obligations described in Section 6.1.
- 6.6. Hours. FSMC is expected to recommend the number of work hours and the number of positions required at each school location.
- 6.7. Background Checks. FSMC shall adhere to applicable state and federal regulations, including the CORI statute codified at M.G.L. c. 71, §38R, in screening prospective employees. FSMC shall comply with criminal background checks and fingerprint regulations required by law for all new hires. It is understood that background checks and fingerprinting for all existing employees have already been completed.
- 6.8. Regulations. FSMC shall instruct its employees to abide by the policies, rules and regulations with respect to its use of SFA premises as established by the SFA from time to time and which are furnished in writing to FSMC.
- 6.9. Removal of Employee. The SFA may provide FSMC with written notice that it requires the removal of an employee of FSMC, if such employee violates health requirements or conducts himself/herself in a manner which is detrimental to the physical, mental or moral well-being of students, staff or faculty, provided that removal of said employee does not violate any applicable law or statute. In the event of the removal of any such employee, FSMC shall immediately restructure its staff without disruption in service.

- 6.10. Emergency Devices. All food service personnel assigned to each school shall be instructed on the use of all emergency switches, fire and safety devices in the kitchen and cafeteria areas.
- 6.11. Student Workers. The use of student workers or students enrolled in the SFA is prohibited without prior SFA approval.
- 6.12. Senior Management. FSMC shall inform the SFA prior to hiring Senior Management positions for the SFA's Food Service Program. Specifically, all persons to be hired as Food Service Directors, Assistant Directors and Supervisors must be presented for the SFA's evaluation and approval. FSMC shall provide qualified management/professional employees to manage the Food Service operations and supervise all employees employed therein. During the term of this agreement and for one year thereafter, SFA shall not solicit FSMC management or professional employees to work in a similar food service capacity whether at the SFA food service facility or elsewhere, nor will SFA permit the employment of said individuals by others in any operation providing food service throughout the district. SFA further covenants and agrees not to hire, nor allow to be hired by others to perform work on behalf of SFA or on SFA premises, any FSMC management/professional employees for a period of one (1) year following employee's termination of employment with FSMC. If at any time during the term of this agreement or upon the expiration or termination of this agreement, SFA or any parent, subsidiary, or affiliate of the SFA nevertheless hires an FSMC management/professional employee, then SFA in recognition of FSMC's considerable investment in attracting and training such employee agrees to pay a fee to FSMC of two times the annual salary of said employee as liquidated damages. Said fee to become due and payable upon the commencement date of employment with SFA or any parent, subsidiary, vendor or affiliate of SFA.

7. Equipment, Facilities & Utilities

- 7.1. Facilities and Equipment. The SFA shall make available without any cost or charge to FSMC, the facilities and equipment necessary for FSMC to provide food service including, but not limited to, area(s) of the Facility agreeable to both parties in which FSMC shall render its services, kitchen equipment, smallwares, suitably furnished office space and facilities for the safekeeping of funds. The SFA shall provide all equipment necessary for the efficient and safe operation of the Food service facilities. All equipment used in connection with the operation of the Food service facilities shall be maintained by the SFA
- 7.2. Condition of Facilities and Equipment. The facilities and equipment provided by each party for use in food service operations shall be in good condition and maintained to ensure compliance with applicable laws concerning building conditions, sanitation, safety and health. FSMC will take proper care of all furniture, fixtures, equipment and facilities provided by the SFA and shall timely notify the SFA of any known deficiencies. FSMC shall not be held accountable for pre-existing conditions. At the expiration of this Agreement, FSMC will return to the SFA the cafeteria premises and all furniture, fixtures and equipment furnished by the SFA in the condi-

tion in which received, except for ordinary wear and tear and damage by the elements, and except to the extent that such premises or equipment may have been lost or damaged by vandalism, fire, flood or other acts of God, or theft by persons other than employees of FSMC, except through the negligence of FSMC or its employees, or for any other reason beyond the control of FSMC.

- 7.3. Utilities. The SFA shall furnish at its expense, light, power, hot and cold water, telephone service, high speed internet connection and other utilities as are necessary for the operation of the food services to be furnished hereunder.
- 7.4. School's Use of the Facilities. The SFA is encouraged to utilize FSMC for catering and other food service needs in addition to the School Lunch and/or Breakfast and/or Special Milk Programs. However, the SFA reserves the right, in its sole discretion, to sell or dispense any food or beverage before or after the SFA's regularly scheduled lunch or breakfast periods, provided such use does not interfere with the operation of the School Lunch and/or Breakfast and/or Special Milk Programs.
- 7.5. Extracurricular Activities. If the SFA utilizes the facilities for extracurricular activities before or after the SFA's regularly scheduled lunch or breakfast period, the SFA shall return facilities and equipment to FSMC in the same condition as received, normal wear and tear expected.
- 7.6. Rental Facilities For Community Use. The SFA retains the right to rent or donate food service facilities during non-school hours or weekends, provided that such activity does not interfere with the normal food service operation. When such functions take place, the SFA may require that a member(s) of the food service staff be on duty to maintain the safe use of SFA owned equipment and/or to provide access to the facilities. The SFA shall return the facilities and equipment to FSMC in the same condition as received, normal wear and tear expected. FSMC shall be reimbursed for the cost for food service staff to be utilized at said functions. Said cost shall not be considered an expense of the school lunch program.

8. Maintenance, Repairs, & Sanitation

- 8.1. Maintenance. The SFA shall furnish, without cost to FSMC, all building maintenance and all repairs to the food service areas and will replace, repair and maintain its equipment, except when damage results from the intentional, willful, or negligent act or omission of FSMC or its employees. The SFA shall at its expense, provide maintenance personnel and outside maintenance services, parts and supplies for properly maintaining the facilities and its equipment.
- 8.2. Cleaning. The SFA will be responsible for the cleaning and maintenance of floors, windows, walls, light fixtures, ceilings, hoods, ducts, grease traps and the general care of the dining, service and kitchen areas. FSMC will be responsible for the routine cleaning and sanitation of the kitchen, serving areas, dish rooms and storerooms, including the ordinary and routine cleaning of counters and operating equipment used in connection with the operation of the food service.

- 8.3. Sanitation. FSMC shall transport refuse to designated refuse collection areas. The SFA shall provide, at its expense, for the daily removal of waste and garbage and regular extermination services.
- 8.4. Recycling. FSMC will cooperate with and participate in all SFA mandated recycling programs.

9. Inventory

- 9.1. Inventory. FSMC shall purchase, on the SFA's behalf, all food and other supplies required under this Agreement. Such food and supplies shall be kept separate and apart and title thereto shall remain with the SFA at all times. FSMC and SFA shall jointly take inventory of all purchased food and supplies at both the beginning and the end of this Agreement. The SFA shall have access to the purchase records of the food purchased for review and audit as deemed necessary in the judgment of the SFA.
- 9.2. Purchasing. FSMC will purchase all food for the SFA at the lowest prices possible, consistent with maintaining the quality standards prescribed by the SFA, including taking advantage of all local trade discounts. All procurement transactions must meet procurement standards set by the United States Department of Agriculture. Transactions shall be conducted in a manner so as to provide maximum open and free competition, as provided by law.
 - 9.2.1. FSMC will request, receive and inspect food delivered by vendors and retain a list of bills when billing the SFA in accordance with regulations.
 - 9.2.2. FSMC shall maintain adequate storage practices, inventory and control of federally donated foods in conformance with the SFA's agreement with the applicable state agency, if any.
 - 9.2.3. In accordance with the Buy American Provisions of 7 CFR Part 250, the Company will purchase, to the maximum extent practicable, domestic commodities that are produced in the United States and processed in the United States substantially using agricultural commodities that are produced in the United States. "Substantially" means that over 51 percent of the final processed products consist of agricultural commodities that were grown domestically.
 - 9.2.4. Any silence, absence or omission from the contract document specifications concerning any point above shall be regarded as meaning that only the best commercial practice 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.
- 9.3. Rebates. All goods, services or monies received as the result of a rebate under a processing contract must be utilized in or credited to the SFA's nonprofit food service.

10. Accounting, Records & Audits

- 10.1. Records. FSMC shall maintain such records as the SFA will need to support its Claim of Reimbursement and shall report thereon to the SFA promptly at the end of each calendar month, at a minimum. Such records shall be available for a period of Three (3) years from the date of final payment under the Agreement for inspection and audit by representatives of the applicable state's Departments of Education and Agriculture, United States Department of Agriculture and the United States General Accounting Office at any reasonable time and place; except that, if audit findings have not been resolved, the records shall be retained beyond the Three (3)-year period as long as required for the resolution of the issues raised by the audit. If the laws of the Commonwealth so require, such records shall be retained as prescribed therein. Such records include, but are not limited to, Daily Cash Reports, Edit Check Worksheets, Milk Rosters and Summary of Meal/Milk counts. An SFA official will review, in accordance with regulation, records maintained by FSMC for the purpose of preparing monthly reimbursement vouchers. FSMC shall observe all federal, state, and local law related to accounts. 7 CFR 210.16c(1) and 7 CFR 210.23c
- 10.2. Availability of Records. The SFA, the applicable state's Departments of Education and Agriculture, United States Department of Agriculture, or Comptroller General of the United States or any of their duly authorized representatives, shall have access to any books, documents, papers and records of FSMC which are directly pertinent to this Agreement, for the purpose of making audit, examination, excerpts and transcriptions. 7 CFR Part 3016
- 10.3. Reimbursement Records. FSMC must retain records to support the SFA's Claim of Reimbursement of the daily number of meals served, by type. These meal counts must be reported daily. 7 CFR 210.16(c)(1)
- 10.4. Revenue Records. FSMC shall retain revenue records broken down by source, type and category of meal or food service (e.g., à la carte sales, reduced price and full price National School Lunch Program, School Breakfast Program meals and vending machine sales, etc.).
- 10.5. Invoices. FSMC shall invoice the SFA monthly a sum not to exceed the amount necessary to cover FSMC's expenditures for the food service operation plus management and administrative fees. FSMC will provide a reconciled monthly statement with costs listed in the following categories: (i) operating expenses, and (ii) management and administrative fee. Payment shall be due within sixty (60) days of receipt of the monthly invoice. FSMC must separately identify for each cost submitted for payment to the SFA the amount of that cost that is allowable (can be paid from nonprofit school service account) and the amount that is unallowable (cannot be paid from the nonprofit school food service account). FSMC determination of its allowable costs must be made in compliance with the applicable U.S. Department of Agriculture and program regulations and Office of Management and Budget circulars.

- 10.6. Invoice Statement. All invoices submitted by FSMC must represent that articles have been furnished or services rendered before payment can be made to FSMC from the SFA's food service account.
- 10.7. Detailed Description. All invoices submitted by FSMC must include a detailed description of the goods, supplies, services or other items being submitted for reimbursement.
- 10.8. Taxes and Assessments. FSMC will pay when due all federal, state, local and other governmental taxes or assessments in connection with the Services provided, as applicable. With regard to sales tax, the Parties will determine by mutual agreement and in accordance with relevant law if any of the Services are subject to sales tax. Even if SFA is tax exempt, SFA may be liable for the collection and remittance of sales tax to the applicable state department of revenue for some of the Services. If applicable, FSMC will collect all applicable sales tax and report the collection of said sales tax collections to SFA on a timely basis. SFA will be responsible for the remittance of said sales tax receipts to the appropriate agency on a timely basis. FSMC shall not be responsible for interest payments or penalties imposed on SFA associated with payments of said sales tax receipts. If the Parties are unable to resolve any dispute or controversy regarding the taxability of any of the Services, such dispute or controversy shall be settled by a relevant ruling by the applicable state department of revenue.
- 10.9. The SFA shall pay when due all federal, state, local and other governmental use and property taxes or assessments arising in connection with the Premises, equipment, offices and utilities. FSMC shall pay when due all license and permit fees in connection with Services. The SFA shall reimburse FSMC for all license and permit fees paid in connection with Services.

11. Financial, Purchasing & Meal Payment

- 11.1. General Provisions. All management/administrative fees shall be specifically stated in this Agreement. FSMC will operate, administer, and manage the food service for SFA in accordance with the financial arrangements as set forth in this 11. This Agreement is not permitted to and does not contain a "cost-plus-a-percentage-of-cost" or a "cost-plus-a percentage-of-income" provision. 7 CFR 210.16(c)
- 11.2. Operating Expenses. FSMC shall charge the SFA its costs of operating the food service which shall include, but not be limited to: (i) the cost of goods, including food, beverages and supplies; (ii) salaries and wages of all of FSMC employees, including payroll taxes and benefits; and (iii) other costs, charges and expenses necessary to perform the duties and obligations under this Agreement including, but not limited to, office supplies, insurance, marketing, training, licenses/permits, laundry, amortization expense, uniforms, postage, paper goods and taxes.
- 11.3. Rebates. All costs charged to the SFA in management fee and cost-reimbursable contracts shall be net of all trade discounts and rebates received by FSMC. FSMC is

required to identify the amount of each discount, rebate or applicable credit on each bill or invoice and whether the amount is a discount, rebate, or in the case of some other form of applicable credit, the nature of that credit. FSMC must identify the method by which it will report discounts, rebates and other applicable credits allocable to the contract that are not reported prior to the conclusion of the contract.

- 11.4. Administrative Fee. FSMC shall charge SFA an Administrative Fee of \$ [REDACTED] for the one year term of this contract. The Administrative fee shall be billed at \$ [REDACTED] per month for 10 months. FSMC's Administrative and Management Fee represents its overhead expenses necessary to operate the food service including, but not limited to: area and zone supervision; general support provided by FSMC's corporate offices, including without limitation, accounting, purchasing, tax, legal, research, auditing other related administrative functions. Upon renewal of this contract, FSMC Administrative Fee shall be increased based on Appendix A of the Price Proposal.
- 11.5. Management Fee. FSMC shall charge SFA a Management Fee of \$ [REDACTED] for the one year term of this contract. The Management fee shall be billed at \$ [REDACTED] per month for 10 months. Upon renewal of this contract, FSMC Management Fee shall be increased based on Appendix A of the Price Proposal.
- 11.6. Allowable/Non-allowable Costs. FSMC shall separately identify for each cost submitted for payment to the District the amount of that cost that is allowable (that which can be paid from the non-profit food service account) and the amount, if any, that is not allowable (cannot be paid from the food service account). The determination of the allowable costs will be made in compliance with applicable USDA regulations and National School Lunch Program and Commodity School Program regulations as well as Office of Management and Budget circulars.
 - 11.6.1. FSMC shall identify the amount of each discount, rebate and other applicable credit on bills and invoices presented to the District for payment and individually identify the amount as a discount, rebate, or in the case of other applicable credit, the nature of the credit. If approved by the Massachusetts Department of Elementary and Secondary Education, the District may permit the FSMC to report this information on a less frequent basis than monthly, but no less than annually.
 - 11.6.2. FSMC shall identify the method by which it will report discounts, rebates and other applicable credits allocable to the contract that are not reported prior to the conclusion of the contract and shall maintain documentation of costs and discounts, rebates and other applicable credits and must furnish such documentation upon request to the District, the Massachusetts Department of Elementary and Secondary Education and the USDA.
 - 11.6.3. For four successive quarters after the conclusion of the contract, FSMC shall conduct quarterly audits to determine if there are any applicable credits, discounts or rebates that are applicable to SFA. If any such credits, discounts or

rebates are identified, FSMC will provide a report of such to SFA along with a credit on any amount owed to FSMC or payment in the form of a check if there is no outstanding balance due to FSMC from SFA.

- 11.7. Computing Meals. Total meals are calculated by adding reimbursable meal pattern meals (breakfast and lunch) served and meal equivalents. Cash receipts, other than from sales of National School Lunch Program and School Breakfast Program meals served to children, shall be divided by \$2.57 to arrive at an equivalent meal count.
- 11.8. Operating Budget. FSMC's proposal projects a profit of \$_____ for the first year of operation, and if the contract is renewed by the SFA in subsequent years, a profit of \$_____ for the first renewal year of operation and a profit of \$_____ for the second renewal year of operation. FSMC guarantees the program will have a profit of \$_____ before the cost of repairs or any other SFA expense (except for the SFA payroll costs projected at \$_____), and if necessary will reduce its management and administrative fee to achieve said profit. FSMC will guarantee 100% of the projected profit in each successive renewal year. The projected operation is based on the following conditions and assumptions remaining in effect for the school year: (i) reimbursement rates for National School Lunch Program meals will not be less than the rates estimated in FSMC proposal (in a first-year agreement) or in effect for any prior school year (in subsequent year agreements); (ii) the value of government donated commodities and/or cash in lieu thereof will not be less than the value of government donated commodities and/or cash in lieu thereof estimated in FSMC proposal or received during the prior school year; (iii) the number of days meals are served during the school year will be not less than 179 days; (iv) the number of serving periods, locations, serving times and types of service will not differ from as listed in the RFP; (v) the student enrollment for the term of the contract period will be not less than 5,200 students; (vi) the level of wages, salaries and fringe benefits will not exceed those proposed and listed in the original proposal; (vii) The actual costs charged to the Food Service budget by the SFA shall not exceed the projected operating expenses as set forth in FSMC proposal; (viii) service will not be interrupted as a result of fire, work stoppage, strike or school closing; (ix) Milk prices shall remain constant throughout the year; (x) There shall be no competitive sales prior to or during breakfast and lunch periods; (xi) selling prices of Menu Pattern Meals and A-La-Carte selections will be not less than those included in the proposal; (xii) SFA and its representatives including but not limited to, school principals, teachers and SFA employees shall fully cooperate with FSMC in the implementation of the Food Service Program. The SFA shall fully cooperate with FSMC to limit the expansion of competitive food sales in order to maximize the gross receipts and other non-cash sales of the Food Service Program; (xiii) There shall be no competitive food and beverage sales during the meal service times; (xiv) Legislation, regulations and SFA wellness policy or practice shall remain consistent with those at the time of the original proposal; and (xv) If applicable, SFA shall approve FSMC recommended changes relating to food service staff levels and/or staff schedules based on food service operational needs.

- 11.9. In the event the foregoing conditions are not met during the school year, the Operating Budget and guarantee may be adjusted by an amount equivalent to any increased cost or loss of revenue attributable to the change in such conditions.
- 11.10. Surplus Revenues. Any surplus revenues existing after deducting the approved operating expenses, Administrative Fee and Management Fee from verified food service receipts and all Federal and State reimbursements shall remain with the SFA.

12. Commodities

- 12.1. Benefit of SFA Only. FSMC agrees that any USDA-donated commodities received by the SFA and made available to FSMC must accrue only to the benefit of and be used only in the SFA's nonprofit school food service. 7 CFR 210.16(a)(6)
- 12.2. Proper Use and Handling. The liability for the proper use of these commodities will be the responsibility of FSMC. FSMC shall maintain accurate and complete records with respect to the receipt, use/disposition, storage and inventory of donated foods. Failure by FSMC to maintain records required under the Agreement shall be considered factual evidence of improper distribution or loss of donated foods. The SFA is responsible for obtaining restitution from FSMC in connection with any claim for improper distribution, use or loss of, or damage to donated foods. 250.12(b)(4)
- 12.3. Value of USDA Donated Foods. FSMC shall credit the District for the value of all donated foods received for use in the District's meal service in the school year (including both entitlement and bonus foods) and include the value of donated foods contained in processed end products in accordance with the contingencies in 7 CFR 250.51 (a). The method used to credit the District for the donated foods shall be crediting by disclosure, which will occur on the billing documents submitted each month.
 - 12.3.1. FSMC will ensure compliance with the requirements of subpart C of CFR part 250 and with the provisions of the SFA's processing agreements in the procurement of process end products on behalf of the District and will ensure crediting of the District for the value of donated foods contained in such end products at the processing agreement value.
- 12.4. Title to Donated Food. Title to USDA-donated food shall remain in the SFA.

13. Insurance & Indemnity

- 13.1. To the extent permitted by law, each party shall indemnify, defend, and hold harmless the other harmless from any and all losses, damages or expenses, including reasonable attorneys' fees, arising out of or resulting from claims or actions for bodily injury, death, sickness, property damage or other injury or damage if caused by any negligent act or omission of such party.
- 13.2. Notification of an event giving rise to an indemnification claim (Notice) must be received by the indemnifying party within thirty (30) days following receipt of such

claim and shall include a brief factual summary of the damage and cause thereof. An indemnification claim is expressly subject to and conditioned upon compliance with the Notice provisions hereunder.

- 13.3. FSMC shall maintain in force at all times during which services are to be performed the following coverage's placed with company(ies) licensed by the Commonwealth of Massachusetts which have at least an "A-VIII" policyholders' rating according to BEST publications latest edition Key Rating Guide: FSMC shall maintain during the term of the Agreement, for protection of the SFA and FSMC, Comprehensive or Commercial General Bodily Injury and Property Damage Liability Insurance in the Combined Single Limit of not less than Five Million Dollars (\$5,000,000.00) for each occurrence, including, but not limited to, Personal Injury, Liability, Broad Form Property Damage Liability blanket Contractual Liability and Products Liability, covering only the operations and activities of FSMC under the Agreement and shall provide SFA with a certificate evidencing such polices. The insurance policies shall contain covenants by the issuing company that the issuing company shall endeavor to provide thirty (30) days' prior written notice of cancellation.

In addition FSMC shall maintain the following:

Automobile Liability	Liability Limit \$1,000,000
Workers' Compensation:	Statutory Limits
Employers Liability:	\$100,000 each accident
	\$500,000 disease policy
	\$100,000 disease accident limit

- 13.4. Certificates of insurance for such coverage naming the SFA as an additional insured will be furnished within 30 days and FSMC shall provide replacement/renewal certificate at least 60 days prior to the expiration of the policy. Should any of the described policies be cancelled before the expiration date, the carrier shall endeavor to notify the SFA 30 days prior to cancellation.
- 13.5. The SFA shall obtain and maintain insurance for the operation facilities, service equipment, offices and utilities against risks covered by standard forms of fire, theft and extended coverage in such amounts under such policies as appropriate.

14. SFA Responsibilities

- 14.1. Food Service Conformity. The SFA shall remain responsible for ensuring that the food service operation is in conformance with its agreement under the program and shall monitor the food service operation through periodic on-site visitations. 7 CFR 210.16(a)(2)(3)
- 14.2. Advisory Board. The SFA shall establish an advisory board composed of parents, teachers and students to assist in menu planning. 7 CFR 210.16(a)(8)

- 14.3. Health Certification. The SFA shall maintain applicable health certification and be assured that all state and local regulations are being met by FSMC preparing or serving meals at the Facility. 7 CFR 210.16(a)(7)
- 14.4. Pricing. The SFA shall establish all program and non-program meal and a la carte price. The SFA shall establish all prices, including price adjustments for food items served under the nonprofit SFA food service account (e.g., reimbursable meals, à la carte service, adult meals and vending machines).
- 14.5. Menu Cycle. The SFA shall develop and include in the invitation to bid or request for proposal a 21-day cycle menu. FSMC must adhere to the cycle for the first 21 days of meal service. Changes thereafter may be made with the approval of the SFA. 7 CFR 210.16(b)(1)
- 14.6. Signature Authority. The SFA shall retain signature authority on the application/agreement to participate in the National School Lunch Program (NSLP), School Breakfast Program (SBP) and the Special Milk Program (SMP), including the SFA's free and reduced price policy statement. 7 CFR 210.16(a)(5)
- 14.7. Internal Controls. The SFA shall establish internal controls which ensure the accuracy of lunch counts prior to the submission of the monthly Claim of Reimbursement. At a minimum, the SFA shall: (i) review worksheets and make comparisons of daily free, reduced price, and paid lunch counts against data which will assist in the identification of lunch counts in excess of the number of free, reduced price and paid lunches served each day to children eligible for such lunches; (ii) develop and implement a system for follow-up on those lunch counts which suggest the likelihood of lunch counting problems; and (iii) conduct an on-site review of the lunch counting and claiming system employed by each school within the jurisdiction of the SFA. 7 CFR 210.8(a)
- 14.8. Reimbursement Claims. The SFA shall be responsible for signing reimbursement claims. This responsibility cannot be delegated to FSMC. 7 CFR 210.16(a)(5).
- 14.9. Claim Liability. The FSMC accepts liability caused by FSMC negligence for claims assessed as a result of Federal / State reviews/audits, corresponding with the SFA's period of liability.
 - 14.9.1. 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.
- 14.10. Contractual Responsibility. The SFA will be responsible for all contractual agreements entered into in connection with food nutrition program (e.g., vending meals to other SFA food authorities). CFR 210.19(a)(1)
- 14.11. Financial Responsibility. The SFA shall retain control of the school food service account and overall financial responsibility for the School Nutrition Programs. CFR 210.19(a)(1)

- 14.12. Program Review. The SFA shall be responsible for ensuring resolution of program review and audit findings. 7 CFR 210.9(b)(17) and 210.18(k)(1)(2)
- 14.13. Parent Letters. The SFA shall develop, distribute, and collect the parent letters and applications for free and reduced price meals and free milk. 7 CFR 245.6
- 14.14. Verifying Free & Reduced Meal Applications. The SFA shall be responsible for determining and verifying applications for free and reduced price meals or free milk benefits and the conduct of any hearings related to such determinations. This responsibility shall not be delegated to FSMC. 7 CFR 245.6
- 14.15. USDA-Donated Food. The SFA shall assure that the maximum amount of USDA-donated foods are received and utilized by FSMC. 7 CFR 210.9(b)(15)
- 14.16. Commodity Processing Contracts. The SFA shall establish commodity processing contracts. This responsibility cannot be delegated to FSMC. 7 CFR 250.12(f)
- 14.17. A la Carte Offering. In order to offer a la carte food service, the SFA must offer all eligible children reduced price and full price reimbursable meals. 7 CFR 210.16(a)
- 14.18. Losses. The SFA shall be responsible for any losses which may arise due to circumstances beyond the control of the SFA or FSMC, such as loss of electrical power.
- 14.19. Inventory. The SFA will provide a physical inventory of supplies and equipment available for use by FSMC prior to the commencement of this Agreement.
- 14.20. Equipment Damage. The SFA shall be responsible for loss or damage not caused by FSMC to equipment owned by the SFA and located on its premises.
- 14.21. Equipment Installation. The SFA shall furnish and install any equipment or make any structural changes needed to comply with federal, state and local laws.
- 14.22. Fixture Repairs. The SFA shall be financially responsible for repairs to all permanent fixtures such as faucets, lights, sewers, air conditioning, heating vents, hoods and all other electrical work.
- 14.23. Utilities. The SFA shall furnish at its expense, space, light, heat, power, hot and cold water, high speed internet connection and other utilities as are necessary for the operation of the food services to be furnished hereunder.
- 14.24. Food Service Areas. The SFA shall make available without cost to FSMC areas of the Facility agreeable to both parties in which FSMC shall render its services, such areas being reasonably necessary for providing efficient food service.
- 14.25. Additional Food Service Programs. The SFA may request that FSMC enter into a separate agreement to provide services for additional programs not currently in operation, including but not limited to, the Summer School Program and Child Care

Feeding Program or other, upon terms and conditions mutually agreeable to the Parties.

- 14.26. Access. The SFA shall have unlimited access to all areas used by FSMC for purposes of inspections and audits.
- 14.27. Trash Removal. The SFA shall have designated areas for the removal of all garbage and trash.
- 14.28. Painting. The SFA shall be responsible for painting within the dining areas.
- 14.29. Toilet Facilities. The SFA shall make available sanitary toilet facilities for the employees of FSMC.

15. Health Certification

- 15.1. Health Certification. FSMC shall have state or local health certification for any facility outside the SFA in which it proposes to prepare meals and FSMC shall maintain this health certification for the duration of the contract. 7 CFR 210.16c(2)
- 15.2. Safety Regulations. FSMC shall comply with all health and safety regulations required by federal, state or local law.

16. Compliance with Law

- 16.1. FSMC shall comply with all applicable laws, ordinances, rules and regulations relating to Food Service sanitation, safety and health, including, without limitation, the following: (i) National School Lunch Program (in particular Title 7, code of Federal Regulations, Section 210, 245, et seq.), the Child Nutrition Act, as amended (7 CFR Part 220), Section 103 of the Federal Contract Work Hours and Safety Standards Act (addressing overtime and compensation), Section 306 of the Clean Air Act (42 USCA Section 1857(h)), Section 208 of the Clean Water Act (33 USCA Section 1368), Executive Order 11738, and Environmental Protection Agency (EPA) regulations (40 CFR Part 15). (ii) FSMC shall recognize mandatory standards and policies relating to energy efficiency and shall comply with the Energy Conservation Policy and Conservation Act (P.L. 94-163). (iii) Violations shall be reported to the U.S. Department of Agriculture, Food and Nutrition Services, and the EPA. FSMC shall not knowingly utilize a facility listed on the EPA List of Violating Facilities. (iv) FSMC shall procure and maintain all necessary licenses and permits.
- 16.2. The Contractor shall not participate in or cooperate with an international boycott, as defined in Section 999 (b)(3) and (4) of the Internal Revenue code 1986, as amended, or engage in conduct declared to be unlawful by Section 2 of Chapter 151E of the Massachusetts General Laws.

17. Debarment/Suspension Certificate

- 17.1. Debarment/Suspension Certificate. FSMC shall sign a Debarment/Suspension Certification. This certification assures the SFA that FSMC has not been debarred from entering into contracts with the federal government, with the Commonwealth of Massachusetts, or any entity receiving federal funds or suspended from entering contracts during a time when FSMC is being investigated for a legal action taken to debar FSMC from contracting activities. 7 CFR 3017.510
- 17.2. Location of Certificate. The certification is attached to the signed Agreement and kept on file at the SFA. A copy of the certification will be forwarded to the state agency with a copy of the signed Agreement. 7 CFR 3017.510

18. Certificate of Independent Price Determination

- 18.1. Independent Price Certification. FSMC shall certify that the prices in the offer have been arrived at independently, without consultation, communication or agreement for the purpose of restricting competition. 7 CFR 301
- 18.2. Certificate of Independent Price Determination. FSMC and the SFA shall sign and submit a Certification of Independent Price Determination with the Agreement. FSMC shall attach the certification to the signed Agreement and the certification shall be kept on file at the SFA. SFA shall also forward a copy of the certification to the state agency with a copy of the signed Agreement. 7 CFR 3017

19. Lobbying Activities/ OTHER Certifications

- 19.1. Lobbying Certification. FSMC will sign and submit a certification regarding lobbying which conforms in substance with and all applicable state laws. 7 CFR 3018
- 19.2. Location of Certification. The certification regarding lobbying shall be attached to the signed Agreement and kept on file at the SFA. A copy of any certification shall also be forwarded to the state agency with the signed Agreement. 7 CFR 3018
- 19.3. Disclosure of Lobbying Activities. FSMC shall disclose lobbying activities in connection with school nutrition programs. 7 CFR 3018
- 19.4. Location of Disclosure Form. The lobbying disclosure form shall be attached to the signed Agreement and kept on file at the SFA. A copy of the certification shall also be forwarded to the state agency with the signed Agreement. 7 CFR 3018
- 19.5. Certifications. Pursuant to Section 49A of Chapter 62C of the Massachusetts General Laws, FSMC hereby certifies under the penalties of perjury that it has complied with all laws of the Commonwealth of Massachusetts relating to taxes, reporting of employees and contractors, and withholding and remitting child support.
- 19.6. FSMC shall comply with M.G.L. c. 268A, the Commonwealth's Conflict of Interest Law.

- 19.7. FSMC hereby certifies under penalties of perjury that its proposal has been made and submitted in good faith and without collusion or fraud with any other person. As used in this certification, the word “person” shall mean any natural person, business, partnership, corporation, union, committee, club, or other organization, entity, or group of individuals.
- 19.8. FSMC certifies that it has not given, offered or agreed to give any person, corporation or other entity any gift, contribution or offer of employment as an inducement for, or in connection with, the award of this Agreement;
- 19.9. FSMC certifies that no consultant to or subcontractor for FSMC has given, offered or agreed to give any gift, contribution or offer of employment to the SFA, or to any other person, corporation, or entity as an inducement for, or in connection with, the award of this Agreement;
- 19.10. FSMC certifies that no person, corporation or other entity, other than a bona fide full time employee, has been retained or hired by FSMC to solicit for or in any way assist it in obtaining this Agreement contract upon an agreement or understanding that such person, corporation or other entity be paid a fee or other consideration contingent upon the award of the contract to FSMC.

20. General Terms & Conditions

- 20.1. **Governing Law.** This Agreement, its construction, validity, effect, performance and enforcement shall be governed by and construed under the laws of the Commonwealth of Massachusetts.
- 20.2. **Entire Agreement.** This Agreement constitutes the entire agreement between the parties pertaining to operation of food service and supersedes all prior or contemporaneous negotiations, discussions or understanding. There are no representations, inducements, promises, agreements, arrangements or undertakings, oral or written, between the parties relating to the matters covered by this Agreement other than those set forth in this Agreement.
- 20.3. **Severability.** Each article, paragraph, subparagraph, term and condition of this Agreement, and any portions thereof, will be considered severable. If, for any reason, any portion of this Agreement is determined to be invalid, contrary to or in conflict with any applicable present or future law, rule or regulation in a final ruling issued by any court, agency or tribunal with valid jurisdiction, that ruling will not impair the operation of or have any other effect upon, any other portions of this Agreement; all of which will remain binding on the parties and continue to be given full force and effect.
- 20.4. **Assignment.** Neither FSMC nor the SFA may assign or transfer this Agreement, or any part thereof, without the written consent of the other party, except the parties may assign this Agreement to an affiliated company or wholly owned subsidiary without prior approval and without being released from any of their responsibilities hereunder.

- 20.5. Captions. All captions in this Agreement are intended solely for the convenience of the parties and none shall be deemed to affect the meaning or construction of any provision of this Agreement.
- 20.6. Construction and Effect. No failure of either party to exercise any power reserved to it by this Agreement or to insist upon strict compliance by the other party with any obligation or condition hereunder and no custom or practice of the parties at variance with the terms hereof shall constitute a waiver of either party's right to demand exact compliance with any of the terms of this contract. Waiver by either party of any particular default shall not affect or impair either party's right to exercise any or all of its rights and powers herein, nor shall that constitute a waiver by that party of any right hereunder, or of its right upon any subsequent breach or default to terminate this Agreement prior to the expiration of its terms.
- 20.7. Proprietary Materials. SFA acknowledges that the names, logos, service marks, trademarks, trade dress, trade names and patents, whether or not registered, now or hereafter owned by or licensed to FSMC or its affiliated and parent companies (collectively "Marks") are proprietary Marks of FSMC and SFA will not use the Marks for any purpose except as expressly permitted in writing by FSMC. Upon termination of this Agreement, SFA shall (a) immediately and permanently discontinue the use and display of any Marks and make or cause to be made such changes to the Premises as FSMC shall reasonably direct so as to effectively distinguish the Premises from its former appearance (collectively "De-Image"), and (b) immediately remove and deliver to FSMC all goods bearing any Marks. If SFA shall fail to De-Image the Premises within 30 days of the termination date, FSMC and its agents shall have the right to enter the Premises and De-Image the Premises without prejudice to FSMC's other rights and remedies.
- 20.8. Notices. If any notice or other correspondence is required to be delivered under this Agreement, it shall be given in writing, and shall be delivered personally, by overnight delivery service, or by United States registered or certified mail, postage prepaid with return receipt requested, in which event it shall be deemed given upon receipt, to the parties at the following addresses (or to such other address as a party may designate by notice).

To SFA: Barnstable Public Schools
 ATTN: Superintendent of Schools
 230 South Street
 Hyannis, MA 02601

To FSMC: _____
 ATTN: _____

- 20.9. Waiver of Recovery. Each party hereto waives its rights, and the rights of its subsidiaries and affiliates, to recover from the other party hereto and its subsidiaries and affiliates for loss or damage to such party's building, equipment, improvements and other property of every kind and description resulting from fire, explosion or other cause normally covered in standard broad form property insurance policies
- 20.10. Confidentiality. In the course of providing the Services hereunder, the Parties may be exposed to trade secrets or other confidential or proprietary information and materials of the other Party including, but not limited to, menus, recipes, signage, Food Service surveys and studies, management guidelines, procedures, operating manuals and software, all of which shall be identified as confidential ("Confidential Information"). The Parties agree to hold in confidence and not to disclose any Confidential Information during the Term of this Agreement and for two (2) years afterward, except that the Parties may use or disclose Confidential Information: (a) to its employees and affiliates or others to the extent necessary to render any Service hereunder, provided that the other Party is first notified of the information that will be provided to any party outside of this Agreement and provided further that such information is disclosed only after such outside party is required to maintain it in confidence as required hereunder; (b) to the extent expressly authorized by either Party; (c) to the extent that at the time of disclosure, such Confidential Information is in the public domain, or after disclosure enters the public domain other than by breach of the terms of this Agreement; (d) that is in the possession of either Party at the time of disclosure and is not acquired directly or indirectly from the other Party; (e) that is subsequently received on a non-confidential basis from a third party having a right to provide such information; or (f) as required by order during the course of a judicial or regulatory proceeding or as required by a government authority. The Parties agree not to photocopy or otherwise duplicate any Confidential Information without the express written consent of the other Party. Each Party's Confidential Information shall remain the exclusive property of the Party and shall be returned to the other Party upon termination or expiration of this Agreement.

In the event of any breach of this provision, the Parties shall be entitled to equitable relief in addition to all other remedies otherwise available to it at law. This provision shall survive the termination or expiration of this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as a sealed instrument as of the respective dates first written below.

[FSMC]

Barnstable School Committee

By _____

By _____
R. Patrick Murphy
Chairman

Date _____

Date: _____