

OREGON DEPARTMENT OF EDUCATION

CHILD NUTRITION PROGRAMS

LEA - FSMC Contract (Fixed Price)

ARTICLE I
INTRODUCTION

1.1 Date of and Parties to the Agreement. This agreement, dated _____, 2020, is between Three Rivers School District, OR, hereafter called the Local Education Agency (LEA), and Food Service Management Company (the FSMC), Compass Group USA, Inc. by and through its Chartwells Division.

1.2 Purpose of Agreement. This agreement sets forth the terms and conditions upon which the LEA retains the FSMC to manage and operate the LEA's food service for the LEA's students, employees, visitors, and guests.

1.3 Term of the Agreement. The initial term of this agreement commences on July 1, 2020 and continues until June 30, 2021. The agreement is subject to maximum four (4) additional one-year renewals upon the consent of both parties, unless terminated earlier as provided in the Article concerning General Terms and Conditions. Extensions or renewals are contingent upon the fulfillment of all contract provisions.

1.4 Integration of Terms. The terms of this agreement shall be in accordance with the Request of Proposal (RFP) and any amendments to the RFP and the proposal submitted by the FSMC, which are incorporated by reference into this agreement. In the event contradictory statements are contained in the RFP, the FSMC proposal and this agreement, the following order of precedence shall apply; this agreement, FSMC proposal, RFP.

ARTICLE II
RELATIONSHIP OF THE PARTIES

2.1 Limited Agency. To the extent that the state or federal statutes or regulations require that the FSMC shall be an agent of the LEA for certain regulatory purposes, such statutes and regulations shall be controlling, and the FSMC shall be the LEA's agent for such purposes. Otherwise, FSMC shall be an independent contractor and not an officer, agent, employee, partner, joint venture, tenant or servant of the LEA.

2.2 Responsibilities of FSMC.

A. The FSMC shall prepare and serve a variety of high quality, wholesome, and nutritious food and beverages for students, faculty, staff, employees, and others as designated by the LEA in accordance with the terms and conditions of this agreement.

B. The FSMC agrees that it will perform the work described in this agreement in full compliance with all applicable laws, rules, and regulations adopted or promulgated by any federal or state regulatory body or governmental agency.

C. The FSMC agrees to meet all requirements and performance standards that may be specified by rule or regulation by any administrative officials or bodies charged with enforcement of any state or federal laws on the subject matter of this agreement.

D. The FSMC agrees to conduct program operations in accordance with 2 CFR Part 200, 7 CFR Parts 210, 215, 220, 225, 226, 245, 250 and FNS instructions and policies as applicable.

E. The FSMC agrees to assume full responsibility for the payment of all contributions, assessments, both state and federal, as to all employees engaged by it in the performance of this agreement.

F. The FSMC agrees to procure processed end products from donated foods on behalf of the LEA in accordance with 7 CFR 250 and 2 CFR 200.

G. The FSMC agrees that it will not itself enter into the processing agreement with the processor. The FSMC will only procure the services of a processor on behalf of the LEA with an approved State Participation Agreement (SPA). 7 CFR 250.30(d)

H. The FSMC agrees to comply with the storage and inventory management requirements for donated foods. 7 CFR 250.14(b)

I. The FSMC agrees to furnish the LEA, upon request, a certificate or other evidence of compliance with state or federal laws regarding contributions, taxes, and assessments on payrolls.

J. The FSMC agrees to comply with the LEA's free and reduce priced meal policies. The information cannot be used or possessed by the FSMC for any use other than to determine eligibility for free and reduced meals.

K. The FSMC will follow the LEA's established policy regarding marketing/advertising within school district buildings.

L. The FSMC will provide the LEA documentation showing their employees providing services for the school meal programs have completed the required Professional Standard training as required by the Healthy, Hungry-Free Kids Act of 2010. 7 CFR 210.30 and USDA memo SP 38-2016.

M. The FSMC will participate in the LEA's advisory board composed of parents, teachers, and students to assist in menu planning. 7 CFR 210.16(8)

2.3 Rights of LEA.

A. The LEA shall supervise and retain control of the FSMC's daily operation of the food service described in this agreement; retain control of the quality, extent, and general nature of the food service operation; and establish all program and non-program

meal and a la carte prices. Authorized representatives of the LEA shall have access to all portions of the food service facilities at all times, and shall monitor the performance of the FSMC under this agreement to ensure conformance with program regulations through periodic on-site visits. 7 CFR 210.16(a)(2)(3)(4); 2 CFR 200.318(b).

B. The LEA may make reasonable regulations with regard to all matters under its' supervision and control, and the FSMC shall comply with them as soon as reasonably possible after proper notification is given.

C. The LEA shall retain control of the school food service account and overall financial responsibility for the school nutrition program. 7 CFR 210.19 (a)(1).

D. The LEA shall retain signature authority on the Child Nutrition Program Food Services Agreement, Free and Reduced Price Policy Statement, and all claims for reimbursement. 7 CFR 210.9(a)(b); 210.16(a)(5).

E. The LEA shall be responsible for all contractual agreements entered into in connection with the school nutrition program. 7 CFR 210.21; 210.19(a)(1); and 2 CFR 200.318(k).

F. The LEA shall implement internal controls and ensure resolution of program review and audit findings. 7 CFR 210.8(a), 210.9(b)(17) ,210.18(k)(1)(2).

G. The LEA shall provide a 21-day cycle menu. The FSMC must adhere to the cycle menu for the first 21 days of meal service, and any changes made thereafter may be made only with approval of the LEA. 7 CFR 210.16(b)(1).

H. The LEA shall establish an advisory board composed of parents, teachers, and students to assist in menu planning. 7 CFR 210.16(a)(8).

I. The LEA shall maintain applicable health certification and be assured that the FSMC is meeting all state and local regulations in preparing and serving meals at the facilities. 7 CFR 210.16(a)(7).

J. The LEA shall distribute and collect the parent letter and application for free and reduced price meals. 7 CFR 245.6.

K. The LEA shall establish a policy for providing meals to students without adequate funds. The LEA policy will protect students by providing equal services to all students. The FSMC will defer to the LEA's policy in providing meals. The FSMC will bill the LEA for the meals served with the LEA payment from funds other than non-profit food service funds.

L. The LEA shall determine eligibility and verify applications for free and reduced price meal benefits and conduct any hearings related to such determinations. 7 CFR 245.6, 6a, 7, 10.

M. The LEA shall assure that the maximum amount of USDA donated foods are received and utilized by the FSMC. 7 CFR 210.9(b)(15).

N. The LEA shall ensure that only processors with National Processing Agreements (NPA) or State Participation Agreement (SPA) are used. 7 CFR 250.30(b)(c)(d).

O. The LEA shall retain title to donated foods. 7 CFR 210.16 (a) (6).

P. The LEA shall conduct a reconciliation at least annually (and upon termination of the contract) to ensure that the FSMC has credited it for the value of all donated foods received for use in the LEA food service in the school or fiscal year, including, in accordance with the requirements in § 250.51(a), the value of donated foods contained in processed end products. 7 CFR 250.54(c)

Q. The LEA shall ensure that the LEA employee serving as the Food Service Director has the required Professional Standards training in accordance with Healthy, Hungry-Free Kids Act of 2010. 7 CFR 210.30 and USDA memo SP 38-2016

R. The LEA shall ensure that the FSMC employees providing services for the LEA meal programs have completed the required Professional Standards training requirements in accordance with Healthy, Hungry-Free Kids Act of 2010. 7 CFR 210.30 and USDA memo SP 38-2016

ARTICLE III FOOD SERVICE PROGRAM

3.1 Location. The FSMC shall prepare and serve meals for the schools/sites listed in Appendix A. The LEA and the FSMC may agree to add other locations.

3.1(a) Programs. The FSMC shall prepare and serve meals for the LEA acting as a sponsor of the following USDA Child Nutrition Programs:

- National School Lunch Program (NSLP)
- School Breakfast Program (SBP)
- Child and Adult Care Food Program (CACFP)
- Summer Food Service Program (SFSP)
- Catering
- A la carte Sales
- Adult Meals
- After School Snack Program

The FSMC shall provide meals that meet all USDA meal pattern requirements as described in 7 CFR 210.10, 220.8, 225.15, and 226.20, as applicable.

3.2 Calendar. All meals will be provided in accordance with the approved calendar, as mutually agreed upon by the parties. For the first twenty-one (21) days of food service, FSMC will adhere to the 21-day cycle menu agreed upon by FSMC and the LEA. Changes in the menu may later be made with approval of the LEA. 7 CFR 210.16 (b) (1).

3.3 Meal Program. The FSMC shall provide nutritional, high-quality breakfasts, lunches, snacks, suppers, and a la carte food items in accordance with the following terms:

A. All reimbursable lunches, breakfasts, suppers and snacks shall meet the qualifications for USDA reimbursement as described in 7 CFR 210.10, and 220.8, 225.16 and 226.20, as applicable.

B. Prices to be charged for meals, and snacks during the current contract year shall be established by the LEA (7CFR 210.16(a)(4)).

C. The LEA shall administer the application process for all free and reduced price meals, and shall establish and notify parents and guardians of program criteria for eligible students. Both the LEA and the FSMC shall be responsible for protecting the anonymity of students receiving free or reduced price meals.

D. The FSMC shall collect gross sale receipts, on behalf of the LEA, for cash-paid meals, a la carte items, and vending items. Gross cash receipts shall be turned over daily to the LEA.

3.4 Nutrition Awareness Programs. In cooperation with the LEA, the FSMC shall conduct on-going nutrition awareness programs for students, teachers, parents, and other interested parties.

3.5 Special Diets. The FSMC shall supply special diets for students where medically necessary and when prescribed by licensed physician for disabled students, or medical practitioner, for non-disabled students, in accordance with USDA and ODE regulations, and approved in writing by the LEA.

3.6 Food Committee and Advisory Board. The FSMC shall cooperate with the LEA's Food Service Advisory Committee, consisting of students, parents, and LEA staff in developing menus and other food service programs. (7 CFR 210.16(8))

3.7 Catering. Upon request by the LEA, the FSMC shall provide catered food service at times and prices mutually agreed upon. For all LEA sponsored and third party functions catered by the FSMC, the FSMC may prepare and submit prenumbered invoices to appropriate administrators of the LEA and representatives of third party organizations, which shall pay the LEA directly. Such invoices will be submitted by the FSMC by the end of the current month. Any invoice payments received by the FSMC

shall be immediately delivered to the LEA's Accounting Department. The LEA shall be responsible for collecting amounts due on food service accounts receivable invoices. The FSMC shall provide the LEA with copies of invoices and an invoice control log within ten (10) days after the end of each month. Costs of catered functions shall not be supported by the nonprofit food service account funds.

3.8 Environmental Protection Agency Compliance. In performance of this agreement, the FSMC shall comply with Section 306 of the Clean Air Act, Section 508 of the Clean Water Act, Executive Order 117389, and EPA Regulations 40 CFR Part 15, et seq. Environmental violations shall be reported to the United States Department of Agriculture and US EPA Assistant Administrator for Enforcement, and the FSMC agrees not to utilize a facility listed on the EPA's "List of Violating Facilities."

3.9 Energy Policy and Conservation Act Compliance. The LEA and the FSMC shall recognize mandatory standards and policies relating to energy efficiency which are contained in the state conservation plan issued in compliance with the Energy Policy and Conservation Act.

3.10 Contract Work Hours and Safety Standards Act Compliance. In performance of this agreement, and as employer for those individuals set forth in Section 4.1, the FSMC shall comply with Sections 103 and 107 of the Contract Work Hours and Safety Standards Act.

3.11 Debarment Certification. The FSMC shall complete and submit to LEA the Certification Regarding Debarment. The LEA shall submit the certification to the Oregon Department of Education – Child Nutrition Programs with the contract for review.

3.12 Lobbying. Pursuant to section 1352, Title 31, US Code, the FSMC shall complete and submit to the LEA a Certificate Regarding Lobbying and a Disclosure of Lobbying Activities. The LEA shall submit the certification to the Oregon Department of Education – Child Nutrition Programs with the contract for review.

3.13 "Buy American" Provision. Section 104(d) of the William F Goodling Child Nutrition Reauthorization Act of 1998 requires schools and institutions participating in the National School Lunch Program (NSLP) and School Breakfast Program (SBP) in the contiguous United States to purchase, to the maximum extent practicable, domestic commodities or products that have been substantially produced and processed in the United States with nonprofit school food service account funds. Substantially means that 51% of the final processes product consists of agricultural commodities that were grown domestically. (7 CFR 210.21(d))

ARTICLE IV MANAGEMENT AND PERSONNEL

- 4.1 FSMC Management and Professional Employees. The FSMC shall provide a Chef and Director of Dining Services to manage the food service operations and supervise all food service workers.
- 4.2 Non-Management Employees. Except as set forth in Section 4.1, food service employees shall be employees of the LEA. The FSMC employees shall direct and supervise the LEA food service employees.
- 4.3 Student Workers. The LEA may have a policy of providing work experience for its students as part of the educational curriculum. In furtherance of that policy and as mutually agreed upon by the parties, the LEA may assign students for work in the food service operation in such numbers as are agreed upon between the LEA and the FSMC.
- 4.4 Payroll and Taxes. The FSMC shall prepare and process the payroll for and shall pay its employees directly. The FSMC further warrants that it shall withhold or pay as appropriate all applicable federal and state employment taxes and payroll insurance with respect to its employees, specifically including any income, social security, and unemployment taxes and workers' compensation payments.
- 4.5 Workers' Compensation Insurance. The FSMC shall procure Workers' Compensation Insurance or shall maintain a system of self-insurance in conformance with applicable state law covering its employees and shall provide proof of such coverage or system to the LEA.
- 4.6 Nondiscrimination. The contractor agrees to comply with (a) Title IV of the Civil Rights Act of 1964, (b) Section V of the Rehabilitation Act of 1973, (c) The Americans with Disabilities Act of 1990 and ORS.659.425, (d) all regulations and administrative rules established pursuant to the foregoing laws and (e) all other applicable requirements of federal and state civil rights and rehabilitations statutes, rules and regulations.

ARTICLE V INVENTORIES, FACILITIES, EQUIPMENT, AND MAINTENANCE

5.1 Inventories of Food and Supplies. Prior to the commencement of the term of this agreement, the existing food and operational supplies shall be delivered and charged to the FSMC for the performance of this agreement. The cost of food and operational supplies ordered by FSMC on behalf of the LEA in performance of this agreement shall be paid for by the FSMC. The inventory of food and operational supplies shall remain the FSMC'S property.

A. Any federally donated commodities received by the LEA and made available to the FSMC shall be used only for the benefit of the LEA'S nonprofit food service operation and must be fully utilized, including all donated ground beef and ground pork and all end products received from processors. Bonus commodity items must be used to reduce the cost of meals, but not replace purchased products. The value of USDA foods

is posted on Web-Based Supply Chain Management (WBSCM) system for direct delivery food products and the Summary End Product Data Schedules (SEPDS) set forth in the National Processing Agreement (NPA) or the State Processing Agreement (SPA) for processed end products. Notwithstanding the foregoing, if, upon termination of the Agreement, there remains USDA donated commodities that have not been used but have been credited (other than ground pork, ground beef, or processed end products), then the LEA shall cause the subsequent FSMC to pay Chartwells the credited value of such commodities. If this is not possible, Chartwells reserves the right to remove the commodities for use at an alternate, approved client site.

B. The FSMC may store and inventory donated foods and commercially purchased food together to the extent that the system ensures required use of donated foods.

C. FSMC representative must have authorization from LEA to have access to commodity ordering system and the name of authorized representative on file with the SA.

5.2 Smallwares. The FSMC shall furnish the necessary smallwares, including trays, dishes, glassware, flatware, serving utensils, and the like.

5.3 Office Facilities. The LEA shall provide, without cost to the FSMC, suitable office facilities, including furniture and equipment, for use by the FSMC in performance of this agreement. The FSMC shall take reasonable care of the office facilities and equipment, and shall return them to the LEA in good condition upon termination of this agreement, ordinary wear and tear excepted.

5.4 Sanitation. The FSMC shall be responsible for usual and customary cleaning and sanitation of the LEA's food service facilities.

- A. The FSMC shall be responsible for housekeeping and sanitation in areas used for food preparation, storage, and service, and shall clean and sanitize dishes, pots, pans, utensils, equipment, and similar items.
- B. The LEA shall be responsible for the required cleaning and maintenance of dining areas and snack bar seating areas beyond the front edge of the serving lines, as well as periodic cleaning of all ceilings, ceiling fixtures, air ducts, and hood vent systems (as per local ordinance). The LEA shall also provide and maintain adequate fire extinguishing equipment for food service areas, provide necessary pest control, and shall be responsible for the removal of refuse from refuse collection centers.
- C. If the LEA is unable to perform any of its responsibilities described in subparagraph B above, the FSMC shall temporarily assume those responsibilities and shall bill the LEA for any costs incurred.
- D. The FSMC shall be responsible for complying with all applicable federal,

state, and municipal laws related to food preparation and sanitation and all rules and regulations promulgated there under for any facility outside the school in which it prepares meals and at LEA facilities.7 CFR 210.16(c)(2).

E. The LEA shall be responsible for compliance relating to structural and equipment matters.

5.5 Maintenance. The LEA shall provide, at the LEA's expense, maintenance personnel and outside maintenance services, parts, and supplies required to properly maintain the food service facilities and equipment. If the FSMC is required by an outside maintenance service to make payment at the time of service, the LEA shall reimburse the FSMC for such payments made.

5.6 Condition of Facilities and Equipment. The LEA shall obtain necessary health permits and certification for its facilities. The premises and equipment provided by each party in performance of this agreement shall comply with all applicable building, safety, sanitation, and health laws; and shall satisfy all permit requirements, ordinances, rules, and regulations, including the federal Occupational Health and Safety Act of 1970 or applicable state act and standards promulgated thereunder. FSMC shall take reasonable and proper care of all premises and equipment in its custody and control and shall use them in a manner that will not cause violation of applicable laws, ordinances, rules, and regulations, including any reporting and record-keeping requirements. If at any time the FSMC is notified by an authorized government agency that the LEA's premises or equipment are not in compliance with any law, ordinance, rule, or regulation, the FSMC shall immediately inform the LEA of such notification.

5.7 Transportation Equipment and Vehicle. The LEA shall provide transportation vehicles and equipment to be used in the food service program. Maintenance, fuel, insurance, and equipment for transportation shall be the responsibility of the LEA.

5.8 Nonconforming Facilities and Equipment. The LEA shall make all repairs, alterations, modifications, or replacements which may be necessary to correct any conditions of premises or equipment which violate applicable building, sanitation, health, or safety law, ordinance, rule or regulation.

ARTICLE VI FINANCIAL AND PAYMENT TERMS

6.1 Billing for Fixed Price Per Meal. The LEA and the FSMC have mutually agreed upon the fixed price per meal as follows:

SBP

-Breakfast	\$2.03 per meal
-Meal Equivalents	\$2.03 per meal based on \$3.8625 rate

NSLP

-Lunch	\$2.03 per meal
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- Snack \$2.03 per snack
- Meal Equivalents \$2.03 per meal based on \$3.8625 rate

SFSP

- Breakfast \$2.03 per meal
- Lunch \$2.03 per meal
- Snack \$2.03 per snack

CACFP

- Breakfast \$2.03 per meal
- Lunch \$2.03 per meal
- Supper \$2.03 per meal
- Snack \$2.03 per snack

A la Carte, Catering, Non-Reimbursable Meal Sales

- Meal Equivalents \$3.8625 rate

A. Meal Equivalent Defined:

1. For fixed price per meal purposes, each reimbursable lunch shall be considered one (1) meal/meal equivalent, each reimbursable breakfast shall be considered one-third (1/3) of a meal/meal equivalent, and one reimbursable snack shall be considered one-fourth (1/4) of a meal/meal equivalent.

2. For cash meal sale other than reimbursable meals the number of meal equivalents shall be determined by dividing the total of all food sales except reimbursable meal and snack sales (including sales of adult meals, a la carte meals, snack bar, catering, conference, and any other function sales) by the sum of the current school year free meal reimbursement rate and the commodity value. (Example: The meal equivalency rate = \$2.72 plus \$0.2025 equals \$2.9225 and Lunch Equivalents = total Ala Carte dollars divided by \$ 2.9225).

B. The FSMC shall submit the following supporting documents to the LEA monthly:

- Daily meal counts by benefit category by school for each program
- Daily menu production records by program
- Monthly summary of Value of Commodities used
- Monthly summary of Revenues from other sales

C. Expenses paid by the FSMC and not charged to the LEA or the food service operations include, but are not limited to:

- Reports filed to the State
- Corporate income tax

D. **Crediting Value of Commodities Received by the LEA** – The FSMC must credit the LEA for the value of all donated food received, entitlement and bonus, for use in the LEA’s meal service during the school year. This includes the value of donated food contained in processed end products. The FSMC shall list on the invoice the value of commodities received, for the period and deduct the amount of value from the total owed by LEA for the NSLP meals served. The value of commodities for entitlement and bonus is the actual USDA purchase price as listed by ODE. For processed commodities it is the processing agreement value.

6.2 **Invoice Due Date.** LEA shall pay the FSMC within thirty (30) days from the FSMC's invoice date. If the LEA does not make a payment when due, the FSMC may charge interest or a late fee on the past due receivable; however, the LEA may not pay the interest or late fee with funds from the nonprofit school food service account funds, pursuant to 7 CPR 210.16(c).

6.3 **Operating Statements.** The FSMC shall submit monthly operating statements to the LEA by the fifteenth (15th) of the next month. This statement shall reflect all activity for the calendar month.

6.4 **Inspection of Books and Records.** The books and records of the FSMC pertaining to operations under this agreement shall be available to representatives of the LEA, state agency, the US Department of Agriculture, and the US General Accounting Office at any reasonable time and place.

6.5 **Renegotiation of Financial Terms** The fixed price per meal/lunch equivalent will be subject to an annual escalator provision, made at the time of contract renewal, based on the CPI For Food Away from Home. The specific CPI used is: CPI-U All Urban Consumers: US City Average Food Away From Home. Use the CPI for the 12 month period of March of 2020 to March of 2021.

6.6 **Financial Reconciliation.** Within ninety (90) days of the end of the school year, the parties shall complete a reconciliation of the annual operational financial report, which the report shall be signed by the parties as being true and correct.

6.7 **Guaranteed Subsidy.** The FSMC guarantees that the bottom line of the operational financial report (exclusive of the cost of equipment repairs, maintenance, replacements, and smallwares) for the 2020-2021 school year will reflect a loss no greater than \$259,000.00. If the actual bottom line (exclusive of the cost of equipment repairs, maintenance, replacements, and smallwares) results in a loss of greater than this amount, the FSMC will reduce its fee by the difference between the actual and the guaranteed amount, but in no event shall the reimbursement obligation exceed \$50,000.00. The Guaranteed Subsidy and the FSMC’s reimbursement obligation are based on the following conditions and assumptions. The Guaranteed Subsidy to the SPONSOR shall be reduced to account for increased cost or loss of revenue by FSMC if the following conditions are not met during the school year:

CONDITIONS:

- The continuing accuracy of information provided by the SPONSOR in the RFP, including value of USDA foods; cash and/or reimbursement levels from State and Federal sponsors; the number of students eligible for free and reduced price meals; and selling price of menu pattern meals and a la carte prices.
- Student on-site full-time enrollment of at least 4,465 and annual serving days for such students of at least 144.
- No changes in legislation or regulation (e.g., minimum wages, fringe and benefits, taxes, unionization, etc.) that would impact cost of FSMC to provide the services.
- No strikes, work stoppages or school closings, and all make-up days due to inclement weather shall have at least equal sales revenue as a normal day of operation.
- Service hours, service requirements, type and number of facilities selling food and/or beverages on SPONSOR premises remain constant throughout the school year. SPONSOR shall limit the expansion of competitive food sales.
- SPONSOR direct expenses will not exceed \$0.00, labor and benefit costs will not exceed \$1,293,974.
- Any capital commitments are utilized as proposed.
- There will be no bad debts, including losses from uncollectible accounts.

ARTICLE VII GENERAL TERMS AND CONDITIONS

7.1 Compliance with Law. The FSMC shall comply with all laws, ordinances, rules, and regulations of all applicable federal, state, county, and city governments, bureaus, and agencies, purchasing, sanitation, health, and safety of the food service operations. As applicable, the FSMC will comply with all requirements of the National School Lunch Program, the School Breakfast Program, the Special Milk Program, the Summer Food Service Program and the Child and Adult Care Food Program and shall procure and maintain all necessary licenses and permits. The LEA shall cooperate, as necessary, for the FSMC's compliance and procurement efforts.

7.2 USDA Child Nutrition Program. In order to assist the LEA participation in the following Child Nutrition Programs:

- ◆ National School Lunch Program (NSLP)
- ◆ School Breakfast Program (SBP)
- ◆ After School Snack Program
- ◆ Summer Food Service Program (SFSP)
- ◆ Child and Adult Care Food Program (CACFP)

A. No payment shall be made for meals or snacks that are spoiled or unwholesome at the time of service, or do not meet specifications developed by the LEA, or do not otherwise meet the requirements of this agreement. No deduction in payment shall be made by the LEA unless the LEA notifies the FSMC in writing within 48 hours of the meal service for which the deduction is to be made, specifying the number of meals for which a deduction is to be made and describing the reasons for the deduction.

B. FSMC will be paid by the Sponsor for all meals provided to the Sponsor in accordance with this Agreement. Neither the Oregon Department of Education (ODE) nor USDA will assume any liability for payment of differences between the number of meals prepared by Vendor for the Sponsor and the number of meals served by the Sponsor that are not eligible for reimbursement.

C. The FSMC shall maintain such records, for a period of not less than five (5) years, as are needed by the LEA to support its claims for federal and state reimbursements. The FSMC shall submit to the LEA a monthly meal reimbursement claim report including all meals served under all programs operated by the LEA for the LEA to submit to the Oregon Department of Education.

D. The FSMC shall make available, as required by state and federal regulations, all facilities, books and records pertaining to food service operations available for onsite review by the LEA, State Agency, the US Department of Agriculture, and the Comptroller General or their duly authorized representatives to ensure compliance with program requirements, management, and use of donated foods.

E. The FSMC must maintain the following records relating to the use of the donated foods:

- 1) The donated food and processed end product received from or on the behalf of the LEA for use in meal service.
- 2) Documentation that it has credited the LEA of the value of all donated food received for use in the LEA's food service in the school year, including the value of donated foods contained in processed products.
- 3) Documentation of the FSMC's procurement of processed end products on behalf of the LEA.

7.3 Comprehensive Insurance. The FSMC shall obtain and keep in force during this agreement, for the protection of the FSMC, Commercial General Liability for Bodily Injury and Property Damage in the combined single limit of no less than one million dollars (\$1,000,000) per occurrence and \$2,000,000 in the aggregate. This insurance policy shall include, but not be limited to, Personal Injury Liability, Broad Form Property Damage Liability or it's equivalent, Blanket Contractual Liability, and Products Liability, covering the operations of the FSMC under this agreement, and shall deliver to the LEA a certificate of insurance evidencing such policies and coverage within thirty (30) days after the execution of this agreement by the parties. This insurance policy shall contain a covenant/endorsement by the issuing company that this policy will provide thirty (30) day prior written notice of cancellation to the LEA. This policy shall also

include the LEA as an Additional Insured, but only with respect to operations of the FSMC under this agreement.

7.4 Waiver of Insurance Subrogation. Neither party has any obligation or responsibility for loss or damage to the other's real or personal property that is caused by fire, extended coverage perils, vandalism, or malicious mischief. The parties waive all rights of recovery against each other for loss or damage to the waiving party occasioned by any such peril insured against under any policies insuring the waiving party's real or personal property.

7.5 Trade Secrets and 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"). This Agreement shall be treated as 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.

7.6 Assignment. This agreement may not be assigned by either party, in whole or in part without consent of the other party. Either party may with prior written approval assign this agreement to any wholly-owned subsidiary without being released from any of its responsibilities. Subcontracting of food service management operation is prohibited.

7.7 Notice. Any notice or communication required or permitted under this agreement shall be in writing and shall be served personally or sent by US registered or certified mail, postage prepaid and return receipt requested, addressed to the other party as follows:

Notices to the LEA:

Three Rivers School District, OR
Attn: Lisa Cross
8550 New Hope Road
Grants Pass, OR 97527

Notices to the FSMC: Only one (1 notice sent to the FSMC. The FSMC is responsible for providing additional copies to others within their organizations.

To Chartwells: Compass Group USA, Inc.
By and through its Chartwells Division
ATTN: President-Schools
2 International Drive
Rye Brook, NY 10573
Facsimile No. (914) 935-5550

With a copy to: Compass Group USA, Inc.
ATTN: General Counsel
2400 Yorkmont Road
Charlotte, North Carolina 28217

Notices shall be effective when received. Sent notices will be considered received forty-eight (48) hours after they are deposited in the US mail.

7.8 Attorney's Fees. INTENTIONALLY DELETED

7.9 Indemnity. Except as otherwise expressly provided in this agreement, and within the limits of an subject to the restrictions in the Oregon Tort Claim Act and Article XI, Section 7 of the Oregon Constitution, each party shall indemnify, defend and hold 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 to the extent caused by the negligent act or omission of such party. 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.

7.10 Catastrophe. With the exception of payment obligations for prior performance under this agreement, neither party shall be liable for the failure to perform their respective obligations under this agreement when such failure is caused by fire, explosion, pandemic, epidemic, water, act of God or inevitable accident, civil disorder, strikes, vandalism, war, riot, sabotage, weather and energy related closings, or other like causes beyond the reasonable control of the party, nor for any real or personal property destroyed or damaged due to such causes. The FSMC shall resume food service operations as soon as possible.

7.11 Cure Period. Intentionally Deleted.

7.12 Termination.

A. Termination for Convenience: This contract may be terminated at any time by the mutual written consent of the parties. Either party may terminate this agreement without cause with not less than sixty (60) days written notice of the intention to terminate for convenience.

B. Termination for Cause: If either party breaches a material provision hereof (“Cause”), the non-breaching party shall give the other written notice of such Cause. If the Cause is remedied within thirty (30) days of receipt of notice, the notice shall be void. 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 upon expiration of such remedy period. In addition, the parties agree that nothing in this paragraph modifies the parties’ right to terminate this Agreement by giving sixty (60) days notice in accordance with Section 7.12(A). *7 CFR Part 3016*

C. At the point of termination the FSMC will surrender to the LEA all program records pertaining to the contract period and renewals. These documents include, but are not limited to: daily meal counts by meal benefit category by school/site for each program; monthly benefit issuance rosters with student start and withdrawal dates; and daily menu production records by program.

D. When a contract terminates and is not extended or renewed the FSMC must return all unused donated ground beef, donated ground pork, and processed end products to the LEA.

7.13 Remedy. Intentionally Deleted.

7.14 Rights Beyond Termination. The right of termination referred to in this agreement is not intended to be exclusive, and is in addition to any other rights available to either party at law or in equity.

7.15 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.

7.16 Amendments to the Agreement. Each of the Articles and Appendixes shall remain in effect throughout the term of this agreement unless the parties mutually agree, in a written document signed by both parties and attached to this agreement, to amend,

add, or delete an Article or Appendix. Any amendment to this agreement shall become effective at the time specified in the amendment.

7.17 Sanctions. For breach of the agreement and associated benefits:

A. The Oregon Department of Education shall be notified immediately of termination action and reason for termination.

B. The name of either party who has caused the breach shall be kept on record by the Oregon Department of Education for information and action if necessary when co-signing future agreements.

C. If the FSMC causes the breach, the LEA may plead and prove any damages allegedly caused by the FSMC's breach.

SO AGREED:

COMPASS GROUP USA, INC. by and through its Chartwells' Division

Print Name	Signature of FSMC Authorized Representative	Title	Date
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THREE RIVERS SCHOOL DISTRICT, OR

Print Name	Signature of LEA Authorized Representative	Title	Date
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Appendix A
Section 3.1
Schools/Sites

School
Hidden Valley HS
Illinois Valley HS
North Valley HS
Fleming MS
Lincoln Savage MS
Lorna Byrne MS
Applegate ES
Evergreen ES
Fort Vannoy ES
Fruitdale ES
Madrona ES
Manzanita ES
Williams ES