

SCHOOL LUNCH SERVICE CONTRACT (STANDARD)

This agreement is made on April 6, 2016, between **NOB HILL CATERING, INC.**, a California corporation DBA **The LunchMaster**, with its principle place of business at 601 Taylor Way, San Carlos, California 94070 (hereinafter “Nob Hill”) and San Carlos School District located at the following locations, (hereinafter “Client”)

Arundel School	200 Arundel Road, San Carlos, CA 94070
Brittan Acres School:	2000 Belle Avenue, San Carlos, CA 94070
Arroyo School	1710 Arroyo Avenue, San Carlos, CA 94070
Central Middle School:	757 Cedar Street, San Carlos, CA 94070
Heather School:	2757 Melendy Drive, San Carlos, CA 94070
Tierra Linda School:	750 Dartmouth Avenue, San Carlos, CA 94070
White Oaks School:	1901 White Oak Way, San Carlos, CA 94070
San Carlos School District:	1200 Industrial Road, Unit B, San Carlos, CA 94070

RECITALS

Nob Hill is in the business of providing school lunch services to students and their families. Client is desirous of engaging the services of Nob Hill to provide a school lunch program for the benefit of Client on the terms and conditions set forth herein.

Therefore, in consideration of the mutual promises set forth below, the parties agree as follows:

AGREEMENT

1. **Term.** The term of this Agreement shall commence on August 24, 2016, and shall continue in full force and effect until June 14, 2017 unless otherwise terminated pursuant to the termination provisions of this Agreement. Notice of intent to terminate shall be given by a party desiring to terminate this contract a minimum of sixty days (without cause) or thirty days (with cause) prior to the initial termination date of this contract. Notice of intent to terminate shall be given in the manner set forth in Paragraph 16 below. The Pricing Grid, Exhibit B hereto, shall be modified and attached hereto as a modification of this contract from time to time.

2. **Services Provided.** Nob Hill agrees to institute a school lunch program at the facility operated by Client and in connection therewith agrees to provide the following services:

A. Prepare and disseminate to students a nutritious and diversified school lunch menu.

B. Prepare and disseminate a method for menu review, ordering and payment online.

C. Prepare and institute a program for identification of students who have ordered and paid for meals in a reasonable and efficient manner to be agreed upon.

D. Perform such other tasks as may be reasonable and necessary as agreed upon in connection with institution and performance of a school lunch program.

E. Provide Snack Sheet for all 7 campuses to identify allergens in snacks.

3. **Delivery, Charges and Billing.**

A. The basic price per meal served shall be established pursuant to the Pricing Grid attached hereto and marked as Exhibit B. The prices set forth on the Pricing Grid shall be valid and shall remain in force without change for the entire term of this Agreement as set forth in Paragraph 1 above. Any deviation from the Price Grid set forth on Exhibit A hereto shall be agreed upon in writing signed by both parties.

B. The Parties shall agree upon the specifics regarding the meals to be served. Attached hereto and marked as Exhibit A is a completed Meal Service Detail form. The Meal Service Detail set forth therein shall be effective during the term of this contract unless replaced upon mutual agreement of the parties. Any deviation from the Meal Service Detail set forth on Exhibit A shall be set forth in a written agreement signed by both parties.

C. The prices set forth on Exhibit B shall include those items as agreed upon and set forth on Exhibit B. Only those specifically described items shall be offered at the price set forth. Free of charge or reduced charge meals shall be billed at the rate set forth on Exhibit B. Client shall be for free of charge or reduced charge meals on each invoice to match the K-8 lunch meal pricing set forth on Exhibit B. Any additional items requested shall be subject to separate charges and billing.

D. Client shall advise the Nob Hill account representatives Michael Giouzelis and Michael Ng of any change in Client's scheduling which may impact meal delivery, including but not limited to dates of service, time of delivery and the like, a minimum of 14 calendar days in advance of any such scheduling change. In the event that Client is not aware of scheduling changes within sufficient time to give the notice required in this paragraph, Client shall give notice of the change immediately, upon said information becoming available to Client, no later than 4:00 p.m. on the date that the client becomes aware of the change. Nob Hill shall use its best efforts to accommodate client with respect to schedule changes. In the event that notice of a schedule change is given in an untimely manner, and Nob Hill is unable to cancel, Client shall pay all fees associated with any such order. Notice shall be given by email and pursuant to the provisions of Paragraph 16 below.

E. Each meal delivery shall be accompanied by an assortment of beverage items in such a manner that there shall be one beverage available for each individual for whom a meal is provided. However, the beverage items shall be in the form of an assortment of the items available on each delivery date. Therefore, there can be no guarantee that each individual will receive his or her preferred beverage item on any particular delivery date. With respect to free of charge or reduced charge meals, it is understood that due to applicable regulations milk shall be supplied as the sole available beverage.

F. It is policy of Nob Hill to provide meals in excess of the number ordered by Client in order to be certain that there is no “shortage” of meals as a result of a clerical error, additional need and the like. Client agrees, however, that any extra meals consumed by Client or its representatives, in excess of those meals actually ordered, shall be billed at the price set forth in Exhibit A. As to any client using a “drop off” service, the school shall be responsible for tracking the identity of any student who shall have received an extra meal. In the event that student desiring service has not been approved to receive an extra meal, Nob Hill will provide shelf stable items which may be used in an emergency. Client or the student, as the case may be, shall be billed accordingly. In the event that there shall be food items remaining on site after all meals ordered are served, said food items shall be returned to Nob Hill and shall be re-inventoried or disposed of as is appropriate. It shall be responsibility of Client to advise school personnel and volunteers that “extras” are available for consumption only upon payment therefore.

G. Nob Hill shall provide appropriate utensils, bags and condiments for use with menu items as is appropriate. A maximum of two condiment packages per meal item ordered shall be provided. Client agrees to assist Nob Hill to ensure that only individuals ordering meals shall use utensils and condiments provided on each delivery date.

H. A Nob Hill Catering designated warehouse employee will be responsible for checking warming ovens, cold cabinets, cows, and all other equipment that is used on a daily basis; for any (broken cabinets, faulty plugs, broken wheels, faulty equipment, etc.... Any issues will be reported to Michael Giouzelis, equipment, will either be fixed or replaced.

I. Client agrees that all Nob Hill owned equipment necessary to provide the school lunch service shall be stored at a reasonably safe location on the school premises. Client shall undertake reasonable precautions to ensure that Nob Hill owned equipment shall be safe from theft, damage or other loss. Client staff and volunteers shall undertake reasonable steps to protect the Nob Hill owned equipment used in drop off deliveries, including placing switches in the “off” position upon termination of usage. Any damage to Nob Hill equipment occasioned by lack of reasonable care in the use of said equipment shall be reimbursed to Nob Hill by Client on presentation of documentation reasonably establishing the cost of repair.

4. **Online Payment.** It is understood that the basic price meal service shall be paid directly by students, parents, guardians and/or state funded programs, a means of billing and paying for said meals shall be instituted, online; to the reasonable satisfaction of Nob Hill and Client. Specific procedures for posting of the menu, ordering and payment shall be agreed upon by the parties and shall be implemented by Nob Hill. With respect to free or reduced price meal program participants, Client shall be responsible for placing the meal order on their behalf. In the event that Client desires to provide the option to the families participating in the free or reduced price meal program to order online, Nob Hill and Client shall separately agree upon a protocol which may be reasonably made available to Client and its students. Client shall be responsible for assigning the correct school ordering codes to all students, and/or designated a San Carlos School District School Liaison, in the event that Client desires to provide the option to all families participating in the school lunch program to order online, Nob Hill and Client shall separately agree upon a protocol which may be reasonably made available to Client and its students.

5. **Party Representatives.**

A. Client shall designate a site contact person who shall be the primary point of contact between Nob Hill and Client with respect to all issues related to this contract. The initial site contact person designated by Client is Mindy Hill (Wellness), Robert Porter (Contracts) and Lisa Ceragioli (Billing and F/R). The contact information for the initial site contact person is: mhill@scsdk8.org, rporter@scsdk8.org, lceragioli@scsdk8.org. Client may change the identity of the contact person pursuant to notice given as set forth in Paragraph 16 below.

B. Nob Hill shall designate an account representative responsible for administration of the school account. The initial Nob Hill account representatives shall be Michael Giouzelis and Michael Ng, who will work with the client on assuring reaching at least 75 participants in the lunch program. The contact information for the School Representatives is: mike@nobhillcatering.com and mike.ng@thelunchmaster.com. Nob Hill may change the identity of the contact person pursuant to notice given as set forth in Paragraph 16 below.

C. In order to facilitate operation of the lunch service program and prompt and satisfactory resolution of problems, all issues of concern regarding the subject matter of this contract, including but not limited to the meal service provided, shall be reported by the Client primary contact person to the Nob Hill account representatives as soon as is reasonably practical under the circumstances in order to facilitate prompt and satisfactory resolution of issues that may arise. The primary method of communication shall be email. In the event that telephone contact is made, email contact shall follow. All issues shall be resolved, to the extent reasonably possible, through the use of email or text messaging.

D. The parties acknowledge and agree that during the term of this agreement, it will be necessary for Client to correspond with parents, guardians or other

users or potential users of the school lunch services. Client agrees that Client will provide to Nob Hill a copy of any and all correspondence to parents, guardians or any other user or potential user of the school lunch service, regardless of the purpose of issuing such correspondence or the method of delivery. For purposes of this paragraph, "correspondence" shall include letters, notifications, flyers, inclusion in newsletters or any other form of communication directed to parents, guardians, users or potential users of the school lunch service whether by hard copy, electronic or other delivery methods.

6. **Termination By Client or Nob Hill.**

A. In the event that Client desires to terminate this Agreement for the convenience of client, Client shall give a minimum of sixty days' notice (without cause) and sixty days' notice (with cause) of termination. Notice shall be given in the manner described in Paragraph 16 below.

B. In the event that this contract is terminated by Client pursuant to the provisions of Paragraph 6.A above, Client agrees that timely notification to parents or other users of the service shall be given. Any such notification shall notify those individuals required to be notified of the termination of the service and the effective date of termination, along with such other information regarding any new service as shall be required. Any such notification shall refrain from discussing motivational reasons for termination of the service and shall advise the parents or other users that service by Nob Hill will continue through the date of termination unless the parties have agreed, in writing, to the contrary. In the event of termination, the parties shall cooperate, to the extent reasonably possible, with respect to transition to such other provider as may be selected by Client.

C. For the period of time between the receipt of notification of termination pursuant to Paragraph 6.A above, and the termination date, Client agrees that orders placed with Nob Hill shall continue for the duration of this contract. A minimum number of meals for delivery on each delivery date shall be established as set forth in this paragraph. The minimum number of meals shall be calculated by a determination of the average number of meals delivered by Nob Hill to Client on each delivery date for the sixty days preceding notice of termination. Upon calculation of said average number of meals delivered, the minimum number of meals to be delivered after notice of termination and before the date of termination shall be 90% of said average number of meals delivered. In the event that meals ordered for delivery to Client shall fall below the minimum established pursuant to this paragraph for three dates, Nob Hill may, at its option, terminate service to Client on ten days' notice of termination given pursuant to Paragraph 16 below or Nob Hill may elect to continue service until the termination date.

D. If client has not otherwise terminated this agreement pursuant to Paragraph 6. A. above, Nob Hill reserves the right to terminate this agreement for its convenience. Good cause shall not be required for termination under this paragraph. If service is terminated pursuant to the terms of this paragraph, Nob Hill shall give sixty (60) days written notice to termination in the manner described in Paragraph 16

below. Any such notice shall specify the last date of service under the terms of this contract.

E. If Nob Hill has not received payment of any charges invoiced pursuant to paragraph 3. B. within 45 days of the date of the original invoice, including payment of any applicable service charge, Nob Hill reserves the right, at its option, to terminate service under this contract. Notice shall be given pursuant to Paragraph 16 below. Any such notice shall specify the last date of service under the terms of this contract.

7. **Food Quality Standards.**

A. In performing the services required under this agreement, Nob Hill shall comply with all applicable federal, state, county and city statutes, ordinances and regulations. In addition, Nob Hill shall comply with all applicable health, safety and food handling codes and regulations. Nob Hill will not deliver any expired food, milk or produce.

B. Client and Nob Hill agree that stockpiling or storage of food made available for service on any given day is inappropriate. All food should be consumed on the date of delivery or returned to Nob Hill for restocking, storage or disposal. Client agrees not to serve any student with an item of food not provided on the date of delivery and Client agrees that Nob Hill shall not be liable for any complaints, injuries or damages arising out of serving of stockpiled or previously delivered food items.

C. Attached hereto and marked as Exhibit A is a list of all items which shall be provided with each meal. All meals shall be the same.

8. **Field Trip Requirements.** Each customer, whether the customer be an individual student or client, shall be responsible for cancelling meal orders resulting from absence of students from the school location due to field trips. Notification shall be given pursuant to the provisions of Paragraph 16 below. In the event that cancellation is to occur less than seven business days in advance, each individual customer shall be responsible for cancellation.

9. **Client Responsibilities.**

A. In consideration of the services provided by Nob Hill, Client covenants and agrees to retain Nob Hill as its exclusive meal service provider during each service date agreed to herein. This covenant shall not require Client to use the services of Nob Hill with respect to special events scheduled from time to time by Client and shall be effective only with respect to meal services for the days upon which Nob Hill is contracted to provide meal service. School holidays and teacher conference days are excluded from this exclusivity covenant.

B. Client shall distribute all communications regarding services from Nob Hill in accordance with Client's standard process of distributing communications to the families of students.

C. Client shall allow Nob Hill to attend and participate in regularly scheduled school events associated with familiarizing families with the services available through Client and schools operated by Client, including but not limited to Back to School Night, parent teacher conference, registration days and other promotional activities.

D. Client authorizes Nob Hill to communicate directly with students and families of students who are using the services provided by Nob Hill in order to efficiently administer the school lunch program. This includes a lunch program introduction and ordering instructions on a school website. The opt out setting is already live within our system. We will be sure to send out a reminder email to parents on how to opt out of receiving electronic literature from Nob Hill Catering.

E. Client shall provide an electronic copy of any related school logo or mascot to Nob Hill. Client hereby grants Nob Hill a non-exclusive license to use or display its logo or mascot, on the web site operated by Nob Hill and in any and all communications prepared or distributed by Nob Hill in connection with this Agreement.

F. Client acknowledges and agrees that any and all trademarks, copyrights, patents and other intellectual property owned by Nob Hill and its subsidiaries or affiliated companies, inclusive of the name and representative logos, may not be used without the written consent of Nob Hill for any purpose, including school printed publications, signage, online content or in any other manner.

10. **Force Majeure.** Neither party shall be liable for any delay or failure in its performance under this contract caused by events beyond the control of the parties, including but not limited to terrorism, war, riots, labor strikes, interruption of utility services, fires, floods, earthquakes and other natural disasters. The Parties further understand that from time to time deliveries may be delayed due to traffic conditions, road closures, extreme weather conditions and other unavoidable circumstances.

11. **Entire Agreement.** This contract contains all of the covenants between the parties with respect to the subject of this contract, and each party acknowledges that no representations, inducements, promises or agreements have been made by or on behalf of any party except the covenants and agreements embodied in this contract. Any agreement, statement or promise not contained in this contract shall not be valid or binding between the parties with respect to the subject of this contract, except for a subsequent written modification signed by the party to be charged.

12. **Amendment.** This contract may be amended or modified at any time with respect to any provisions by a written instrument executed by Nob Hill and Client.

13. **Non-Assignment.** Neither party may assign or transfer this agreement, in whole or in part, without the prior written consent of the other party.

14. **Attorney Fees.** If any legal action is brought to enforce or interpret the provisions of this contract, the prevailing party shall be entitled to recover reasonable attorney's fees from the other party. These fees, which may be set by the court in the same action or in a separate action brought for that purpose, are in addition to any other relief to which the prevailing party may be entitled.

15. **Dispute Resolution.**

A. **Mediation.** The parties hereby agree that any dispute between the parties hereto arising out of or related to the subject matter of this Agreement or services to be provided pursuant to this Agreement shall be subject to non-binding mediation prior to implementation of any other dispute resolution process. The mediator shall be a retired judge or practicing attorney to be agreed upon by the parties. Mediation shall be held in San Mateo County, California. The cost mediation shall be borne by the parties equally. The parties agree that all individuals or entities necessary for resolution of any such dispute shall participate in the mediation process, including but not limited to party principals, insurers, consultants, agents, contractors and subcontractors as is necessary. In the event that the dispute is not resolved by mediation, each party shall thereafter be free to commence litigation or other dispute resolution process at the party's discretion. In the event that a court of competent jurisdiction shall determine that any party hereto shall have failed to adequately and meaningfully participate in the mediation process prior to commencement of litigation or other dispute resolution, said finder of fact shall be empowered to deny attorney's fee to that party that the non-participating party would otherwise have been entitled to an award of attorney's fees.

B. The parties hereby irrevocably and unconditionally agree that all disputes arising out of or related to the subject matter of this Agreement or related to the services to be provided pursuant to this Agreement shall be resolved pursuant to binding arbitration proceedings. Arbitration proceedings shall be conducted by a single neutral arbitrator to be agreed upon by the parties. If the parties are unable to agree upon the identity of a single neutral arbitrator within thirty days of a demand for arbitration by any party hereto, said arbitrator shall be appointed by the presiding judge of the San Mateo County, California Superior Court or his designee. Arbitration proceedings shall be conducted pursuant to the provisions of the California Arbitration Act, Code of Civil Procedure Section 1280 and following. Discover shall be allowed as described in the California Arbitration Act. The award of an arbitrator shall be final and binding and subject only to such collateral attack as shall be allowed pursuant to the terms of the California Arbitration Act. The award of an arbitrator may be entered as a judgment in any court of competent jurisdiction.

C. **Exclusive jurisdiction and venue** with respect to all dispute resolution matters arising out of or related to this contract or related to the services to be provided pursuant to the terms of this Agreement shall lie in the courts of the State of California in and for the County of San Mateo. The parties agree that the courts in and

for the County of San Mateo are convenient to the parties. Arbitration proceedings commenced pursuant to this Agreement shall be held in San Mateo County, California.

D. This contract shall be governed by and construed in accordance with the laws of California.

16. **Notices.** Any notice required or permitted to be given under this contract shall be written, and may be given by personal delivery or by registered or certified mail, first class postage prepaid, return receipt requested or via email. Notice shall be deemed given upon actual receipt in the case of personal delivery or upon delivery to the United States Post Office for mailing. Mailed notices shall be addressed as follows. Each party may change address by written notice in accordance with this paragraph.

To Nob Hill: 601 Taylor Way
San Carlos, CA 94070
Email: _____

To Client: 1200 Industrial Road, Unit 9
San Carlos, CA 94070
Email: _____

Dated: _____

NOB HILL CATERING, INC.

By:

Dated: _____

SAN CARLOS SCHOOL
DISTRICT

By:

EXHIBIT A
MEAL SERVICE DETAIL

1. Ingredients that may not be used (within reasonable capability of Nob Hill):
Client Initials: _____

2. Beverage service (Unless otherwise noted, beverage service shall be an assortment of 1% milk, non-fat white milk and water):

3. Service shall be provided Monday through Friday unless noted below:

Note: Wednesdays are minimum days and pre-bagged, labeled lunches will be provided on Wednesdays and all other minimum days.

4. The time upon which the first meal service shall begin and the time at which meal service shall be completed:

See attached schedule for service at each school.

5. Upon agreement between Nob Hill and meal server, meal servers may be paid in meal credits. Volunteers shall be awarded the following:

0-100 Ordered Meals	1 Meal Credit
101-200 Ordered Meals	2 Meal Credits
201-300 Ordered Meals	3 Meal Credits

☐ Yes ☐ No

6. Meal Tickets:

Meal tickets shall be provided for each meal. The cost of meal ticker service shall be as set forth on Exhibit B (Pricing Grid). If Client desires to accept this option, mark "Yes" below. If Client declines this option, mark "No" below.

☐ Yes ☒ No

7. Field trip:

See Paragraph 8.

8. Cancellation and refund policy:

Pre-ordered and pre-paid meals may be canceled in exchange for future LunchMaster account credit subject to the policy set forth in this paragraph. In order to receive full credit, cancellation shall occur on or before 4____p.m. on the day prior to meal service. Cancellations received between 4:01____p.m. on the day preceding service and 7:00a.m. on the date of service shall receive 50% credit. No credit will be given for meals canceled after 7:00a.m. on the date of service. All meals credited on the LunchMaster account shall remain on the account for use with respect to future meal orders. NO CASH REFUNDS WILL BE PAID.

9. Notes:

Nob Hill agrees to deliver a quantity of **10 percent** extra in **emergency meals** (based on total meals ordered) per meal service day. All extra meals will be cold lunches so that they may be given to food banks if not claimed. SCSD asks that confirmation of meal donation be provided at least twice during the school year.

EXHIBIT B PRICING GRID

Student Pricing

Item	Price
Regular Lunch Meal	\$4.50
Large Lunch Meal	\$NA
Vegan/Gluten Free Regular Lunch Meal (1 of each per day for Elementary)	\$NA
Vegan/Gluten Free Large Lunch meal (1 of each per day for Elementary)	\$NA
Late Lunch/Emergency Surcharge	\$1.00

Staff Pricing

Item	Price
Regular Lunch Meal	\$5.00
Large Lunch Meal	\$NA
Vegan/Gluten Free Regular Lunch Meal (1 of each per day for Elementary)	\$NA
Vegan/Gluten Free Large Lunch meal (1 of each per day for Elementary)	\$NA
Late Lunch/Emergency Surcharge	\$1.00

Free and Reduced Lunch Invoice Credit

Item	Meal Price	Final F/R Price
Regular Lunch Meal	\$4.50	\$3.25