

FOOD SERVICE AGREEMENT

THIS AGREEMENT is made and entered into as of this 10/1/08, 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

SUNSHINE ELEMENTARY CHARTER 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 meals that meet the minimum meal pattern requirements for the Program as to components and portion sizes. Meals will be provided to the sites listed on Exhibit "A".

Meal Application Processing Fee - \$3.00 per application.

There are three (3) meal plan options available.

- The meal rates for Option I and Option II are listed in Section 2.04 A. Schedule One Meal Rates.
- The meal rate for Option III is listed in Section 2.04 B. Schedule Two Meal Rates.

Option I

Bulk Hot Food – Breakfast and Lunch

In order to select this option the SCHOOL must be in compliance with Health Department Requirement (see Special Condition 2.05).

Option II

Pre-packaged cold meal breakfast and lunch.

Option III

Pre-packaged meals –breakfast and hot lunch (Contingent upon vendor availability.)

For Meal Options I and III

If the hot meal program is less than 100 lunch meals daily, there will be a \$120.00 per day charge to provide the required staff.

SBBC’S Food and Nutrition Services Department will determine the length of the meal serving times based on the number of meals served.

August 15, 2008 is the deadline for the school to meet all requirements in the agreement in order to receive food beginning August 18, 2008, unless arrangements have been made with the Food and Nutrition Services Department, Broward County School District.

2.04 Meal Rates

A. Schedule One Meal Rates for Options I & II *

- 1. Meal Rates. Based on student eligibility Meal/Price Categories are free, reduced and full paid.
- 2. Delivery Fee: \$.65 added to all Breakfast and Lunch Meals
- 3. Administrative Fee: \$.45 added to all Breakfast and Lunch Meals

School	Breakfast		Lunch		Snack	
	Reduced	Paid	Reduced	Paid	Reduced	Paid
Elementary	.30	1.60	.40	2.15	.15	1.00
Middle	.30	1.70	.40	2.50	.15	1.00
High	.30	1.70	.40	2.65	.15	1.00
Adults		2.10		3.15		1.25

Note: The SCHOOL is charged a Delivery Fee and Administrative Fee for all meals provided (free, reduced and paid). The SCHOOL may not pass these fees on to free and reduced students. The SCHOOL may set the meal prices for full paid students and adults.

A SCHOOL serving pre-packaged cold meals may pick up meals from the production site in which case, there will be no delivery charge. Based on a variety of factors, the Food and Nutrition Services Department may not be able to offer the option of delivered pre-packaged cold meals, in which case the SCHOOL would be required to pickup the meals.

Example of a full paid elementary lunch meal delivered to the SCHOOL:

Meal	\$2.15
Delivery	\$.65
Administrative Fee	<u>\$.45</u>
Total	\$3.25

B Schedule Two Meal Rates Options III & IV *

1. Meal Rates. Based on student eligibility Meal/Price Categories are free, reduced and full paid.
2. Delivery Fee: \$.65 added to all Breakfast and Lunch Meals
3. Administrative Fee: \$.45 added to all Breakfast and Lunch Meals

School	Breakfast		Lunch		Snack	
	Reduced	Paid	Reduced	Paid	Reduced	Paid
Elementary	.30	1.85	.40	2.60	.15	1.00
Middle	.30	2.00	.40	2.90	.15	1.00
High	.30	2.00	.40	2.90	.15	1.00
Adults		2.40		3.30		1.25

Note: The SCHOOL is charged a Delivery Fee and Administrative Fee for all meals provided (free, reduced and paid). The SCHOOL may not pass these fees on to free and reduced students. The SCHOOL may set the meal prices for full paid students and adults.

Example of a full paid elementary lunch meal delivered to the SCHOOL:

Meal	\$2.60
Delivery	\$.65
Administrative Fee	<u>\$.45</u>
Total	\$3.70

*These charges do not include the extra \$120.00 per day labor charges if the Hot Meal Program is less than 100 lunch meals daily.

2.05 Health Department Requirements. The Broward County Health Department regulations for transporting meals to offsite locations.

1. To receive and serve hot food prepared in bulk, each location must have the following commercially approved equipment (household equipment not acceptable).
 - a. Steam table with a sneeze guard
 - b. Adequate warmer and oven space (Safety Department may require a hood over the oven) to accommodate the meals served
 - c. Three compartment sink with hot and cold running water
2. All sites receiving food of any type must have the following equipment.
 - a. Hand wash sink, in the food preparation and serving area, with hot and cold running water
 - b. Janitorial sink
 - c. Dumpster pad with drain and water supply
 - d. Restroom convenient to the serving area
 - e. Refrigeration
3. All schools contemplating providing food service either by preparing food on premises or having food catered by a third party must submit a floor plan, including equipment layout and a site plan, to the Broward County Health Department, attention Mr. Imad Madi, R.S. Environmental Specialist II, 954-467-4237, prior to commencing any food service operations.
4. All facilities must meet all of Broward County Health Department (BCHD) requirements and be permitted prior to operating.

Note: Contact SBBC'S Food and Nutrition Services Department prior to purchasing equipment to insure that commercial equipment will support the volume of meals served at your SCHOOL. Your SCHOOL must also meet the requirements stated in 2.05 - #3 and #4.

2.06 **Additional Equipment Requirement.** In addition to the Health Department Requirement SBBC'S Food and Nutrition Services Department has requirements for the SCHOOL serving hot food. The following list is a guide and additional equipment may be needed.

Milk cooler	Small kitchen supplies (pans, serving utensils)
Ice cream freezer	Garbage can and lid
Stainless steel worktable	Industrial can opener
Key Pad/Cash register and stand	Wiring between cash register and computer.
Modem line	Printer/Computer and locking cabinet to store both.
Software Licensing	

2.07 **U.S.D.A. and D.O.E. Regulations.** Any school previously removed from this agreement for non-compliance, will not be permitted to participate in future agreements with the Food and Nutrition Services Department. Any school found not in compliance with United States Department of Agriculture (U.S.D.A.) and Department of Education (DOE) regulations will have the Child Nutrition Program removed from the school or will be required to pay a fine to cover the cost of disallowed meals. *The sale of foods other than food provided by the approved Child Nutrition Program during meal service times is prohibited.* Schools are required to restrict student access to concession, extra sales, vending and fundraisers that are in direct competition with the Child Nutrition Program during meal services anywhere on campus. If income from such sales occurs, the revenue is required to be deposited into the Child Nutrition account.

When the SCHOOL enters into this agreement, SBBC'S Food and Nutrition Services Department becomes the sole provider of meals to the SCHOOL. Meals will be provided on all school days students are in session according to the School Board of Broward County's 180 day School Calendar. The SCHOOL may not pick and choose which days they want SBBC'S Food and Nutrition Services to provide meal service.

2.08 **Inspections:** SBBC'S Food & Nutrition Services Department requires the SCHOOL to have an on-site inspection by the SBBC'S Safety Department prior to initiating Food Service. The SBBC'S Food & Nutrition Services Department will conduct an on-site review to assure all necessary requirements are met prior to providing food services.

2.09 **Sanitation Reports:** The SCHOOL must satisfactorily complete quarterly health inspections each year and submit a copy to the Food & Nutrition Services Manager.

2.10 **Permits:** The SCHOOL is required to have a Broward County Health Department Food Service Operating Permit and submit a copy of the permit to the coordinator of the Food and Nutrition Services Department no later than August 15, 2008.

2.11 **Meal Accountability.** The SCHOOL will follow required procedures for assuring accuracy at the point of service and comply with all federal, state, and local rules and procedures pertaining to the administration of the program.

2.12 **Free and Reduced Price Meal Application Processing.** The SCHOOL will be responsible for distributing Free and Reduced Price Meal applications to all students and reviewing applications for completeness before forwarding to the Food and Nutrition Services Department for approval of students receiving free and reduced price meals. The designee who reviews applications for completeness will attend the pre-school workshop provided by the SBBC.

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

2.14 **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 and the daily number of meals delivered by type. SBBC will provide meal reports to the SCHOOL promptly at the end of each month. SBBC will retain such records for a period of three (3) years from the date of receipt of final payment under this agreement (or longer, if SBBC has been notified of an audit in progress). Upon request, SBBC will make all accounts and records pertaining to the Program available to representatives of the United States Department of Agriculture and the General Accounting Office for audit or administrative review at a reasonable time and place.

2.15 **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 meals provided along with applicable fees and costs of all meals contained in this contract. The invoice shall be based upon food delivery reports generated by SBBC's Food and Nutrition Services Department, money collected at the SCHOOL and applicable fees and costs. 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 the delivery of meals and the SCHOOL'S Program participation shall be open to inspection and audit by the SCHOOL and its designees upon reasonable advance notice.

2.16 **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.

2.17 **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.

2.18 **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: Dr. Steve Montes
Sunshine Elementary Charter School
2210 Pierce Street
Hollywood, FL 33020

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)

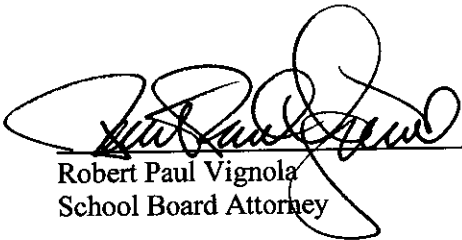
THE SCHOOL BOARD OF BROWARD
COUNTY, FLORIDA

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)

SUNSHINE ELEMENTARY CHARTER SCHOOL, INC.

By *Dr. Steve Montes*
Dr. Steve Montes
Principal

ATTEST:

Laurie Manning
(Please Print)
Laurie Manning
(Signature)

-OR-

Witness (please print)

(Signature)

Witness (please print)

(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 18th day of July, 2008 by Dr. Steve Montes of Sunshine Elem Charter on behalf of the corporation/agency.
Name of Person
Name of Corporation or 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:

Laurie Manning
Signature - Notary Public

Laurie Manning
Printed Name of Notary

DD 612527
Notary's Commission No.



Exhibit A

SUNSHINE ELEMENTARY CHARTER SCHOOL, INC.

Sunshine Elementary Charter School
2210 Pierce Street
Hollywood, FL 33020