



shall be done in accordance with MCL 380.1274, applicable federal guidelines, and all applicable policies, procedures, rules and regulations of DPS. Develop nutritious menus, in accordance with applicable State and Federal guidelines.

- B. Train and supervise all food services staff employed by DPS pursuant to DPS policies, procedures, regulations and contractual obligations.
- C. Maintain and repair all equipment used in the Food Service Program in good working order and repair, the costs for which shall be charged against food service revenues of the SCHOOL.
- D. Report any personnel issues or matters to the Superintendent of SCHOOL immediately, but no later than two (2) business days of the occurrence or knowledge thereof.
- E. Prepare appropriate State and Federal reports, as well as any appropriate documentation to participate in State and Federal programs, including, but not limited to, the National School Lunch Program and the School Milk Program.
- F. Facilitate any applications and related documentation for any SCHOOL students eligible to participate in the Free and Reduced Lunch Program.
- G. Ensure compliance with all USDA regulations, including without limitation appropriately accounting for all USDA donated commodity food received by SCHOOL. SCHOOL shall retain title to all USDA donated commodity food received by SCHOOL and all USDA donated commodity food shall only be used for the benefit of SCHOOL.
- H. Ensure meals are served on such days and at such times as required by SCHOOL even if DPS is closed on any day that SCHOOL is open.
- I. Distribute meal applications.
- J. Obtain and maintain all licenses required by applicable health department regulations.
- K. Make a monthly claim for reimbursement through the Michigan Department of Education on behalf of SCHOOL.
- L. Obtain and maintain at its expense point of service software.
- M. Operate the Child Nutrition Application Process

- 1.2. SCHOOL Obligations. Commencing upon the Effective Date of this Agreement, in addition to any other requirements of SCHOOL set forth herein, SCHOOL, its personnel and agents, shall be responsible for the following in connection with the Food Service Program:
- A. Assemble and provide information to DPS relative to the operation of the Food Service Program.
  - B. Provide DPS access to all Food Service Program related premises and equipment.
  - C. Maintain and repair all lunch tables.
  - D. Distribute and collect from students meal applications as are provided by DPS.
  - E. Secure and maintain daily cafeteria deposits in the Schools for scheduled pick-up by a DPS-authorized courier.
  - F. Provide supervision and daily cleaning for the lunch room and kitchen areas.
  - G. Provide waste disposal and trash removal services.
  - H. Provide to DPS student services current enrollment data of SCHOOL.
  - I. Ensure that parents of SCHOOL students maintain adequate funds in their respective students' accounts at all times via the meal pay system as directed by DPS.
  - J. Make available for DPS to retrieve at the end of each School year that this Agreement is in place, all remaining food and paper supplies, including without limitation all serving utensils from the elementary School kitchens.

## SECTION 2. MEAL PRICES

- Free priced meals will be at no charge.
- Reduced priced lunches will be at no charge.
- Full price meals will be \$2.50.
- Breakfast shall be served free to all students regardless of eligibility status. Adult priced meals will be \$3.00 for lunch and \$1.85 for breakfast.
- Milk only price will be \$.50 cents per unit.

To the extent the SCHOOL can be included in the Community Eligibility Option program, DPS shall provide breakfast and lunch to all students of the SCHOOL at no charge.

### SECTION 3. REVENUES AND PAYMENTS

All revenues collected from reimbursable meals and ala carte sales shall be deposited directly with DPS Office of School Nutrition. SCHOOL shall be liable for any unpaid student meal debts that are uncollected at the end of the School year, and shall reimburse DPS for all costs and expenses incurred by DPS in connection with the Food Service Program that are not recovered by DPS from normal collection of meal sales. Such reimbursement shall occur within five (5) days of delivery by DPS to SCHOOL of written documentation showing the unpaid costs and expenses. DPS shall pay to SCHOOL an amount equal to the lesser of: a) the net revenues of food service revenues after all expenses and administrative fees are paid in full; and b) the allowable amount of indirect reimbursable expenses pursuant to USDA regulations.

### SECTION 4. PERFORMANCE

DPS agrees to perform all DPS Services in a professional manner in accordance with all applicable federal, state and local laws, rules, regulations and ordinances, as well as applicable policies and procedures of SCHOOL. The Parties agree to meet at least quarterly to review the financial status and other aspects of this Agreement.

### SECTION 5. TERM AND TERMINATION

This Agreement shall commence on the Effective Date and shall continue through June 30, 20\_\_ (the "Initial Term"). Either Party may terminate this Agreement for any reason by providing thirty (30) days prior written notice to the other Party. This Agreement shall automatically renew for periods of one (1) year, commencing on July 1, 20\_\_, and annually thereafter (each a "Renewal Term"), unless either Party elects not to renew by giving written notice of such intention to the other Party by June 1 of the year at issue.

### SECTION 6. EMPLOYER OF RECORD

Each Party shall be designated as the Employer of Record with respect to each person performing any obligations under this Agreement on behalf of the respective Party. Each Party expressly agrees that each such person shall remain an employee of the respective Party for which the person was hired or engaged, consistent with the terms of the applicable employment or collective bargaining agreement, if any, governing the employment of such personnel, and such respective Party shall be responsible for costs of employment (salary, taxes, fees, fringe benefits etc.) relative to that personnel, except as otherwise stated herein. This Agreement shall not be construed as authority for any Party to act for another Party in any agency or other capacity or to make commitments of any kind for the account of, or on behalf of, the other Party, except to the extent, and for the purposes, expressly provided for and set forth herein, and no partnership or joint venture is created hereby. A Party, or its respective employees, are not entitled to participate in any plans, arrangements, or distributions by the other Party pertaining to or in connection with any fringe, pension, bonus, profit sharing, or similar benefits, or any medical, dental, life or disability insurance plans.

## SECTION 7. RESERVATION OF RIGHTS

This Agreement does not, and is not intended to impair, divest, delegate, or contravene any constitutional, statutory, or other legal right, privilege, power, obligation, duty or immunity of each Party, and shall not be construed to waive the defense of governmental immunity held by either Party.

## SECTION 8. RECORD KEEPING

The Parties shall maintain records of any obligations performed, and any payments received or costs incurred under this Agreement. Such records shall be kept in accordance with generally accepted accounting principles, and shall be made available to the other Party during normal business hours, upon reasonable notice.

## SECTION 9. MUTUAL INDEMNITY

### 9.1. DPS Indemnity

To the extent permitted by law, DPS indemnifies, holds harmless and agrees to defend SCHOOL, its board members, employees, agents, successors and assigns, from and against any and all claims, demands, causes of action, suits, proceedings, losses, costs, liabilities, damages (including consequential, incidental or punitive damages) and expenses of any kind or nature, including without limitation all attorneys' fees, incurred by SCHOOL for injuries, sickness, property damage or death of DPS employees or agents arising out of or related in any way to DPS's use of the kitchen equipment and facilities, except to the extent any such claim arises as a result of the negligent acts or omissions of SCHOOL.

### 9.2. SCHOOL Indemnity

To the extent permitted by law, SCHOOL indemnifies, holds harmless and agrees to defend DPS, its board members, employees, agents, successors and assigns, from and against any and all claims, demands, causes of action, suits, proceedings, losses, costs, liabilities, damages (including consequential, incidental or punitive damages) and expenses of any kind or nature, including without limitation all attorneys' fees, incurred by DPS for injuries, sickness, property damage or death of SCHOOL students, SCHOOL employees or agents, arising out of or related in any way to this Agreement or the Food Service Program, except to the extent any such claim arises as a result of the negligent acts or omissions of DPS.

## SECTION 10. INSURANCE

SCHOOL shall, at its expense, maintain, at a minimum, insurance coverage for workers' compensation and general liability, in commercially reasonable amounts, and shall name DPS as an additional insured.

**SECTION 11. NOTICES**

All notices to be provided under this Agreement shall be made by first class mail or hand delivery, and shall be deemed delivered immediately upon hand delivery or the third (3rd) business day after regular mail. Notices shall be delivered to:

School Name  
Address  
City, Michigan Zip code  
Attn: \_\_\_\_\_  
Phone #: \_\_\_\_\_  
Fax #: \_\_\_\_\_

DPS: Detroit Public Schools  
3011 W. Grand Blvd., 10<sup>th</sup> Floor  
Detroit, Michigan, 48202  
Attn: Chief Operating Officer  
Phone #:313-873-6532  
Fax #:313-873-6491

**SECTION 12. DISPUTE RESOLUTION PROCEDURE**

Any and all disputes between the Parties concerning any alleged breach of this Agreement or arising out of or relating to the interpretation of this Agreement or the Parties' performance of their respective obligations under this Agreement that are unable to be resolved through discussion and negotiation shall be resolved by arbitration, and such an arbitration procedure shall be the sole and exclusive remedy for such matters. The arbitrator shall be selected from a panel provided by and in accordance with the rules of the American Arbitration Association. The arbitration shall be conducted in accordance with the rules of the American Arbitration Association, with such variations as the Parties and the arbitrator unanimously accept. Any arbitration hearing shall be conducted in Detroit, Michigan. A judgment on the award rendered by the arbitrators may be entered in any court having appropriate jurisdiction. The cost of arbitration, not including attorneys' fees, shall be paid by the losing party.

**SECTION 13. MISCELLANEOUS**

- 13.1. Entire Agreement. This Agreement sets forth all the covenants, agreements, stipulations, promises, conditions and understandings of the Parties concerning the activities and services contemplated herein. No Party, or its respective Board members, employees, attorneys, consultants, advisors, agents, representatives or students, have made any covenant, agreement, stipulation, promise, condition or understanding, warranty or representation, either oral or written, other than as set forth herein.
- 13.2. Amendment. This Agreement shall not be modified, altered or amended except by written agreement duly executed by the Parties in accordance with the terms hereof.

- 13.3. Invalidity of Particular Provision. The invalidity of any article, section, subsection, clause or provision of this Agreement shall not affect the validity of the remaining sections, subsections, clauses or provisions hereof, which remain valid and be enforced to the fullest extent permitted by law.
- 13.4. Captions. The captions in this Agreement are inserted only as a matter of convenience and for reference and in no way define, limit, enlarge or describe the scope or intent of this Agreement nor in any way shall affect this Agreement or the construction of any provision hereof.
- 13.5. Waivers. A Party may not waive any default, condition, promise, obligation or requirement applicable to the other Party hereunder, unless such waiver is in writing signed by an authorized representative of such Party and expressly stated to constitute such waiver. Such waiver shall only apply to the extent given and shall not be deemed or construed to waive any such or other default, condition, promise, obligation or requirement in any past or future instance. No failure by a Party to insist upon strict performance of any covenant, agreement, term, or condition of this Agreement, or to the exercise any right or remedy in the event of default, shall constitute a waiver of any such default of such covenant, agreement, term or condition.
- 13.6. Governing Law. This Agreement shall be governed by, construed and enforced in accordance with, the laws of the State of Michigan.
- 13.7. Expenses. Except as otherwise specifically provided herein, the Parties shall pay their respective attorney fees, accounting fees and other costs and expenses incurred in connection with the performance of this Agreement.
- 13.8. No Third Party Beneficiaries. This Agreement is made solely for the benefit of the Parties to this Agreement. Nothing contained in this Agreement shall be deemed to give any person, partnership, joint venture, corporation, limited liability company, governmental entity or other entity any right to enforce any of the provisions of this Agreement, nor shall any of them be a third party beneficiary of this Agreement.
- 13.9. Assignment. SCHOOL may not assign this Agreement without the prior written approval of DPS.
- 13.10. Successors and Assigns. The covenants, conditions and agreements in this Agreement shall be binding upon and inure to the benefit of each Party, their respective legal representatives, successors and assigns.
- 13.11. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be an original, but all such counterparts shall together constitute one and the same instrument.

13.12. Authorized Signatory. The Parties represent that each has the authority under law to execute, deliver and perform this Agreement and to incur the obligations set forth herein, that its actions have been duly and validly authorized, and that it will adopt any and all resolutions or approvals required for execution of this Agreement.

**IN WITNESS WHEREOF:** the Parties hereto on this day execute this Food Service Agreement as of the Effective Date.

**Detroit Public Schools**

**School Name**

**By:** \_\_\_\_\_

**By:** \_\_\_\_\_

**Its:** \_\_\_\_\_

**Its:** \_\_\_\_\_

**Date:** \_\_\_\_\_

**Date:** \_\_\_\_\_

# 2011-2012 Alternate Agreement

MICHIGAN DEPARTMENT OF EDUCATION  
Grants Coordination and School Support

SPONSOR AGREEMENT NUMBER  
82010

LEGAL NAME OF SPONSOR (District, School, etc.)  
School District of the City of Detroit

NAME OF CONTACT PERSON (Sponsor)  
Betti J. Wiggins, CPM

TITLE  
Executive Director  
Office of School Nutrition

TELEPHONE NUMBER  
313.578.7220

ADDRESS OF SPONSOR  
1425 East Warren Ave

CITY  
Detroit

STATE  
Michigan

ZIP CODE  
48207

BENEFICIARY AGREEMENT NUMBER

LEGAL NAME OF BENEFICIARY (District, School, etc.)

NAME OF CONTACT PERSON (Beneficiary)

TITLE

TELEPHONE NUMBER

ADDRESS OF BENEFICIARY

CITY

STATE  
Michigan

ZIP CODE

ENROLLMENT (Beneficiary)

THIS AGREEMENT is made this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_,  
by \_\_\_\_\_ (sponsor) and \_\_\_\_\_ (beneficiary).

The sponsor agrees to provide the following service(s) to \_\_\_\_\_ (beneficiary):  
**Complete food service operations as more particularly described in that certain Food Service Agreement between the Sponsor and Beneficiary.**

The sponsor will be responsible for ensuring that the food service operation is in conformance with all Federal and State regulations that are applicable to the National School Lunch, School Breakfast and Special Milk Programs.

THIS AGREEMENT **does not** constitute the entire agreement between the parties with respect to subject matter thereof.

THIS AGREEMENT **does not** supersede any or all prior agreements between the parties as they relate to the food service program.

THIS AGREEMENT shall be in effect for the current school year only, or until it is terminated or adjusted by both parties.

\_\_\_\_\_  
SPONSOR (Signature)

\_\_\_\_\_  
(TITLE)

\_\_\_\_\_  
(DATE)

\_\_\_\_\_  
BENEFICIARY (Signature)

\_\_\_\_\_  
(TITLE)

\_\_\_\_\_  
(DATE)

(List all services and activities.)

**In accordance with Federal Law and U.S. Department of Agriculture policy, this institution is prohibited from discriminating on the basis of race, color, national origin, sex, age, or disability.**

**To file a complaint of discrimination, write USDA, Director, Office of Adjudication, 1400 Independence Avenue, SW, Washington, D.C. 20250-9410 or call toll free (866) 632-9992 (Voice). Individuals who are hearing impaired or have speech disabilities may contact USDA through the Federal Relay Service at (800) 877-8339; or (800) 845-6136 (Spanish). USDA is an equal opportunity provider and employer.**