

ADDENDUM TO FSMC CONTRACT
BETWEEN BROOKFIELD PUBLIC SCHOOLS
AND
WHITSONS NEW ENGLAND, LLC
SY 2022-2023

This is an Addendum to the Food Service Management Contract (“Contract”), dated as of July 1, 2022, between Brookfield Public Schools (“SFA”) and Whitsons New England, LLC (“FSMC” or “Whitsons”). All Section and Paragraph references herein contained refer to the Sections and Paragraphs of the Contract.

SECTION III: Food Service Program

3.5 Add the following language to the end of this paragraph:

“The medical statement shall be provided to the SFA and shall specify the food(s) to be omitted from the child’s diet and the specific substitutions needed. The SFA shall communicate information to the FSMC to allow it to prepare such requested special diets. Any additional cost incurred to provide substitutions shall be considered allowable costs of the food service program, and the SFA shall reimburse the FSMC therefor.”

3.7 In the second line of this Paragraph, after “mutually agreed upon”, add the following language:

“by the parties. The SFA shall use its best efforts to give at least ten (10) days written notice prior to the date of the function.”

At the end of the third sentence of this paragraph, after the words “by the end of the month in which services were rendered”, add the words “, and SFA shall pay the FSMC within fifteen (15) days from receipt of such invoice.”

SECTION V: Equipment

5.5 In the second line of this paragraph, before the word “acceptable”, insert the word “reasonably”. Delete the word “accepted” at the end of this paragraph and replace with “excepted.”

5.7 Delete “, wear and tear accepted” from this paragraph, and replace with:

“, except for any loss occasioned by ordinary wear and tear or damage by the elements or other cause beyond the reasonable control of the FSMC.”

SECTION VI: Facilities

- 6.1** After “water”, add “, telephone, high speed internet or wi-fi connections” in this paragraph.
- 6.3** In the second sentence of this paragraph, delete “and be reimbursed” and replace with:
“, and the FSMC shall be reimbursed for the cost of its own staff to be utilized at said functions. Said cost shall not be considered an expense of the food service program.”
- 6.6** Add the following after the first sentence of this paragraph:
“The office shall have a lock a key (to be provided to the Food Service Director) and a locking file cabinet.”

SECTION VII: Sanitation and Safety

- 7.8** At the beginning of this paragraph, before the first sentence, add the following:
“The SFA shall provide, at its expense, all necessary waste receptacles, including those required for the proper recycling of all waste materials (including without limitation, to the extent applicable, food waste, plastic and paper) as required by Federal, State and/or local law and shall be responsible for the removal of refuse from the designated refuse collection area.”
- 7.13** At the end of the last sentence of this paragraph, add the following language:
“and the SFA shall take prompt corrective action to ensure the safety of the FSMC’s employees.”

SECTION VIII: Employees

- 8.7** Add “or equivalent insurance” after “fidelity bond” in the last sentence of this paragraph.
- 8.13** Add the following language at the end of this paragraph:
“It is understood and agreed that background checks and fingerprinting for all existing employees (including employees formerly employed by the predecessor FSMC) have already been completed and information regarding same was provided to the SFA, and new background checks and fingerprinting shall not be required for such employees, except to the extent required by law.”
- 8.15** Add a new Paragraph 8.15 at the end of this Section as follows:
“The SFA shall use its best efforts to notify FSMC in advance of any anticipated closing due to inclement weather or other emergency. If advance notice is not given and/or a

decision is made by the SFA to delay opening or close the Facility after FSMC's employees have already reported to work, any labor costs incurred by FSMC (including under applicable collective bargaining agreements) as a result of such closing (including early dismissal) or delayed opening shall be charged to the SFA as an Operating Expense of the Food Service Program. For purposes of this paragraph, it is understood and agreed that notification by way of radio or TV announcement, in accordance with the SFA's established policy, shall constitute sufficient advance notice to the FSMC, and the FSMC shall be responsible for directing its employees to tune in to the applicable radio or TV channels for information regarding inclement weather or emergency closing."

8.16 Add a new Paragraph 8.16 at the end of this Section as follows:

"During the term of this Contract and for one year thereafter, SFA shall not solicit to hire nor cause to be hired, whether as an employee or consultant, any FSMC management/professional employees (including without limitation any Vice President, District Manager, Food Service Director, Supervisor, Chef, Nutritionist or Dietitian) who have worked at the SFA's facilities in the SFA's food service operations to work for the SFA in a similar capacity at the SFA's food service facility, nor will SFA knowingly permit the employment of said individuals by any successor food service management company in the SFA's food service operation. SFA further covenants and agrees not to hire such management/professional employees, nor allow any of them to work in the SFA's food service operations or at the food service facility for any successor food service management company or otherwise, for a period of one (1) year following the date of such employee's termination of employment with FSMC. In the event of a breach of the above covenants by SFA within such time periods, then SFA in recognition of FSMC's considerable investment in attracting and training such employee agrees to pay a fee to FSMC of two times the annual salary of said employee as liquidated damages. Said fee shall become due and payable upon the commencement date of employment with SFA or the date that such person commences work in the SFA's food service operations for any successor food service management company."

SECTION IX: Free and Reduced Lunch Policy and Charging Policy

9.3 At the end of the second sentence of this paragraph, delete "the FSMC with a written copy" and insert:

"a written copy of this policy to the FSMC's Food Service Director at the beginning of each school year and at any time this policy is modified."

Add another sentence at the end of this paragraph as follows:

"FSMC shall have no liability whatsoever for implementing the policy in accordance with SFA's instructions."

SECTION XI: Food Inventory, Storage and Procurement

11.4 At the end of the second sentence of this paragraph, add the following language:

“, except for any difference due to loss occasioned by ordinary wear and tear and damage by the elements or other cause beyond the reasonable control of the FSMC.”

11.5 At the end of the last sentence of this paragraph, add the following language:

“, with an appropriate adjustment for normal wear and tear and equipment lifetime expectancies, and except where such shortages are caused by the negligence or willful misconduct of the SFA (its employees or agents) or losses due to fires or other casualties (including without limitation loss of electric power) not caused by the FSMC.”

SECTION XII: Financial Accounting, Reporting Systems, Records, and Payment Terms

12.3 At the end of the first paragraph of this section, add the following language:

“, or if otherwise incurred at the direct request of SFA.”

12.8 Add the following at the end of this paragraph:

“The FSMC shall invoice the SFA monthly for the actual direct costs of operation (plus Management Fee and Administrative Fee) incurred at the close of each month of program operation. Invoiced amounts shall be due and payable within thirty (30) days after submission of invoice and supporting documentation. The SFA shall promptly notify FSMC of any disputed amounts that do not pass audit and the reason for such dispute. The SFA and FSMC agree to cooperate with each other diligently and in good faith to resolve all such disputes in a timely manner. In any event, the SFA shall promptly pay that portion of any invoice that is undisputed (including Management and Administrative Fees). Some of the food products sold to the SFA in connection with the Food Service Program hereunder may be “Perishable Agricultural Commodities” within the meaning of the Perishable Agricultural Commodities Act, 1930 (7 U.S.C. 499e(c)) (“**PACA**”). Where applicable, (a) such food products are sold subject to the statutory trust authorized by section 5(c) of PACA and (b) FSMC retains a trust claim over these commodities and all inventories of food or other products derived from these commodities until full payment from SFA is received. In the event that FSMC incurs legal expense in enforcing its right to receive timely payment of invoices, SFA agrees to pay FSMC’s reasonable attorney’s fees and other costs, provided that such fees and costs shall not be paid out of the non-profit food service account.”

12.10 A. Add to the end of this subparagraph A the following:

“as well as the actual and direct costs for the wages, payroll taxes (e.g. FUTA, FICA, SUI, disability, worker’s compensation, etc.), and benefits of the non-

management employees on the FSMC’s payroll that provide services under this Contract.”

B. Add the following language to the end of this subparagraph before the first bullet point:

“set forth under 2 CFR §200 Subpart E, including the following:

Add the following bullet points to this subparagraph B:

- the cost of any performance bond required under this Contract
- Sales and use tax, if applicable
- Technology expenses, including without limitation hardware, software and licensing fees
- Fingerprinting and background checks as required
- Repairs to equipment not otherwise performed by SFA
- Vehicle cost and operating expense (including fuel charges, maintenance and insurance)
- Office supplies, printing, postage and telephone expense
- Depreciation of FSMC Investment, if any
- Other expenses necessary for the operation of the Child Nutrition Program, as mutually agreed.”

“In furtherance, but not in limitation of the foregoing, payroll-related taxes (e.g. FUTA, FICA, SUI, disability, worker’s compensation, etc.) and business insurance expenses (e.g. comprehensive liability, property, umbrella, etc.) will be invoiced at the fixed rate set forth in the FSMC’s Proposal or current school year’s food service budget approved by the SFA.”

L. In the first sentence immediately before the “assumptions” in this Paragraph L, the reference to paragraphs “12.11 A-E above” is hereby corrected to “12.10 A-E above.”

1. Assumptions. Add Assumptions in this paragraph as follows:

- “d. reimbursement rates for National School Lunch Program and National School Breakfast Program meals, as the case may be, will not be less than the rates estimated in FSMC’s Proposal (for the Initial Term) or in effect for any prior school year (for any Renewal Term), and the Program will receive the \$0.07 federal reimbursement increase published by the USDA and the Connecticut \$0.10 healthy certification reimbursement;
- “e. any changes to the number of serving periods, locations, serving times and types of service from that listed in the RFP will be discussed and mutually agreed by the SFA and FSMC to ensure limited impact on the food service and cost of the food service program;

- “f. the student enrollment for the Initial Term will not be less than 90% of the enrollment set forth in the RFP (where the RFP specified 855 students in the elementary Schools, 790 students in the Middle Schools, and 903 students in the High Schools);
- “g. the level of wages, salaries, fringe benefits and health costs will not exceed those proposed and listed in the FSMC’s Proposal (for Initial Term) or proposed budget (for Renewal Term);
- “h. the actual costs charged to the Food Service budget by the SFA shall not exceed the projected operating expenses as set forth in the approved operating budget;
- “i. service will not be interrupted as a result of fire, work stoppage, strike or school closing;
- “j. The cost of milk shall remain constant throughout the Term;
- “k. selling prices of Menu Pattern Meals and A-La-Carte selections will be not less than those included in the RFP or the applicable operating budget;
- “l. SFA and its representatives, including but not limited to, school principals, teachers and SFA employees, shall fully cooperate with the FSMC in the implementation of the Food Service Program;
- “m. There shall be no competitive food and beverage sales immediately prior to, after or during the meal service times, and the SFA shall fully cooperate with FSMC to limit the expansion of competitive food sales in order to maximize the gross receipts and other non-cash sales of the Food Service Program, and to ensure that any such competitive sales are in compliance with Federal, State and local law;
- “n. Legislation, regulations and SFA’s Wellness Policy or practice shall remain consistent with those at the time of the original RFP;
- “o. To the extent applicable, SFA shall reasonably approve FSMC’s recommended changes relating to food service staff levels and/or staff schedules based on the operational needs of the Food Service Program, provided that, when the FSMC is making recommendations, it shall also provide a justification and information on the financial impact of the recommended changes, as reasonably requested by the SFA;

- “p. The SFA shall have timely submitted and certified all claims for reimbursement, except where such failure or delay is due solely to an act or omission of FSMC;
- “q. FSMC has not taken into account the effect of meals and/or snacks distributed under the SFA’s humanitarian meal policy in establishing the Guarantee. Any meals and/or snacks distributed under such policy that would negatively affect the Guarantee will result in an appropriate adjustment thereof; and
- “r. There shall be no change in any other operational parameters set forth in the RFP that would have a material adverse impact on the Guarantee.

“If there is a change in the above-described conditions and assumptions during the Term (a “Changed Condition”), the Operating Budget and Guarantee shall be adjusted by an amount equivalent to any increased cost or loss of revenue attributable to the Changed Condition. The FSMC will issue a credit on the final invoice of the contract year for any shortfall in the Guarantee, and to the extent the shortfall exceeds the amount of the final invoice, pay to the SFA any shortfall of the Guarantee within thirty (30) days after the end of the applicable contract year. In the event that a dispute exists in good faith as to whether a Changed Condition existed or affected the Guarantee, the FSMC may withhold the payment of the disputed amount and agrees that it shall work with the SFA to promptly resolve such dispute and any shortfall shall be paid within ten (10) days after such dispute has been resolved.”

M. Renegotiation of Financial Terms. At the beginning of the first paragraph of this subsection M, insert the following language:

“Except as contemplated in Section 12.10.H and 12.10.L hereof,”

At the end of the first paragraph of this subsection M, add the following language:

“, it being understood and agreed, however, that the occurrence of a Changed Condition shall not be considered foreseeable and predictable and may give rise to renegotiation of financial terms.”

SECTION XVI: Contract Term, Renewal and Termination

16.8 Delete the reference to “Paragraph 16.8” and replace it with “Paragraph 16.7”.

SFA:

BROOKFIELD PUBLIC SCHOOLS

By: _____

Name: _____

Title: _____

Date: _____

FSMC:

WHITSONS NEW ENGLAND, LLC

By: Beth Buuster


Name: Beth Bunster

Title: CFO

Date: 2022-08-29

Signature Certificate

Reference number: NRHUX-R4PN7-MUOSC-VPM2F

Signer	Timestamp	Signature
Beth Bunster Email: bunsterba@whitsons.com		
Sent:	29 Aug 2022 17:32:07 UTC	
Viewed:	29 Aug 2022 17:33:36 UTC	
Signed:	29 Aug 2022 17:40:16 UTC	
Recipient Verification:		IP address: 69.27.254.25
✓ Email verified	29 Aug 2022 17:33:36 UTC	Location: Ronkonkoma, United States

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