



KELLER INDEPENDENT SCHOOL DISTRICT

350 KELLER PARKWAY
KELLER, TEXAS 76248

Food Service Management Agreement

This Food Service Management Agreement (“Agreement”) made as of this the first day of July, 2004 **2005**, by and between COMPASS GROUP USA, INC., by and through its CHARTWELLS Division (“Chartwells” or “FSMC”) and Keller Independent School District (the “District”).

Witnessed:

Whereas, the District wishes to contract with Chartwells to provide certain food and food related services at the District’s elementary, middle and high school locations, as set forth in Exhibit A (collectively, the “Facility”);

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, Chartwells and the District agree as follows:

Article I

Purpose of the Contract

- 1.1 **Appointment of FSMC.** The District hereby contracts with Chartwells and grants to Chartwells the exclusive right to provide and manage the District’s breakfast and lunch operations, and an After School Snack program at the Facility.
- 1.2 **General Purpose.** Chartwells will be responsible for all of the District’s breakfast and lunch operations, and an After School Snack program and will prepare and serve wholesome, nutritious and appetizing meals to the reasonable satisfaction of the District. Chartwells shall comply with the applicable provisions of the National School Lunch Act, as amended, the School Breakfast Program, and the Department of Agriculture regulations set forth in 7 CFR 210, 7 CFR 215, 7 CFR 220, 7 CFR 245, 7 CFR 250, 7 CFR 3015, 7 CFR 3016, 7 CFR 3017, 7 CFR 3018 and any requirements set by the Child Nutrition Programs Division, Texas Education Agency, or by other law.
- 1.3 **Independent Contractor.** Chartwells shall be an independent contractor and shall retain control over its employees and agents. Chartwells neither implies nor grants exclusive rights of its services to Keller ISD and retains its rights to perform services with any other company or organization during the term of this Agreement. Chartwells agrees not to use Keller ISD facilities for the performance of services that is not related to the Keller ISD Food Service Program without the written consent of the District. If written consent is given, the fees retained by Chartwells for the performance of the service will be based on the Meal Equivalency rate established in 10.5. Fees for the use of the facility that will be remitted to Keller ISD will be computed on a space, labor and equipment rental scale established by the district.

Article II
Commencement and Termination

- 2.1 **Commencement and Term.** This Agreement shall be for a period of one (1) year, commencing ~~July 1, 2004, and continuing until June 30, 2005~~ **July 1, 2005, and continuing until June 30, 2006**, unless terminated by either party as hereinafter provided. The parties may by mutual agreement renew the terms of this Agreement for ~~four (4)~~ **three (3)** successive one (1) year periods. 7 CFR 210.16(d).
- 2.2 **Duration of Agreement.** Duration of this Agreement will be for one (1) year and a maximum of ~~four (4)~~ **three (3)** one-year renewals upon a finding by the District that the services are being performed in an effective and efficient manner. 7 CFR 210.16(d).
- 2.3 **Termination.** Either party may, during the life of the Agreement, terminate this Agreement with or without cause, by giving sixty (60) days notice in writing to the other party of its intention to do so.
- 2.4 **Breach.** If either party breaches a material provision hereof ("Cause"), the non-breaching party shall give the other party notice of such Cause. If the Cause is remedied within thirty (30) days, the notice shall be null and void. If such Cause is not remedied within thirty (30) days, the party giving notice shall have the right to terminate the Agreement upon expiration of such remedy period. 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 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. Additionally, the parties agree that nothing in this paragraph modifies the parties' right to terminate this contract by giving sixty (60) days notice in accordance with paragraph 2.3 of this Agreement.
- 2.5 If at any time during the term of this Agreement, District makes a reasonable decision that adequate funding for federal, state, or local services is not available to enable District to carry out its financial obligations to Chartwells hereunder, District shall have the option to terminate this Agreement by giving thirty (30) days written notice to Chartwells.

Article III
Employees

- 3.1 **FSMC Employees.** All food service employees shall be employees of the Client other than food service management, who will be employees of Chartwells. All current employees of the District shall remain employees of the District. District shall be entitled to review and approve of all Chartwells employees to be hired as director, general manager, or chef for the District's food services program. District shall retain the right to require that a proposed employee not serve the District food services program in those capacities. District shall further have the right to require Chartwells to remove and/or replace employees in those positions at any time during the term of this Agreement, so long as such removal or replacement is not a violation of any applicable laws. Chartwells shall be entitled to thirty (30) days written notice from the District of any such complaint or objection to personnel in those positions. District shall also require that Chartwells perform appropriate background checks, including criminal history checks to the extent legally permissible, prior to the employment by Chartwells of any employee who will serve in the District's food services program.

- 3.2 **Personnel Obligations.** Chartwells shall be responsible for the employees on its payroll, including, but not limited to, responsibility for recruitment, employment, promotion, payment of salaries, pension benefits, fringe benefits, layoffs, termination, and shall comply with all applicable laws and regulations. Chartwells 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 any income, social security and unemployment taxes and workers' compensation costs and allocated charges at actual cost calculated by formula as presented and demonstrated in Exhibit C. Presentation of these charges to the district will be made with an itemized invoice showing all charges and calculations.
- 3.3 **Equal Opportunity Employer.** The District and Chartwells shall comply with Executive Order 11246, entitled "Equal Employment Opportunity," as amended by Executive Order 11375, and as supplemented in Department of Labor Regulations. In addition, Chartwells shall comply with any civil rights requirements applicable to the District.
- 3.4 **Work Hours.** Chartwells and the District shall comply with Section 103 and 107 of the "Agreement Work Hours and Safety Standards Act" (*40 USC 327-330*) as supplemented by Department of Labor regulations (*29 CFR, Part 5*). Under Section 103 of the Act, each contractor shall be required to compute the wages of every mechanic and laborer on the basis of a standard workday of eight (8) hours and a standard workweek of forty (40) hours. Overtime is permissible provided that the worker is compensated at a rate of not less than 1 ½ times the basic rate or pay of all hours worked in excess of eight (8) hours in any calendar day or forty (40) hours in the workweek. Section 107 provides that no laborer or mechanic shall be required to work in surroundings or under working conditions that are unsanitary, hazardous or dangerous to his or her health and safety as determined under construction, safety and health standards promulgated by the Secretary of Labor. *7 CFR 3016*
- 3.5 Chartwells' employees will be subject to, and will comply with, all rules and regulations of District while on District premises or in District facilities.

Article IV Management Services and Special Functions

- 4.1 **Management Services.** Chartwells will provide all management, administrative and dietetic services required for the efficient supervision and operation of District's breakfast and lunch programs, and after school snack programs. The resident Chartwells employees' salary and fringe benefits will be a direct reimbursable cost of operation.
- 4.2 **Special Functions.** Chartwells will provide food services for administration and student related functions as requested by District. 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 District.
- 4.3 To the extent applicable, Chartwells shall comply with USDA Rights to Copyrights, Patent Rights and Rights in Data and Reporting of Discoveries and Inventions. *7 CFR 3016*

Article V
Equipment, Facilities and Utilities

- 5.1 Facilities and Equipment.** The District shall make available, without any cost or charge to Chartwells, the facilities and equipment necessary for Chartwells to provide food service, including, but not limited to, area or areas of the premises agreeable to both parties in which Chartwells shall render its services, kitchen equipment, small wares, suitably furnished office space, and facilities for the safekeeping of funds. District shall be entitled to approval of all signage and color schemes used by Chartwells in any modifications made to the existing facilities. Such approval shall be given by District prior to any such modifications or changes being made or imposed by Chartwells.
- 5.2 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 by the providing party to ensure compliance with applicable laws concerning building conditions, sanitation, safety and health. Chartwells will take proper care of all furniture; fixtures, equipment and facilities provided by the District and shall timely notify the District of any known deficiencies. Chartwells shall not be held accountable for pre-existing conditions. At the expiration of this Agreement, Chartwells will return to the School Authority the cafeteria premises and all furniture, fixtures, and equipment furnished by the District in the condition in which received, except for ordinary wear and tear, damage by the elements and except to the extent that said 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 Chartwells, except through the negligence of Chartwells or its employees, or for any other reason beyond the control of Chartwells.
- 5.3 Utilities.** The District shall furnish at its expense, light, power, hot and cold water, telephone service and other utilities as are necessary for the operation of the food services to be furnished hereunder.
- 5.4 District's Use of the Facilities.** The District is encouraged to utilize Chartwells for catering and other food service needs in addition to the School Lunch and/or Breakfast and/or After School Snack Programs. However, the District reserves the right, in its sole discretion, to sell or dispense any food or beverage before or after the District'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 After School Snack Programs.
- 5.5 Extracurricular Activities.** If the District utilizes the facilities for extracurricular activities before or after the District's regularly scheduled lunch or breakfast period, the District shall return facilities and equipment to Chartwells in the same condition as received, normal wear and tear excepted.

Article VI
Maintenance, Repairs and Sanitation

- 6.1 Maintenance.** The District shall furnish all building maintenance, make repairs to the food service areas, and replace, repair and maintain its equipment, except when damages result from negligence by Chartwells or its employees. The District shall, at its expense, provide maintenance personnel and outside maintenance services, parts and supplies for properly maintaining the facilities and its equipment.

- 6.2 **Cleaning.** The District 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. Chartwells will be responsible for the routine cleaning 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.
- 6.3 **Sanitation.** The District shall, at its expense, provide for the daily removal of waste and garbage and regular extermination services.

Article VII Inventory

- 7.1 **Inventory.** District shall purchase 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 District at all times. Chartwells and District shall jointly take inventory of all purchased food and supplies at both the beginning and the end of this Agreement. The District shall have access to the purchase records of the food purchased for review and audit as deemed necessary in the judgment of the District.
- 7.2 **Purchasing.** District will purchase all food at the lowest prices possible consistent with maintaining the quality standards prescribed by the District. Chartwells shall consult with District and make recommendations with regard to purchases. All procurement transactions must meet procurement standards set by the United States Department of Agriculture (National School Lunch Regulations Part 210-19a) and any additional requirements set forth by the Child Nutrition Programs Division, Texas Education Agency. Transactions shall be conducted in a manner so as to provide maximum open and free competition, as provided by law and as required by Section 44.031 *et seq.* Of the Texas Education Code.
- 7.3 **Rebates.** All goods, services or moneys received as the result of a rebate under a processing contract must be utilized in the District's nonprofit food service. *7 CFR 250.12 (c) (1)*

Article VIII Menus, Food Choice Offerings and Food Specifications

- 8.1 **Menus.** Chartwells shall consult with District's officials for their opinions on food preferences for the monthly menu. Any changes thereafter must be made with the approval of the District. An Advisory Board comprised of parents, teachers and students will assist Chartwells in menu planning. Seasonal changes, special school programs, or shifts in student preferences shall be taken into consideration in menu preparation. Chartwells will submit menus for approval, as the District shall designate. All menus will be nutritionally acceptable to District and in accordance with the Child Nutrition Program Regulations.
- 8.2 **Control of Food Service.** The District shall retain control of the quality, extent and general nature of its food service. *7 CFR 210.16(a)(4)*.
- 8.3 **Food Specifications.** The District must provide detailed specifications, including, but not limited to, grade and weight for each food component or menu item as specified in *7 CFR Part 210*, and include these specifications in the IFBs or RFPs. Specifications may also cover other items such as purchase units, style, condition, ingredients, formulations, and delivery time. *7 CFR 210.16 (c)(3)*.

- 8.4 **Non-Payment by District.** 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 District for each food component specified in the School Lunch Pattern/School Breakfast Program (if applicable) or do not otherwise meet the requirements of the Agreement. *7 CFR Part 210.16 (c) (3).*
- 8.5 **Third Party Vendors.** This Agreement shall not prohibit District from entering into contracts for vending services by third party vendors in the delivery and sale of food items by such third party vendors within District facilities. The district has entered into third party vendor agreements with Chick Fil-A and Keller Pizza for the acquisition of product only. The documents of procurement are kept on file in the District. ***Third party vendors will only be allowed to provide goods and services within the District by bidding through the food service program and by mutual consent of Chartwells and the District.***
- 8.6 **Compliance with Nutrition Policy.** Chartwells expressly agrees to comply with and follow the provisions of the Texas Public School Nutrition Policy issued by the Texas Department of Agriculture and all regulations issued by the United States Department of Agriculture or Department of Education, and any amendments thereto that become effective during the term of this Agreement and any extensions thereof, including without limitation the express prohibition under the Texas Public School Nutrition Policy of selling sugared, carbonated beverages in containers larger than 12 ounces in size.

Article IX

Accounting, Records and Audits

- 9.1 **Records.** Chartwells shall maintain such records as the District will need to support its reimbursement claim and shall report thereon to the District promptly at the end of each calendar month, at a minimum. Such records shall be available, for a period of five (5) years from the date of final payment under the Agreement, for inspection and audit by representatives of the Texas Education Agency, 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 five (5) year period as long as required for the resolution of the issues raised by the audit. *7 CFR 210.16c and 210.23c.*
- 9.2 **Availability of Records.** The District, Texas Education Agency, United States Department of Agriculture or Comptroller General of the United States, any state agency, or any of their duly authorized representatives shall have access to any books, documents, papers and records of Chartwells which are directly pertinent to this Agreement, for the purpose of making audit, examination, excerpts and transcriptions. *7 CFR 3016*
- 9.3 **Reimbursement Records.** Chartwells must retain records to support the District'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).*
- 9.4 **Revenue Records.** Chartwells shall retain revenue records broken down by source, type and category of meal or food service, e.g. a la carte sales, reduced and full price National School Lunch and School Breakfast Program meals. *7 CFR 210.16.*
- 9.5 **Reimbursement Vouchers.** Within seven (7) business days after the end of each month, Chartwells will provide the District with completed monthly reimbursement vouchers for execution by the District.

- 9.6 **Control of Funds.** All income accruing as a result of payments by children and adults, federal and state reimbursements and all other income from sources including but not limited to donations, rebates, banquets, grants and loans must be under the control of the treasurer and shall be deposited in the District's school food service account ("Food Service Account") and shall apply to the benefit of the district's food service program.
- 9.7 **Invoices.** Chartwells shall invoice the District monthly a sum not to exceed the amount necessary to cover Chartwells' expenditures for the food service operation and/or the submission of a valid claim for the items designated in Article X. Chartwells will provide a reconciliation of its billing with costs listed in the following categories: 1) Management Fee; 2) Administrative Fee; 3) direct costs; and 4) labor. Payment shall be due within ten (10) days of receipt of the monthly invoice, and will be paid in accordance with Texas law. No interest shall be charged to the District on any payments to Chartwells.
- 9.8 **Invoice Statement.** All claims and demands submitted by Chartwells must state that articles have been furnished or services rendered before payment can be made to Chartwells from the District's general operating account.
- 9.9 **Detailed Description.** All claims submitted by Chartwells must include a detailed description of the goods, supplies, services or other items being submitted for reimbursement.

Article X

Financial Arrangements, Fee, Surplus Revenues, Purchasing and Meal Payment

- 10.1 **General Provisions.** Chartwells will operate, administer, and manage the food service for the District in accordance with the financial arrangements as set forth in this Article X. This Agreement does not contain a "cost-plus-a-percentage-of-cost" or a "cost-plus-a-percentage-of-income" provision. *7 CFR 210.16 (c) and 210.16(a)(c)*.
- 10.2 **Operating Expenses.** Chartwells' cost of operating the food service will include, but not be limited to: salaries of all onsite Chartwells assigned employees and will exclude any employee that is not permanently assigned to Keller ISD during the course of the contract as calculated and defined in 3.2 and actual expenses necessary to perform the duties and obligations under this Agreement including, but not limited to, office supplies, insurance, training, marketing, licenses/permits, laundry, uniforms, postage, paper goods and taxes.
- 10.3 **Administrative Charge.** Chartwells' Administrative Charge for the food service will be \$0.035 per meal served.
- 10.4 **Management Fee.** Chartwells' Management Fee for the food service will be \$0.035 per meal served.
- 10.5 **Computing Meals.** For the purpose of computing the meals in Sections 10.4 and 10.5, the total number of meals served shall be determined as follows: a) the total number of student meal pattern breakfasts/lunches/snacks served to children, and b) cash receipts, other than from the sales of National School Student meal pattern meals to children, divided by the Meal Equivalency Rate. Meal counts for special functions (e.g., awards dinners, banquets, etc.) shall be determined by actual count. For the purpose of this Agreement, the Meal Equivalency rate shall equal \$2.32.

10.6 **Guaranteed Return.** Chartwells shall provide a guaranteed return ("Guaranteed Return") to the District of \$120,786 for the ~~2004/2005~~**2005/2006** fiscal school year. ~~The amount of Guaranteed Return in any subsequent years under this contract shall be~~ **and is** subject to negotiation upon any and all annual renewals. The Guaranteed Return shall apply only to the food service operations that are included in the Agreement. The District shall be responsible for designation and recording the revenues and expenditures that apply to this Agreement. The Guaranteed Return shall be placed in the Food Service Account and be applied to the benefit of the District's school food service program. Chartwells shall not request, and the District shall not make, any expenditure from the Food Service Account that is not for the benefit of the District's school food service program.

If the actual returns are less than this amount, Chartwells will provide a subsidy to the District's food service account up to 100% of the Guaranteed Return and the audited surplus as stated in the district's annual independent audit from the ~~2004/2005~~ **2005/2006** fiscal school year, provided the following conditions are met:

- i. Reimbursement rates for the National School Lunch Program meals shall not be less than the rates at the effective date of this Agreement or upon the effective date of any and all annual renewals allowed as part of this agreement.
- ii. The value of government donated commodities and/or cash in lieu thereof shall not be less than the value of government donated commodities and/or cash in lieu thereof for the ~~2003/2004~~2004/2005 school year.
- iii. The number of days meals are served during the 2005/2006 school year shall be no less than 174 full service days and 4 half service days for a total of 176 full service days, and is subject to change with any and all annual renewals allowed as part of this Agreement.
- iv. ~~The number of serving periods, locations, serving times and types of service shall not change materially from the anticipated and budgeted projections for the 2005/2006 school year. In-district catering revenue will be at least 75% (seventy-five percent) of net revenue of the prior year's in-district catering revenue if awarded the contract for catering.~~
- v. The student enrollment for the term of this Agreement shall be no less than ~~and 8% or 1,600 student increase from the 2003-2004 school year enrollment~~ **23,000 students**, and is subject to review and adjustment with any and all annual renewals allowed as part of this Agreement.
- vi. The level of wages and salaries for employees will not exceed an average ~~3%~~ **3.5%** increase from ~~2003/2004~~ 2004/2005 school year, and the fringe benefits for employees will not exceed a 5% increase from the 2004/2005 school year.
- vii. The selling prices of Menu Pattern Meals and A-la-carte selections will be ~~increase as anticipated and included in the budget for the 2004/2005 school year~~ **increased based on inflation and approved by the District**, and will be subject to review and change with any and all annual renewals allowed as part of this Agreement.
- viii. Employee personnel and sick leave does not exceed an average of 4 days per employee.

- ix. The level of food and paper product cost does not exceed an increase of ~~3%~~ **4%**.
- x. ~~Any and~~ All start up costs for the new campuses is at the District's expense and will not be included in any calculation for the Child Nutrition Fund regarding the Guaranteed Return.
- xi. State matching funds will not be less than the prior year.
- xii. Service will not be interrupted as a result of fire, work stoppage, strike or school closing.
- xiii. The District will consider program changes as recommended by Chartwells to increase revenues and/or reduce expenses.
- xiv. The Guaranteed Return will be subject to negotiation in the event of any legislative changes that materially impact program revenues and/or expenses.

In the event the foregoing conditions are not met during the ~~2004/2005~~ **2005-2006** school year, Chartwells' guarantee obligation may be subsidized by a prorated adjustment attributable to the change in such conditions stated above.

10.7 Reimbursement for Penalties. Chartwells will be responsible for reimbursing the District for any monetary losses due to penalties or charges assessed by the Texas Education Agency or any other governing body that has jurisdiction over the food service program if the assessment is made during Chartwells management of the District's food service program and after six (6) months of service by Chartwells to the District. District and Chartwells will review internal competitive food programs with Principals to ensure that all District locations/schools are in compliance with Texas Department of Agriculture regulations. Chartwells will reimburse District if penalties or charges are imposed due to non-compliance.

~~10.8 **Investment:** Compass will fund certain improvements to Client Premises to facilitate performance of the Services (Investment). The scope and specifications for such improvements shall be mutually agreed in writing by the parties prior to the disbursement of any investment funds. The Investment shall be payable in accordance with the disbursement schedule agreed in writing by the parties, and shall not exceed an aggregate of one hundred one thousand \$101,000 Dollars (\$). The investment shall have a payment scheduled. Client shall hold title to items funded by the Investment at such time as the investment schedule reports no value. If the Agreement is terminated for any reason prior to the schedule reporting \$0.00 in value, the SFA may elect to (i) pay the scheduled balance of the Investment within thirty days of the termination, (ii) have the incoming food service management company pay the scheduled balance of the Investment in full within thirty days of the termination, or (iii) continue to make the scheduled balance to Chartwells in accordance with the schedule set forth herein.~~

Article XI Commodities

- 11.1 Benefit of School Authority Only.** Chartwells agrees that any USDA-donated commodities received by the District and available to Chartwells must accrue only to the benefit of and be used only in the District's nonprofit school food service.
- 11.2 Proper Use and Handling.** The liability for the proper use of these commodities will be the responsibility of Chartwells. Chartwells shall maintain accurate, and complete records with respect to the receipt, use/disposition, storage, and inventory of donated foods. Failure by Chartwells to maintain records required under the Agreement shall be considered factual evidence of improper distribution or loss of donated foods. The District is responsible for obtaining restitution from Chartwells in connection with any claim for improper distribution, use or loss of, or damage to donated foods. *7 CFR 210; 16(a)(6). 250.12(b)(4).*
- 11.3 Title to Donated Food.** Title to USDA-donated food must remain with the District. *7 CFR 250.4(a).*

Article XII Insurance and Indemnity

- 12.1 Indemnity.** Chartwells shall indemnify, defend (including reasonable attorneys' fees), and save harmless District, its trustees, employees and agents from and against any physical damage to tangible property, bodily injury, sickness, death or other claims caused by the negligent acts, omissions or willful misconduct of Chartwells' agents or employees arising out of this Agreement. As part of this Indemnity Agreement, Chartwells accepts any liability caused by Chartwells or its employees, agents, or representatives for negligence arising out of claims assessed as a result of federal or state reviews or audits, corresponding with the District's period of liability. It shall further include liability for any negligence on its part or the part of its agents, employees, or representatives that results in any loss of, improper use of, or damage to USDA donated foods.
- 12.2 Insurance.** In order to secure Chartwells' obligation to indemnify the District, Chartwells shall procure and maintain the following insurance:
- i) Business Automobile Bodily Injury Liability and Property Damage liability Insurance, with combined single limits of Two Million Dollars (\$2,000,000) each accident;
 - ii) Commercial General Liability and Property Damage Liability Insurance, with combined single limits of One Million Dollars (\$1,000,000) each occurrence and Two Million Dollars (\$2,000,000) general aggregate each location.

Chartwells shall furnish District a certificate of Insurance evidencing such coverage as respect Chartwell's operation at the Facility. The cost of the above insurance will be an operating expense and shall be charged to the operation of the business.

- iii) Chartwells will procure Statutory Workers' Compensation Insurance and Employers' Liability Insurance in the amount of One Million Dollars (\$1,000,000) to cover its employees at the Facility.

Article XIII

District Responsibilities

- 13.1 Food Service Conformity.** The District 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 visitation. *7 CFR 210.16(a)(2)(3).*
- 13.2 Advisory Board.** The District contracting with Chartwells shall establish an advisory board composed of parents, teachers, and students to assist in menu planning. *7 CFR 210.16(a)(8).*
- 13.3 Health Certification.** The District shall maintain applicable health certification and be assured that all state and local regulations are being met by Chartwells preparing or serving meals at the Facility. *7 CFR 210.16(a)(7).*
- 13.4 Pricing.** The District shall establish all program and non-program meal and a-la-carte prices. *7 CFR 210.16(a)(4).*
- 13.5 Menu Cycle.** The District shall develop and include in the invitation to bid or request for proposal a 21-day cycle menu. Chartwells must adhere to the cycle for the first 21 days of meal service. Changes thereafter may be made with the approval of the District. *7 CFR 210.16(b)(1).*
- 13.6 Signature Authority.** The District shall retain signature authority on the application/agreement to participate in the National School Lunch Program (NSLP), School Breakfast Program (SBP), and an after School Snack Program including the District's free and reduced price policy statement. *7 CFR 210.9(a)(b), 210.16(a)(5).*
- 13.7 Internal Controls.** The District shall establish internal controls that ensure the accuracy of lunch counts prior to the submission of the monthly claim for reimbursement. *7 CFR 210.8(a).* At a minimum, the District shall:
- i) Review edit check 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;
 - iii) Conduct an on-site review of the lunch counting and claiming system employed by each school within the jurisdiction of the District.
- 13.8 Reimbursement Claims.** The District shall be responsible for signing reimbursement claims. This responsibility cannot be delegated to Chartwells. *7 CFR 210.16(a)(5).*
- 13.9 Contractual Responsibility.** The District shall be responsible for all contractual agreements entered into in connection with the school nutrition program (i.e., vending meals to other District food authorities). *7 CFR 210.21, 7 CFR 210.19(a)(1) and 301.5.*
- 13.10 Financial Responsibility.** The District shall retain control of the non-profit school food service account and overall financial responsibility for the non-profit food service operation. *7 CFR 210.16(a)(4).*

- 13.11 **Program Review.** The District shall be responsible for ensuring resolution of program review and audit findings. *7 CFR Parts 210.9(b)(17) and 210.18(k)(1)(2).*
- 13.12 **Parent Letters.** The District shall develop, distribute and collect the parent letters and applications for free and reduced price meals. *7 CFR 245.6.*
- 13.13 **Verifying Free and Reduced Meal Applications.** The District shall be responsible for determining and verifying applications for free and reduced price meals, ~~free-milk~~ benefits and the conduct of any hearings related to such determinations. This responsibility shall not be delegated to Chartwells. *7 CFR 245.6.*
- 13.14 **USDA-Donated Food.** The District shall assure that the maximum amount of USDA-donated foods are received and utilized by Chartwells. *7 CFR 210.9(b)(15).*
- 13.15 **Commodity Processing Contracts.** The District shall establish commodity-processing contracts. This responsibility cannot be delegated to Chartwells. *7 CFR 210.15(a).*
- 13.16 **A-la-Carte Offering.** If a-la-carte food service is offered, all eligible children must be offered free, reduced price and full price reimbursable meals. *7 CFR 210.16(a).*
- 13.17 **Pricing.** The District shall establish all prices, including price adjustments for food items served under the non-profit District food service account (e.g., reimbursable meals, a-la-carte service, adult meals and vending machines). *7 CFR Part 210.16(a)(4).*

Article XIV Health Certification

- 14.1 **Health Certification.** Chartwells shall have state or local health certification for any facility outside the District in which it proposes to prepare meals and Chartwells shall maintain this health certification for the duration of the contract. *7 CFR Part 210.16 (c) (2).* Chartwells must meet all applicable state and local health regulations in preparing and serving meals at District facilities.

Article XV Environmental and Energy Compliance

- 15.1 **Environmental.** The District and Chartwells shall comply with all applicable standards, orders, or requirements issued under:
- i) Section 306 of the Clean Air Act 42 *USC 1857 (h)*;
 - ii) Section 508 of the Clean Water Act 33 *USC 1368*;
 - iii) Executive Order 117389;
 - iv) Environmental Protection Agency regulations 40 *CFR, Part 15*;
 - v) Violations shall be reported to the United States Department of Agriculture and to the USEPA Assistant Administrator for Enforcement (*EN-329*).

15.2 **Energy.** The District and Chartwells shall recognize mandatory standards and policies relating to energy efficiency that are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act. (*P.L. 94-163*) 7 CFR 3016

Article XVI

Debarment/Suspension Certificate

16.1 **Debarment/Suspension Certificate.** Chartwells shall sign a Debarment/Suspension Certification. This certification assures the District that Chartwells has not been debarred from entering into contracts with the federal government or any entity receiving federal funds or suspended from entering contracts during a time when Chartwells is being investigated for a legal action taken to debar Chartwells from contracting activities. The certification will be attached to the signed Agreement and kept on file at the District. A copy of the certification will be forwarded to the state agency with a copy of the signed Agreement. *7 CFR Part 3017.*

Article XVII

Certificate of Independent Price Determination

17.1 **Independent Price Certification.** Chartwells shall certify that the prices in the offer have been arrived at independently, without consultation, communication or agreement, for the purpose of restricting competition. Chartwells and the District shall sign and submit a Certification of Independent Price Determination with the Agreement. Chartwells shall attach the certification to the signed Agreement and kept on file at the District. District shall also forward a copy of the certification to the state agency with a copy of the signed Agreement. *7 CFR Part 3017.*

Article XVIII

Certification Regarding Lobbying and Disclosure of Lobbying Activities

18.1 **Lobbying Certification.** Chartwells will sign and submit a certification regarding lobbying which conforms in substance with language in *7 CFR 3018*. The certification regarding lobbying shall be attached to the signed Agreement and kept on file at the District. A copy of the certification shall also be forwarded to the state agency with the signed Agreement.

18.2 **Disclosure of Lobbying Activities.** Chartwells shall disclose lobbying activities in connection with school nutrition programs. The lobbying disclosure form shall be attached to the signed Agreement and kept on file at the District. A copy of the certification shall also be forwarded to the state agency with the signed Agreement. *7 CFR Part 3018.*

Article XIX

General Terms and Conditions

19.1 **Governing Law.** This Agreement, its construction, validity, effect, performance, and enforcement shall be governed by and construed under the laws of Texas.

19.2 **Entire Agreement.** This Agreement and tendered proposal that was conveyed to the District through the Request for Proposal process, constitutes the entire agreement between the parties pertaining to operation of food service, and supersedes all prior or contemporaneous negotiations, discussions or undertakings. 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.

19.3 **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, unappealable 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.

19.4 **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.

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

19.6 **Notices.** Any notice or communication required by or permitted to be given under this Agreement shall be in writing and either served personally, delivered by a nationally recognized courier, or sent by United States certified mail, postage prepaid with the return receipt requested, addressed to the other party:

To District: Keller Independent School District
350 Keller Parkway
Keller, TX 76248
Attn: Assistant Superintendent of Finance

To Chartwells: Chartwells
3 International Drive
Rye Brook, NY 10573
Attn: President

With a copy to: Compass Group USA, Inc.
2400 Yorkmont Road
Charlotte, NC 28217
Attention: General Counsel

In Witness Whereof, the parties hereto have executed this Agreement as of the respective dates written below.

Keller Independent School District

Compass Group USA, Inc., by and through its Chartwells division

By: _____

By: _____

Name: _____

Name: Keith Cullinan

Title: President, Board of Trustees

Title: Division President

Date: _____

Date: _____

Exhibit A

Keller High School
Fossil Ridge High School
Central High School
Keller ISD Learning Center
Keller Middle School
Fossil Hill Middle School
Hillwood Middle School
Indian Springs Middle School
Keller Harvel Elementary
Florence Elementary
Parkview Elementary
Bear Creek Intermediate
Whitley Road Elementary
Heritage Elementary
Chisholm Trail Intermediate
Shady Grove Elementary
Park Glen Elementary
Willis Lane Elementary
North Riverside Elementary
Hidden Lakes Elementary
Lone Star Elementary
Parkwood Hill Intermediate
South Keller Intermediate
Bluebonnet Elementary
Freedom Elementary
Woodland Springs Elementary
Bette Perot Elementary
New Elementary in Colleyville
Education Center

List of food service locations in the Keller Independent School District

The list of food service locations included in this Agreement is subject to addition or deletion upon any and all annual renewals as allowed as part of this Agreement.