

FOOD SERVICE AGREEMENT

THIS AGREEMENT is made and entered into as of this _____, by
and between

THE SCHOOL BOARD OF BROWARD COUNTY, FLORIDA
(hereinafter referred to as "SBBC"),
a body corporate and political subdivision of the State of Florida,
whose principal place of business is
600 Southeast Third Avenue, Fort Lauderdale, Florida 33301

and

SMART SCHOOL, INC.
(hereinafter referred to as "SCHOOL"),

WHEREAS, the SCHOOL is desirous of obtaining food services for a School Breakfast and Lunch Program (hereinafter referred to as "Program") from SBBC and SBBC is willing to provide such services.

NOW, THEREFORE, in consideration of the premises and of the mutual covenants contained herein and the sum of Ten Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereby agree as follows:

ARTICLE 1 - RECITALS

- 1.01 **Recitals.** The Parties agree that the foregoing recitals are true and correct and that such recitals are incorporated herein by reference.

ARTICLE 2 - SPECIAL CONDITIONS

- 2.01 **Effective Date.** The effective date of this Agreement shall be August 18, 2008.

- 2.02 **Term.** The term of this Agreement shall be from August 18, 2008 through June 5, 2009.

2.03 **Meal Service** SBBC will provide the SCHOOL snacks that meet the minimum meal pattern requirements for the Program as to components and portion sizes. Snacks will be provided to the sites listed on Exhibit "A". The School will pick up snacks from a location designated by SBBC. The cost of each snack will be \$.75.

2.04 **Meal Reports.** SBBC'S Food and Nutrition Services Department will maintain full and accurate records specifying menu records and identifying the amount of food prepared.

2.05 **Program Compliance.** The SBBC will be responsible for monitoring the program to provide technical assistance and ensure program compliance.

- 2.06 **Meal Deposits/Invoices.**

Deposits: A deposit is required for any SCHOOL that was delinquent in payments at any time during the prior 12 months. A deposit based on one month's projected meal service will be required to be paid to the Food and Nutrition Services Department before meal service is to begin. The deposit will be held until the end of the contract and all invoices have been paid. At that time the deposit will be returned to the SCHOOL.

Invoices: SBBC's School Food Accounting Department will send an invoice to the SCHOOL each month setting forth the amounts payable to SBBC for the snacks provided. The invoice shall be based upon food delivery reports generated by SBBC's Food and Nutrition Services Department. The SCHOOL will pay SBBC the invoiced amount within ten (10) days of receipt of the invoice. Failure to pay the invoiced amount within ten (10) days and/or a delinquent account may result in termination of meal service. SBBC'S records regarding snacks and the SCHOOL'S Program participation shall be open to inspection and audit by the SCHOOL and its designees upon reasonable advance notice.

2.07 **Audits.** With regard to any inspection or audit of records pursuant to this Agreement, each Party agrees that the other Party and its designee(s) shall have full access to inspect and copy any records reasonably necessary for the conduct of such inspection and audit. Such inspection shall be conducted at the place where such records are usually kept and during normal business hours. The Parties agree that all records maintained concerning the duties, responsibilities and obligations imposed under this Agreement shall be kept in Broward County, Florida. Each Party agrees to provide a reasonable sufficient workspace for the use of the inspecting or auditing Party's personnel during such inspection or audit. Each Party agrees to cooperate with the inspecting or auditing Party and its designee(s) during the course of an inspection or audit. The costs of any such inspection or audit shall be borne by the Party requesting the inspection or audit.

2.08 **Indemnification.** Each Party agrees to be fully responsible for its acts of negligence, or its agent's acts of negligence when acting within the scope of their employment and agrees to be liable for any damages resulting from said negligence.

2.09 **Background Screening.** The SCHOOL agrees to comply with all requirements of Sections 1012.32 and 1012.465, Florida Statutes, and that the SCHOOL and all of its personnel who (1) are to be permitted access to school grounds when students are present, (2) will have direct contact with students, or (3) have access or control of school funds will successfully complete the background screening required by the referenced statutes and meet the standards established by the statutes. This background screening will be conducted by SBBC in advance of the SCHOOL or its personnel providing any services under the conditions described in the previous sentence. The SCHOOL will bear the cost of acquiring the background screening required by Section 1012.32, Florida Statutes, and any fee imposed by the Florida Department of Law Enforcement to maintain the fingerprints provided with respect to the SCHOOL and its personnel. The Parties agree that the failure of the SCHOOL to perform any of the duties described in this section shall constitute a material breach of the Agreement entitling SBBC to terminate immediately with no further responsibilities or duties to perform under this Agreement. The SCHOOL agrees to indemnify and hold harmless SBBC, its officers and employees from any liability in the form of physical or mental injury, death or property damage resulting in the SCHOOL'S failure to comply with the requirements of this section or Sections 1012.32 and 1012.465, Florida Statutes.

ARTICLE 3 - GENERAL CONDITIONS

3.01 **No Waiver of Sovereign Immunity.** Nothing contained in this Agreement, including but not limited to the Indemnification section of Article 2, is intended to serve as a waiver of sovereign immunity by any agency to which sovereign immunity may be applicable.

3.02 **No Third Party Beneficiaries.** The Parties expressly acknowledge that it is not their intent to create or confer any rights or obligations in or upon any third person or entity under this Agreement. None of the Parties intend to directly or substantially benefit a third Party by this Agreement. The Parties agree that there are no third Party beneficiaries to this Agreement and that no third Party shall be entitled to assert a claim against any of the Parties based upon this Agreement. Nothing herein shall be construed as consent by an agency or political subdivision of the State of Florida to be sued by third Parties in any manner arising out of any contract.

3.03 **Non-Discrimination.** The Parties shall not discriminate against any employee or participant in the performance of the duties, responsibilities and obligations under this Agreement because of race, age, religion, color, gender, national origin, marital status, disability or sexual orientation.

3.04 **Termination.** This Agreement may be canceled by SBBC without cause and for convenience that will proceed during the term thereof upon thirty (30) days written notice to the SCHOOL of SBBC'S desire to terminate this Agreement.

3.05 **Records.** Each Party shall maintain its own respective records and documents associated with this Agreement in accordance with the records retention requirements applicable to public records. Each Party shall be responsible for compliance with any public documents request served upon it pursuant to Section 119.07, Florida Statutes, and any resultant award of attorney's fees for non-compliance with that law.

3.06 **Entire Agreement.** This document incorporates and includes all prior negotiations, correspondence, conversations, agreements and understandings applicable to the matters contained herein and the Parties agree that there are no commitments, agreements or understandings concerning the subject matter of this Agreement that are not contained in this document. Accordingly, the Parties agree that no deviation from the terms hereof shall be predicated upon any prior representations or agreements, whether oral or written.

3.07 **Amendments.** No modification, amendment, or alteration in the terms or conditions contained herein shall be effective unless contained in a written document prepared with the same or similar formality as this Agreement and executed by each Party hereto.

3.08 **Preparation of Agreement.** The Parties acknowledge that they have sought and obtained whatever competent advice and counsel as was necessary for them to form a full and complete understanding of all rights and obligations herein and that the preparation of this Agreement has been their joint effort. The language agreed to herein expresses their mutual intent and the resulting document shall not, solely as a matter of judicial construction, be construed more severely against one of the Parties than the other.

3.09 **Waiver.** The Parties agree that each requirement, duty and obligation set forth herein is substantial and important to the formation of this Agreement and, therefore, is a material term hereof. Any Party's failure to enforce any provision of this Agreement shall not be deemed a waiver of such provision or modification of this Agreement. A waiver of any breach of a provision of this Agreement shall not be deemed a waiver of any subsequent breach and shall not be construed to be a modification of the terms of this Agreement.

3.10 **Compliance with Laws.** Each Party shall comply with all applicable federal and state laws, codes, rules and regulation in performing its duties, responsibilities and obligations pursuant to this Agreement.

3.11 **Governing Law.** This Agreement shall be interpreted and construed in accordance with and governed by the laws of the State of Florida. Any controversies or legal problems arising out of this Agreement and any action involving the enforcement or interpretation of any rights hereunder shall be submitted to the jurisdiction of the State courts of the Seventeenth Judicial Circuit of Broward County, Florida.

3.12 **Binding Effect.** This Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective successors and assigns.

3.13 **Assignment.** Neither this Agreement nor any interest herein may be assigned, transferred or encumbered by any Party without the prior written consent of the other Party. There shall be no partial assignments of this Agreement including, without limitation, the partial assignment of any right to receive payments from SBBC.

3.14 **Force Majeure.** Neither Party shall be obligated to perform any duty, requirement or obligation under this Agreement if such performance is prevented by fire, hurricane, earthquake, explosion, wars, sabotage, accident, flood, acts of God, strikes, or other labor disputes, riot or civil commotions, or by reason of any other matter or condition beyond the control of either Party, and which cannot be overcome by reasonable diligence and without unusual expense ("Force Majeure"). In no event shall a lack of funds on the part of either Party be deemed Force Majeure.

3.15 **Place of Performance.** All obligations of SBBC under the terms of this Agreement are reasonably susceptible of being performed in Broward County, Florida and shall be payable and performable in Broward County, Florida.

3.16 **Severability.** In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, unlawful, unenforceable or void in any respect, the invalidity, illegality, unenforceability or unlawful or void nature of that provision shall not effect any other provision and this Agreement shall be considered as if such invalid, illegal, unlawful, unenforceable or void provision had never been included herein.

3.17 **Notice.** When any of the Parties desire to give notice to the other, such notice must be in writing, sent by U.S. Mail, postage prepaid, addressed to the Party for whom it is intended at the place last specified; the place for giving notice shall remain such until it is changed by written notice in compliance with the provisions of this paragraph. For the present, the Parties designate the following as the respective places for giving notice:

To SBBC: Superintendent of Schools
The School Board of Broward County, Florida
600 Southeast Third Avenue
Fort Lauderdale, Florida 33301

With a Copy to: Director of Food and Nutrition Services
7720 West Oakland Park Boulevard, Suite 204
Sunrise, Florida 33351

To SCHOOL: Ms. Sonia Martinez
Smart School
3020 N. W. 33rd Avenue
Lauderdale Lakes, FL 33311

3.18 **Captions.** The captions, section numbers, article numbers, title and headings appearing in this Agreement are inserted only as a matter of convenience and in no way define, limit, construe or describe the scope or intent of such articles or sections of this Agreement, nor in any way effect this Agreement and shall not be construed to create a conflict with the provisions of this Agreement.

3.19 **Authority.** Each person signing this Agreement on behalf of either Party individually warrants that he or she has full legal power to execute this Agreement on behalf of the Party for whom he or she is signing, and to bind and obligate such Party with respect to all provisions contained in this Agreement.

3.20 **Excess Funds.** Any Party receiving funds paid by SBBC under this Agreement agrees to promptly notify SBBC of any funds erroneously received from SBBC upon discovery of such erroneous payment or overpayment. Any such excess funds shall be refunded to SBBC with interest calculated from the date of the erroneous payment or overpayment. Interest shall be calculated using the interest rate for judgments under Section 55.03, Florida Statutes, applicable at the time the erroneous payment or overpayment was made by SBBC.

IN WITNESS WHEREOF, the Parties hereto have made and executed this Agreement on the date first above written.

FOR SBBC

(Corporate Seal)

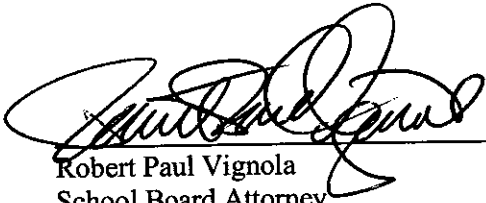
THE SCHOOL BOARD OF BROWARD
COUNTY, FLORIDA

By _____
Robin Bartleman, Chair

ATTEST:

Approved as to Form and legal content:

James F. Notter
Superintendent of Schools



Robert Paul Vignola
School Board Attorney

FOR SCHOOL

(Corporate Seal)

SMART SCHOOL, INC.

By *Edward W. Miller*
Edward W. Miller
Chief Executive Officer

ATTEST:

(Please Print)

(Signature)

-OR-

Betty Messal
Witness (please print)

Betty Messal
(Signature)

Fernanda L. Taylor
Witness (please print)

F. L. Taylor
(Signature)

The Following Notarization is Required for Every Agreement Without Regard to Whether the School Chose to Use a Secretary's Attestation or Two (2) Witnesses.

STATE OF Florida
COUNTY OF Broward

The foregoing instrument was acknowledged before me this 17th day of July, 2008 by Edward W. Miller of Smart School, Inc
Name of Person
Name of Corporation or Agency on behalf of the corporation/agency.

He/She is personally known to me or produced _____ as
Type of identification

identification and did/did not first take an oath.

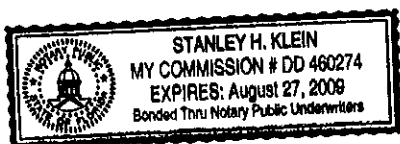
My Commission Expires:

Stanley H. Klein
Signature - Notary Public

Stanley H. Klein
Printed Name of Notary

DD 460244
Notary's Commission No.

(SEAL)



SMART SCHOOL, INC.

Smart School
3698 N.W. 15th Street
Lauderhill, FL 33311

Eagle Academy
3020 N.W. 33rd Avenue
Lauderhill, FL 33311

Smart School High
3020 N.W. 33rd Avenue
Lauderhill, FL 33311