

**FOOD SERVICES MANAGEMENT AGREEMENT
BETWEEN
GENEVA COMMUNITY UNIT SCHOOL DISTRICT 304
AND
SODEXO AMERICA LLC**

This FOOD SERVICES MANAGEMENT AGREEMENT (“Agreement”), dated as of the last date affixed to the signatures below (the “Effective Date”), is made and entered into by and between the Board of Education of Geneva Community Unit School District 304 (the “District”), an Illinois public school district established under the Illinois School Code, 105 ILCS 10-1, *et seq.*, (the “School Code”) and Sodexo America LLC, (the “Service Provider” or “Provider”), a Delaware limited liability company registered to conduct business in Illinois. The District and Service Provider are each individually referred to herein as a “Party” and collectively as the “Parties.”

RECITALS

WHEREAS, the Service Provider provides management services relating to school food services operations and desires to enter into an agreement with the District to provide related services (“Services”) in accordance with the Request for Proposals (“RFP”) issued by the District on or about May 18, 2023, which is incorporated herein as “**Exhibit A**”;

WHEREAS, by submitting a response to the RFP on or about June 6, 2023, which is incorporated herein as “**Exhibit B**,” the Service Provider has agreed to provide the Services in accordance with the specifications, terms and other conditions described in the RFP or otherwise incorporated therein;

WHEREAS, on July 12, 2023, the District’s Board of Education approved the award of a contract to Service Provider to provide such Services as a result of the terms, conditions and representations made in Exhibit B;

NOW, THEREFORE, in consideration of the mutual agreements and understandings below, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows.

AGREEMENT

- 1. Incorporation of Recitals.** The recitals stated above are hereby incorporated into and made a part of this Agreement as if fully set forth herein.

- 2. Incorporation of Agreement Documents; Order of Precedence.** Exhibits A and B are incorporated into this Agreement, together with all terms and conditions contained therein, and shall be binding upon the Parties. To the extent of any conflict between this Agreement and Exhibit A or Exhibit B, Exhibit A shall control followed by Exhibit B and then this Agreement. This Agreement supersedes any previous agreements relating to the right to manage and operate Services for the benefit of the District. Notwithstanding the foregoing, any invoiced and unpaid

amounts due to Service Provider under any previous agreement shall remain due and payable.

3. Definitions. For purposes of this Agreement, the following terms shall have the meaning set forth herein.

- A. Accounting Period.** A period of a calendar month, twelve (12) of which shall constitute an accounting year.
- B. Catering/Special Functions.** Food and beverage service for meetings, conferences, dinners, parties or other functions requested by the District and as agreed by the Parties in writing.
- C. Charge.** A fee established by Service Provider for goods or services provided by Service Provider.
- D. Expendable Equipment.** Any expendable item used in the preparation and service of meals, such as pots, pans, and cooking and serving utensils used in providing the Services.
- E. Food Service.** The preparation, service and sale of food, beverages (including milk), goods, merchandise or other items in connection with the Services to be provided to the District, excluding any vending sales.
- F. Gross Sales.** All sales of food, beverages, goods, merchandise and services in connection with the Services to be provided to the District.

4. Services to be Provided. Service Provider will provide the Services according to the specifications, terms and conditions set forth in Exhibits A and B. In performing the Services, Service Provider will perform the Services in a good and workmanlike manner, and provide a dedicated management and leadership team to deliver the Services in strict conformance with, and as necessary to carry out, the Service Provider's obligations under Exhibits A and B. With respect to such Services, the Parties further agree to the following.

- A. Locations.** Service Provider shall provide Services relating to the District's Food Service at all locations identified in Exhibits A and B. All food prepared by Service Provider in connection with the Food Service shall be prepared at the District's facilities, in accordance with specifications and as required by applicable local, state or federal laws and regulations. The Service Provider shall not use the District's facilities to produce food, meals, or services for other organizations or otherwise use the District's facilities for any reason other than those specifically provided for in the Agreement. The District shall have, with or without notice, for any purpose, including but not limited to audit and inspection access, to all District facilities used by the Service Provider.
- B. Meal Pricing.** Prices to be charged for meals, a la carte items, snack foods and beverages in connection with the Food Service during each contract year shall be as mutually agreed upon by the Parties. Service Provider shall serve free, reduced-price, and paid meals and/or free milk to those children designated by the District.

- C. Inventories of Food, Beverages and Supplies.** Service Provider shall purchase, maintain and own inventories of food, beverages, goods, merchandise and supplies sufficient to perform the Services in accordance with the specifications, terms and conditions set forth in Exhibits A and B.
- D. Liability for Injury and Damages.** The Service Provider shall be responsible and liable for any physical, personal injury or property damage caused by its employees, contractors, agents and representatives in carrying out Services under this Agreement, or the maintenance and operation of any equipment in connection therewith.
- E. Expendable Equipment and Smallwares.** The District shall furnish, replace and own all Expendable Equipment and Smallwares required for the operation of the Food Service.
- F. Other Equipment.** If the Service Provider requires or desires to install any equipment for the purpose of providing Food Services, the District shall meet and confer with the Service Provider regarding the installation, use and ownership of such equipment during the Term of this Agreement. At the sole discretion of the District, Service Provider may purchase from Service Provider any such equipment upon expiration of the Term of this Agreement.
- G. Office Facilities.** The District, at its expense, shall provide employees of the Service Provider suitable office facilities, including customary furniture and equipment necessary for the management of Food Service operations. Service Provider shall take reasonable care of the office facilities, furnishings and equipment, and return the same to the District in good, working condition upon termination of the Agreement, ordinary wear and tear excepted. The Service Provider shall be responsible for the cost of any repair, service or replacement of the District's equipment and furnishings during its occupancy of such facilities resulting from damage caused by the Service Provider or its employees.
- H. Sanitation.** Service Provider shall be responsible for maintaining proper sanitary procedures to ensure that facilities used in connection with the Food Service are clean and maintained in accordance with all applicable local, state and federal laws and regulations for food safety and sanitation. Service provider shall further be responsible for all aspects of sanitation associated with the Food Service, including ensuring food preparation is carried out in a safe, sanitary manner and cleaning and sanitizing all storage areas, service areas and equipment. Service Provider shall be solely responsible for ensuring all refuse is transported to designated refuse collection areas.
- I. District Policies.** At all times, Service Provider and its employees, contractors, agents and representatives shall comply with all policies and procedures adopted by the District and its Board of Education, including without limitation its Free and Reduced Meal and Local Wellness policies.
- J. Confidentiality of Student Information.** The Service Provider shall protect the anonymity of all children receiving free or reduced-price meals. Further, methods for ensuring anonymity shall be jointly agreed upon, by the Parties provided that nothing in

this paragraph shall be construed to relieve the Service Provider of its independent obligation to protect the anonymity of all children receiving free or reduced-price meals and to provide the required quality and extent of goods and services hereunder. Any record created by Service Provider in the courses of providing Services that relates to identifiable students shall be deemed a school student record and shall be maintained in accordance with the Illinois School Student Records Act (“ISSRA”) and the Family Educational Rights and Privacy Act (“FERPA”). Further, Service Provider agrees to comply with all other state or federal legislation concerning privacy or confidentiality of records, including but not limited to health or student records. The parties will notify one another if there are known breaches of this confidentiality.

K. Performance Review. The District may conduct performance reviews of the Service Provider’s performance under the Agreement. Any Services performed under the Agreement shall be subject to performance reviews conducted by the District. The Service Provider shall cooperate with the District in these reviews, which may require the Service Provider to provide records of its performance. Performance reviews may be used by the District to determine, including without limitation, whether to enter into future contractual relationships with the Service Provider, including subsequent Agreement Renewal Terms, as applicable.

L. Training. The Service Provider shall administer training, conduct new hire orientation, manage compliance and sanitation licensure processes, promote continuous learning environment and ensure delivery of professional development for food service staff. Training shall include, but not limited to, civil rights, sexual harassment, professional standards regulations, the point-of-sale (“POS”) system, how to operate kitchen equipment, food safety and sanitation.

5. Independent Contractor. Notwithstanding the terms and conditions of this Agreement, the Service Provider shall be an independent contractor in their relationship to the District, and nothing contained herein shall render the Service Provider an employee, partner, agent of, joint employer or joint venturer with the District for any purpose. The Service Provider and its employees shall have no claim against the District hereunder or otherwise for vacation pay, sick leave, retirement benefits, social security, worker’s compensation, health or disability benefits, unemployment insurance benefits, or employee benefits of any kind.

6. Service Provider Employees.

A. Employment Liability. Each Party hereto shall be solely responsible for all claims asserted by or on behalf of the employees on their respective payrolls, including employment and personnel actions (such as wrongful termination, discrimination, etc.) and claims arising out of injuries occurring on the job.

B. Sufficient Staffing. The Parties recognize that sufficient staffing to ensure Services are performed in accordance with the specifications, terms and conditions described herein is a material obligation of Service Provider, and Service Provider shall be responsible for the employment of all staff necessary for the safe, timely, and efficient distribution of meals

to students and members of the District's staff. The Service Provider shall maintain the same minimum level of employee positions, hours, wages, and benefits as stipulated in Exhibits A and B throughout the entire Term of this Agreement, and each subsequent Term, as applicable, unless a reduction in the required levels is authorized by the District. The Service Provider shall provide the District with written notice of any increases or decreases in employee positions, hours, wages, and benefits.

- C. Supervisory Staffing.** The Service Provider shall provide daily, on-site supervisory personnel dedicated solely to ensuring the quality of Services performed for the District in connection with Food Service. The District retains final approval authority for the Service Provider's local management position(s).
- D. Removal of Employee.** Upon written request of the District, the Service Provider will immediately remove any Service Provider employee who violates health requirements or conducts himself or herself in a manner which is detrimental to the physical, mental, or moral well-being of students or staff, or otherwise violates the District's policies, procedures, and practices. In the event of the removal or suspension of any employee, the Service Provider shall immediately restructure its staff without disruption in service.
- E. Wages and Hours.** The Service Provider shall comply with all wage and hour requirements of state and federal law, including without limitation the Fair Labor Standards Act (29 U.S.C. § 201 *et seq.*) and the Illinois Minimum Wage Law (820 ILCS 105/1-15).
- F. Criminal Background Checks.** The Service Provider shall ensure, at its own expense, required fingerprint-based criminal history records checks are conducted on all Service Provider employees assigned to the District and results are provided to the District pursuant to the Illinois School Code, 105 ILCS 5/10-21.9, unless such employee was previously employed by the District and has record of a completed background check meeting the requirements of this section that has been retained by the District or is otherwise available to Service Provider. Furthermore, the Service Provider is not permitted to employ on the premises of the District any employee who has been convicted of an offense as described in 105 ILCS 5/21-23a. For each of its employees, the Service Provider shall perform periodic checks of the Statewide Sex Offender Database, as authorized by the Sex Offender Community Notification Law (730 ILCS § 152/101 *et seq.*), and the Statewide Child Murderer and Violent Offender Against Youth Database, as authorized by the Child Murderer and Violent Offender Against Youth Community Notification Law (730 ILCS § 154/75-105). All results must be provided to the District.
- G. Communicable Diseases.** The Service Provider shall ensure that all individuals performing services on the Service Provider's behalf in or for schools shall be free from communicable diseases, including tuberculosis, and administered a tuberculosis screening test if they have a documented positive tuberculosis screening test result or otherwise meet the requirements for tuberculosis screening as set forth in the Illinois Department of Public Health's rules (77 Ill. Adm. Code 696.140), prior to performing any such services in or for schools, and shall ensure that all such individuals comply with all requirements established by the Illinois Department of Public Health.

H. Compliance with Faith’s Law Required. In providing such Services, without any limitation to requirements otherwise contained in Exhibit A and in addition thereto, and as required under 105 ILCS 5/22-94 (“Faith’s Law”), Service Provider shall perform an Employment History Review either at the time of initial hiring of an employee or prior to the assignment of an existing employee or person to perform work for the District in a position involving direct contact with children or students. The Employment History Review must be performed using the template developed by the State Board of Education, which can be found at <https://www.isbe.net/educatorquality>. The Employment History Review shall remain valid as long as the employee remains employed by Service Provider, even if assigned to perform work for other school districts. “Direct contact with children or students” is defined under Faith’s Law as “the possibility of care, supervision, guidance, or control of children or students or routine interaction with children or students.” Service Provider shall maintain records documenting the Employment History Reviews for all employees as required by Faith’s Law and shall provide the District access to the Employment History Review documents for any person assigned to perform work at the District on behalf of Service Provider within five (5) days of a written request by the District.

Prior to assigning any employee to perform work for the District, Service Provider shall inform the District of any instance known to Service Provider, either as a result of the Employment History Review or otherwise, in which the assigned person.

Has been the subject of a sexual misconduct allegation unless a subsequent investigation resulted in a finding that the allegation was false, unfounded, or unsubstantiated;

Has ever been discharged, been asked to resign from, resigned from, or otherwise been separated from any employment, been removed from a substitute list, been disciplined by an employer, or had an employment contract not renewed due to an adjudication or finding of sexual misconduct or while an allegation of sexual misconduct was pending or under investigation, unless the investigation resulted in a finding that the allegation was false, unfounded, or unsubstantiated; or

Has ever had a license or certificate suspended, surrendered, or revoked due to an adjudication or finding of sexual misconduct or while an allegation of sexual misconduct was pending or under investigation, unless the investigation resulted in a finding that the allegation was false, unfounded, or unsubstantiated.

Service Provider shall not assign any person to perform work for the District in a position involving direct contact with children or students if the District objects to the assignment after being informed of an instance listed above. Additionally, Service Provider may not assign any person to the District to provide services involving direct contact with children or students if such person failed to complete the Employment History Review authorization as required by law.

As evidence that all requirements under Faith’s Law have been complied with, Service Provider shall provide the District certification that they have conducted the Employment History Review pursuant to Faith’s Law for any person assigned by Service Provider to provide services to the District prior to the commencement of any work covered by this contract. This certification shall verify that all employees assigned to the District have no known history of sexual misconduct. Further, The Service Provider must certify that all persons assigned by Service Provider to the District are eligible for employment pursuant to Faith’s Law.

7. Service Costs and Fees. This Agreement shall be at no Charge or other cost to the District, and Service Provider shall be entitled to all revenues received from operation of the Food Service Program and its Gross Sales less any amounts that the District shall be entitled to as a percentage of Gross Sales from such sales, as set forth in the schedule below:

Revenue Sharing Schedule		
School Year	Percentage of Gross Sales	Anticipated Return
2023-24	2.0%	\$47,028
2024-2025	2.5%	\$61,725
2025-2026	3.0%	\$77,773
2026-2027	3.0%	\$81,662
2027-2028	3.0%	\$85,745

The District may, from time to time, request and Service Provider shall provide additional services relating to Catering/Special Functions. The Parties shall agree to any additional Charge for such Services prior to Service Provider performing such Services and may, by written agreement, agree that such Charges should be offset from amounts owed to the District for that portion of revenue from Gross Sales due and owing for the Accounting Period during which such Services were required as a result of the Catering/Special Functions. If Service Provider enters into a third-party agreement for the provision of food or services relating to Catering/Special Functions or any other Services to be provided hereunder, Service Provider shall provide the District with any contract, agreement, purchase order or other such instrument related to the provision of food or services prior to the negotiation of Charges for such Services.

All amounts due to the District from Gross Sales must be paid within thirty (30) days following the end of the Accounting Period during which such Gross Sales were made, and Service Provider shall not have a right to offset any amounts, claims or other indebtedness claimed due from the District without express written permission of the District. The Anticipated Return to the District included in the table above is for illustrative purposes only.

8. Licenses, Permits, Certifications and Taxes. Throughout the Term of the Agreement and any renewal thereof, the District shall, with the assistance of Service Provider, obtain, maintain and pay for all applicable licenses, permits, and health certifications required by federal, state, and local law in connection with the Services. The Service Provider shall have state or local health certification for any facility outside the District in which it proposes to prepare meals, if applicable, and must maintain this health certification during the term of this Agreement. To the extent

applicable, the Service Provider and all affiliates shall collect and remit Illinois Use Tax on all sales of tangible personal property in the State of Illinois in accordance with Section 10-20.21(b) of the School Code (105 ILCS 5/10-20.21(b)) and the Illinois Use Tax Act (35 ILCS 105/1 et seq.).

9. Term and Termination.

A. Term and Termination by District. The Agreement shall be effective for a five-year period commencing July 1, 2023, and expiring on June 30, 2028, unless renewed thereafter at the sole discretion of the District. This Agreement can be terminated by the District with sixty (60) days' written notice.

B. Termination for Default. If the Service Provider fails to perform to the SFA's satisfaction any material requirement of this Agreement or is in violation of a material provision of this Agreement, the District shall provide written notice to the Service Provider requesting that the breach of noncompliance be remedied within thirty (30) days. If the breach or noncompliance is not remedied by such time, the District may either: (a) immediately terminate the Agreement without additional written notice or, (b) enforce the terms and conditions of the Agreement. In either event, the District may seek any available legal or equitable remedies and damages. Further, in the event of a default by the Service Provider, the District reserves the right to complete the Services contemplated by this Agreement by whatever method the District may deem expedient, including by contracting with third parties. Any damages or costs incurred by the District as a result of any default by the Service Provider, or the completion of Services following such default, shall be borne by the Service Provider at its sole cost and expense and shall be reimbursed to the District by the Service Provider upon demand.

10. Indemnification. To the fullest extent permitted by law, Service Provider hereby agrees to indemnify, defend, and hold harmless the District, its board members, administrators, principals, teachers, employees, staff members, agents, attorneys, and all other representatives, from any and all claims, causes of action, demands, suits, damages, expenses, losses, or any other liability of any nature, including attorneys' fees and court costs, whether alleged under common law or statute, whether alleged as a breach of contract or tort, which relate in any way to, arise from, are the result of, or are in any way connected with Service Provider's actual or alleged breach of the Agreement, or one or more of Service Provider's acts or omissions in performing services under the Agreement, including all acts and omissions of any person engaged by Service Provider in connection with providing Services to the District.

11. Insurance. Service Provider shall at all times during the term of this Agreement maintain at least those insurance coverages identified in Exhibit A.

12. Miscellaneous Provisions.

A. Severability. If any provision of this Agreement is held invalid for any reason, the other provisions of this Agreement will remain in effect, insofar as consistent with law.

B. Amendments; Waivers. The Agreement may only be modified by a written amendment

authorized and executed by all parties to the Agreement.

- C. Notices.** All notices, requests, demands, and other communications hereunder shall be in writing and shall be deemed to have been duly given if delivered personally or if sent by courier, registered or certified mail, return receipt requested, properly addressed and postage prepaid, by email and upon the receipt by the sending party of written confirmation by the receiving party; provided, however, that email confirmation of delivery or read receipt shall not constitute such confirmation; or by overnight mail by a reputable carrier, and addressed as follows.

TO Service Provider: **Sodexo America LLC**

TO District: **Todd Latham
Geneva CUSD 304
227 N. Fourth Street
Geneva, IL 60134**

or at any other address as may be given by either party to the other by notice in writing pursuant to the provisions of this Section.

- D. Non-Discrimination.** Service Provider agrees that it is an equal opportunity employer, and it shall not discriminate against any of its employees or applicants for employment on the basis of race, color, creed, sex, national origin, age, or any other protected factor. Further, the Service Provider shall comply with shall comply with Title VI of the Civil Rights Act of 1964, as amended; USDA regulations implementing Title IX of the Education Amendments of 1972; Section 504 of the Rehabilitation Act of 1973; Age Discrimination Act of 1975; the Illinois Human Rights Act, and all other applicable state and federal laws and regulations.
- E. Authority.** Each Party to this Agreement represents and warrants to the other that. (a) it has the right, power and authority to enter into and perform its obligations under this Agreement and (b) it has taken all requisite action (corporate, statutory or otherwise) to approve execution, delivery and performance of this Agreement, and (c) this Agreement constitutes a legal, valid and binding obligation upon itself in accordance with its terms.
- F. Interpretation and Applicable Law.** This Agreement shall be subject to, and enforceable under, the laws of the State of Illinois, and any dispute arising out of this Agreement shall be submitted to a court of competent jurisdiction in Kane County, Illinois.
- G. Binding; No Third-Party Beneficiaries.** This Agreement shall inure to and bind all parties, their successors, assigns, agents or representatives. There are no third-party beneficiaries of this Agreement.
- H. Signature in Counterparts or Facsimile.** This Agreement may be signed in counterparts,

each of which shall be deemed to be a fully executed original. An original signature transmitted by facsimile shall be deemed to be original for purposes of this Agreement.

- I. Force Majeure.** The Agreement may be suspended by either party upon the occasion of an event beyond the control and without the fault or negligence of the party claiming inability to perform its obligations and which party is unable to prevent or provide against by the exercise of reasonable diligence. Such event may include, without limitation, acts of God, riots, governmental condemnation of real property, changes in applicable law, floods, droughts, fires, explosions, terrorism, war, criminal behavior, or other catastrophes causing damage or destruction, in whole or in part, to the equipment or property necessary to perform the contract, or failure or refusal by a regulatory or other agency to act upon or grant permits or licenses.
- J. Titles and Captions.** All article, section and paragraph titles and captions contained in this Agreement are for convenience only and are not deemed a part of the context hereof.
- K. Language Construction.** The language of this Agreement shall be construed in accordance with its fair meaning and not for or against any party except as expressly stated herein. The parties acknowledge that each party and its counsel have reviewed and had the opportunity to participate in the drafting of this Agreement and, accordingly, that the rule of construction that would resolve ambiguities in favor of non-drafting parties shall not apply to the interpretation of this Agreement.
- L. Payment of Fees.** In the event of a dispute arising under this Agreement finally resolved through litigation or alternative dispute resolution, the prevailing party shall be entitled to recover reasonable attorneys' fees and costs, determined by a court of competent jurisdiction.
- M. Interpretation; Omissions.** Any silence, absence, or omission from the Agreement specifications concerning any point shall be regarded as meaning that only the best commercial practices are to prevail, and all materials, workmanship, and services rendered shall be of a quality that would normally be specified by the District.
- N. No Waiver.** No course of dealing or failure of the District to enforce strictly any term, right, or condition of this Agreement shall be construed as a waiver of such term, right, or condition. No express waiver of any term, right, or condition of this Agreement shall operate as a waiver of any other term, right, or condition.
- O. Entire Agreement.** This Agreement contains the entire agreement between the parties. All prior negotiations between the parties are merged in this Agreement, and there are no understandings or agreements other than those incorporated or referred to herein. This Agreement may not be modified except by an instrument in writing signed by Service Provider and the District. This Agreement may not be assigned by either party without the written consent of the other party. Consent to an assignment to a wholly owned subsidiary or affiliate of the assignor shall not be unreasonably withheld.

IN WITNESS WHEREOF, the Parties to this Agreement have executed this Agreement as of the

day and year first written above.

GENEVA CUSD 304

SODEXO AMERICA LLC

By _____

By _____

Name _____

Name _____

Title _____

Title _____

Date _____

Date _____