

**STANDARD AGREEMENT TO PROVIDE FOOD SERVICE
BETWEEN A SPONSOR AND A FOOD SERVICE VENDOR**

This agreement ("Agreement") is entered into on September 2, 2013 by and between INTERMOUNTAIN CENTERS FOR HUMAN DEVELOPMENT, INC. ("Institution") and TUSD FOOD SERVICE ("Vendor") for meals in accordance with the rules and regulations of the National School Breakfast Program (NSBP) and National School Lunch Program (NSLP).

BACKGROUND

Whereas, it is not within the capability of the Institution to prepare specified meals (breakfast, lunch, supper or snacks) under the National School Breakfast Program (NSBP) and the National School Lunch Program (NSLP); and

Whereas, the facilities and capabilities of the Vendor are adequate to prepare and deliver specified meals to the Institution's facility(s); and

Whereas, the Vendor is willing to provide such services to the Institution on a cost reimbursement basis.

Therefore, both parties agree as follows:

AGREEMENT

1. Vendor Responsibilities.

- 1.1. Food Services. The Vendor agrees to prepare specified meals for delivery and/or serving **Breakfast and Lunch Meals** to the site(s) specified in Paragraph 1.2 per the agreed upon menu planning requirement specified in Paragraph 1.6. The Institution has approved the menu, which is incorporated into this Agreement by this reference.
- 1.2. Service Site(s). For the purpose of this Agreement, the Vendor shall make meals for delivery and/or serving that comply with the NSBP and NSLP and this Agreement to the food service site(s) at the following TUSD property/leased location(s): **Intermountain Academy school.**
- 1.3. Delivery Requirements. The Vendor shall make deliveries of the meals within the hours and on the days designated below. The Vendor shall make deliveries only to the authorized site(s) at the following day(s) and time(s).
- 1.4. Price. Vendor's price for each **Breakfast** meal is \$1.50 and for each **Lunch** meal is \$2.40 based on the written estimate of meals needed that the Institution provides, except as provided in Paragraph 1.9.
- 1.5. Menu Preparation and Approval. Vendor shall provide the Institution, for approval, a proposed 5 week cycle menu for the operational period, at least 10 business days prior to the beginning of the period to which the menu applies. Any changes to the menu made after Institution approval must be agreed upon by the Institution and documented on the menu records. Menu items may be adjusted in writing by the mutual consent of both parties. However, the Vendor shall adjust the menus at the request of the Institution whenever the Institution determines certain items to be unacceptable. Such items can be determined to be unacceptable because of (1) a monotonous diet resulting from items served frequently or the similarity to other items; (2) the nutritional needs of the students; (3) susceptibility to spoilage; and (4) excessive waste resulting from unpopularity of items with students. Such adjustments shall be made at the earliest convenience of both parties, but in no instance later than one week after request except that in the

case of spoilage adjustment shall be made in such a manner that the children in attendance on the day spoilage is discovered shall receive acceptable meals meeting meal requirements.

- 1.6. Food Preparation. Vendor shall assure that each meal provided to the Institution under this Agreement meets the minimum requirements as to the nutritional content as specified and approved by the NSBP and the NSLP. This includes the Nutrition Standards set forth in Title 7 of the Code of Federal Regulations (CFR) Section 226.20. The Vendor must provide menus to the Institution on a weekly basis if no cycle menus are used; or if cycle menus are used they must be furnished monthly or as the cycle runs. 7 CFR 226.6 (i)(4)
- 1.7. Recordkeeping. Vendor shall maintain full and accurate records/production worksheets that document: (1) the menus provided to the Institution during the term of this Agreement, (2) a listing of all components of each meal, and (3) an itemization of the quantities and portion sizes of each component used to prepare each meal. The Vendor agrees to provide breakfast and lunch preparation documentation by using yield factors for each food item as listed in the United States Department of Agriculture ("USDA") Food Buying Guide when calculating and recording the quantity of food prepared for each meal. Vendor shall also maintain and make available:
 - 1.7.1. Recipes, nutrition facts labels, and any necessary child nutrition (CN) labels or product specification sheets related to the menus served;
 - 1.7.2. Such cost records as invoices, receipts or other documentation that exhibit the purchase, or otherwise availability to the Vendor, of the meal components and quantities itemized in the meal preparation records;
 - 1.7.3. On a daily basis, an accurate count of the number of meals, by meal type, prepared for and delivered to the Institution. Meal count documentation must include the number of meals requested by the Institution in writing.
- 1.8. Estimates. Vendor shall allow the Institution to increase or decrease the number of meal orders, as needed, when the request is made within 24 hours of the scheduled delivery time.
- 1.9. Invoicing. Vendor shall present to the Institution an invoice accompanied by reports no later than the 30th day of each month which itemizes the previous month's delivery. The Vendor agrees to forfeit payment for meals which are not ready within one (30 minutes) of the agreed upon delivery time, are spoiled or unwholesome at the time of delivery, or do not otherwise meet the meal requirements contained in this Agreement. In cases of nonperformance or noncompliance on the part of the Vendor, the Vendor shall pay the Institution for any excess costs the Institution incurs by obtaining meals from another source.
- 1.10. Certifications. Vendor shall provide the Institution with a copy of current health certifications for the food service facility in which it prepares meals. The Vendor also agrees to notify the Institution of the results of any health inspection that is made during the duration of this Agreement. The Vendor shall maintain proper sanitation practices and health standards in conformance with all applicable State and local laws and regulations. The Vendor shall assure that wholesome ingredients are used and that all food is properly stored, prepared, packaged, and transported. In addition, any substance that the food contacts or which is used in conjunction with the food shall be so handled as to assure that it does not become contaminated.
- 1.11. Record Retention. Vendor shall retain all records related to this Agreement in its possession for three (3) years after the expiration of the Agreement. Upon request make all accounts and records pertaining to the Agreement available to the certified public accountant hired by the Institution, representatives of the Arizona Department of Education (ADE), USDA, the US General Accounting Office, and the USDA Office of Inspector General ("OIG") for audits or administrative reviews at a reasonable time and place.

1.12. Subcontracting. Vendor shall not subcontract any portion of this Agreement.

2. Institution Responsibilities.

- 2.1. Unacceptable Meal. Institution shall be responsible for informing the Vendor of its reasons for determining that a meal is unacceptable in writing within forty-eight (48) hours.
- 2.2. Meal Estimates. Institution shall provide in writing, no later than 4PM, August 19, 2013 before the first day of operation, a reasonably accurate estimate of the number of meals to be delivered to Institution each day. The Institution shall notify the Vendor in writing of necessary increases or decreases in the number of meal orders within 24 hours of the scheduled delivery time. Errors in meal order counts made by the Institution shall be the sole responsibility of the Institution. The Institution shall notify the Vendor in writing of the quantity of each meal choice by 9AM each Friday morning (or earlier) prior to the scheduled service of those meals. This provides a reasonable period of time for Vendor to procure and produce different menu items for the following week.
- 2.3. Institution Representative Duties. Institution shall ensure that an Institution representative is available at each delivery site, at the specified time on each specified delivery day to receive, inspect and sign for the requested number of meals. This individual will verify the temperature, quality and quantity of each meal delivery. The Institution assures the Vendor that this individual will be trained and knowledgeable in the record keeping, reimbursement claim process and meal requirements of the NSBP and NSLP and with local health and safety codes.
- 2.4. Cleaning. Institution shall be responsible for cleaning the eating areas daily.
- 2.5. Approval of Menus. Institution shall notify the Vendor in writing within 10 days of receipt of the next month's proposed cycle menu, of any changes, additions or deletions.
- 2.6. Payment. Institution shall pay the Vendor by the 30th day of each month the full amount as presented on the monthly itemized invoice. The Institution shall notify the Vendor within 48 hours of receipt of any discrepancy in the invoice. The Institution shall pay the Vendor for all meals delivered in accordance with the agreement. Note: Neither ADE nor USDA will assume any liability for payment of the difference between the number of meals prepared and delivered by the Vendor and the number of meals served by the Institution that are eligible for reimbursement. In addition, neither ADE nor USDA will be responsible for resolving issues of partial or non-payment per the terms of this agreement.

3. General Terms.

- 3.1. Employment. The Vendor shall comply with all applicable Federal, State, and local laws and regulations pertaining to wages, hours, conditions of employment, and nondiscrimination in employment, 7 CFR Section 3016.36 (i)(3). USDA is an Equal Opportunity Provider and Employer.
- 3.2. Payroll Taxes and Costs. The Vendor shall pay its employees directly and shall withhold and pay all applicable federal and state employment taxes and payroll insurance with respect to its employees, including an applicable income, social security, Medicare and employment taxes and workers compensation costs.
- 3.3. Indemnity.
- 3.3.1. The Vendor shall indemnify, defend and hold the Institution harmless against any loss of damage (including attorney's fees and costs of litigation) caused by the Vendor's negligent act or omission, theft by the Vendor's employees, or the negligent or intentional acts or omissions of the Vendor's

agents or employees. The Vendor shall defend any suit against the Institution alleging personal injury or property damage arising out of the transportation of meals or other items to the Site(s) or out of the acts of the Vendor's employees, and any suit alleging bodily injury, sickness, or disease arising out of the consumption of the meals delivered by the Vendor to the Food Service Site(s), and shall be liable for any damages agreed to by the parties or awarded as a result of such litigation.

3.3.2. The Institution shall promptly notify the Vendor in writing of any claims against the Vendor or the Institution and, in the event a suit is filed, shall promptly forward to the Vendor all papers in connection therewith. The Vendor shall not incur any expense or make any settlement without the Institution's consent. However, if the Vendor refuses or neglects to defend any such suit, the Institution may defend, adjust, or settle any such claim, and the costs of such defense, adjustment, or settlement, including reasonable attorney's fees, shall be charged to the Vendor.

3.4. Agreement Modification; Nonperformance or Default.

3.4.1. This Agreement constitutes the entire understanding between the Vendor and the Institution with respect to the subject matter hereof and there is no other written or oral understandings or agreements with respect hereto. No variation or modification of the Agreement and no waiver of its provisions shall be valid unless in writing and signed by the duly authorized officers of the Institution and the Vendor. No assignment or transfer of this Agreement may be made, in whole or in part, without the prior written consent of the Institution.

3.4.2. The Institution may, upon written notice of default to the Vendor, terminate the whole or any part of this Agreement in any one of the following circumstances:

3.4.2.1. If the Vendor fails to make delivery of meals, other agreed upon items (i.e. eating utensils, supplies, storage equipment), or to perform the services within the time specified herein.

3.4.2.2. If the Vendor fails to perform any of the other provisions of this Agreement in accordance with its terms and does not correct such failure within 48 hours after requested to do so.

3.5. Duration and Termination. This Agreement shall become effective **September 2, 2013** after both parties sign it and ADE and the TUSD Governing Board approve it. The Vendor shall provide meals during the period starting on the Effective Date and ending on **May 23, 2014**. However, either party may, at any time during the life of this Agreement, terminate this Agreement by giving thirty (30) days notice in writing to the other party of its intention to do so. The Institution may terminate this Agreement upon written notice if Vendor fails to fully comply with the terms and conditions. All notices to the Institution shall be addressed to the Institution at the address listed on the signature page, and all notices to the Vendor shall be addressed to the Vendor at the address listed on the signature page. The agreement is subject to four (4) one year renewals upon consent of both parties, unless terminated earlier as provided in the paragraph 3.9 concerning termination.

3.6. Audit. The Institution shall have the right, at its expense, to inspect the books and records of Vendor to verify its performance and expenses submitted under this Agreement. Inspection shall take place during normal business hours at Vendor's place of business.

3.7. Applicable Law. The law of the State of Arizona shall govern this Agreement.

3.8. Cancellation. The Institution may cancel this Agreement under Arizona Revised Statutes §38-511 (Cancellation for conflict of interest - <http://www.azleg.state.az.us/ars/38/00511.htm>) for a violation of that statute. This notice complies with the requirements of that statute.

- 3.9. Termination without Cause. Either party may terminate this Agreement at any time upon thirty (30) days prior written notice to the other of such party's intention to terminate this Agreement.
- 3.10. Unavailability of Funds. The Institution may terminate this Agreement, without penalty, if its Governing Board fails to appropriate funds in subsequent fiscal years to support the program that is the subject of this Agreement. The Institution shall give the Vendor prompt written notice after it knows that funding will not be available.
- 3.11. Non-Discrimination. Vendor shall not illegally discriminate in either the provision of services, or in employment, against any person because of sex, race, disability, national origin, veteran's status, sexual preference or religion. Vendor agrees to comply with all applicable federal and state laws, rules, regulations, and executive orders relating to non-discrimination, affirmative action and equal employment opportunity.
- 3.12. Workers Compensation. Vendor shall maintain a system of coverage for workers compensation in conformance with applicable state law covering all of its employees who may be employed in connection with food service provided to the Institution.
- 3.13. Insurance. Vendor shall maintain during the term of this Agreement insurance policies described below issued by companies licensed in Arizona with a current A.M. Best rating of A: VIII or better. The Vendor shall also name the Institution as additionally insured under the liability policy for the duration of the contract. And upon request, the Vendor will provide the Institution with a certificate evidencing such insurance coverage.
- 3.13.1. Commercial General Liability insurance with a limit of not less than \$1,000,000 per occurrence for bodily injury, property damage, personal injury, products and completed operations, and blanket contractual coverage, including but not limited to, the liability assumed under the indemnification provisions of this Agreement; and
- 3.13.2. Automobile Liability insurance with a combined single limit for bodily injury and property damage of not less than \$1,000,000 each occurrence with respect to the Vendor's owned, hired, and non-owned vehicles.
- 3.14. Assignment. This Agreement may not be assigned by either party without the prior written consent of the other party.
- 3.15. Construction and Effect. A waiver of any failure under this agreement shall neither be construed as, nor constitute a waiver of, any subsequent failure. This agreement supersedes all prior negotiations, representations, or agreements. The Article and Paragraph headings are used solely for convenience and shall not be deemed to limit the subject of the Articles and Paragraphs or be considered in their interpretation. The appendixes referred to herein are made part of this agreement by the respective references to them. This agreement may be executed in several counterparts, each of which shall be deemed an original.
- 3.16. Amendments to the Agreement. The parties cannot alter any provision in this agreement that is required by any law, rule or regulation. The parties cannot otherwise amend or alter this agreement, except as to minor, non-substantive provisions or issues that do not materially affect the scope of work or the cost of the agreement. The parties must mutually agree, in a written document signed by both parties and attached to this agreement, amend, add, or delete an Article or Appendix. Any amendment to this agreement shall become effective at the time specified in the amendment.

For the Institution:

For the Vendor:

Christine Wells, Chief Operating Officer
Name and Title of Representative

Shirley McKechnie - Sokol, Interim Director, TUSD Food Services
Name and Title of Representative

Christine Wells

Signature

Signature

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