

## **FOOD SERVICE AGREEMENT**

This Food Service Agreement ("Agreement") is entered into by and between Flo's Friendly Foods ("Contractor") and Oakland Military School ("School"). The Parties may be referred to collectively in this Agreement as "Parties" or singularly as a "Party." This Agreement is effective from November 21, through June 30, 2023.

WHEREAS, Contractor wishes to provide and is capable of providing lunch meals and food products for consumption by the students of the School for the School's 2022- 2023 lunch Program (the "Services"); and

WHEREAS, School wishes Contractor to provide Services;

NOW, THEREFORE, the Parties agree as follows

### **ARTICLE 1: TERM OF AGREEMENT**

This Agreement shall be effective for the 2022-2023 Lunch Program at the School, and may be extended upon mutual written agreement between the Parties. The School grants Contractor the exclusive right to provide Services to the students of the School on regular school days when Oakland Military School's Lunch Program is in session between November 21, 2022, and June 30, 2023. The school agrees to provide Contractor advance notice of days in session. Contractor will attach to Agreement the timeframe for daily delivery of lunch meals and food products.

### **ARTICLE 2: FACILITIES AND EQUIPMENT**

The School shall not incur any costs associated with the Contractor's delivery of meals to the lunch program, including equipment and food purchases.

### **ARTICLE 3: SERVICES PROVIDED BY CONTRACTOR**

(A) The Services to be provided by Contractor are all those necessary for the provision of lunch to the School on regular school days for the 2022-2023 Lunch Program at the School, including: delivering nutritious meals that are freshly prepared and compliant with the National School Lunch Program standards and will directly invoice the School for Services provided. The Contractor will timely deliver prepared meals to the School at 3877 Lusk Street Oakland. The Parties shall discuss and mutually agree upon the food and beverages to be served.

(B) Contractor acknowledges that many children are allergic to nuts and will therefore not provide nuts or peanuts in menus. Contractor will use only vegetable oils in the preparation of food.

- (C) The School may provide written notice to Contractor of other products to which a significant number of the school population is allergic, in which case Contractor will not provide such ingredients in meals.
- (D) School shall have the option to request from Contractor the sale of lunch meals to faculty and staff for the duration of the 2022 - 2023 Lunch Program at the School.
- (E) School will be invoiced on a biweekly basis every 15th and the end of the month payment is due within 7 days from invoice date.

#### **ARTICLE 4: COMPENSATION AND PRICING**

Per Student  
Lunch \$5.00  
Breakfast \$3.50  
Snack \$.98

#### **ARTICLE 5: WARRANTY OF COMPETENCE**

Contractor warrants that it will perform its obligations under this Agreement in accordance with the highest professional standards of an expert in the food service industry, and that the personnel it provides under this Agreement shall be fully qualified and competent to perform under this Agreement. Contractor personnel shall at all times while performing the Services be neat, clean, and appropriately dressed, and shall conduct themselves in a manner compatible with the students and staff of the School.

#### **ARTICLE 6: INDEMNIFICATION/HOLD HARMLESS**

Contractor agrees that it will defend, indemnify, and hold School harmless from and against any loss, cost, expense, claim, or cause of action arising out of or relating to the provision of the Services by Contractor pursuant to this Agreement, including but not limited to, all personal injury claims of Contractor's employees regardless of whether or not caused by Contractor, and any and all other personal injury or property damage claims, by whomever brought, caused by Contractor, its agents, or employees. School shall have the right to select or approve legal counsel, and Contractor shall reimburse School for attorney's fees as incurred.

#### **ARTICLE 7: INSURANCE**

(A) Each party shall maintain Workers' Compensation Insurance coverage as required by California State Law.

(B) Contractor shall keep the School insured against any claim for personal injury or proper damage. Said insurance shall have liability limits of not less than One Million Dollars (\$1,000,000) per occurrence and Two Million Dollars (\$2,000,000) in the aggregate.

(C) If Contractor, or its contractors, agents, or employees will bring vehicles on the School's premises, Contractor shall have and maintain comprehensive automobile liability insurance covering liability arising out of any such vehicle (owned, hired, or non-owned) brought onto the School's premises by Contractor, or its contractors, agents, or employees, providing, at a minimum, a single limit of \$100,000/person and \$300,00/accident.

(D) The term of this Contact shall not commence until Contractor has delivered to the School a certificate from an insurance carrier naming Oakland Military Institute as additional insured to evidence the coverage required by this section. Such insurance certificate shall contain an endorsement requiring 30 days written notice from the insurance company to the School before cancellation or change in the coverage, scope, or amount of the policy.

## **ARTICLE 8: CONTRACTOR RESPONSIBILITIES**

(A) Each employee of Contractor or any subcontractor providing Services on School premises will submit to a criminal background check (including submission of fingerprints). Contractor will provide School written results of background check and TB risk assessment for each employee prior to that employee's physical presence on School campus. Contractor will comply with the criminal background check sections of Education Code section 45125.1. Contractor is responsible for ensuring that no employee or subcontractor working at School has a communicable disease that would put student's health or safety at risk.

(B) Contractor shall provide system to be used by School parents in order to purchase meals directly from Contractor. Contractor will further provide information regarding, but not limited to, nutrition education, ingredient information upon request, and industry-specific knowledge.

(C) Contractor shall maintain the appropriate state and local health certifications for their facility and will package, deliver, and serve meals in accordance with the food safety guidelines of the appropriate governing health departments. Contractor shall maintain all necessary records on the nutritional

components and quantities of meals served at School and make said records available for inspection by State and Federal authorities upon request.

(D) Contractor shall prepare, deliver, and serve lunch meals to School that comply with the nutrition standards established by the United States Department of Agriculture (USDA).

(E) Contractor shall be responsible for care and condition of lunch meals until they are delivered to School, and as they are served, including providing delivery and service equipment necessary to deliver and serve lunch meals in accordance with the food safety guidelines of the appropriate governing health departments.

(F) Delivery scheduled is as follows:

- **Contractor will deliver breakfast before the day before it is to be served or up to 700 the day of service.**
- **Contractor will deliver lunch and snack before 1100 ready to serve the day of service or the day before it is to be served**
- **Contractor will deliver before 1500 the day before service for colds and field trip lunches**

(H) Contractor will provide a limited quantity of extra lunch meals and will use historical sales data to determine this quantity. Contractor will keep a limited quantity of non-perishable lunch items on hand.

## **ARTICLE 9: NOTICES**

All notices or other communications provided for by this Agreement shall be in writing and shall be deemed properly given when delivered personally, sent by courier, fax, electronic mail, registered mail, or certified mail, postage prepaid, return receipt requested, addressed to the Party concerned at the address indicated below or to such other address as such Party may subsequently give notice of hereunder in writing:

To School:

**Oakland Military Institute  
Attention: Sammy Enriquez  
3877 Lusk Street  
Oakland, CA. 94609**

**Voice: 510-594-3922**

**Email: [senriquez@omiacademy.org](mailto:senriquez@omiacademy.org)**

To Contractor:

Flo's Friendly Foods  
6232 La Salle Avenue Suite E  
Oakland CA 94611  
Attention: Florence Eriksson  
Voice: (415) 244-3234  
Email: florence@flosfriendlyfoods.com

Any notice delivered personally or by courier under this Article 9 shall be deemed given on the date delivered, and any notice sent by electronic mail, registered mail, or certified mail, postage prepaid, return receipt requested, shall be deemed given on the date emailed or mailed.

#### **ARTICLE 10: FORCE MAJEURE**

- (A) Neither party shall be liable to the other for delay in, or failure of, performance nor shall any such delay in, or failure of, performance constitutes default if such delay or failure is caused by force majeure. Force majeure means an occurrence that is beyond the control of the party affected and occurs without its fault or negligence. Force majeure may include, but is not restricted to, acts of God, the public enemy, acts of the state in its sovereign capacity, fires, floods, power failure, disabling strikes, epidemics, quarantine restrictions, and freight embargoes.
- (B) Force majeure does not include any of the following occurrences:
  - 1. Late performance by a subcontractor, unless the delay arises out of a force majeure occurrence.
  - 2. Inability of either Contractor or any of its subcontractors to acquire or maintain any required insurance, bonds, licenses, or permits
- (C) If either party is delayed at any time in the progress of work by force majeure, the delayed party shall notify the other party in writing of such delay, as soon as practicable and no later than the following work day or the commencement thereof, and shall specify the causes of such delay. Such notice shall be delivered by hand or email, and shall make a specific reference to this article, thereby invoking its provisions. The delayed party shall cause such delay to cease as soon as practicable and shall notify the other party in writing when it has done so.
- (D) Any delay or failure in performance by either party caused by natural force majeure shall not constitute default, not give rise to any claim for damages or loss of anticipated profits.

#### **ARTICLE 11: DEFAULT**

(A) Should either Contractor or the School fail to perform any term or provision of this Contract, written notice of default must be given to the non-performing party within ten (10) business days;

(B) Upon receiving written notice of default, the non-performing party has up to ten (10) business days to cure the default or risk termination of the Contract immediately.

(C) The failure of either party to enforce any provision of this Contract shall not be construed as a waiver or limitation of that party's right to subsequently enforce and compel strict compliance with every provision of this Contract.

## **ARTICLE 12: INTERPRETATION**

(A) Governing Law/Jurisdiction: This Agreement shall be governed by and construed in accordance with the laws of the State of California, excluding the choice of law rules of said state.

(B) Counterparts: This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

(C) Binding Arbitration Agreement: Contractor agrees to submit any dispute including, but not necessarily limited to negligence, contract or statutory, Contractor has with the School that may otherwise lead to legal action, first to the School's Head of School, and if not satisfied, then and only then to binding arbitration that will be handled according to the rules and guidelines of the State of California.

(D) Terms and Termination of Agreement: Either party may terminate this Agreement at any time, without cause, by providing ten (10) days prior written notice to the other Party of such termination; provided, however, that School may terminate this Agreement by providing thirty (30) days prior written notice to Contractor in the event that Contractor breaches any of its obligations under this Agreement. *wsj*

## **ARTICLE 13: ACCEPTANCE AND EFFECTIVE DATE**

This Agreement shall become effective upon execution by a duly authorized representative of School and by a duly authorized officer of Contractor. Each of the persons signing below represents and warrants that he/she has the authority for the Party for whom he/she signs.

Each Party has full power and authority to enter into and perform under this Agreement. Each Party further acknowledges that it has read this Agreement, understands it, and agrees to be bound by it.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed as of the date first set forth above.

**Flo's Friendly Foods**

Signed:  Date: *October 24 2022*  
Florence Eriksson, Owner

**Oakland Military Institute**

Signed:  Date: *24 Oct 2022*