

FOOD SERVICE INTER-AGENCY AGREEMENT

Administering Sponsor: Imperial Unified School District	
Agreement Number: 2018-19 School Year	Vendor Number: 1013

Receiving Sponsor: Imperial County Office of Education—Early Care and Education Programs	
Agreement Number: 2018-19 School Year	Vendor Number: 6307

This Agreement, executed in duplicate and entered into on June 14, 2018 between the **Administering Sponsor**, hereinafter referred to as **School Food Authority (SFA)**, and the receiving sponsor, hereinafter referred to as **ICOE**, is created for the purpose of providing: (check ☒ all that apply)

- ☒ Lunches under the National School Lunch Program
- ☒ Breakfasts under the School Breakfast Program
- ☐ Snacks under the Meal Supplements in the National School Lunch Program

It is hereby agreed that:

1. Effective Date and Term of Agreement.

- a. This Agreement shall commence on the later of the date the Agreement is signed by all parties or July 1, 2018 and shall remain in full force and effect until June 30, 2019 ("Term of Agreement").
- b. Once approved by the California Department of Education, this Agreement is permanent for the Term of the Agreement. Either party may terminate this Agreement as set forth in the Termination section below.

2. Provisions Relating to Food Service at Ben Hulse Elementary School by SFA for ICOE.

- a. The SFA will represent the ICOE as the Child Nutrition Program "Sponsor" and will claim reimbursement from the California Department of Education for all meals served to children enrolled in ICOE Early Care and Education Program at Ben Hulse Elementary School, located at 303 S D St, Imperial, California 92251.
Reimbursement will be claimed at the rate of one breakfast/lunch/snack per child per

day, only for complete meals/snacks counted at the point of service, and according to each child's eligibility category.

- b. The SFA will conduct the free and reduced-price application process, including the distribution, review, and approval of applications for ICOE. The SFA will create the eligibility roster for the free and reduced-price meals/snacks for ICOE students and provide updated lists to ICOE within 10 working days after changes occur, so that ICOE can comply with its reporting obligations.
- c. The SFA will perform the point of service meal counts. The SFA will provide training as necessary to appropriate ICOE staff regarding point-of-service meal counts and completion of all required documents.
- d. The SFA will perform the required daily and monthly edit checks.
- e. The SFA will ultimately be responsible for meal count and claiming accountability.
- f. The SFA will perform the verification process and will notify ICOE of its findings.
- g. The ICOE will assume responsibility for any classroom roster over-claims identified during a review or audit, and reimburse the State accordingly.
- h. The SFA will include all participating sites from the ICOE in its application/agreement with the California Department of Education.
- i. The SFA will provide meals to the ICOE that comply with the nutrition standards established by the United States Department of Agriculture for the traditional menu planning option.
- j. The SFA will prepare the meals/snacks in the Imperial Unified School District Central Kitchen located at 303 South "D" Street, Imperial, California 92251. This preparation site will maintain the appropriate state and local health certifications for the facility.
- k. The ICOE will notify the SFA of the number of meals/snacks needed no later than 10:00 a.m. each day. Adjusted counts may not be accepted by the SFA after that time. If the SFA does not receive a meal count by that time, the SFA will prepare and deliver the same number of meals requested by the ICOE the prior service day. The ICOE will be obligated to accept and pay for the number of meals requested. SFA will not be obligated to provide any meals on days when the SFA is not open for business.

- l. The SFA will provide all the equipment necessary to transport the meals/snacks except that the ICOE agrees to provide an adequate number of ice chests to transport the milk and juice. The SFA will provide the necessary trays, dishes, utensils, straws, and napkins for students to eat the meals. The ICOE shall be responsible for providing personnel necessary to receive, serve, and supervise the consumption of the meals.
 - m. The SFA will be responsible for transporting the meals/snacks from the Central Kitchen to the school-site cafeteria, which is where students will generally eat the meal. This will occur through ICOE students receiving lunches in the school's cafeteria. The students will receive the prepared meals no later than 9:00 a.m. for breakfast and 1:00 p.m. for lunch.
 - n. The SFA will be responsible for maintaining the proper temperature of the meals until they are delivered to ICOE. Thereafter, ICOE shall be responsible for maintaining the proper temperature of the meal components until they are consumed.
 - o. The ICOE will return on a daily basis any and all property owned by the SFA (e.g. trays, utensils, transportation containers).
 - p. No later than one (1) week prior to the end of each month the SFA will provide to the ICOE a monthly menu consisting of the meals/snacks to be served the following month.
 - q. The SFA will submit to the ICOE itemized invoices for the meals/snacks provided by the SFA. The invoices will be for the actual cost of producing meals/snacks minus payments received from the ICOE participating children and adults and minus the state and federal reimbursements. The ICOE will submit payment to the SFA in such form as required by the SFA on or before the 30th day of the following month.
 - r. When requested by the ICOE, the SFA will provide sack lunches for field trips that meet the meal pattern requirements. Sack lunches for field trips will be requested at least 10 working days in advance. The cost per lunch will remain the same as for the regular lunch. The SFA will be responsible for maintaining the appropriate temperature of lunches until delivered to ICOE; ICOE then will have the same responsibility until the lunches are served. ICOE and the SFA will mutually agree upon pick-up/delivery time for these sack lunches on a case-by-case basis for each field trip.
3. **Gifts.** The gift or exchange of commodities is not permitted. Until students are served a meal/snack, all food remains the property of the SFA.
4. **Indemnification.**
- a. The SFA agrees to indemnify, defend, and hold harmless ICOE, its officers, agents and employees against any claim, liability, loss, injury or damage imposed on ICOE arising out of the SFA's performance on this Agreement, except for liability resulting from the negligent or willful misconduct of ICOE, its officers, agents and employees.

If obligated to indemnify, defend, or hold harmless ICOE under this Agreement, the SFA shall reimburse ICOE for all costs, attorney's fees, expenses and liabilities associated with any resulting legal action. The SFA shall seek ICOE approval of any settlement that could adversely affect the ICOE, its officers, agents or employees.

- b. ICOE agrees to indemnify, defend, and hold harmless the SFA, its officers, agents and employees against any claim, liability, loss, injury or damage imposed on the SFA arising out of ICOE's performance on this Agreement, except for liability resulting from the negligent or willful misconduct of SFA, its officers, agents and employees. If obligated to indemnify, defend, or hold harmless the SFA under this Agreement, ICOE shall reimburse the SFA for all costs, attorney's fees, expenses and liabilities associated with any resulting legal action. ICOE shall seek the SFA's approval of any settlement that could adversely affect the SFA, its officers, agents or employees.

5. Insurance.

- a. Each party shall obtain, pay for and maintain in effect during the life of this Agreement the following policies of insurance issued by an insurance company with a current A.M. Best's rating no less than "A-" and "V" and licensed to do business in California:
 - i. Commercial General Liability including coverage for Premises Operations, Products/Completed Operations, Contractual, Independent Contractors, Broad Form Property Damage, and Personal Injury; with a minimum combined single limit of not less than \$1,000,000 for Bodily injury and Property Damage (each occurrence) and a \$2,000,000 aggregate.
 - ii. Commercial Automobile Liability for "any auto" with a minimum combined single limit of not less than \$1,000,000 per occurrence.
 - iii. Professional Liability Insurance for errors and omissions with a limit of liability of not less than \$1,000,000 per occurrence; and
 - iv. Workers' Compensation and Employer's Liability Insurance shall be retained to the full extent required by applicable state and federal law.
- b. Nothing in this Insurance section shall reduce a party's liabilities or obligations under the Indemnification section of this Agreement.
- c. The Parties acknowledge that ICOE is permissibly self-insured under California law.
- d. Each party, upon request of the other party, shall produce a certificate evidencing insurance in the above amount, naming the other party as an additional insured and specifying that the coverage will not be cancelled or modified without 14 days prior written notice to the other party.

6. Compliance with Laws.

- a. The parties shall, at their own cost and expense, will comply with all applicable federal, state, and local statutes and regulations that affect this Agreement and with regard to the preparation and service of National School Lunch Program and/or School Breakfast Program meals, including, but not limited to, all applicable regulations relating to the overt identification of needy pupils, the nutritional content of meals, and nondiscrimination. All records maintained by both parties shall be

open and available to inspection by Federal, State, and local authorities in accordance with applicable statutes and regulations.

7. Termination:

- a. In the event that the SFA fails to perform on a material term of this Agreement, ICOE has the right to terminate the Agreement upon ten days written notice and all other rights and remedies available to it at law and equity.
- b. In the event that ICOE fails to perform on a material term of this Agreement, then SFA shall have the right to terminate the Agreement upon ten days written notice and all other rights and remedies available to it at law and equity.

8. Arbitration. Any controversy or claim arising out of or relating to this Agreement shall first be subject to mediation with a mediator agreed to by both parties and paid for by both parties, absent an agreement otherwise. If after mediation there is no resolution of the dispute, the parties agree to resolve the dispute by binding arbitration administered by the American Arbitration Association ("AAA") in accordance with its Commercial Arbitration Rules, and judgment on an arbitrator's award may be entered in any court having jurisdiction thereof.

- a. The Parties shall select one arbitrator pursuant to the AAA's Commercial Arbitration Rules.
- b. The arbitrator shall present a written, well-reasoned decision that includes the arbitrator's findings of fact and conclusions of law. The decision of the arbitrator shall be binding and conclusive on the Parties.
- c. The arbitrator shall have no authority to award punitive or other damages not measured by the prevailing Party's actual damages, except as may be required by statute. The arbitrator shall have no authority to award equitable relief. Any arbitration award initiated under this clause shall be limited to monetary damages and shall include no injunction or direction to either Party other than the direction to pay a monetary amount. As determined by the arbitrator, the arbitrator shall award the prevailing Party, if any, all of its costs and fees. The term "costs and fees" includes all reasonable pre-award arbitration expenses, including arbitrator fees, administrative fees, witness fees, attorney's fees and costs, court costs, travel expenses, and out-of-pocket expenses such as photocopy and telephone expenses. The decision of the arbitrator is not reviewable, except to determine whether the arbitrator complied with sections (b) and (c) of this paragraph.

9. Miscellaneous Provisions.

- a. Governing Law and Venue. The laws of the State of California shall govern this Agreement. Proper venue for any dispute regarding this Agreement shall lie in Imperial County, California.
- b. Entire Agreement. This Agreement represents the entire Agreement between ICOE and SFA and supersedes any and all prior negotiations, representations, understandings or agreements, either written or oral.

- c. Interpretation. This Agreement shall be interpreted to give effect to its fair meaning and shall be construed as though both parties prepared it.
- d. Assignment. Unless authorized in writing by both Parties, neither Party shall assign or transfer any rights or obligations covered by this Agreement. Any unauthorized assignment or transfer shall constitute grounds for termination by the other Party.
- e. No Waiver of Default. No delay or failure to require performance of any provision of this Agreement shall constitute a waiver of that provision as to that instance or any other instance. Any waiver must be in writing and shall only apply to that instance.
- f. Successors and Assigns. All representations, covenants, and warranties set forth by, on behalf of, or for the benefit of either Party herein shall be binding upon and inure to the benefit of such Party and its successors and assigns.
- g. Amendment. This Agreement may only be altered, amended, or modified by written instrument executed by both Parties. The Parties agree to waive any right to claim, contest, or assert that this Agreement was modified, canceled, superseded, or altered by oral agreement, course of conduct, waiver, or estoppel.
- h. Severability. If any one or more of the provisions of this Agreement is held to be invalid, illegal, or unenforceable, then such provision or provisions shall be severed from the Agreement, and the remaining provisions of the Agreement shall continue in full force and effect and shall not be affected, impaired, or invalidated in any way.
- i. Execution of Counterparts. If this Agreement is executed in counterparts, each counterpart shall be deemed an original, and all such counterparts or as many of them as the Parties preserve undestroyed shall together constitute one and the same Agreement.
- j. Authority. The Parties warrant and represent that they have the authority to enter into this Agreement in the names, titles, and capacities stated herein and on behalf of the entities, persons, or firms named herein and that all legal requirements to enter into this Agreement have been fulfilled.
- k. Nondiscrimination. During the performance of this Agreement, the Parties shall not discriminate against any employee, applicant, student or other person connected to this Agreement in a manner prohibited by the laws of the United States or the State of California (including, but not limited to, on the basis of religion, race, color, national origin, handicap, ancestry, sex, sexual orientation, marital status or age).
- l. Public Safety.
 - i. ICOE certifies that, in the employment of ICOE employees and hiring of contractors providing services under this Agreement, it has complied with the employment and fingerprinting requirements set out in Education Code section 45125 *et. seq.*

- ii. SFA certifies that, in the employment of SFA employees and hiring of contractors providing services under this Agreement, it has complied with the employment and fingerprinting requirements set out in Education Code section 45125 *et. seq.*

10. **Notice.** Any notice given under this Agreement shall be in writing to the parties' representatives and shall be deemed delivered three (3) days after the deposit in the United States mail, certified or registered, postage prepaid, and addressed to the parties.

The Parties' representatives shall be:

ICOE:

Amanda Brooke
Deputy Superintendent
1398 Sperber Road
El Centro, CA 92243
Phone: (760) 312-6581
Email: amanda.brooke@icoe.org

SFA:

Bryan Thomason
Superintendent
219 N "E" Street
Imperial, CA 92251
Phone: (760) 355-3200
Email: bthomason@imperialusd.org

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date hereof.

Name and Title of SFA Official:	Telephone Number:
Bryan Thomason, Imperial Unified Superintendent of Schools	760-355-3200
Signature of SFA Official:	Date:
Name and Title of Receiving District Official:	Telephone Number:
J. Todd Finnell, Ed.D., Imperial County Superintendent of Schools	760- 312-6464
Signature of Receiving District Official:	Date:

CDE Use	
<input type="checkbox"/> Approved <input type="checkbox"/> Denied	Date:
_____ Signature	