

**PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS
AGENDA ITEM SUMMARY**

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Meeting Date: September 14, 2010	[X]	Consent	[]	Regular
	[]	Ordinance	[]	Public Hearing

Department

Submitted By: Community Services

Submitted For: Head Start/Early Head Start & Children's Services

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I. EXECUTIVE BRIEF

Motion and Title: Staff recommends motion to ratify the Chair's signature on: **A)** Child Care Food Program (CCFP) Contract for the period of October 1, 2010, through September 30, 2011, in the amount of \$1,359,067 for meals served to Head Start/Early Head Start children; **B)** Amendment No. 1 To FY 2010-2011 Contract and **C)** the Child Care Food Program Delegation of Signing Authority document, authorizing the Department of Community Services Director to sign program documents required by the Department of Health (DOH).


Summary: This contract will enable the Head Start Program to participate in the FY 2010-2011 CCFP by providing 979 infants, toddlers and children with breakfast, lunch, and a snack each day. Amendment No. 1 is needed to incorporate necessary provisions to the contract. It reflects new food safety and sanitation requirements, the right to legal counsel and the distribution of copies. The Delegation of Signing Authority form will allow one representative, other than the Chairperson, to sign any additional forms from the DOH during the contract period. Head Start staff projects reimbursement of \$950,000 from the DOH. County support of \$409,067 is required for a total amount of \$1,359,067 to serve meals to Head Start and Early Head Start children. The application was received at the DOH training workshop on August 2, 2010. The County funds are included in the proposed FY 2011 budget (Head Start) Countywide (TKF).

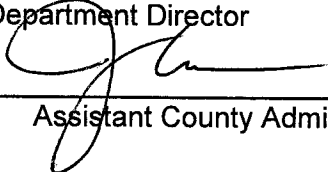
Background and Justification: Palm Beach County participates in the Florida Department of Health (DOH) Child Care Food Program for needy children. The predetermined Budget Grand Total is received from the DOH. The Florida Department of Health Child Care Food Program Budget form has been amended to match the Palm Beach County Head Start Child Care Food Program (1449) FY 2011 Budget Request. The CCFP budget from the DOH is an estimated budget and does not affect reimbursement of meals. The projected earnings for 2010/2011 are based on a reconfigured food service process to be a more accountable system. The projected expenditures for 2010/2011 are \$1,359,067. Head Start/Early Head Start projects that its twelve (12) centers will feed 979 infants, toddlers, and children during the fiscal year 2010– 2011 for an estimated reimbursement of \$950,000 from DOH, and additional support of \$409,067 from the County. Listed below are projections for the twelve child care centers upon which this contract is based:

<u>CENTERS</u>	<u>NUMBER OF CHILDREN</u>
West Palm Beach, WPB	149
Westgate, West Palm Beach	35
Boynton Beach	114
Delray Beach	65
Delray Beach EHS	16
Lake Worth	90
Pahokee	99
Jupiter	67
San Castle	12
South Bay U.S. 27	144
Palm Glades, Belle Glade	74
Riviera Beach	<u>114</u>
TOTAL	979

Attachments:

- 1. Child Care Food Program Contract
- 2. Amendment One to FY2010-2011 Contract
- 3. Program Budget for FY 2010-2011
- 4. Delegation of Signing Authority Form

Recommended by:  8/28/10
Department Director Date

Approved by:  8/30/10
Assistant County Administrator Date

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	<u>2011</u>	<u>2012</u>	<u>2013</u>	<u>2014</u>	<u>2015</u>
Capital Expenditures	_____	_____	_____	_____	_____
Operating Costs	1,359,067	_____	_____	_____	_____
External Revenues	(950,000)	_____	_____	_____	_____
Program Income (County)	_____	_____	_____	_____	_____
In-Kind Match (County)	_____	_____	_____	_____	_____
NET FISCAL IMPACT	<u>409,067</u>	_____	_____	_____	_____

ADDITIONAL FTE POSITIONS (CUMULATIVE)

Is Item Included in Proposed Budget? Yes X No _____
Budget Account No.: Fund 1002 Agency 147 Org. 1449 Object Various
Program Code: Various

B. Recommended Sources of Funds/Summary of Fiscal Impact:

Funding	Florida Department of Health (DOH)	\$ 950,000
	PBC	\$ <u>409,067</u>
		\$ 1,359,067

C. Departmental Fiscal Review. Tauna Malhotra
8/23/10

III. REVIEW COMMENTS

A. OFMB Fiscal and/or Contract Administration Comments:

[Signature]
OFMB
1/A
8/26/10
8/25/10

[Signature] 8/27/10
Contract Dev. and Control

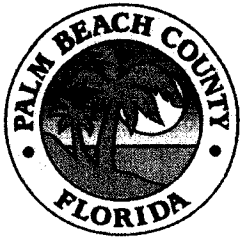
B. Legal Sufficiency:

[Signature] 8/30/10
Assistant County Attorney

C. Other Department Review:

Department Director

This summary is not to be used as a basis for payment.



Department of
Community Services

810 Datura Street
West Palm Beach FL 33401
(561) 355-4700
FAX: (561) 355-3863
<http://www.pbcgov.com>

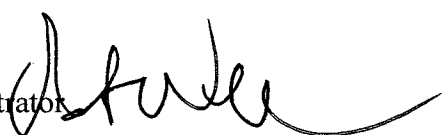
Palm Beach County
Board of County
Commissioners

Burt Aaronson, Chair
Karen T. Marcus, Vice-Chair
Shelley Vana
Steven L. Abrams
Jess R. Santamaria
Priscilla A. Taylor
County Administrator
Robert Weisman

"An Equal Opportunity
Affirmative Action Employer"

MEMORANDUM

TO: Burt Aaronson, Chair and the
Board of County Commissioners

FROM: Robert Weisman 
County Administrator

DATE: August 10, 2010

RE: Child Care Food Program Contract

Pursuant to PPM#CW-F-003 your signature is required on the A) Child Care Food Program Contract, B) Amendment One to FY 2010-2011 Contract and the C) Delegation of Signing Authority.

The Child Care Food program provides monthly reimbursement for the cost of breakfast, lunch, and a snack for eligible Head Start/Early Head Start infants, toddlers and children. Head Start staff projects an estimated reimbursement of \$950,000 from the Department of Health. The application was received on August 2, 2010 with instructions to return it by August 27, 2010.

There is not sufficient time to submit the application through the regular Board of County Commissioners agenda process.

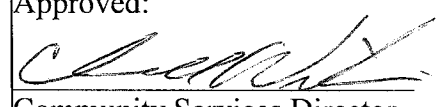
Staff will submit this item on the Agenda for the Board of County Commissioners meeting on September 14, 2010.

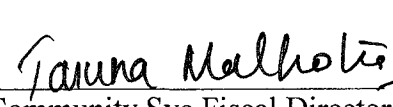
If additional information is needed, please contact Dr. Carmen Nicholas, Head Start/Early Head Start Director at 561-233-1611.

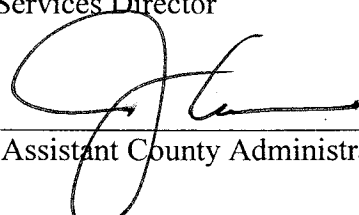

Assistant County Attorney


OFMB

Approved:


Community Services Director


Community Svc Fiscal Director 8/11


Assistant County Administrator

Delegation of Signing Authority for the Child Care Food Program

To Whom it May Concern:

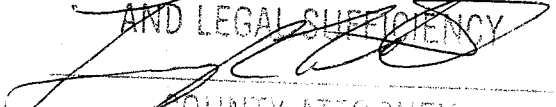
By means of this letter, I, Burt Aaronson (the Delegating Official, which is the Chairman of the Board, President or Owner), delegate the authority herein described, to Channell Wilkins (my representative), on the following terms and conditions:

1. My representative may sign, on my behalf, any documents pertaining to the Child Care Food Program.
2. The designated effective date of this delegation is the date the checklist or contract is signed, whichever date occurs earlier. The designated effective date of this delegation shall then be effective until September 30, 2011 or until revoked by the delegating official, whichever is sooner.
3. The authority delegated is not subject to sub-delegation without my prior and written consent.
4. I understand that this delegation does not relieve me of responsibility to manage and supervise operation of the Child Care Food Program, that I may be liable for repayment of funds received and that I may be subject to disqualification from future participation in the Child Care Food Program should the terms of the contract with DOH for participation in the Child Care Food Program not be fulfilled.

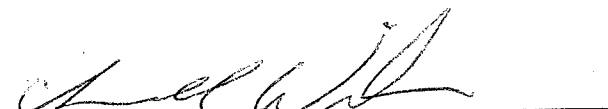

Signature (Delegating Official)

Burt Aaronson, Chair, BOCC
Name and Title (Chairman of the Board,
President or Owner)

Date

APPROVED AS TO FORM
AND LEGAL SUFFICIENCY

COUNTY ATTORNEY

Acknowledged and agreed:


Signature (Representative)

Channell Wilkins, Director of Community Svcs.
Name and Title

Date



**Bureau of Childcare Food Programs
Child Care Food Program**

**AMENDMENT ONE
TO
FY 2010-2011 CONTRACT**

THIS CONTRACT AMENDMENT is entered into between the State of Florida, Department of Health, hereinafter referred to as the "Department," administering the United States Department of Agriculture (USDA) Child and Adult Care Food Program (CFDA# 10.558), codified in Florida at Section 383.011(1)(i), Florida Statutes, and known as the Child Care Food Program, and the organization identified as the Contractor on page 5 of this contract amendment.

The specified terms of this contract amendment shall supersede the requirements of stated positions with the original contract and shall be in addition to the original contract terms where new provisions are provided. The original contract and any amendments thereto shall be modified as listed in this amendment. All other provisions of the original contract and any amendments not specifically addressed herein shall remain unchanged by this amendment. The original contract and any properly executed amendments thereto shall represent the entire contract between the parties and shall supersede all previous communications, representations, or agreements, either verbal or written between the parties. Any representation to the contrary shall not be effective.

THE PARTIES AGREE:

In all portions of the original contract, all references to the Bureau of Child Nutrition Programs are hereby amended to now state the Bureau of Childcare Food Programs.

Section I. of the original contract is hereby amended with the following provisions:

P. Child Care Food Program Contractor is Encouraged to Seek Legal Counsel:

1. The Child Care Food Program contract is a legal binding contract between the Contractor and the Florida Department of Health (Department). Entering into this contract may affect the Contractor's rights and responsibilities under Florida law. It is therefore most likely that the Contractor will have individual legal concerns that are best addressed by an attorney representing that Contractor's interests.
2. The Department is not permitted to provide legal advice regarding this contract. The Department is only permitted to explain the various terms, conditions and functions of the requirements within the contract. The Department may not advise the Contractor as to the Contractor's rights under the contractor's provisions. Any representation either implied or stated by any party, or any agent of the Department in this regard to the contrary shall have no effect and shall not be relied upon regarding this contract.
3. Each Contractor is therefore strongly encouraged to seek legal advice from an attorney licensed in the State of Florida before entering into this contract or any contract amendment. The Department respects the Contractor's right to seek proper legal counsel. The Department will certainly discuss the provisions of the proposed contract with a properly licensed attorney representing the Contractor and answer any questions or concerns without affecting the Contractor's opportunity in the Program whatsoever.

4. Consistent with the requirements of 7 CFR §226.6(b)(4), the terms of this contract are applied uniformly throughout the state and are not subject to negotiation. Therefore, any communication with the Contractor's attorney shall be for the sole purpose of providing information regarding the legal implications of the contract's terms and conditions.

Q. Contract Amendment Procedure:

1. Contract Amendment

- a. The Department shall have the right to amend the Contract from time to time as required under the Program's regulations or for operational necessity.
- b. Such amendment, executed by the Department, shall be mailed to the Contractor's last reported mailing address. The Contractor shall no later than 21 days of receipt of the amendment:
 - (1) Sign the amendment and return a copy to the Department; or
 - (2) Provide the Department written notice of its intent to withdraw from the Program.
- c. Amendments to the contract shall be effective upon the earlier of:
 - (1) 30 days after receipt of the amendment; or
 - (2) 30 days after the five day period after the Notice is mailed to the Contractor.
- d. The Amendment shall be adopted by reference into the original Contract and considered effective against all parties at the end of the applicable 30 day period unless:
 - (1) The Contractor submits written notice of objection to the amendment and its intent to withdraw from the Program within 30 days of receipt of the amendment; or
 - (2) The Department withdraws the amendment.

2. The Contractor shall:

- a. Elect to comply with the contract amendments issued by the Department by permitting the period of notice of objection of 30 days from the date of receipt of the proposed amendment to expire; or
- b. Provide written notice to the Department of objection to the amendment and the contractor's intention to withdraw from the Program within the earlier of:
 - (1) 30 days from the date of the receipt of the written notice of contract amendment; or
 - (2) 30 days after the five day period after the Department mails the contractor notice of the contract amendment.

R. Food Safety and Sanitation Requirements:

- 1. The Contractor hereby expressly agrees that the Contractor shall only claim and receive approved reimbursement for those meals that are served according to all required food safety and sanitation requirements stated in Attachment 3.
- 2. The terms and conditions of this contract shall in no fashion be used for purposes other than participation in the CCFP. The Contractor hereby further agrees that it understands that it is solely responsible for any additional licensure or certifications that may be required. The terms of this contract do not provide the Contractor with a food permit or formal approval for its food preparation facility or operation.
- 3. Food permits (also known as annual sanitation certificates) issued between October 1, 2009 and June 30, 2010 will be accepted for FY 2010-2011 at the same food service level the permit was issued.

4. The Contractor shall:

- a. Ensure that it is in compliance with all food safety and sanitation requirements as they apply to the food storage, preparation, cooking and/or serving of meals; and
- b. Comply with all food safety and sanitation requirements stated in Attachment 3 to the contract, hereby adopted and incorporated into the contract.
- c. Adhere to the level of food service as required by current food permit.
- d. Not change the level of food service (to a higher level of service) after June 30, 2010 unless a new food permit issued by an authorized state agency is provided reflecting this approved change.

Section III. E. of the original contract is hereby amended with the following provisions:

5. The Contract shall terminate upon the date of expiration unless the Department takes additional actions described in this Contract. Prior to automatic termination, the Contract may be terminated, if not precluded by other provisions of this Contract, upon the Department's receipt of the Contractor's written notice of the Contractor's:

- a. Objection to a Contract amendment; and
- b. Its election to withdraw from the Program within 30 days of the Contractor's receipt of the written notification of a proposed amendment to the Contract.

Section III. G. of the original contract is hereby replaced in its entirety with the following:

G. Venue

Venue for any action arising from the terms of this contract or the application of state or federal law to any dispute between the parties to this contract shall be Leon County, Florida to the exclusion of all other courts and jurisdictions. Any action regarding this contract or the application of state or federal law to any dispute between the parties to this contract shall be brought to the Department for an administrative hearing that shall be conducted in Leon County, Florida to the exclusion of all other courts and jurisdictions. Any non-administrative action regarding this contract or the application of state or federal law to any dispute between the parties to this contract shall be conducted in Leon County, Florida to the exclusion of all other courts and jurisdictions. Any appeal of a lower court or administrative hearing shall be to the First District Court of Appeal, in Leon County, Florida to the exclusion of all other courts and jurisdictions.

Attachment 1 of the original contract is hereby amended with the following provisions:

20. The following additional separate acts or omissions relevant to Attachment 3, Food Safety and Sanitation Requirements of this contract and other governing food safety and sanitation requirements are considered areas of noncompliance and could lead to a Notice of Serious Deficiency and/or suspension.

a. Poor employee health and hygiene:

- (1) Failure to exclude employees with a communicable disease (or are a carrier), an acute respiratory illness, an acute gastrointestinal illness, or while afflicted with boils, infected wounds or sores from working in any area of food service.
- (2) Failure to wash hands properly, frequently and at appropriate times. Handwashing areas must be supplied with hand soap, disposable towels or hand drying devices.
- (3) Failure of employees to maintain a high degree of personal cleanliness in the food preparation, storage area and when serving food to children.

b. Food From Unsafe Sources:

(1) Failure to obtain food from sources that meet federal and state health standards. Foods used in CCFP reimbursable meals must not be obtained from private homes or caterers not registered with the Department.

(2) Failure to obtain food that is not adulterated, temperature abused, misbranded or spoiled.

c. Improper protection and storage of potentially hazardous foods:

(1) Failure to keep food at proper temperatures (41°F or below and 135°F or above, also known as danger zone) except during necessary periods of preparation and service.

(2) Failure to thaw frozen foods in the refrigerator, under cold potable running water, in the microwave or part of the cooking process.

(3) Failure to ensure that potentially hazardous foods are not in the danger zone for more than 4 hours. Potentially hazardous catered food must be discarded after meal service with the exception of refrigerated milk.

(4) Failure to store food in clean, covered containers that are clearly marked with date of preparation.

(5) Failure to discard any unused, prepared, refrigerated, ready-to-eat food after 7 calendar days.

d. Improper cooking temperatures of food:

(1) Failure to ensure proper internal cooking temperatures are reached and held at least 15 seconds to eliminate bacteria.

(2) Failure to reheat potentially hazardous foods to a minimum of 165°F.

e. Dirty or contaminated utensils and equipment:

(1) Failure to properly wash, rinse, and sanitize utensils, food preparation equipment, and food contact surfaces at least every 4 hours.

(2) Failure to use 3-compartment sink or mechanical dish machine for washing, rinsing, and sanitizing utensils and equipment.

(3) Failure to use test kit to ensure accuracy of chemicals being used for sanitizing.

f. Failure to comply with stated requirements of Attachment 3 of this contract and other health and sanitation regulations that may apply at the contractor's facility.

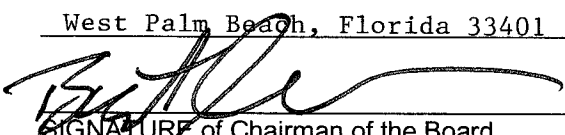
A new Attachment 3 is hereby amended to the original contract and is contained as attachment 1 to this Amendment One.

THE REMAINDER OF THIS PAGE IS INTENTIONALLY BLANK

As the Contractor's authorized representative empowered to commit to the terms of this contract, I have been expressly advised to seek legal advice regarding the terms of this contract with an attorney licensed in the State of Florida representing the interests of the corporation and/or individual interests of associated individuals or individuals named herein. By my signature I acknowledge that I enter into this contract freely on behalf of myself and those who I am empowered to represent. I have not relied upon any advice from the Department or its agents regarding this contract and the legal rights for myself or those who I am empowered to represent. I have considered seeking appropriate legal advice. I have read the above contract and understand each section and paragraph.

IN WITNESS THEREOF, the parties hereto have caused this 5 page contract amendment and its subject attachments, Attachment 1, identified as Attachment 3 of the Contract, adopted and incorporated into this contract by reference, to be executed by their undersigned official as duly authorized.

CONTRACTOR:

S-735
(Authorization Number)
Palm Beach County
Head Start & Children Services
(Legal Name of Organization)
Head Start & Children Services
(D/B/A Name)
301 N. Olive Avenue
(Address)
West Palm Beach, Florida 33401

SIGNATURE of Chairman of the Board,
President, Owner or Delegated Authority

PRINTED NAME: _____

TITLE: _____

DATE: _____

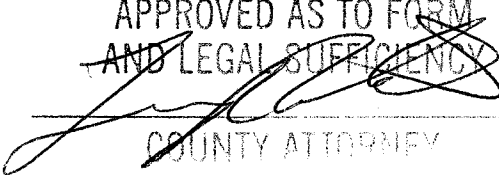
**STATE OF FLORIDA
DEPARTMENT OF HEALTH:**

Maria Williamson, Chief,
Bureau of Childcare Food Programs

DATE: _____

**APPROVED AS TO TERMS
AND CONDITIONS**

BY: 
DEPARTMENT HEAD

**APPROVED AS TO FORM
AND LEGAL SUFFICIENCY**

COUNTY ATTORNEY

Bureau of Childcare Food Programs
Child Care Food Program (CCFP)

AMENDMENT ONE TO
FFY 2010-2011 CONTRACT

ATTACHMENT 3
FOOD SAFETY AND SANITATION REQUIREMENTS

This attachment incorporates the food safety and sanitation requirements of the Bureau of Childcare Food Programs, Child Care Food Program contract. These requirements are in addition to any such local food safety, sanitation and licensure requirements for the contract facility. Any conflict between the requirements of this attachment and those of any other food safety or health authority shall be resolved in favor of the most stringent requirement. The failure to cite a specific violation of the requirements of this attachment shall not waive that requirement or the Bureau's authority to cite a then existing violation in the future.

The following requirements shall be met by all contract facilities and their employees.

- A. Food Safety and Sanitation - General, page 6
- B. Definitions, page 6-9
- C. Food Supplies, page 9
- D. Food Protection, 9-12
- E. Personnel, page 12-13
- F. Food Equipment and Utensils, page 13-18
- G. Sanitary Facilities and Controls, page 18-20
- H. Other Facilities and Operations, page 20-21
- J. Required CCFP Food Safety Training, page 21

A. Food Safety and Sanitation - General.

This attachment prescribes minimum safe and sanitary practices relating to food service at child care centers serving food or drink to children participating in the Child Care Food Program (CCFP).

(1) All CCFP food operations occurring at child care centers (public or private, for profit or nonprofit), at-risk after school care centers, religiously exempt centers, emergency shelters, outside-school-hours care centers under the auspices of a sponsoring organization, Head Start centers and organizations providing day care services for children with disabilities will be held responsible for these food safety and sanitation requirements.

(2) Sponsoring organizations will use these food safety and sanitation requirements for monitoring purposes and when pre-approving new child care sites.

(3) Food operations occurring at child care sites (i.e. day care homes) or premises other than what is defined in A.(1) will be held responsible for sanitary practices and standards as outlined in these food safety and sanitation requirements.

(4) Stricter local ordinances will supersede these food safety and sanitation requirements for food operations.

B. Definitions.

(1) "Adulterated" – Food shall be considered to be adulterated:

(a) If it bears or contains any poisonous or deleterious substance which may render it injurious to health; but in case the substance is not an added substance such food shall not be considered adulterated under this clause if the quantity of such substance in such food does not ordinarily render it injurious to health; or

(b) If it bears or contains any added poisonous or added deleterious substance, other than one which is a pesticide chemical in or on a raw agricultural commodity, which in or on the raw agricultural commodity has been removed to the extent possible in good manufacturing practice, and the concentration of such residue in the processed food when ready to eat, is not greater than the tolerance prescribed for the raw agricultural commodity; or

(c) If it consists in whole or in part of a diseased, contaminated, filthy, putrid, or decomposed substance, which renders it unfit for consumption; or

(d) If it has been produced, prepared, packed or held under insanitary conditions whereby it may become contaminated with filth, or whereby it may have been rendered diseased, unwholesome, or injurious to health; or

(e) If it is the product of a diseased animal, an animal which has died otherwise than by slaughter, or an animal that

has been fed the uncooked offal from a slaughter house, or from other food establishments; or

(f) If its container is composed, in whole or in part, of any poisonous or deleterious substance which may render the contents injurious to health.

(2) "Air gap" – The unobstructed vertical distance, through the free atmosphere, between the lowest opening from any pipe or faucet supplying water to a tank, plumbing fixture, or other device and the flood-level rim of the receptacle, or the lowest opening from any waste outlet pipe and the flood-level rim of the receptacle.

(3) "Caterer" – A food service establishment listed under Section 381.0072, F.S., that prepares food at one location for delivery to and individual portion service at another location.

(4) "Civic" – Any organization, excluding Division of Blind Services, offering food service to the public; and

(a) Possesses tax exempt status under 26 U.S.C. section 501(c)(4); or

(b) Which has a chartered body of citizens, recognized by a municipality, whether for profit or not, that operates primarily to further the common good and general welfare of the people of the community.

(5) "Clean" – Free from dirt, foreign matter and impurities.

(6) "Commissary" – A food service establishment or any other commercial establishment where food, containers, or supplies are stored, prepared, or packaged, or where utensils are sanitized for transit to, and sale or service at, other locations.

(7) "Corrosion-resistant" – Those materials which maintain their original surface characteristics under prolonged influence of the food to be contacted, the normal use of cleaning compounds and sanitizing solutions, and other conditions-of-use environment.

(8) "Easily cleanable" – Surfaces that are readily accessible and of such material, finish and so fabricated that residue may be effectively removed by normal cleaning methods.

(9) "Easily movable" – Small equipment weighing 30 pounds or less; or mounted on casters, or provided with mechanical means of safely tilting for cleaning purposes; and has no utility connection, or has a utility connection that disconnects quickly, or has a flexible utility connection line of sufficient length to permit the equipment to be moved for cleaning of the area.

(10) "Employee" – Any person working in or for a food service establishment who engages in food preparation or service, who transports food or food containers, or who comes in contact with any utensil or equipment.

(11) "Equipment" – All stoves, ranges, hoods, meatblocks, tables, counters, cabinets, refrigerators, freezers, sinks, dishwashing machines, steam tables and similar items, other than utensils, used in the operation of a food service establishment.

(12) "Extensively remodeled" – For the purpose of this chapter, the term extensively remodeled means structural changes to an existing establishment which costs in excess of 50 percent of the assessed value of the facility as determined by the county property appraiser.

(13) "Fixed food establishment" – A food service establishment which operates at a specific location and is connected to electrical, water, and sewage disposal systems.

(14) "Food" – Any raw, cooked or processed edible substance, ice, beverage or ingredient used or intended for use in whole, or in part, for human consumption.

(15) "Food-contact surfaces" – Surfaces of equipment and utensils with which food normally comes in contact, and those surfaces from which food may drain, drip or splash back onto surfaces normally in contact with food.

(16) "Food preparation" – The manipulation of foods intended for human consumption by such means as washing, slicing, peeling, chipping, shucking, scooping, and/or portioning. The term also includes those activities involving temperature changes, combining ingredients, opening ready-to-eat food packages, or any other activity causing physical or chemical alterations in the food.

(17) "Garbage" – Food waste generated on premises that is not disposed of through the sewage disposal system. The term also includes solid waste such as discarded containers or wrappers that are contaminated with food waste.

(18) "Hermetically sealed container" – A container designed and intended to be secure against the entry of microorganisms to maintain the commercial sterility of its contents after processing.

(19) "Highly susceptible population" – A group of persons who are more likely than other populations to experience foodborne disease because they are immunocompromised or older adults institutionalized or preschool age children in custodial care.

(20) "Hot water" – For the purposes of this chapter, hot water means a water temperature of 100 degrees Fahrenheit or above.

(21) "Indirect waste connection" – An indirect waste connection is a liquid waste pipe that is connected with the sewerage system through an air gap or air break.

(22) "Kitchenware" – All multi-use utensils other than tableware.

(23) "Limited food service establishment" – Any establishment with a food service operation, so limited by the type and quantity of foods prepared and the equipment utilized, that it poses a lesser degree of risk to the public's health. The term includes small seasonally operated concessions stands at schools, satellite kitchens that dispense catered meals and similar facilities.

(24) CCFP Program Manager – An individual who has direct authority, control or supervision over employees engaged in the storage, preparation, display and serving of food to children in child care settings.

(25) "Misbranded" – Food shall be considered to be misbranded:

(a) If in packaged form it lacks a label containing the name and place of business of the manufacturer, packer, or distributor; or an accurate statement of the contents; or

(b) If it is offered for sale under the name of another food; or

(c) If it purports to be or is represented as a food for which a definition and standard of identity has been prescribed and it is not.

(26) "Perishable food" – Any food of such type or in such condition as may spoil; provided, that foods which are in hermetically sealed containers processed by heat or other means to prevent spoilage and properly packaged, dehydrated, dry or powdered foods so low in moisture content as to retard development of microorganisms shall not be considered readily perishable.

(27) "Plumbing authority" – The local governing body, such as a county or city building inspection department which has adopted a plumbing code and has authority to interpret, inspect, and provide enforcement of plumbing standards.

(28) "Potentially hazardous food" – Any perishable food which consists in whole or in part of milk or milk products, eggs, meat, poultry, fish, shellfish, edible crustacea, or other ingredients, including synthetic ingredients, in a form:

(a) Capable of supporting rapid and progressive growth of infectious or toxigenic microorganisms; or

(b) Capable of supporting the slower growth of *Clostridium botulinum*.

(c) The term "potentially hazardous food" does not include foods which have a pH level of 4.6 or below or a water activity (Aw) value of 0.85 or less, or air-cooled hard-boiled eggs with the shell intact.

(29) "Premises" – The physical food service establishment and the contiguous land or property under the control of the manager, operator or owner.

(30) "Product thermometer" – A thermometer, thermocouple, thermistor or other device that when inserted into food indicates the temperature of the food. This term does not include non-product ambient temperature sensing devices.

(31) "Ready-to-eat food" – Food that is in a form that is edible without washing, cooking, or additional preparation by the establishment or the consumer. This includes:

(a) Unpackaged potentially hazardous food that is cooked to the temperature and time required for the specific food under section D. Food Protection of this attachment.;

(b) Raw, washed, cut fruits and vegetables;

(c) Whole, raw, fruits and vegetables that are presented for consumption without the need for further washing, such as at a buffet; and

(d) Other food presented for consumption for which further washing or cooking is not required and from which rinds, peels, husks, or shells are removed.

(32) "Reconstitute" – The recombination of dehydrated food products with potable water or other suitable liquids.

(33) "Safe materials" – Articles manufactured from or composed of materials that may not be expected to result, directly or indirectly, in their becoming a component or otherwise affecting the characteristics of any food.

(34) "Sanitary" – Free from disease causing microorganisms of public health importance.

(35) "Sanitize" – The effective treatment of clean surfaces of equipment and utensils by a process which provides enough accumulative heat or concentration of chemicals for enough time that when evaluated for efficacy, yields a reduction of 5 logs, which is equal to a 99.999% reduction of representative disease microorganisms of public health importance.

(36) "Sealed" – Free of cracks or other junctures or openings which permit the entry or passage of moisture.

(37) "Single-service articles" – Any cups, containers, closures, plates, straws, place mats, napkins, doilies, spoons, stirrers, paddles, knives, forks, wrapping materials and all similar articles which are constructed wholly or in part from paper, paperboard, molded pulp, foil, wood, plastic, synthetic or other readily destructible materials, and which are intended by the manufacturers to be for one-time, one-person use, then to be discarded.

(38) "Tableware" – Multi-use eating and drinking utensils.

(39) "Utensils" – Implements such as pots, pans, ladles or food containers used in the preparation, storage,

transportation or serving of food.

(40) "Wholesome" – Food which is in sound condition, clean, free from adulteration and otherwise suitable for human consumption.

C. Food Supplies.

(1) Food received or used in food service establishments shall be from sources approved or considered satisfactory by the department and shall be clean, wholesome, free from spoilage, adulteration and misbranding, and safe for human consumption. It shall have been prepared, processed, handled, packaged, transported and stored in a sanitary manner so as to be protected from contamination and spoilage.

(2) Milk and milk products, including fluid milk, other fluid dairy products and manufactured milk products shall meet the standards of quality established for such products by applicable state laws and rules. Only pasteurized milk and milk products shall be used or served. Reconstituted dry milk and dry milk products may be used for cooking, baking, or fortification purposes. Non-dairy creaming, whitening or whipping agents may be reconstituted on the premises.

(3) Meat and meat products received or used in a food service establishment shall be identified as having been officially inspected for wholesomeness and sanitation by a federal or state regulatory program.

(4) Only clean eggs with shells intact and without cracks or checks, pasteurized liquid, frozen or dry eggs or pasteurized dry egg products shall be used in the establishment; except that hard boiled, peeled eggs, commercially prepared and packaged may be used. Pasteurized liquid, frozen, or dry eggs or egg products shall be substituted for shell eggs in the preparation of:

(a) Recipes calling for uncooked eggs, such as Caesar salad, hollandaise or bernaise sauce, noncommercial mayonnaise, eggnog, ice cream, and egg-fortified beverages; and

(b) Eggs for a highly susceptible population if the eggs are broken, combined in a container, and not cooked immediately or if the eggs are held before service following cooking.

(5) All packaged foods, including those packaged in hermetically sealed containers, shall have been processed and packaged in approved commercial food processing establishments.

(6) Food containers and packaged foods received and stored at food service establishments shall be in a condition which maintains the safety and integrity of the contents.

(7) Food prepared in a private home shall not be used, sold, or offered to the public by a food service establishment.

D. Food Protection.

(1) Food while being transported, stored, prepared, displayed, served or sold at a food service establishment shall be protected from dust, flies, rodents or other vermin, toxic materials, unclean equipment and utensils, unnecessary handling, coughs and sneezes, flooding by sewage, overhead leakage and all other sources of contamination. Different types of raw animal products such as beef, fish, lamb, pork or poultry shall be separated during storage and processing by use of different containers, partitions, shelves, or by cleaning and sanitizing the equipment between product use. Raw food products shall be physically separated from ready-to-eat food products during display or storage by storing the raw products below ready-to-eat food products.

(2) Perishable food shall be stored at such temperatures as will protect against spoilage. All potentially hazardous food shall be kept at safe temperatures, 41 degrees (°) Fahrenheit (F) or below and 135 degrees (°) Fahrenheit (F) or above, except during necessary periods of preparation and service.

(3) Potentially hazardous foods which are to be served without further cooking, such as ham salad, chicken salad, egg salad, shrimp salad, lobster salad, tuna salad, potato salad and other mixed foods containing potentially hazardous ingredients or dressings shall be prepared from chilled products with a minimum of manual contact. The surfaces of containers and the utensils used for preparation and subsequent storage shall have been effectively cleaned and sanitized immediately prior to use. Potentially hazardous food requiring refrigeration after preparation shall be rapidly cooled to an internal temperature of 41°F or below. The cooling period shall not exceed four hours. Potentially hazardous foods of large volume or prepared in large quantities shall be rapidly cooled, utilizing one or more of the following methods based on the type of food being cooled:

(a) Placing the food in shallow pans;

(b) Separating the food into smaller or thinner portions;

(c) Using rapid cooling equipment;

(d) Stirring the food in a container placed in an ice water bath;

(e) Using containers that facilitate heat transfer;

(f) Adding ice as an ingredient;

- (4) Frozen potentially hazardous food shall be thawed:
- (a) In refrigerated units at a temperature not to exceed 41°F ; or
 - (b) Under cold potable running water with sufficient water velocity to agitate and float off loosened food particles into the overflow:
 - 1. For a period of time that does not allow thawed portions of ready-to-eat food to rise above 41°F; or
 - 2. For a period of time that does not allow thawed portions of a raw animal food requiring cooking to be above 41°F for more than 4 hours including the time the food is exposed to the running water and the time needed for preparation for cooking; or
 - (c) In a microwave oven; or
 - (d) As part of the conventional cooking process.
- (5) Raw, unprocessed fruits and vegetables shall be thoroughly washed in potable water to remove any existing contaminants before being cut, combined with other ingredients, cooked, or served.
- (6) Raw meats and selected foods must be cooked to the internal cooking temperatures identified in Table 1 below and held at the appropriate temperature for at least 15 seconds.

Table 1 Safe Internal Cooking Temperatures of Raw Meats and Selected Foods:

Food	Minimum Internal Temperature
Roasts (Beef, Pork and Ham)	145° F
Fish	145° F
Eggs – to be served immediately	145° F (whites and yolks are firm)
Eggs – cooked and held for service	155° F
Ground meat	155° F
Poultry – whole, parts, or ground	165° F
Leftovers	165° F
Foods cooked in microwave	165° F
Sauces, gravy, soups	165° F

- (7) Microwave Cooking. Raw animal food cooked in a microwave oven shall be:
- (a) Rotated or stirred throughout or midway during cooking to compensate for uneven distribution of heat;
 - (b) Covered to retain surface moisture;
 - (c) Heated to a temperature of at least 165°F throughout all parts of the food; and
 - (d) Allowed to stand covered for 2 minutes after cooking to obtain temperature equilibrium.
- (8) Food shall be prepared with the least possible manual contact, with suitable utensils, and on surfaces that prior to use have been cleaned, rinsed and sanitized to prevent cross contamination. Potentially hazardous foods that have been cooked and then refrigerated shall be reheated rapidly to a minimum of 165°F for 15 seconds throughout all parts of the food, or if reheated in a microwave, shall meet the requirements for microwave cooking in section D.(7) before being served or before being placed in a hot food storage equipment. Ready-to-eat food taken from a commercially processed, hermetically sealed container, or from an intact package from a food processing plant, shall be heated to a temperature of a least 135°F. Precooked, pre-packaged food from approved sources shall be exempt from this rapid reheating requirement when the food is initially removed from the original package, prepared for service, and not cooked for hot holding. Steam tables, bainmaries, warmers and similar hot food holding equipment are prohibited for the rapid reheating of potentially hazardous foods.
- (9) Food, whether raw or prepared, if removed from the container or package in which it was obtained, shall be stored in a clean covered container except during necessary periods of preparation or service. Container covers shall be impervious and nonabsorbent, except that linens or napkins may be used for lining or covering bread or roll serving containers. Solid cuts of meat shall be protected by being covered in storage, except that quarters or sides of meat may be hung uncovered on clean sanitized hooks if no food product is stored beneath the meat. Food and containers of food shall not be stored under exposed or unprotected sewer lines or water lines, except for automatic fire protection sprinkler heads that may be required by fire safety rules. The storage of food in toilet rooms, locker rooms, dressing rooms, garbage rooms, or vestibules is prohibited. Unless its identity is unmistakable, bulk food such as cooking oil, syrup, salt, sugar or flour not stored in the product container or package in which it was obtained, shall be stored in a container identifying the food by common name. Food not subject to further washing or cooking before serving shall be stored in a way that protects it against cross contamination from food requiring washing or cooking. Packaged food

shall not be stored in contact with water or undrained ice. Food shall be stored a minimum of 6 inches above the floor, on clean shelves, racks, dollies or other clean surfaces in such a manner as to be protected from splash and other contamination. Racks and dollies used for food storage must be easily movable.

(10) Potentially hazardous food, date marking requirements.

(a) Refrigerated, ready-to-eat, potentially hazardous food prepared and held for more than 24 hours in a facility shall be clearly marked with the date of preparation.

(b) Except as specified in paragraph (d) of this section, a container of refrigerated, ready-to-eat, potentially hazardous food prepared and packaged by another food service establishment shall be marked to indicate the date, as specified under subsection D.(11), by which food shall be sold or served.

(c) When ready to eat, potentially hazardous food specified in paragraphs D.(10)(a) and (b), is to be subsequently frozen, in addition to the date of preparation, the food shall comply with the following:

1. Prior to the food being placed into the freezer, the container must be clearly marked to indicate the date of freezing; and

2. The container must be clearly marked to indicate that the food shall be consumed within 24 hours of thawing and shall be exempted from paragraphs (11)(a) and (b) of this subsection; or

3. When the food is removed from the freezer, the container must be clearly marked to indicate the date of thawing.

(d) Paragraphs (b) and (c) of this section does not apply to:

1. Cured meats and aged cheese; and

2. Individual meal portions served or repackaged for sale from a bulk container upon a consumer's request.

(11) Ready-to-eat, potentially hazardous food, disposition.

(a) Refrigerated, ready-to-eat, potentially hazardous food specified in paragraphs D.(10)(a) and (c), shall be discarded if not served within 7 calendar days from the date of preparation, excluding the time that the product is frozen;

(b) An ingredient or a container of refrigerated, ready-to-eat, potentially hazardous food specified in paragraph D.(10)(b), shall be discarded if not served within 7 calendar days, excluding the time that the product is frozen, after the original package is opened or by the manufacturer's "sell by" or "use by" date, whichever occurs first.

(c) Ready-to-eat, potentially hazardous food specified in subparagraph D.(10)(c)2., shall be discarded if not consumed within 24 hours after thawing.

(d) Food specified under subsection D.(10), shall:

1. Not be frozen if the food has exceeded the requirements of subsection D.(2) or (3), ;

2. Not be frozen and subsequently thawed more than once;

3. Be discarded if it is in a container or package that does not bear a date or is inappropriately marked with a date that exceeds the time frame specified in subsection D.(11),

(e) A refrigerated, potentially hazardous, ready-to-eat food ingredient or a portion of a refrigerated, potentially hazardous, ready-to-eat food that is subsequently combined with additional ingredients or portions of food shall retain the date marking of the earliest or first-prepared ingredient or portion and shall be discarded as specified under subsection D.(11),

(12) All food shall be displayed and served in such a manner as to minimize contamination. To avoid unnecessary manual contact with food, suitable dispensing utensils shall be used by employees or provided to consumers who serve themselves. During pauses in food preparation or dispensing, food preparation and dispensing utensils shall be stored:

(a) In the food, including food within containers such as bins of sugar or flour, with the dispensing utensil handle extended out of the food; or

(b) Clean and dry; or

(c) In running water of sufficient velocity to flush particulates to the drain, if used with moist food such as ice cream or mashed potatoes; or

(d) In hot water wells that maintain the temperature of the water at or above 135°F and that are cleaned frequently at scheduled intervals throughout the day.

(e) Ice-dispensing utensils shall be stored on a clean surface or in the ice with the dispensing utensil's handle extended out of the ice. Between uses, ice transfer utensils shall be stored in a way that protects the utensils from contamination.

(13) Sugar, condiments, seasonings or dressings intended for self-service use shall be provided only in individual packages or from dispensers that protect their contents. Nondairy creaming or whitening agents shall be provided in an individual service container, protected pour-type pitcher, or drawn from a refrigerated dispenser designed for such service.

(14) Individual portions of food once served to a customer shall not be served again, except those packaged foods, other than potentially hazardous foods, which remain in their undamaged original packaging and which are still wholesome may be re-served.

(15) Ice obtained from outside the food service establishment shall be from an approved source and shall be handled, transported and stored in a sanitary manner. Ice for consumer use shall be dispensed only with scoops, tongs or other ice-dispensing utensils or through automatic self-service ice-dispensing equipment. Ice-dispensing utensils shall be stored on a clean surface or in the ice with the dispensing utensil's handle extended out of the ice. Between uses, ice transfer utensils shall be stored in a way that protects the utensils from contamination. Ice storage bins shall be drained through an air gap in accordance with the provisions of the applicable plumbing authority. Ice used for cooling stored food and food containers shall not be used for human consumption, except that such ice may be used for cooling tubes conveying beverages or beverage ingredients to a dispenser head.

(16) Food while being transported between food service establishments or while being transported from a food service establishment to another location shall be in covered containers or otherwise wrapped or packaged to ensure protection from contamination. Potentially hazardous foods shall be kept at safe temperatures during all periods of transportation and delivery. Food utensils shall be completely wrapped or packaged to protect them from contamination.

(17) No poisonous or toxic materials shall be present in food service establishments except those used for maintaining the establishment, cleaning and sanitizing equipment and utensils, and controlling insects and rodents.

(a) Containers of poisonous or toxic materials shall be prominently and distinctly labeled for easy identification of contents.

(b) Poisonous or toxic materials shall be stored separate from food, food equipment, utensils, or single-service articles.

(c) The use of sanitizers, cleaning compounds or other compounds intended for use on food-contact surfaces shall not leave a toxic residue on such surfaces or constitute a hazard to employees or consumers.

(d) Poisonous or toxic materials shall not be used in a way that contaminates food, equipment, or utensils, nor in any way that constitutes a hazard to employees or other persons, nor in a way other than in full compliance with the manufacturer's labeling.

(e) First-aid supplies and personal medications shall be stored in a way which prevents their contaminating food or food-contact surfaces.

(f) Sanitizers, detergents, or other cleaning compounds shall be stored separately from insecticides, rodenticides and other poisonous or toxic materials using methods such as different storage cabinets or separate areas of a room.

(18) In the event of an emergency occurrence such as a fire, flood, power outage or similar event that might result in the contamination of food, or that might prevent potentially hazardous food from being held at safe temperatures, 41°F or below and 135°F or above, the person in charge shall immediately notify the department.

E. Personnel.

(1) Health and disease control – No person while affected with any disease in a communicable form or while a carrier of such disease or while afflicted with boils, infected wounds, sores or an acute respiratory infection shall work in any area of a food service establishment in any capacity in which there is a likelihood of such person contaminating food or food-contact surfaces with pathogenic organisms, or transmitting disease to other individuals and no person known or suspected of being affected with any such disease or condition shall be employed in such an area or capacity. If the management of the food service establishment has reason to suspect that an employee has contracted any disease in a communicable form or has become a carrier of such disease that can be transmitted by normal food service operation, the department shall be notified immediately. Both management and employee shall be responsible for compliance with the requirements of this section.

(2) Cleanliness – The outer clothing of all employees shall be clean. Employees shall maintain a high degree of personal cleanliness during all periods of duty. All persons involved with food preparation or food storage, or who come in contact with utensils or other food-contact services, shall comply with paragraphs (a) through (f).

(a) Hairnets, headbands, caps or other effective hair restraints shall be worn to keep hair from food and food-contact surfaces.

(b) Keep their fingernails trimmed, filed, and maintained so the edges and surfaces are cleanable and not rough. Fingernails exceeding one-eighth inch beyond the nail bed shall not be considered trimmed and must comply with paragraph (c) of this subsection.

(c) Not wear fingernail polish or artificial fingernails when working with exposed food or unwrapped utensils unless wearing intact gloves in good repair.

(d) Except as specified in paragraph (f) of this section, shall not eat or drink in food storage and preparation areas, or in areas containing exposed food or unwrapped utensils, or where utensils are cleaned or stored.

(e) Not wear jewelry on their arms and hands while preparing food. This does not apply to a single plain ring such as a wedding band.

(f) Be allowed to drink from a beverage container with a tight fitting lid, if the container is handled to prevent contamination of the employees' hands, the container or unwrapped single-service article; and exposed food, clean equipment, utensils, and linens.

(3) Tobacco – Employees shall not smoke or use tobacco in any form while engaged in the preparation or service of food or while handling any utensils or equipment. Smoking shall not be permitted in food storage and preparation areas or in areas where utensils are cleaned or stored.

(4) Other practices – Spoons, knives and forks shall be picked up and touched only by their handles. Cups, glasses and bowls shall be handled so that fingers or thumbs do not contact inside surfaces or lip-contact outer surfaces.

(5) Handwashing – Employees shall wash their hands and exposed portions of their arms at designated handwashing facilities at the following times:

(a) After touching bare human body parts other than clean hands and clean, exposed portions of arms;

(b) After using the toilet room;

(c) After caring for or handling support animals as allowed under subsection H.(8);

(d) After coughing, sneezing, using a handkerchief or disposable tissue, using tobacco, eating, or drinking (except as noted in paragraph (2)(f) of this section);

(e) Immediately before engaging in food preparation including working with exposed food, clean equipment and utensils, and unwrapped single-service and single-use articles;

(f) During food preparation, as often as necessary to remove soil and contamination and prevent cross contamination when changing tasks;

(g) When switching between working with raw foods and working with ready-to-eat foods; and

(h) After engaging in other activities that contaminate the hands.

(6) Other – Infants and children shall not be permitted in food preparation areas. Only authorized individuals, necessary for the operation of the food service establishment, or as part of an organized educational event, shall be allowed in the food preparation or utensil washing areas.

(7) When the food service establishment receives a complaint of possible foodborne illness, the local county health department must be notified.

F. Food Equipment and Utensils.

(1) Equipment and facilities provided – Every food service establishment shall be provided with equipment and utensils so designed, constructed, located, installed, maintained and operated as to permit full compliance with the provisions of this chapter. Equipment that is certified or classified for sanitation in accordance with American National Standards Institute/National Sanitation Foundation (ANSI/NSF) standards (Standard 2, July 1, 2002; Standard 3, July 1, 2001; Standard 4, April 26, 2002; Standard 6, December 6, 2002; Standard 7, April 1, 2001; Standard 8, December 26, 2002; Standard 12, November 1, 1992; Standard 13, August 1, 2001; Standard 18, August 29, 1996; Standard 20, July 1, 2000; Standard 25, December 26, 2002; Standard 29, November 1, 1990; Standard 36, January 1, 2002; Standard 37, April 26, 2002; Standard 51, June 14, 2002; and Standard 59, December 26, 2002) by an ANSI accredited program, will be deemed to comply with this section. The following equipment and facilities shall be provided where applicable to the operations conducted:

(a) Conveniently located refrigeration facilities and hot food storage and display facilities of capacity adequate to maintain all potentially hazardous foods at safe temperatures during all storage, preparation, display and serving operations. Each facility used for the storage of potentially hazardous foods shall be provided with a digital or numerically scaled indicating thermometer accurate to plus or minus 3°F, located in the warmest or coldest part of the facility as may be applicable and of such type and so situated that the temperature can be easily and readily observed. Recording thermometers, accurate to plus or minus 3°F may be used in lieu of indicating thermometers. Where it is impractical to install thermometers on equipment such as bainmaries, steam tables, steam kettles, heat lamps, calrod units or insulated food transport carriers, a metal stem-type product thermometer with a digital or numerical scale and accurate to plus or minus 3°F shall be provided and used to check internal food temperatures.

(b) Conveniently located sinks with running water, waste disposal units or containers or similar equipment for the washing, trimming and similar preparation of foods. Sinks used for the preparation of food shall not be used for any other purpose.

(c) Cabinets, compartments or bins and utensils for storing and serving ice in a sanitary manner.

- (d) Water dispensing devices of sanitary design.
- (e) Sanitary facilities for storing and dispensing single-service articles.
- (f) Unwrapped foods which are displayed or otherwise placed on counters or serving lines at cafeterias, smorgasbords, buffets or similar type operations and all unwrapped foods on tables, racks, carts, counters and shelves at any food service establishment shall be protected against contamination from customers and other sources. Such protection shall be provided by enclosures or by the installation of easily cleanable sneezeguards or other effective counter protector devices, cabinets, display cases that shall be designed to intercept direct lines between the mouth of the customer and the food. Self-service openings and counter guards shall be so designed and arranged to protect food from bare hand contact by customers.
- (g) Exhaust ventilation installed at or over all cooking units such as ranges, griddles, deep-fat frying units and other units of equipment which release appreciable quantities of steam, odors, grease or smoke shall be approved by the local fire authority.
- (h) Facilities for the storage of tableware, designed and maintained to present the handle to the employee or customer and to cover or protect the portion which may contact the customer's mouth.
- (i) Convenient and suitable implements such as forks, knives, tongs, spoons, scoops and similar devices to prevent unnecessary handling of food at all points where food is prepared or served.
- (j) Conveniently located cleaning facilities to keep all parts of the establishment and all equipment and utensils in a clean and sanitary condition. This shall include suitable space and facilities for storing clean and soiled utensils; for disposing of waste food residues; for pre-rinsing, washing and sanitizing of multi-use utensils; for cleaning pots, pans, racks and cans; and such other equipment as may be necessary for the effective, regular and periodic cleaning of the entire establishment including either a janitorial sink, can washing facility or similar device intended for the disposal of liquid waste resulting from cleaning operations.
- (k) Suitable multi-use utensils or single-service articles made from non-toxic materials.
- (l) Equipment for manual or mechanical dishwashing of multi-use eating and drinking utensils. Suitable facilities shall be provided for removing food scraps and food residue from utensils, including glasses, before they are placed in the wash water or wash compartment.
 1. When utensils are washed and sanitized by hand, a three compartment sink shall be provided. All sinks shall be of adequate size and depth to accommodate the utensils to be washed, shall be provided with running hot and cold water and shall be properly connected to the building drainage system. Sinks shall be provided with drainboards, easily moveable dishtables of adequate size or other similar equipment so located and so constructed that soiled and cleaned utensils are kept entirely separate and that cleaned utensils are protected against contamination from soiled utensils or dishwashing operations. Drainboards shall slope to the sinks or to suitable drains and shall be installed so as not to interfere with proper use of the sinks. Dish baskets shall be of such design as to permit complete immersion of multi-use utensils and equipment components being sanitized therein.
 2. When immersion type dishwashing machines are used, applicable requirements pertaining to manual dishwashing shall be met.
 3. When utensils are washed by spray-type dishwashing machines which depend upon a hot water spray for final rinsing or sanitizing, the hot water system shall provide water to the machine during all periods of dishwashing operations at a temperature at least equal to the final rinse temperature specified in subparagraph F.(5)(b)7. Easily readable thermometers shall be installed near the discharge end of the machine, so located as to show the temperature of the final rinse water entering the manifold. Thermometers shall also be provided to indicate the temperature of water in all tanks of machines. These thermometers shall be accurate to plus or minus 3°F. A pressure gauge shall be installed or a suitable gauge cock shall be provided in the rinse line, immediately upstream from the dishwashing machine, to permit checking the flow pressure of the final rinse water.
- (m) All facilities necessary for washing pots, pans and other multi-use utensils in which food is prepared. At least a two compartment sink shall be provided for washing kitchenware and equipment which does not require sanitization. All sinks shall be provided with running hot and cold water and adequate impervious drainboards or easily movable dishtables.
- (n) Other types of devices which have been demonstrated to the satisfaction of the department to be effective in rendering all surfaces of utensils free from visible soil, wash water and detergent, leaving them clean to sight and touch and effectively subjected to sanitizing.

(2) Design and fabrication.

- (a) Multi-use equipment and utensils shall be constructed and repaired with safe materials, including finishing materials; shall be corrosion resistant and nonabsorbent; and shall be smooth, easily cleanable and durable under conditions of normal use. Single-service articles shall be made from clean, sanitary, safe materials. Ice buckets, other

containers, and scoops, shall be of a smooth, impervious material and designed to facilitate cleaning. Equipment, utensils and single-service articles shall not impart odors, color or taste nor contribute to the contamination of food.

(b) If solder is used, it shall comply with the standards of the Plumbing section of the current Florida Building Code . It shall not exceed .2% lead.

(c) Pewter or enamel may not be used as a food-contact surface. Galvanized metal may not be used for moist or acidic foods and beverages.

(d) Hard maple or equivalently nonabsorbent material may be used for cutting blocks, cutting boards, salad bowls, baker's tables or rolling pins. Wood may be used for single-service articles, such as chopsticks, stirrers or ice cream spoons. Under other circumstances, the use of wood as food-contact surfaces is prohibited, except as specified in subsection F.(2).

(e) Safe plastic or safe rubber-like materials that are resistant under normal conditions of use to scratching, scoring, decomposition, crazing, chipping and distortion, that are of sufficient weight and thickness to permit cleaning and sanitizing by normal dishwashing methods are permitted for repeated use.

(f) Cutting surfaces that come into contact with food such as cutting blocks and boards that are subject to scratching and scoring shall be resurfaced if they can no longer be effectively cleaned and sanitized, or discarded if they are not capable of being resurfaced.

(g) Equipment containing bearings and gears requiring non-food grade lubricants shall be designed and constructed so that the lubricant cannot leak, drip or be forced into food or onto food-contact surfaces. Only food grade lubricants shall be used on equipment designed to receive lubrication of bearings and gears on or within food-contact surfaces.

(h) Tubing conveying beverages or beverage ingredients to dispensing heads may be in contact with stored ice provided that such tubing is fabricated from safe materials, is grommited at entry and exit points to preclude moisture from condensation from entering the ice machine or the ice storage bin, and is kept clean. Drainage or drainage tubes from dispensing units shall not pass through the ice machine or the ice storage bin.

(i) Food-contact surfaces shall be easily cleanable, smooth and free of breaks, open seams, cracks, chips, pits, and similar imperfections, and free of difficult to clean internal corners and crevices. Cast iron may be used as a food-contact surface only if the surface is heated, such as in grills, griddle tops and skillets. Threads shall be designed to facilitate cleaning; ordinary "V" type threads are prohibited in food-contact surfaces, except that in equipment such as ice makers or hot oil cooking equipment and hot oil filtering systems, such threads shall be minimized.

(j) Unless designed for in-place cleaning, food-contact surfaces shall be accessible for cleaning and inspection:

1. Without being disassembled; or
2. By disassembling without the use of tools; or
3. By easy disassembling with the use of only simple tools such as a mallet, a screwdriver or an open-end wrench kept available near the equipment.

(k) Equipment intended for in-place cleaning shall be so designed and fabricated that:

1. Cleaning and sanitizing solutions can be circulated throughout a fixed system using an effective cleaning and sanitizing regimen; and
2. Cleaning and sanitizing solutions will contact all interior food-contact surfaces; and
3. The system is self-draining or capable of being completely evacuated.

(l) Fixed equipment designed and fabricated to be cleaned and sanitized by pressure spray methods shall have sealed electrical wiring, switches and connections.

(m) Sinks and drain boards shall be self-draining.

(n) Indicating thermometers required for immersion into food or cooking media shall be of metal stem type construction, with a digital or numerical scale and accurate to plus or minus 3°F .

(o) Non-food-contact surfaces of equipment which are exposed to splash or food debris or which otherwise requires frequent cleaning, shall be designed and fabricated to be smooth, washable, free of unnecessary ledges, projections or crevices, readily accessible for cleaning and shall be of such material and in such repair as to be easily maintained in a clean and sanitary condition.

(p) Ventilation hoods and devices shall be designed to prevent grease or condensation from collecting on walls and ceilings and from dripping into food or onto food-contact surfaces. Filters or other grease extracting equipment, if used, shall be readily removable for cleaning and replacement if not designed to be cleaned in place.

(q) Equipment that was installed in a food service establishment prior to the effective date of this Amendment One, Food Safety and Sanitation Requirements, Attachment 3 that does not fully meet all of the design and fabrication requirements of this section, shall be deemed acceptable in that establishment if it is in good repair, capable of being maintained in a sanitary condition and the food-contact surfaces are non-toxic. Replacement equipment and new

equipment acquired after the effective date of this Amendment One, Food Safety and Sanitation Requirements, Attachment 3 shall meet the requirements of this amendment.

(3) Installation and location of equipment – Equipment shall be so installed as to facilitate the cleaning thereof and of all adjacent areas with the equipment in place, unless the equipment is easily movable. Equipment placed on tables or counters, but not sealed thereto and is not easily movable, shall be mounted on legs or feet at least 4 inches high. Floor mounted equipment, unless easily movable, shall be installed on raised platforms of concrete or other smooth masonry in such manner as to prevent liquids or debris from seeping or settling underneath, between or behind in spaces not fully open for cleaning and inspection; or shall be elevated on legs or feet at least 6 inches above the floor. Such equipment shall be installed flush to the wall with the space sealed; or a sufficient, unobstructed space from the rear wall to the back of the equipment shall be provided to permit cleaning. The space between adjoining units or between the side of a unit and the adjacent wall shall be sealed unless there is sufficient space to allow for ready and thorough cleaning between, behind and beside all such equipment. Aisles or working spaces between equipment and walls shall be of sufficient width and unimpeded so that employees can readily perform their duties without contamination of food or food-contact surfaces from clothing or unnecessary personal contact. All easily movable storage equipment such as pallets, racks and dollies shall be positioned to provide accessibility to working areas. Equipment intended for connection to the water supply or sewer system shall be installed in accordance with provisions of the applicable plumbing authority and shall be protected from back siphonage or backflow by use of approved air gaps, vacuum breakers or backflow preventers.

(a) Waste piping from all refrigerators shall discharge indirectly into a floor sink, floor drain or receptor approved by the plumbing authority.

(b) Drains in walk-in refrigerator floors shall be installed by indirect waste connections and such drains shall discharge into a floor drain located outside the walk-in refrigerator.

(4) Cleanliness of equipment and utensils.

(a) All tableware, kitchenware and food-contact surfaces of equipment, exclusive of cooking surfaces of equipment and pots and pans that are not used to hold or store food and are used solely for cooking purposes, shall be thoroughly cleaned and sanitized after each use. Food-contact surfaces of grills, griddles and similar cooking devices and the cavities and door seals of microwave ovens shall be cleaned at least once a day; except that this shall not apply to hot oil cooking equipment and hot oil filtering systems. The food-contact surfaces of all cooking equipment shall be kept free of encrusted grease deposits and other accumulated soil. All multi-use utensils and food-contact surfaces of equipment used in the preparation or storage of potentially hazardous food shall be thoroughly cleaned and sanitized prior to each such use. Where equipment and multi-use utensils are used for preparation of potentially hazardous foods on a continuous or production line basis, food-contact surfaces of such equipment and utensils shall be cleaned and sanitized at least after every four (4) hours of operation, based on food temperature, type of food and amount of food particle accumulation. Non-food-contact surfaces of equipment shall be cleaned at such intervals as necessary to keep them free of dust, dirt, food particles and otherwise in a clean and sanitary condition. After cleaning and until use, all food-contact surfaces of equipment and multi-use utensils shall be stored and handled in a manner that protects those surfaces from manual contact, splash, dust, dirt, insects and other contaminants.

(b) All single-service articles shall be stored, handled and dispensed in a sanitary manner and shall be used only once. Food service establishments which do not have adequate and effective facilities for cleaning and sanitizing multi-use utensils shall use single-service articles only.

(c) Detergents, cleaning components and abrasives shall be thoroughly rinsed off food-contact surfaces.

(d) Cloths used for wiping occasional food spills on tableware, such as plates or bowls being served to the consumer, shall be clean, dry and used for no other purpose. Moist cloths or sponges used for wiping food spills on kitchenware and food-contact surfaces of equipment shall be clean and rinsed immediately prior to use and frequently during use in a sanitizing solution and used for no other purpose. Moist cloths or sponges used for cleaning non-food-contact surfaces of equipment such as counters, dining table tops and shelves shall be clean and rinsed in a sanitizing solution and used for no other purpose. If multi-use disposable towels are used in place of wiping cloths or sponges, the towels shall be discarded at least on a daily basis.

(5) Methods of washing and sanitizing – Prior to washing, all equipment and multi-use utensils shall be preflushed or prescraped and, when necessary, presoaked to remove gross food particles and soil. Effective concentrations of suitable detergent shall be used in both manual and mechanical dishwashing.

(a) Manual – For manual washing, rinsing and sanitizing of utensils and equipment, sinks, drainboards and dishtables shall be cleaned prior to use. Equipment and multi-use utensils shall be thoroughly washed in the first compartment in a hot detergent solution which is kept reasonably clean, and then shall be rinsed free of such solution in the second compartment. All multi-use eating and drinking utensils and, as described in paragraph (4)(a) of this

section, the food-contact surfaces of all other equipment and multi-use utensils shall be sanitized in the third compartment by one of the following methods:

1. Immersion for a period of at least one-half minute in clean, hot water at a temperature of 170°F or above;
 2. Immersion for a period of at least 1 minute in a clean sanitizing solution containing:
 - a. A minimum of 50 parts per million of available chlorine at a temperature not less than 75°F; or
 - b. A minimum of 12.5 parts per million of available iodine in a solution with a pH not higher than five and a temperature not less than 75°F;
 - c. Any other chemical sanitizing agent which has been demonstrated to the satisfaction of the department to be effective and non-toxic under use conditions and for which a suitable field test is available, as described herein. Such other sanitizing agents, in-use solutions, shall provide the equivalent sanitizing effect of a solution containing at least 50 parts per million of available chlorine at a temperature not less than 75°F. The concentration and contact time for quaternary ammonium compounds shall be in accordance with the manufacturer's label directions.
 - d. A test kit or other device that accurately measures the parts per million concentration of the solution shall be available and used when chemicals are used for sanitization.
 3. Fixed equipment and equipment too large to treat by methods 1. and 2. above, may be treated:
 - a. With live steam from a hose, free from material or additives other than those specified in Title 21 Code of Federal Regulations 173.310; or
 - b. By boiling water rinse from a hose;
 4. When hot water is used for sanitizing, the following facilities shall be provided and used:
 - a. An integral heating device or fixture installed in, on, or under the sanitizing compartment of the sink capable of maintaining the water at a temperature of at least 170°F; and
 - b. A digital or numerically scaled indicating thermometer, accurate to plus or minus 3°F convenient to the sink for frequent checks of water temperature.
- (b) Mechanical – Cleaning and sanitizing may be done by spray type or immersion dishwashing or by any other type of machine or device if it is demonstrated that it thoroughly cleans and sanitizes equipment and utensils. These machines and devices shall be properly installed and maintained in good repair. Machines and devices shall be operated in accordance with the manufacturer's instructions and specifications, which must be attached to the machine. Utensils and equipment placed in the machine shall be exposed to all dishwashing cycles. Automatic detergent dispensers, wetting agent dispensers, and liquid sanitizer injectors, if any, shall be properly installed and maintained. All dishwashing machines shall be thoroughly cleaned at least once a day, or more when necessary, to maintain them in a satisfactory operating condition.
1. The pressure of final rinse water supplied to spray type dishwashing machines shall not be less than 15 nor more than 25 pounds per square inch measured in the water line immediately adjacent to the final rinse control valve. A one-fourth inch IPS valve shall be provided immediately upstream from the final rinse control valve to permit checking the flow pressure of the final rinse water.
 2. Machine or water line mounted digital or numerically scaled indicating thermometers, accurate to plus or minus 3°F, shall be provided to indicate the temperature of the water in each tank of the machine and the temperature of the final rinse water as it enters the manifold.
 3. Rinse water tanks shall be protected by baffles, curtains or other effective means to minimize the entry of wash water into the rinse water. Conveyors in dishwashing machines shall be accurately timed to assure proper exposure times in wash and rinse cycles in accordance with manufacturer's specifications attached to the machines.
 4. Drain boards shall be provided and be of adequate size for the proper handling of soiled utensils prior to washing, and of cleaned utensils following sanitization, and be so located and constructed as not to interfere with the proper use of the dishwashing facilities. This does not preclude the use of easily movable dishtables for the storage of soiled utensils or the use of easily movable dishtables for the storage of clean utensils following sanitization.
 5. Equipment and utensils shall be flushed or scraped and, when necessary, soaked to remove gross food particles and soil prior to being washed in a dishwashing machine, unless a prewash cycle is part of the dishwashing machine operation. Equipment and utensils shall be placed in racks, trays, or baskets, or on conveyors, in a way that food-contact surfaces are exposed to the unobstructed application of detergent wash and clean rinse waters and that permits free draining.
 6. Machines using chemicals for sanitization may be used, provided that:
 - a. The temperature of the wash water shall not be less than 120°F.
 - b. The wash water shall be kept clean.
 - c. Chemicals added for sanitization purposes shall be automatically dispensed.
 - d. Utensils and equipment shall be exposed to the final chemical sanitizing rinse in accordance with the

manufacturer's specifications for time and concentration.

e. The chemical sanitizing rinse water temperature shall not be less than 75°F nor less than the temperature specified by the machine's manufacturer.

f. Chemical sanitizers used shall meet the requirements of subsection F.(5)(a) of this chapter.

g. A test kit or other device that accurately measures the parts per million concentration of the solution shall be available and used.

7. Machines using hot water for sanitizing may be used provided that wash water and pumped rinse water shall be kept clean; and the final rinse cycle achieves a utensil surface temperature of 160°F as measured by an irreversible registering temperature indicator; and water shall be maintained at not less than the temperatures stated in sub-subparagraphs a. through e. below:

a. Single tank, stationary rack, dual temperature machine:

Wash temperature 140°F.

Final rinse temperature 180°F.

b. Single tank, stationary rack, single temperature machine:

Wash temperature 165°F.

Final rinse temperature 165°F.

c. Single tank, conveyor machine:

Wash temperature 140°F.

Final rinse temperature 180°F.

d. Multi-tank, conveyor machines:

Wash temperature 140°F.

Pumped rinse temperature 160°F.

Final rinse temperature 180°F.

e. Single tank, pot, pan, and utensil washer, either stationary or moving rack:

Wash temperature 140°F.

Final rinse temperature 180°F.

f. Final rinse temperatures in this subsection apply to temperatures at the rinse manifold.

(c) Drying and handling – After sanitization, all equipment and utensils shall be air dried. Cleaned and sanitized equipment and utensils and all single-service articles shall be handled in a way that protects them from contamination.

(d) Equipment and utensil storage – Cleaned and sanitized utensils and equipment and all single-service articles shall be stored at least 6 inches above the floor in a clean, dry location in a way that protects them from contamination by splash, dust and other means. The food-contact surfaces of fixed equipment shall also be protected from contamination. Equipment and utensils shall not be placed under exposed sewer lines. The storage of food equipment, utensils or single-service articles in toilet rooms or vestibules is prohibited.

G. Sanitary Facilities and Controls.

(1) Water supply – The water supply shall be adequate, of safe sanitary quality and from an approved source in accordance with provisions of Chapters 62-550 and 62-555, F.A.C., or Chapter 64E-8, F.A.C. Hot and cold running water under pressure shall be provided in all areas where food is prepared and where equipment and multi-use utensils are washed.

(a) Transportation of water – All potable water not provided directly by pipe to the food service establishment from the source shall be transported in a bulk water transport system and shall be delivered to a closed water system.

(b) Bottled water – Bottled and packaged potable water shall be obtained from a source that complies with the requirements of Sections 500.147(3) and (4), F.S., and shall be handled and stored in a way that protects it from contamination. Bottled and packaged potable water shall be dispensed from the original container.

(c) Steam – Steam used in contact with food or food-contact surfaces shall be free from any materials or additives other than those specified in Title 21, Code of Federal Regulations 173.310.

(d) Ice – Ice making machines shall utilize water from an approved source and shall be constructed, located, installed, operated and maintained so as to prevent contamination of the ice. They shall be kept clean and shall be stored and handled in a sanitary manner.

(2) Sewage disposal – Sewage shall be disposed of in a public sewerage system or other approved sewerage system in accordance with provisions of Chapter 64E-6 or 62-600, F.A.C., whichever is applicable. Grease interceptors shall be readily accessible for cleaning. Grease interceptors shall be designed and installed in accordance with provisions of Chapter 64E-6, F.A.C., or the applicable plumbing authority.

(3) Plumbing – Plumbing shall be sized, installed and maintained in accordance with provisions of the applicable

plumbing authority. The plumbing shall provide adequate quantities of potable water to required locations throughout the establishment, prevent contamination of the water supply, properly convey sewage and liquid wastes from the establishment to the sewerage system; and shall not constitute a source of contamination of food, equipment or utensils or create an unsanitary condition or nuisance.

(a) Backflow – The potable water system shall be installed to preclude the possibility of backflow. Devices shall be installed and maintained to protect against backflow and back siphonage at all fixtures and equipment where an air gap at least twice the diameter of the water supply inlet is not provided between the water supply inlet and the fixture's flood level rim. A hose shall not be attached to a faucet unless a backflow prevention device is installed. Any faucet equipped with a hose fitting shall be protected by a backflow protection device.

(b) Drains – There shall be no direct connection between the sewerage system and any drains originating from equipment in which food, portable equipment or utensils are placed. When a dishwashing machine is located within 5 feet of a trapped floor drain, the dishwasher waste outlet may be connected directly to the inlet side of a properly vented floor drain trap.

(4) Toilet facilities – Each food service establishment shall be provided with adequate and conveniently located toilet facilities for its employees and patrons in accordance with provisions of the applicable plumbing authority or, where no plumbing code has been adopted locally, with Chapter 64E-10, F.A.C. Food service establishments constructed or extensively remodeled after the effective date of this amendment are required to comply with the requirements for toilet facilities outlined above. Existing food service establishments must also meet the requirements for toilet facilities outlined above if there is or has been a sufficient increase in the number of seats or if the nature of the food service operation changes such that additional toilet facilities would be needed. Fixtures shall be of readily cleanable sanitary design. Toilet facilities shall be kept clean, in good repair and free from objectionable odors. Toilet tissue shall be provided. Easily cleanable receptacles shall be provided for waste materials and such receptacles in toilet rooms for women shall be covered. Toilet rooms shall be completely enclosed and shall have tight-fitting, self-closing doors. Such doors shall not be left open except during cleaning or maintenance. Handwashing signs shall be posted in each toilet room used by employees.

(5) Handwashing facilities – Each food service establishment shall be provided with adequate, readily accessible, conveniently located lavatories equipped with hot and cold running water, hand cleansing soap or detergent and individual single use sanitary towels or a heated-air hand drying devices in accordance with provisions of the applicable plumbing authority or, where no plumbing code has been adopted locally, with Chapter 64E-10, F.A.C. Handwashing facilities shall not be used for any purpose other than handwashing.

(a) Lavatories shall be located in or immediately adjacent to all toilet rooms. At least one employee handwashing facility shall be located within each food preparation area.

(b) Employee handwashing facilities shall be installed in rooms or in areas where mechanical dishwashing machines operate that are isolated or remote from food preparation areas.

(c) Lavatories, soap dispensers, hand-drying devices and all other components of the handwashing facilities shall be kept clean and in good repair. Handwashing signs shall be posted at each handwashing facility.

(d) Hot and cold running water under pressure shall be provided at all employee handwashing sinks.

(6) Garbage and rubbish disposal

(a) All garbage and rubbish containing food wastes shall, prior to disposal, be kept in leakproof, nonabsorbent containers which shall be kept covered with tight fitting lids; provided that such containers need not be covered when stored in a special vermin proofed room or in a closed food waste refrigerator. Containers which do not have tight fitting vermin proof lids may be used only if garbage is first placed in plastic bags or wet-strength paper bags which are securely tied closed. All other rubbish shall be stored in an approved manner. The rooms, enclosures, areas and containers used shall be adequate for the storage of all food wastes and rubbish which accumulates between periods of removal.

(b) Garbage and refuse containers, compactors and dumpsters located outside shall be stored on or above a smooth surface of nonabsorbent material such as concrete that is kept clean and maintained in good repair. If a compactor system is used for the storage of garbage, and the garbage is not stored in a self-contained and leak proof system, the compactor shall be placed on a concrete pad which is graded to drain into a sanitary sewer system.

(c) Adequate cleaning facilities shall be provided and each container, room or area shall be thoroughly cleaned after the emptying or removal of garbage and rubbish. Waste water from such cleaning operations shall be disposed of as sewage. Food waste grinders, if used, shall be suitably constructed and shall be installed in accordance with provisions of the applicable plumbing authority. All garbage and rubbish shall be removed from the food establishment premises with sufficient frequency to prevent nuisance conditions and shall be disposed of in accordance with provisions of Chapter 62-701, F.A.C.

(7) Vermin control – Effective control measures shall be taken to protect against the entrance into the food establishment, and the breeding or presence on the premises of rodents, flies, roaches and other vermin. All buildings shall be effectively rodent-proofed, free of rodents and maintained in a rodent-proof and rodent-free condition. All openings to the outside air, including windows, doors, skylights, transoms, intake and exhaust ducts shall be effectively protected against the entrance of flies and other flying insects by self-closing doors which open outward, closed windows, screening, controlled air currents or other effective means. Screening material shall not be less than 16 mesh to the inch or equivalent and screens for windows, doors, skylights, transoms and other openings to the outside air shall be tight fitting and free of breaks. Insecticides or rodenticides, when used, shall be used in full compliance with Chapter 5E-14, F.A.C.

H. Other Facilities and Operations.

(1) Floors – The floor surfaces in kitchens and all the rooms and areas in which food is stored or prepared, utensils are washed or stored, walk-in refrigerators, garbage and rubbish storage areas or rooms and toilet, dressing and locker rooms shall be of smooth, nonabsorbent material and so constructed as to be easily cleanable. The use of anti-slip floor covering materials is permitted in areas where necessary for safety reasons. Floor drains shall be provided in accordance with provisions of the applicable plumbing authority in all rooms where floors are subjected to flush or flood type cleaning or where normal operations release or discharge water or other liquid waste onto the floor. Such floors shall be graded to effectively drain. Mats or duckboards, if used, shall be so constructed as to facilitate being easily cleaned and shall be kept clean. The floor surfaces in all interior and exterior areas where food is served shall be of such construction and finish as to be easily cleanable. Carpeting, if used on floors of interior dining rooms, shall be kept in good repair and shall be cleaned by dustless methods. All floors shall be kept clean and in good repair. Sawdust, wood shavings, peanut hulls and similar materials shall not be permitted on the floors of a food service establishment. In all new or extensively remodeled establishments utilizing concrete, terrazzo, ceramic tile or similar flooring materials, the junctures between walls and floors shall be coved and sealed. Installation of exposed horizontal utility lines and pipes on the floor is prohibited.

(2) Walls and ceilings – All walls and ceilings including doors, windows, skylights, screens and similar closures shall be kept clean and in good repair. The walls of all food preparation, utensil washing and handwashing rooms or areas shall have smooth, easily cleanable surfaces and shall be washable up to the highest level reached by splash or spray. Concrete or pumice blocks used for interior wall construction shall be finished and sealed to provide an easily cleanable surface. Studs, joists and rafters shall not be left exposed in walk-in refrigerating units, in food preparation or washing areas or toilet rooms. If exposed in other rooms or areas, they shall be suitably finished and all surfaces shall be kept clean and in good repair. Sheet metal, plastic or other covering materials, if used, shall be closed at all joints and shall be sealed to the wall or ceiling. Acoustical materials may be used on ceilings, provided ventilation is adequate to minimize grease and moisture absorption. Light fixtures, fans, hoods and other equipment and materials attached to walls or ceilings shall be kept clean. Exposed utility service lines and pipes shall be installed in a way that does not obstruct or prevent cleaning of the walls and ceiling. Utility service lines and pipes shall not be unnecessarily exposed on walls or ceilings in walk-in refrigerating units, food preparation areas, equipment washing and utensil washing areas, toilet rooms and vestibules.

(3) Lighting – All areas in which food is stored or prepared, utensils washed or stored, toilet, dressing and locker rooms, handwashing areas and garbage and rubbish storage areas shall be well lighted. At least 20 foot candles of light shall be provided on all working surfaces and at least 10 foot candles shall be provided on all other surfaces and equipment in food storage, food preparation, utensil washing and handwashing areas and in toilet rooms. At least 10 foot candles of light at a distance of 30 inches from the floor shall be required in dining rooms and all other areas during cleaning operations. Effective shields, sleeves, coatings, or covers shall be provided for all artificial lighting fixtures and infrared heat lamps located over, by, or within food storage, preparation and display facilities where food is opened or exposed.

(4) Ventilation – All rooms in which food is stored, prepared or served, utensils are washed, toilet, dressing and locker rooms and garbage storage areas shall be well ventilated. Obnoxious odors, fumes and vapors shall be effectively vented to the outside air. Ventilation hoods and devices shall be designed to prevent grease and condensate from dripping into food or onto food-contact surfaces. Filters, where used, shall be readily removable for cleaning unless designed to be cleaned in place. Ventilation systems shall comply with applicable fire prevention requirements and shall discharge in such a manner as not to create a nuisance. Intake and exhaust air ducts shall be maintained to prevent the entrance of dust, dirt and other contaminating materials.

(5) Dressing rooms and lockers – Adequate facilities shall be provided for the orderly storage of employees' clothing and personal belongings. Where employees routinely change clothes within the establishment, one or more

dressing rooms or designated areas shall be provided for this purpose. Such rooms or areas shall be located outside the food storage, preparation and serving areas and utensil washing and storage areas. Lockers or other suitable storage facilities shall be provided. Dressing areas and lockers shall be kept clean and orderly.

(6) Housekeeping – All parts of the establishment and its premises shall be kept neat, clean and free of litter and rubbish. Cleaning operations shall be conducted in such a manner as to minimize contamination of food and food-contact surfaces. Vacuum cleaning, wet cleaning or other dustless methods shall be used for cleaning floors, walls and ceilings; provided, that dust-arresting sweeping compounds and push brooms may be employed for floors. All such cleaning, except emergency floor cleaning, shall be done during periods when the least amount of food is exposed, such as after closing and between meals. At least one utility sink or curbed cleaning facility with a floor drain shall be provided and used for the cleaning of mops or similar wet floor cleaning tools and for the disposal of mop water or similar liquid wastes. The use of lavatories, utensil washing or equipment washing, or food preparation sinks for this purpose is prohibited. Each utility sink or curbed cleaning facility shall be supplied with hot and cold water under pressure. Maintenance and cleaning tools such as brooms, mops, vacuum cleaners and similar equipment shall be maintained and stored in a way that does not contaminate food, utensils, equipment or linens and shall be stored in an orderly manner. Soiled cloths, linens, aprons, coats and other uniform apparel shall be kept in suitable containers until removed for laundering. Only articles necessary for the operation and maintenance of the food service establishment shall be stored on the premises.

(7) Living Quarters – None of the operations connected with a food service establishment shall be conducted in any room used as living or sleeping quarters. There shall be no direct opening between living quarters and a food service establishment.

(8) Live birds and animals – No live birds or animals except for crustacea, shellfish and fish in aquariums shall be allowed in a food service establishment, in vehicles used for transporting food or in any other area or facility used to conduct food service operations; except as provided under Section 413.08, F.S., and, further provided, that live birds may be present in food service areas where adequate engineering controls of the ventilation system will prevent contamination of the facility, employees, or consumers.

(9) Premises – Food service establishments and all parts of property used in connection with their operations shall be kept free of litter. The walking and driving surfaces of all exterior areas of food service establishments shall be effectively maintained so as to minimize dust. These surfaces shall be graded to prevent pooling of water.

(10) Laundry facilities – Laundry facilities in a food service establishment shall be restricted to the washing and drying of linens, cloths, uniforms and aprons necessary to the operation. Laundry facilities may be located in storage rooms containing only packaged foods or single-service items or in separate rooms.

I. Required CCFP Approved Food Safety Training

(1) All CCFP program managers shall have attended and received a certificate of completion (or documented by training sign-in sheet) from a CCFP approved food safety training which provides basic knowledge of food protection practices in child care settings.

(2) All CCFP child care staff that purchase, prepare, and serve meals to children are strongly encouraged to attend and receive a certificate of completion from a CCFP approved food safety training.

(3) New CCFP program managers must receive required food safety training within 3 months of department approval for participation in the CCFP.

(4) Attendance of required CCFP food safety training must occur at least annually.



FY 2010-2011 CCFP Renewal
Checklist of Materials Required

SPONSOR OF AFFILIATED CHILD CARE CENTERS

Name of Contractor: Head Start & Children Services Authorization Number: S-735

A. Please answer the following questions:

1. What is your organization's fiscal year end date? **Month/Day:** 09 / 30
2. Is your organization a non-profit entity or a non-federal governmental entity that expended \$500,000 or more in federal funds during its most recent fiscal year? **Yes** X **No**

B. Send the following materials and this checklist to your Program Specialist for approval.

Check (✓) if Enclosed

- X 1. Budget (with red-line changes)
- X 2. Supplemental Budget for Special Cost Items (applicable only if charging/expensing a special cost item to the CCFP)
- X 3. Management Plan
- X 4. Contract with D.O.H. – submit **both** copies with original signatures
- X 5. Delegation of Signing Authority (if applicable)
- N/A 6. Board of Directors Certification (private, non-profit organizations only)

APPROVED AS TO FORM
J. P. [Signature]
ATTORNEY

I certify that all the enclosed information is true and correct.

[Signature]
Signature of Board Chairman, President, Owner
or Delegated Authority

Date

Printed Name

Title

For DOH Use Only:

Approval Signature (Program Specialist)

Date

Approval Signature (Headquarters)

Date



**Bureau of Child Nutrition Programs
Child Care Food Program**

FY 2010-2011 CONTRACT

(Non-Pricing Program)

THIS CONTRACT is entered into between the State of Florida, Department of Health, hereinafter referred to as the "Department," administering the United States Department of Agriculture (USDA) Child and Adult Care Food Program (CFDA# 10.558), codified in Florida at Section 383.011(1)(i), Florida Statutes, and known as the Child Care Food Program, and the organization identified as the Contractor on page 9 of this contract. This contract shall supersede all previous communications, representations, or agreements, either verbal or written between the parties.

THE PARTIES AGREE:

I. THE CONTRACTOR AGREES:

A. To provide services in accordance with this contract and governing state and federal law, and to comply with any state or federal rules, regulations, instructions, policies, procedures and manuals used by the Department in its administration of the Child Care Food Program (CCFP).

B. To warrant that it will accept final administrative and financial responsibility for total Child Care Food Program operations governed by this contract. The Contractor shall complete an application that shall include, but not be limited to, a list of all locations at which it will operate or sponsor the operation of the Child Care Food Program.

C. To familiarize itself with and comply with the following:

1. The terms and conditions of this contract, including Attachments 1 and 2 to this contract and all applicable rules, regulations, instructions, policies, procedures and manuals.

2. Florida Law

This contract is executed and entered into in the State of Florida, and shall be construed, performed, and enforced in all respects in accordance with the laws, rules, and regulations of the State of Florida.

3. Florida Department of Health Bureau of Child Nutrition Programs Child Care Food Program manuals and guides, as though fully set forth herein, with which the Contractor here by agrees to comply as a condition of this contract. The Contractor shall comply with the following manuals and guides as applicable: the Procedure Manual for Sponsors of Unaffiliated Centers; the Procedure Manual for Sponsors of Day Care Homes; the Procedure Manual for Sponsors of Affiliated Centers; the Procedure Manual for Independent Child Care Centers; the Procedure Manual for Afterschool Snack Programs; the Financial Management Guide; A Guide to Crediting Foods; Feeding Infants in the Child Care Food Program; the Eligibility Guide for Child Care Centers; Catering Contract Guidance; Prospective Contractor Training for Child Care Centers; Prospective Contractor Training for the Afterschool Snack Program; Prospective Contractor Training for the Homeless Children Nutrition Program; Sponsor Oversight Responsibilities for Sponsors of Day Care Homes; Sponsor Oversight Responsibilities for Sponsors of Unaffiliated Child Care Centers; Sponsor Oversight Responsibilities for Sponsors of Afterschool Snack Programs; and Sponsor Oversight Responsibilities for Sponsors of Homeless Children Nutrition Programs.

4. Federal Law

a. As though fully set forth herein, all Child Care Food Program rules, regulations, instructions, policies, procedures and manuals used by the Department in its administration of the Child Care Food Program, including but not limited to applicable provisions of: Title 7 Code of Federal Regulations Part 226, "Child and Adult Care Food Program"; Office of Management and Budget Circular A-21, "Cost Principles for Educational Institutions"; Office of Management and Budget Circular A-87, "Cost Principles for State, Local, and Indian Tribal Governments"; Office of Management and Budget Circular A-122, "Cost Principles for Non-Profit Organizations"; Office of Management and Budget Circular A-133, "Audits of States, Local Governments, and Non-Profit Organizations"; USDA Food and Nutrition Service Instruction 796-2, Revision 3; Title 7 Code of Federal Regulations Part 3015, "Uniform Federal Assistance Regulations"; and Title 7 Code of Federal Regulations Part 3016, "Uniform Administrative Requirements For Grants And Cooperative Agreements To State And Local Governments"; Title 7 Code of Federal Regulations Part 3019, "Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations"; and Title 7 Code of Federal Regulations Part 3052, "Audits of States, Local Governments, and Non-Profit Organizations."

b. The Contractor hereby agrees that it will comply with Title VI of the Civil Rights Act of 1964 (42 U.S.C §2000d et seq.) Title IX of the Education Amendments of 1972, (20 U.S.C. §1681 et seq.) as amended, Section 504 of the Rehabilitation Act of 1973, (29 U.S.C., §794) as amended, the Age Discrimination Act of 1975,

(42 U.S.C. §6101 et seq.) as amended, and all requirements imposed by the regulations of the U.S. Department of Agriculture (Title 7 Code of Federal Regulations Part 15); Department of Justice Enforcement Guidelines, (Title 28 Code of Federal Regulations Part SO.3, 42 and 50); and USDA, Food and Nutrition Service directives or regulations issued pursuant to that Act and the regulations, to the effect that, no person in the United States shall, on the ground of race, color, national origin, sex, age, or disability, be excluded from participation in, be denied the benefits of, or be otherwise subject to discrimination under any program or activity for which the Contractor received Federal financial assistance from USDA; and hereby gives assurance that it will immediately take any measures necessary to fulfill this agreement. This assurance is given in consideration of and for the purpose of obtaining any and all federal financial assistance, grants and loans of federal funds, reimbursable expenditures, grant or donation of federal property and interest in property, the detail of federal personnel, the sale and lease of, and the permission to use federal property or interest in such property, or the furnishing of services without consideration or at a nominal consideration, or at a consideration which is reduced for the purpose of assisting the recipient or in recognition of the public interest to be served by such sale, lease, or furnishing of services to the recipient, or any improvements made with federal financial assistance extended to the Contractor by the USDA. This includes any federal agreement, arrangement, or other contract which has as one of its purposes the provision of cash assistance for the purchase of food, and cash assistance for purchase or rental of food service equipment or any other financial assistance extended in reliance on the representations and agreements made in this contract.

c. If reimbursements paid to the Contractor exceed \$100,000, the Contractor shall comply with all applicable standards, orders, or regulations issued under Section 306 of the Clean Air Act, as amended (42 U.S.C. 1857(h) et seq.), Section 508 of the Clean Water Act, as amended (33 U.S.C. 1368 et seq.), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR Part 15). The provider shall report any violations of the above to the department. If reimbursements paid to the Contractor exceed \$100,000, the Contractor's execution of this contract shall serve as its certification that it will not and has not used Child Care Food Program funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of congress in connection with this contract pursuant to Title 31 United States Code Section 1352.

d. The Contractor shall not employ unauthorized aliens. The Department shall consider employment of unauthorized aliens a violation of Section 274A(e) of the Immigration and Naturalization Act. Such violation shall be cause for unilateral cancellation of this contract by the Department.

e. The Contractor shall comply with the Pro-Children Act of 1994, Public Law 103-277, which requires that smoking not be permitted in any portion of any indoor facility used for the provision of federally funded services including health, child care, early childhood development, education or library services on a routine or regular basis, to children up to age 18. Failure to comply with the provisions of the law may result in the imposition of civil monetary penalty of up to \$1,000 for each violation and/or the imposition of an administrative compliance order on the responsible entity.

f. By executing this contract, the Contractor agrees to compile data, maintain records and submit reports as required to permit effective enforcement of nondiscrimination laws and permit authorized USDA personnel during hours of program operation to review such records, books, and accounts as needed to ascertain compliance with the nondiscrimination laws. If there are any violations of this assurance, the USDA, Food and Nutrition Service shall have the right to seek judicial enforcement of this assurance. This assurance is binding on the Contractor, its successors, transferees, and assignees as long as it receives assistance or retains possession of any assistance from USDA. The person or persons whose signatures appear below are authorized to sign this assurance on the behalf of the Contractor.

D. To Maintain and Retain Records that are Subject to Inspection, Copying and Audit, and to Provide Audits, if Required.

1. To establish and maintain books, records, and documents (including electronic storage media) in accordance with generally accepted accounting procedures and practices that sufficiently and properly reflect all revenues and expenditures of funds provided by the Department under this contract.

2. To retain all program related records, financial records, supporting documents, statistical records, and any other documents (including electronic storage media) pertinent to this contract for a period of three (3) years after expiration or termination of the contract, or if an audit has been initiated and audit findings have not been resolved at the end of three (3) years, the records shall be retained until final resolution of the audit findings or any litigation relating to the audit findings or any action subject to administrative review. Any records retained, regardless of the time retained, shall be subject to inspection, copying, audit and review.

3. Upon expiration or termination of the contract and at the request of the Department, the Contractor will cooperate with the Department to facilitate the duplication and transfer of any said records or documents during the required retention period as specified in Section I., Paragraph D.2. above. The contractor agrees to maintain the records for the requisite period, even if this contract is terminated or if the contractor has ceased operations.

4. To assure that all records shall be subject to copying, inspection, review, or audit during any hours that the Contractor is open for business, but at minimum between the hours of 8 a.m. and 5 p.m., upon presentation of photo identification. All Child Care Food Program records shall be maintained at the site at which the Contractor provides program services or at the Contractor's sponsoring organization office, as appropriate to the type of record maintained. Employees of the Department, the United States Department of Agriculture and the Florida Department of Law Enforcement shall be provided with access to records upon presentation of identification and shall be authorized to take physical possession of any Child Care Food Program records, or equipment

containing such records and any other records maintained on equipment used in the Child Care Food Program. Others requesting access shall provide identification and a letter of authorization from the Department of Health.

5. Upon presentation of identification, the Contractor shall grant appropriately designated individuals full access to any of the Contractor's contracts and all program related records, financial records, supporting documents, statistical records, and any other documents (including electronic storage media) pertinent to this contract, regardless of the form in which kept, at all reasonable times, and all reasonable places, for as long as records are retained. Individuals granted access pursuant to the terms of this contract and this provision shall include employees of the Department, those individuals authorized in writing by the Department, personnel of the United States Department of Agriculture and the Florida Department of Law Enforcement and federal auditors pursuant to Title 45 Code of Federal Regulations, Part 92.

6. A not-for-profit organization or non-federal governmental entity that expends Federal awards, including Child Care Food Program reimbursements, of \$500,000 or more in its fiscal year, shall assure that a single or program-specific audit is conducted in accordance with the provisions of Office of Management and Budget Circular A-133, as revised. In determining the Federal awards expended in its fiscal year, the Contractor shall consider all sources of Federal awards. The determination of amounts of Federal awards expended shall be in accordance with the guidelines established by Office of Management and Budget Circular A-133, as revised.

7. In connection with the audit requirements addressed in Section I, Paragraph D.6, the Contractor shall fulfill the requirements relative to auditee responsibilities as provided in Subpart C of Office of Management and Budget Circular A-133, as revised as though fully set forth herein, and shall make all records relating to the audit, including but not limited to accountant work papers and findings, available to the Department for inspection and copying.

8. If the Contractor expends less than \$500,000 in Federal awards in its fiscal year, an audit conducted in accordance with the provisions of Office of Management and Budget Circular A-133, as revised, is not required. In the event that the Contractor expends less than \$500,000 in Federal awards in its fiscal year and elects to have an audit conducted in accordance with the provisions of Office of Management and Budget Circular A-133, as revised, the cost of the audit must be paid from non-Federal funds (i.e., the cost of such an audit must be paid from Contractor funds obtained from other than Federal entities). All records relating to the audit, including but not limited to accountant work papers and findings shall be made available to the Department for inspection and copying.

9. Copies of audit reports for audits conducted in accordance with Office of Management and Budget Circular A-133, as revised, and required by Section I, Paragraph D.6, of this agreement shall be submitted within 30 days of receiving the auditor's report or nine months after the end of the audit period, whichever is sooner. Copies of audit reports shall be submitted by or on behalf of the Contractor directly to each of the following:

- a. Contract Administrative Monitoring Unit
Florida Department of Health
4052 Bald Cypress Way, Bin B-01
Tallahassee, FL 32399-1700
- b. Federal Audit Clearinghouse
Bureau of the Census
1201 E. 10th Street
Jeffersonville, IN 47132
- c. Other Federal agencies and pass-through entities in accordance with Sections .320 (e) and (f), Office of Management and Budget Circular A-133, as revised.

E. To Submit Documents to the Department

1. In addition to any documents required to be submitted to the Department in compliance with state and federal law, the Contractor agrees to submit any receipts, invoices, documentation or other evidence that the Department in its sole discretion deems necessary to evaluate the validity of any and all claims for reimbursement submitted by the Contractor. Such requirement for documentation may also require the Contractor to submit documentation prior to payment of any claim; any claim or portion thereof that is not supported by documents requested by the Department in writing shall be disallowed.

2. The Contractor shall provide any and all information requested by the Department which the Department deems necessary in its sole discretion to evaluate an application to participate in the Child Care Food Program or an application to renew its participation in the Child Care Food Program or to evaluate a contractor's performance in the Child Care Food Program, including but not limited to, documents which the Department determines are necessary to evaluate the applicant's or the contractor's financial viability, administrative capability and fiscal responsibility.

F. Departmental Approval of Contractor's Operations

1. A Contractor serving as a sponsor of any Child Care Food Program with which the contractor has no affiliation shall obtain prior written approval from the Department for all salaries and benefits funded by CCFP

reimbursements. Salaries and benefits must be reasonable, prudent and necessary for the furtherance of the CCFP in addition to being in compliance with federal law. The reasonableness of salaries and benefits shall be determined by the Department after its review of the Contractor's operations or anticipated operations and shall not exceed those salaries and benefits generally made available to non-profit corporation employees and officers in the same geographical area for similar services.

2. A Contractor serving as a sponsor of any Child Care Food Program with which the contractor has no affiliation shall not employ staff or officers or directors who are related by blood or marriage without the prior written approval of the Department. Any such approval will be granted only upon written documentation of extraordinary circumstances and shall only be granted for the shortest period of time necessary to address the justifying circumstances.

3. The Contractor shall submit budgets and budget amendments that are reasonable, prudent and necessary for the furtherance of the CCFP. All budgets and budget amendments shall require prior written approval by the Department. No more than four budget amendments may be filed in any federal fiscal year unless the Contractor is able to show good cause, in the sole discretion of the Department, why additional amendments are required due to expenses that could not be reasonably anticipated and handled through the allowed number of amendments.

4. The Contractor shall comply with program meal requirements as specified by the Department. Failure to meet Department specifications, regardless of whether the requirements are more stringent than those provided by the USDA, shall subject the Contractor to disallowance of payment for the non-compliant meals or snacks and shall subject the Contractor to issuance of a notice of serious deficiency, proposed termination, refusal to renew the contract, disqualification, and/or suspension.

5. Contractors providing services in accordance with this contract hereby agree that they shall not provide services to Child Care Food Program contractors as a registered caterer with the Florida Department of Health during the period of this contract. Contractors attempting to simultaneously perform services under this contract and also as a registered caterer with the Florida Department of Health shall be in violation of the terms of this agreement and may be subject to disqualification.

G. Monitoring, Compliance and Review Procedures, Administrative and Criminal Penalties

1. The Contractor agrees to submit to monitoring, compliance and reviews and subsequent administrative and criminal penalties that may apply to include:

- a. Reviews of audits conducted in accordance with Office of Management and Budget Circular A-133, as revised; and
- b. Monitoring procedures by the Department that may include, but are not limited to, on-site visits by Department staff, limited scope audits as defined by Office of Management and Budget Circular A-133, as revised, and/or other procedures or audits deemed necessary in the sole discretion of the Department to evaluate program operations.

2. The Contractor agrees to comply and cooperate with any:

- a. Monitoring procedures/processes deemed appropriate by the Department;
- b. Additional instructions provided by the Department to the Contractor upon the Department's determination that an audit or a limited scope audit of the Contractor is appropriate; and
- c. Inspections, reviews, investigations, or audits deemed necessary by the Department, or the State of Florida's Comptroller or Auditor General.

3. The Contractor hereby acknowledges that any monitoring or review, whether performed by the Department, the United States Department of Agriculture, the Florida Department of Law Enforcement or by another entity authorized by the Department may result in the initiation of criminal charges and that the Department will actively cooperate and assist in such criminal prosecution.

4. Any Contractor sponsoring the CCFP shall monitor each sponsored organization and ensure its compliance with the requirements of state and federal rules, regulations, policies, instructions, procedures and manuals. Contractor personnel responsible for monitoring must carry photo identification demonstrating their relationship to the sponsoring organization and present it upon request.

5. Regarding inspections and regulatory actions the Contractor agrees:

- a. To permit persons authorized by the Department to inspect any records, papers, documents, facilities, and/or goods and services of the Contractor which are relevant to this contract, and/or to interview any clients and employees of the Contractor.
- b. That any inspections or monitoring visits of the Contractor's facility or of the Contractor's records shall be made to assure the Department of the satisfactory performance of the terms and conditions of this contract. The Contractor agrees that such visits, reviews or inspections may be announced or unannounced.
- c. To accept the Department's written report of findings regarding the Contractor's performance or compliance with the terms of this contract.
- d. To provide its written response to the Department's written report of findings within the period specified in the Department's notice of required corrective action.

e. That the Department may or may not accept the Contractor's corrective actions. The Contractor agrees to respond to all requests for modification of the Contractor's proposed corrective actions as specified by the Department. The Contractor agrees that it shall correct all noted deficiencies identified by the Department consistent with a Department approved Corrective Action Plan (CAP) within the specified period of time set forth in the Contractor's CAP.

f. That the Contractor's failure to submit an acceptable CAP to the Department within the timeframe provided in the Department's notice, or failure to correct noted deficiencies, or failure to maintain implemented corrective action for a period of two years from the date of the corrective action, may at the sole and exclusive discretion of the Department, result in:

- (1) The Contractor being deemed in breach or default of this contract;
- (2) Suspension of program participation;
- (3) Withholding of payment to the Contractor by the Department;
- (4) Termination of this contract for cause; and

(5) The Contractor and the Contractor's responsible principal(s) and responsible individual(s) being disqualified from participation in the CCFP and listed on the USDA National Disqualified List.

g. That the Contractor's failure to maintain an approved corrective action for a period of two years from the implementation date of the corrective action shall result in contract termination and disqualification and listing the Contractor, and the Contractor's responsible principal(s) and responsible individual(s) on the USDA National Disqualified List.

h. That the Contractor's exclusive means of challenging the Department's determination of acceptable CAP submission, successful correction of deficiencies, termination and entry of named parties on the USDA National Disqualified List shall be the review procedures provided pursuant to the terms of this contract and Title 7 Code of Federal Regulations, Part 226.

6. Upon termination or expiration of this contract, for a period of three years from the end of the federal fiscal year in which the contract is terminated or expires, the Contractor agrees to :

a. Maintain all CCFP records and program related records, unless instructed by the Department to maintain those records for a longer period of time;

b. Maintain all records pertaining to any unresolved audit or review for a minimum of three fiscal years plus the current fiscal year or until all outstanding issues are resolved; and

c. Submit to the Department's authority regarding the issue and determination of a serious deficiency. Failure to respond or successfully resolve any Notice of Serious Deficiency may result in the Contractor and its responsible individual(s) and responsible principal(s) being added to the USDA National Disqualified List pursuant to the requirements of Title 7 Code of Federal Regulations Part 226.6.

H. Indemnification. NOTE: This paragraph is not applicable to contracts executed between the Department and state agencies or subdivisions, as defined in Section 768.28, Florida Statutes, or between the Department and federal agencies or sovereign American Indian nations.

1. The Contractor shall be liable for and shall indemnify, defend, and hold harmless the Department and all of its officers, agents, and employees from all claims, suits, judgments, or damages, consequential or otherwise and including attorneys' fees and costs, arising out of any act, actions, neglect, or omission by the Contractor, its agents, or employees during the performance or operation of this contract or any subsequent modifications thereof, whether direct or indirect, and whether to any person or tangible or intangible property.

2. The Contractor's inability to evaluate liability or its evaluation of liability shall not excuse the Contractor's duty to defend and indemnify within seven (7) days after such notice by the Department is given by certified mail, equivalent delivery service, e-mail or facsimile transmission. Only adjudication or judgment after highest appeal is exhausted specifically finding the Contractor not liable shall excuse performance of this provision. The Contractor shall pay all costs and fees related to this obligation and its enforcement by the Department. The Department's failure to notify the Contractor of a claim shall not release the Contractor of the above duty to defend.

I. Assignments and Subcontracts

1. The Contractor shall not assign the responsibility of this contract to another party. Any such assignment, transfer, or sublicense shall be null and void. The Department shall not approve any subcontract for a day care home sponsor or a sponsor of unaffiliated child care centers for Child Care Food Program management functions, including but not limited to, program financial management, eligibility review and approval, preparation and maintenance of enrollment rosters, tiering determinations, and submission of claims for reimbursement and monitoring.

2. The Contractor shall not subcontract for any of the work contemplated under this contract without prior written approval of the Department. Any subcontract otherwise occurring shall be null and void.

3. The Contractor shall be responsible for all work performed and all expenses incurred for implementing the Child Care Food Program on behalf of the Department. If the Department permits the Contractor to subcontract all or part of the work contemplated under this contract, including entering into subcontracts with vendors for services and commodities, the Contractor agrees that the Department shall not be liable to the

subcontractor for any expenses or liabilities incurred under the subcontract and the Contractor shall be solely liable to the subcontractor for all expenses and liabilities incurred under the subcontract. The Contractor, at its expense, will defend the Department against such claims.

4. The State of Florida shall at all times be entitled to assign or transfer its rights, duties, or obligations under this contract to another governmental agency in the State of Florida, upon giving prior written notice to the Contractor. In the event the State of Florida approves transfer of the Contractor's obligations, the Contractor remains responsible for all work performed and all expenses incurred in connection with the contract. In addition, this contract shall bind the successors and legal representatives of the Contractor and of any legal entity that succeeds to the obligations of the State of Florida.

J. Contractor as a Corporation

1. The Department recognizes that corporations may participate in the Child Care Food Program and that such entities are recognized under Florida law as natural persons. The Department also understands that the funds for the Child Care Food Program are funds paid by the taxpayers of the United States and therefore subject to greater oversight than if the funds were private in nature. The Department, in performing its function, is akin to a fiduciary on behalf of the taxpayers. In consideration of the foregoing, the provisions of this section shall apply to all contractors organized as corporations in which stock is not publicly traded.

2. During the term of this agreement the Contractor agrees to notify the Department of any proposed sale, transfer, other conveyance or pledge of assets. The Contractor's notice shall state the name or names of the intended purchasers, transferees or creditors and be provided to the Department in writing no less than 30 days prior to the date of such proposed change. Failure of the Contractor to provide such notice may result in the Department issuing a Notice of Serious Deficiency and Notice of Proposed Termination and Disqualification of Responsible Principals and Responsible Individuals and immediate termination of this agreement. The Department shall either agree to or decline the proposed change and provide the Contractor written notification of its decision. If the Contractor chooses to pursue the proposed change after the Department declines, this contract shall terminate.

3. If more than fifty percent (50%) of the stock of the Contractor's corporation is sold, transferred, otherwise conveyed or pledged, this contract shall terminate immediately. Prior to such termination, the Contractor and/or the prospective majority stockholders may apply to the Department for participation in the program. The Department shall receive and process such application pursuant to its established policies and procedures.

4. This agreement and the privilege of participating in the Child Care Food Program are not subject to sale, assignment, transfer, or any other form of conveyance.

K. Return of Funds

To return to the Department any overpayments due to unearned funds pursuant to the terms of this contract or applicable state or federal law, rules, regulations, instructions, policies, procedures or manuals, that are used by the Department in its administration of the Child Care Food Program. In the event that the Contractor or its independent auditor discovers that an overpayment has been made, the Contractor shall notify the Department by certified mail within five (5) days of such discovery. In the event that the Department first discovers an overpayment has been made, the Department will notify the Contractor by letter of such a finding. Repayment shall be made pursuant to the Department's instructions to the Contractor and shall include interest as required by federal law; such instructions may include but are not limited to a sponsor's payment to centers and a contractor's payment to the Department.

L. Disallowance of Payment for Program Meals

In the event the Department discovers, prior to payment, the Contractor's failure to comply with recordkeeping requirements pertaining to records directly supporting claims for reimbursement, the Department shall disallow payment for any meals not supported by such records. Records that support claims for reimbursement include, but are not limited to, free and reduced price meal applications, daily meal counts, menu records, enrollment records, and attendance records.

M. Independent Capacity of the Contractor

1. In performance of this contract, it is agreed between the parties that the Contractor is an independent Contractor and that the Contractor is solely liable for the performance of all tasks contemplated by this contract, which are not the exclusive responsibility of the Department.

2. The Contractor, its officers, agents, employees, or subcontractors in performance of this contract, shall act in the capacity of an independent Contractor and not as an officer, employee, or agent of the State of Florida. The Contractor shall not represent to others that it has the authority to bind the Department unless specifically authorized in writing to do so.

3. The Contractor, its officers, agents, employees, and its subcontractors are not entitled to state retirement benefits, state leave benefits, or to any other compensation of state employment as a result of performing the duties and obligations of this contract.

4. The Contractor agrees to take such actions as may be necessary to ensure that each subcontractor of the Contractor will be deemed to be an independent Contractor and will not be considered or permitted to be an agent, servant, joint venturer, or partner of the State of Florida.

N. Training and Security

1. The Contractor agrees to attend all meetings and training sessions required by the Department.

2. Child Care Food Program records contain information that is confidential under both Florida and federal law. The contractor agrees to maintain any and all records, documents, forms, reports, and information, in whatever form, in a secure location with access that is sufficiently limited to protect the records.

O. Non-Pricing Policy

The Contractor agrees that all children in attendance at site(s) listed on the Site Information Form(s) and/or Provider Information Form(s), are offered the same meal at no separate charge regardless of race, color, sex, age, national origin, or disability, and there is no discrimination against any child in the course of the meal service based on race, color, sex, age, national origin, or disability. The Contractor agrees to keep confidential from family day care home providers the identity of Tier I or Tier II eligible recipients and income information pertaining to individual households. The Contractor agrees to limit access to eligibility information to persons directly connected with the administration and enforcement of the Child Care Food Program.

II. THE DEPARTMENT AGREES:

A. To reimburse the Contractor for meals and other allowable costs as further provided in applicable rules, regulations, instructions, policies, procedures or manuals. Claims for reimbursement not filed with the Department within 60 days after the close of the month in which the claim was incurred shall be disallowed except where a claim for reimbursement has been filed late because of audit adjustments. The Department may, though is not required to, at its sole discretion and with any necessary approval from USDA, grant an exception to this requirement.

B. Should the Contractor violate any terms of this agreement, or any Child Care Food Program policies, instructions, procedures, or manuals, or the rules, regulations and laws governing the program, and as a result, the Department acts to withhold funds or to restrict or terminate the Contractor's participation in the program, the Contractor shall be accorded a review procedure only if required by federal law pursuant to Title 7 Code of Federal Regulations Part 226.

C. To inspect or evaluate Contractor records, papers, documents, facilities, and/or the Contractor's goods and services which are relevant to this contract and/or interview any Contractor clients or employees. Upon completion of any such inspection or evaluation, the Department shall provide the Contractor a written report of its findings. The written report shall describe the Department's evaluation of the Contractor's performance of its responsibilities and obligations as outlined in this contract.

D. To provide the Contractor a written report of its findings and a date certain by which the Contractor must provide a written corrective action plan (CAP). When applicable, the Department shall also provide the Contractor a written Notice of Serious Deficiency with a date certain by which the Contractor must provide its written CAP.

E. To provide the Contractor written notice of the acceptance or rejection of the Contractor's CAP. The Department shall issue written notice to the last reported address for the Contractor and those responsible individuals and responsible principals described in the applicable governing regulation and procedure manuals when the rejection of a CAP requires termination of this agreement and disqualification of the Contractor and responsible individuals and responsible principals.

III. THE DEPARTMENT AND THE CONTRACTOR MUTUALLY AGREE:

A. Effective and Ending Dates

This contract shall begin on October 1, 2010, or on the date on which the contract has been signed by both parties, whichever is later or at the discretion of the Department, pursuant to Title 7 Code of Federal Regulations Part 226.11. The contract shall expire on September 30, 2011, and may be renewed pursuant to procedures and requirements established by the Department.

B. This contract is a legal binding Agreement between the Contractor and the Department.

1. Entering into this Agreement may affect the Contractor's rights and responsibilities under Florida law. It is therefore most likely that the Contractor will have individual legal concerns that are best addressed by an attorney representing that Contractor's interests.

2. The Department is not permitted to nor will it provide legal advice regarding this Contract. The Department is only permitted to describe the various terms, conditions and functions of the requirements within the Contract. The Department may not advise the Contractor as to the Contractor's rights under the Contract's provisions. Any representation either implied or stated by any party, or any agent of the Department in this regard to the contrary shall have no force or effect and shall not be relied upon regarding this Contract.

C. Conditional Contract. The parties intend this contract to be conditioned upon the Contractor remaining eligible to participate in the CCFP. The requirements in this section apply if this contract is being entered into during a period in which the Department has notified the Contractor that it intends to terminate the Contractor's CCFP contract from a previous federal fiscal year.

1. If the Administrative Review Official (ARO) upholds the Department's current intended action to terminate the contract with the Contractor the following additional potential results shall apply:

a. This current contract shall be terminated upon the date of the Final Order in the administrative case without further action or notification by the CCFP;

b. Consistent with the ARO's Final Order the Contractor and each named responsible individual and responsible principal shall be disqualified from further participation in the CCFP and each name shall be entered on the USDA National Disqualified List. Those named parties shall be precluded from further participation in the CCFP for a period of seven years or until any funds due the Department are repaid, whichever occurs later; and

c. Claims for goods or services provided after the rendition of the Final Order shall not be payable. Necessary and reasonable costs of ceasing CCFP participation may be reimbursable, conditioned upon submission of required documentation and Department approval of those costs. However, the Department shall offset reimbursement for allowed close-out costs against any outstanding CCFP debt the Contractor may owe as of the date of the Final Order.

2. The termination of this contract upon rendition of a Final Order shall not be automatically stayed pending any appeal of or challenge to the Final Order.

a. Such Stay may only be obtained by filing a Motion for Stay Pending Appeal with the ARO. Should the ARO grant the Stay, the Contractor shall be permitted to continue to participate and receive CCFP reimbursement for eligible meals served, and allowable administrative costs incurred until the time for appeal has expired, the administrative review is completed, or the appeal is dismissed. The Contractor shall waive its right to seek such Stay if it fails to file a Motion for Stay within the period authorized in Sec. 120.68, F.S.

b. The Contractor shall waive its right to appeal the Final Order if it fails to file one copy of a Notice of Appeal with the Agency Clerk of the Department of Health and a second copy, accompanied by the filing fees required by law, with the First District Court of Appeal, Tallahassee, Florida. The Notice of Appeal must be filed within 30 days of the rendition of the ARO's Final Order.

D. All written notices describing an action proposed or taken by the Department with regard to the Contractor's CCFP reimbursement or participation shall be mailed to the latest address on file with the Department. The Contractor shall ensure that its current address is on file with the Department at all times. The Contractor shall notify the Department in writing of any change in its business location or mailing address no later than five days after such change takes place. The parties agree that the Department shall consider all notices as received by the Contractor and its responsible principal(s) and responsible individual(s) five days after being sent to the last address the Contractor reported to the Department.

E. Termination

1. Contractor Termination at Will. The Contractor may terminate this contract without cause upon no less than thirty (30) calendar days notice in writing to the Department unless the Department agrees to a lesser time in writing. Said notice shall be delivered by facsimile transmission, email, certified mail – return receipt requested, or in person with proof of delivery. The Contractor shall be permitted to voluntarily terminate this contract after the date the Department issues a Notice of Serious Deficiency to the Contractor. However, the Contractor's self termination under such circumstances may result in the names of the Contractor and its responsible principal(s) and responsible individual(s) being placed on the USDA National Disqualified List.

2. Termination Because of Lack of Funds. In the event funds to finance this contract become unavailable, the Department may terminate the contract upon no less than twenty-four (24) hours notice in writing to the Contractor. Said notice shall be delivered by facsimile transmission, email, certified mail – return receipt requested, or in person with proof of delivery. The Department shall be the final authority as to the availability and adequacy of funds.

3. In the event of the Contractor's termination of this contract consistent with the requirements of III. E. 1 above, the Contractor will be compensated for approved Program costs lawfully incurred prior to notification of termination.

4. Termination for Cause. The Department may terminate this contract for cause for the Contractor's noncompliance with any provision of this contract or for any of the serious deficiencies identified, but not limited to, those in Attachment 1.

F. Enforcement

1. Each provision of this Agreement shall be interpreted in such a way as to be effective and valid under applicable law. If any term or provision of the contract or of any Child Care Food Program rules, regulations, policies, procedures, instructions, or manuals is found to be illegal or unenforceable, the remainder of the contract shall remain in full force and effect and such term or provision shall be stricken.

2. Subsequent to execution of this contract, if a direct conflict between the terms of this Agreement and Federal Program requirements stated in Title 7 Code of Federal Regulations Part 226 and associated Program regulation and policy occurs, such conflict shall be resolved in favor of the current Federal Program requirement for only those parts of this Contract's requirements in direct conflict with Federal Program requirements. All other provisions shall remain unchanged.

G. Venue

Venue for any action arising from the terms of this contract or the application of state or federal law to any dispute between the parties to this contract shall be Leon County, Florida to the exclusion of all other courts and jurisdictions. Any action regarding this contract or the application of state or federal law to any dispute between the parties to this contract shall be brought to the Department for an administrative hearing that shall be conducted in Leon County, Florida to the exclusion of all other courts and jurisdictions. Any appeal of a Final Order shall be to the First District Court of Appeal, in Leon County, Florida to the exclusion of all other courts and jurisdictions.

As the Contractor's authorized representative empowered to commit to the terms of this contract, I have been expressly advised to seek legal advice regarding the terms of this agreement with an attorney licensed in the State of Florida representing the interests of the corporation and/or individual interests of associated individuals or individuals named herein. By my signature I acknowledge that I enter into this contract freely on behalf of myself and those who I am empowered to represent. I have not relied upon any advice from the Department or its agents regarding this contract and the legal rights for myself or those who I am empowered to represent. I have considered seeking appropriate legal advice. I have read the above contract and understand each section and paragraph.

IN WITNESS THEREOF, the parties hereto have caused this 9 page contract and its subject attachments, Attachment 1 and Attachment 2, adopted and incorporated into this contract by reference, to be executed by their undersigned official as duly authorized.

CONTRACTOR:

S-735

(Authorization Number)

Palm Beach County

Head Start & Children Services

(Legal Name of Organization)

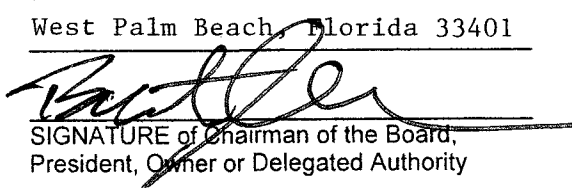
Head Start & Children Services

(D/B/A Name)

301 N. Olive Avenue

(Address)

West Palm Beach, Florida 33401


SIGNATURE of Chairman of the Board,
President, Owner or Delegated Authority

PRINTED NAME: _____

TITLE: _____

DATE: _____

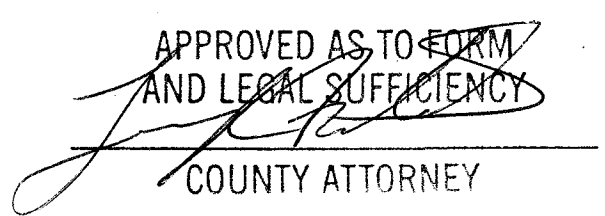
STATE OF FLORIDA
DEPARTMENT OF HEALTH:

Maria Williamson, Chief,
Bureau of Child Nutrition Programs

DATE: _____

**APPROVED AS TO TERMS
AND CONDITIONS**

BY: 
DEPARTMENT HEAD


**APPROVED AS TO FORM
AND LEGAL SUFFICIENCY**
COUNTY ATTORNEY



**Bureau of Child Nutrition Programs
Child Care Food Program**

**CONTRACT FY 2010-2011
ATTACHMENT 1**

This attachment incorporates the most common examples of serious deficiencies listed in Title 7 Code of Federal Regulations Part 226 and provides example descriptions of non-compliance with program requirements. Contractors who commit or engage in any serious deficiencies described in the federal and state laws, regulations, procedure manuals and policies shown in Section I of this contract, including but not limited to those incorporated herein, shall be subject to termination and disqualification from the Child Care Food Program (CCFP).

1. Submission of false information to the Department

- *Failure to disclose ineligible officers, directors, key employees*
- *Listing fictitious employees/officers/board members on an application*
- *Claiming tax-exempt status when denied, rescinded, etc.*
- *Submitting the IRS tax-exempt determination letter of a different or defunct organization*
- *Concealing a conviction for any activity occurring during the previous seven years that indicates a lack of business integrity*
- *Falsification of documentation*

2. Permitting an individual on the USDA National Disqualified List to serve in a principal capacity with the Contractor or at a site sponsored by the Contractor

3. Failure to operate the CCFP in conformance with performance standards established in Title 7 Code of Federal Regulations Part 226.6(b)(2)(vii), regarding financial viability and financial management, administrative capability, and program accountability

- *Failure to ensure provision of adequate financial resources for daily program operations*
- *Failure to maintain adequate funds to withstand temporary interruptions in program payments and/or fiscal claims against the Contractor*
- *Failure to maintain an adequate number and type of qualified staff to ensure proper CCFP operations*
- *Failure to establish and implement internal controls and other systems to ensure fiscal accountability*
- *Failure of the Board of Directors to provide adequate program oversight*

4. Failure to maintain adequate records

- *Failure to maintain appropriate records to document compliance with CCFP requirements including budgets, approved budget amendments, and when applicable, management plans and records pertaining to facility operations*
- *Consistently missing/incomplete records during different reviews, complaint investigations, agreed-upon-procedures reviews, or audits*
- *Missing/incomplete/incorrect invoices, receipts, canceled checks, inventories resulting in false/inflated/unsubstantiated claimed costs*
- *Cost records not maintained according to generally accepted accounting principles resulting in false/inflated/unsubstantiated claimed costs*

5. Failure to adjust meal orders to conform to variations in the number of participants

- *Inflated meal counts, such as meals claimed regularly equal the number of meals ordered/planned or the number of participants on the center roster*

6. Non-compliance with applicable bid procedures and contract requirements of federal child nutrition programs

- *Failure to competitively procure goods and services*
- *Anti-competitive practices, such as collusion, kickbacks, conflicts of interest*
- *Inclusion of non-competitive provisions in a bid, e.g., "successful bidder for a contract to provide meals must establish a scholarship fund"*

7. Claiming reimbursement for meals not served to participants

- *Claiming meals delivered or planned for as meals served to participants*
- *Claiming meals for participants not present on a given day or for a particular meal*
- *Claiming meals served to non-existent children*
- *Claiming meals served to non-enrolled children or to staff*
- *Inflating facility meal counts*
- *Claiming non-existent and non-participating facilities*
- *Claiming meals for ineligible facilities*
- *Claiming dual participating facilities*
- *Claiming the same participant for the same meal at more than one facility*

8. Claiming reimbursement for meals that do not meet CCFP requirements

9. Use of a food service management company that is in violation of health codes

10. Failure of a sponsoring organization to disburse payments to its facilities in accordance with its management plan and/or CCFP requirements

- *Checks to facilities prepared more than 5 days after receipt of reimbursement*
- *Payments sent without endorsements or otherwise incomplete*
- *Payments made for other than the full amount the facility is entitled to*
- *Payments made to a facility other than the facility that earned the payment*
- *Payments made to an entity/person other than the facility without express written permission of the facility*
- *Checks not mailed within 5 day timeframe or first business day thereafter*
- *Failure to transfer full amount of facility payments to facility bank account within 5 day time frame*
- *Failure to maintain full amount of facility payments in commingled bank account until checks clear*
- *Using provider reimbursement funds to pay provider advances*
- *Using day care home funds to pay sponsored centers or center funds to pay day care homes*
- *Retaining sponsored center funds in excess of the amount approved in the management plan*

11. History of administrative or financial mismanagement in any USDA child nutrition program

- *Sponsor left Summer Food Service Program because of a serious documented problem in its operation*
- *Failure to maintain required corrective actions*
- *Sponsor terminated for serious deficiency in one part of the CCFP (child care center for example) applies to administer a different part (day care homes for example)*

12. Claiming reimbursement for meals served by a proprietary child care center during a calendar month in which the center does not meet Title XX eligibility requirements or Free and Reduced eligibility requirements, as applicable

13. Failure by a sponsoring organization to properly classify individuals or homes in the correct reimbursement category

14. Failure of a sponsoring organization to properly exercise its oversight responsibilities

- *Failure to adequately monitor*
- *Failure to require full, permanent, and systemic corrective actions*
- *Failure to impose sanctions on centers, sites, or day care home providers when serious deficiencies are identified*
- *Failure to follow suspension, termination, disqualification and appeal procedures*

15. The fact that the Contractor or any of its principals have been declared ineligible to participate in a publicly funded program due to violating that program's requirements

16. Conviction of the Contractor or any of its principals for any activity that occurred during the past seven years and that indicates a lack of business integrity as defined in Title 7 Code of Federal Regulation Part 226 and to include tax evasion, tax fraud, failing to file tax returns, passing worthless checks, and perjury. The parties hereby agree that the term conviction shall mean having been found guilty, with or without adjudication of guilt, as a result of a jury verdict, nonjury trial, or entry of a plea of guilty or nolo contendere.
17. Failure to make payment(s) to subcontractor(s) for program services rendered
- *Payments made for other than the full amount the subcontractor is entitled to*
 - *Checks not mailed within 5 business days after receipt of reimbursement or first business day thereafter*
 - *Using reimbursement funds claimed for subcontractor costs for other purposes*
18. The following acts or omissions are also serious deficiencies
- *Failure to make records associated with the CCFP available upon request at a reasonable time and place*
 - *Failure to maintain current licensure requirements*
 - *Misuse of CCFP funds*
 - *Serious mismanagement (e.g. failure to monitor properly)*
 - *Failure to obtain a required audit*
 - *Failure to notify the Department of change in IRS status*
 - *Violations of IRS regulations*
 - *Failure to remit periodic payments (required by statute or regulation) to regulatory agencies (e.g. employee withholding for income taxes, social security, unemployment compensation)*
 - *Failure to implement corrective action(s) within required timeframes*
 - *Failure to follow-up/require and maintain corrective action for facility review findings*
 - *Creating fictitious records*
 - *Failure to make required repayment of program funds to the Department*
 - *Failure to comply with state incorporation requirements*
 - *Paying employees salaries based on the number of homes/centers recruited; paying recruitment bounties or bonuses*
 - *Failure to attend training required by the Department*
 - *Interfering or obstructing a Department on-site or program review of the Contractor's performance under the terms of this contract*
 - *Failure to comply with the terms of this contract which shall be identified as a failure to operate the Program in conformance with the performance standards set forth in Title 7 Code of Federal Regulations Part 226.6(b)(1)(xvii) and (b)(2)(vii).*
19. Failure to comply with any other financial and/or administrative requirements of Title 7 Code of Federal Regulations, Part 226 and/or failure to comply with applicable federal or Department of Health CCFP rules, regulations, policies, instructions, procedures and/or manuals



**Bureau of Child Nutrition Programs
Child Care Food Program**

**CONTRACT FY 2010-2011
ATTACHMENT 2**

**SERIOUS DEFICIENCIES, CORRECTIVE ACTION PLANS, PROPOSED ACTIONS SUBJECT TO
ADMINISTRATIVE REVIEW AND THE USDA NATIONAL DISQUALIFIED LIST**

All contractors are required to abide by the requirements set forth in Title 7 Code of Federal Regulations Part 226. All notices of serious deficiency, notices of proposed termination and notices of proposed suspension shall be provided by the Department to the Contractor and its executive director, owner, and/or chairman of the board of directors and responsible principals or responsible individuals, as applicable, by facsimile transmission, e-mail, certified mail or equivalent delivery service.

If the Department determines that a contractor has failed to comply with a requirement of Title 7 Code of Federal Regulations Parts 226, 3015, 3016, 3019, 3052 and/or FNS Financial Management Instruction 796-2, Revision 3, which constitute a serious deficiency, the Department shall issue a Notice of Serious Deficiency that specifies the serious deficiency or deficiencies and provides a date certain by which the Contractor shall file a corrective action plan with the Department.

If the corrective action plan is timely filed and is acceptable to the Department, the Department will conduct an unannounced follow-up review of the Contractor. If the follow-up review establishes that the serious deficiencies noted in the Notice of Serious Deficiency appear to have been fully and permanently corrected, the Department will so notify the Contractor. If the follow-up review does not establish that the serious deficiencies have been fully and permanently corrected the Department may issue a Notice of Proposed Termination and Disqualification of Responsible Principals and Responsible Individuals or the Department may choose to permit additional time to file or amend a corrective action plan.

If the corrective action plan is not timely filed, the Department may take one of two actions. The Department may grant additional time to file or amend a corrective action plan. The Department may, alternatively, at its election issue a Notice of Proposed Termination and Disqualification of Responsible Principals and Responsible Individuals.

If the corrective action plan is not acceptable to the Department it may take one of two actions. The Department may issue a Notice of Proposed Termination and Disqualification of Responsible Principals and Responsible Individuals. The Department may also elect to conduct an unannounced follow-up review of the Contractor. During that review the Department shall determine if it shall grant the Contractor additional time to file or amend a corrective action plan. Alternatively, the Department may choose to proceed to issue a Notice of Proposed Termination and Disqualification of Responsible Principals and Responsible Individuals.

If a Notice of Serious Deficiency for the same or substantially the same serious deficiencies is issued within two calendar years of a withdrawn Notice of Serious Deficiency, the Department shall issue a Notice of Proposed Termination and Disqualification of Responsible Principals and Responsible Individuals since the second Notice of Serious Deficiency establishes that the previous serious deficiency was not fully and permanently corrected.

If the Department determines that a contractor has filed a false or fraudulent claim, or if the Department determines that there is an imminent threat to the health or safety of program participants, or that the contractor poses a threat to public health or safety, it may issue a Notice of Proposed Suspension and shall provide notice of the procedures for suspension review. In any such event, the Department shall propose termination and disqualification and provide notice of procedures for administrative review.

Administrative Review Rights

The Contractor is not entitled to administrative review of a Notice of Serious Deficiency. The Contractor is entitled to administrative review of other Department actions, as provided by Title 7 Code of Federal Regulations Part 226, which affect the Contractor's participation or reimbursements in the Child Care Food Program, including but not limited to proposed termination and disqualification. To obtain an administrative review, the Contractor and/or responsible principals or responsible individuals must request it in writing within 15 days of receipt of the Department's notice. The written request must be received by the Department of Health Agency Clerk, Sam Power, 4052 Bald Cypress Way, Bin No. A-02, Tallahassee, Florida 32399-1703; telephone number 850-245-4005, facsimile number 850-410-1448, within the time permitted. If no written request is submitted or if the written request is not received within 15 days of the Department's notice, then the Department's proposed action against the Contractor, responsible principals and responsible individuals shall no longer be subject to administrative review and the proposed action will become effective. The Agency Clerk will acknowledge receipt of the request for

Child Care Food Program Contract

administrative review within 10 days and, if the request was timely filed, will appoint an administrative review official. If the request for administrative review was not timely filed, the Department shall notify the Contractor, responsible principals and responsible individuals that review is no longer authorized and that the Department's proposed action has now taken effect.

If a timely written request is submitted, the Contractor, responsible principals and responsible individuals must submit documentation in opposition to the proposed Department action no later than 30 days after receipt of the Department's notice to the administrative review official. The Department may submit documentation in support of its action within 15 days of the Contractor's request for administrative review. The administrative review official will consider the Department's proposed actions based upon written submissions by the Department and the Contractor.

A hearing will be held in addition to, or in lieu of, a review of written information only if it is not excluded by Title 7 Code of Federal Regulations 226.6(k)(9) and the Contractor or a responsible principal or individual requests such a hearing in the initial written request for administrative review. The administrative review official may consider any evidence that he or she determines is credible, trustworthy and would reasonably be relied upon by a prudent person in the conduct of his or her normal daily activities. Either party may be represented by counsel. If a hearing is requested, the parties may call witnesses to testify and may cross examine witnesses. Witnesses may testify by telephone and may be sworn over the telephone and may be permitted to testify in narrative form. The administrative review official will issue a decision within 60 days of the Department's receipt of a timely filed written request for administrative review which is an administrative requirement for the Department and may not be used as a basis for overturning the Department's action if a decision is not made within that specified timeframe.

The administrative review official's determination is the final administrative determination to be afforded to the institution and responsible principals and individuals. The termination of this contract upon rendition of a Final Order shall not be automatically stayed pending any appeal of or challenge to the Final Order. Such stay may only be obtained by filing a Motion for Stay Pending Appeal with the ARO. Should the ARO grant the Stay, the Contractor shall be permitted to continue to participate and receive Program reimbursement for eligible meals served, and allowable administrative costs incurred until the time for appeal has expired, the administrative review is completed, or the appeal is dismissed. The Contractor shall waive its right to seek such Stay if it fails to file a Motion for Stay within the period authorized in Sec. 120.68, F.S. The Contractor shall waive its right to appeal the Final Order if it fails to file one copy of a Notice of Appeal with the Agency Clerk of the Department of Health and a second copy, accompanied by the filing fees required by law, with the First District Court of Appeal, Tallahassee, Florida. The Notice of Appeal must be filed within 30 days of the rendition of the ARO's Final Order.

USDA National Disqualified List

If a contractor, responsible principals and responsible individuals do not timely request administrative review or if administrative review upholds the Department's proposed action for disqualification from the Child Care Food Program, the Contractor and/or responsible principals and responsible individuals will be placed on the National Disqualified List with the United States Department of Agriculture and will be prohibited from participating in the Child Care Food Program for a period not to exceed seven years. However, if a contractor, responsible principal or individual has failed to repay debts owed under the Child Care Food Program, they will remain on the list until the debt has been repaid.