

## AGREEMENT

**AGREEMENT** made this 4<sup>TH</sup> day of October, 2016 by and between PORT JERVIS CITY SCHOOL DISTRICT BOARD OF EDUCATION (hereinafter referred to as the "SCHOOL DISTRICT"), as the party of the first part, having its principal place of business located at 9 Thompson Street, Port Jervis, New York 12771, and EASTER SEALS/PROJECT DISCOVERY (hereinafter referred to as "EASTER SEALS"), as the party of the second part, having its principal place of business for purposes of this Agreement at 88 E. Main Street, Port Jervis, New York 12771.

WHEREAS, EASTER SEALS represents and warrants that it is a not for profit organization that operates Pre-School Program services;

WHEREAS, EASTER SEALS does not maintain adequate facilities for the economical preparation of meals (breakfast and lunch) for children and desires that the SCHOOL DISTRICT provide such meals;

WHEREAS, the SCHOOL DISTRICT maintains adequate facilities for such purposes and is capable and willing to provide such services; and

NOW THEREFORE, in consideration of the mutual promise herein contained, the parties agree as follows:

1. **TERM OF AGREEMENT:** This Agreement shall be in effect for the period October 10, 2016 to June 30, 2017, unless terminated earlier, as set forth herein.
2. **SCOPE OF SERVICES:** the SCHOOL DISTRICT will provide EASTER SEALS services as follows:
  1. **Preparation of Food:** The SCHOOL DISTRICT shall order, prepare and provide sufficient food and milk for the number of meals and milk required each day by EASTER SEALS, provided the SCHOOL DISTRICT receives adequate notice of such requirements and subject to any unscheduled school closings per the terms of this Agreement.
  2. **Menus/Meals Pattern Conformance:** All meals supplied by the SCHOOL DISTRICT will conform to the United States Department of Agriculture breakfast and lunch requirements as determined by the New York Department of Education. The SCHOOL DISTRICT shall provide a menu to EASTER SEALS a minimum of one week in advance of the meals being provided, or as mutually agreed by the parties.
  3. **Orders:** EASTER SEALS shall submit daily telephone orders to the Central Kitchen maintained by the DISTRICT setting forth the number of breakfasts, lunches and milk half pints required by EASTER SEALS by 5pm the prior school day, or as mutually agreed by the parties.
  4. **Delivery:** The School District shall be responsible for the delivery of all breakfast, lunch and milk items including all expenses of such delivery. The SCHOOL

DISTRICT shall ensure that all food provided is packaged in suitable containers for delivery.

5. **Unscheduled closings:** The DISTRICT shall not provide any food or milk to EASTER SEALS on days the SCHOOL DISTRICT is unexpectedly closed, even if PROJECT DISCOVERY/EASTER SEALS remains open.

3. **PAYMENT SCHEDULE:** In full consideration for the services to be rendered by SCHOOL DISTRICT to EASTER SEALS for the term of this Agreement, EASTER SEALS agrees to pay SCHOOL DISTRICT monthly at the rate of \$ 1.25 per breakfast and \$2.40 per lunch meal pattern. Milk which is shipped in addition to the milk half pints which accompany a menu pattern meal will be invoiced on a monthly basis at a rate of \$.40 per half pint. Any increases in the price of foodstuffs during the contract term will be incurred by EASTER SEALS. There will be no credit of meals and/or milk left over by EASTER SEALS, or for the value of government commodities described below.

4. **INVOICE DUE ON MONTHLY BASIS:** SCHOOL DISTRICT will submit an invoice to EASTER SEALS for services rendered on a monthly basis, and payment to SCHOOL DISTRICT shall be made within twenty (20) days from receipt of invoice from SCHOOL DISTRICT. EASTER SEALS shall give SCHOOL DISTRICT notice of any invoice dispute within twenty (20) days of its receipt.

5. **INDEPENDENT CONTRACTOR:** All employees of EASTER SEALS shall be deemed employees of EASTER SEALS for all purposes and EASTER SEALS alone shall be responsible for their work, personal conduct, direction, and compensation. EASTER SEALS acknowledges that it will not hold itself, its officers, employees and/or agents out as employees of SCHOOL DISTRICT. Employees of EASTER SEALS shall not be considered as having SCHOOL DISTRICT employee status and shall not be entitled to participate in any of SCHOOL DISTRICT's workers' compensation, retirement, fringe benefits, unemployment insurance, liability insurance, disability insurance, or other similar employee benefit programs. Similarly, EASTER SEALS, its officers, its employees and/or agents shall not be considered as having employee status for the purposes of any other rights, privileges or benefits derived from employment by SCHOOL DISTRICT. EASTER SEALS agrees that this Agreement does not confer benefits of any nature whatsoever upon it other than the services provided herein. EASTER SEALS shall not assert any claim for additional benefits of any nature, including, but not limited to, unemployment compensation benefits, by reason of the services to be performed pursuant to this Agreement. Employees of EASTER SEALS shall not be entitled to assert any claim to entitlements pursuant to any collective bargaining agreement now or hereafter in effect between SCHOOL DISTRICT and its employees.

6. **EXPENSES OF EASTER SEALS:** EASTER SEALS shall be responsible for all costs and expenses incurred by EASTER SEALS that are incident to the performance of services by SCHOOL DISTRICT, including, but not limited to, all supplies and vehicles to be used by EASTER SEALS in the pick up or delivery of food and milk items, all fees, fines, licenses, bonds or taxes required of or imposed against EASTER SEALS and all other of EASTER SEALS's costs of doing business.

7. **INCOME TAX DESIGNATION AND INDEMNIFICATION:** EASTER SEALS shall not withhold from sums becoming payable to SCHOOL DISTRICT under this Agreement any amounts for Federal, State, or local taxes including Federal or State income taxes, employment taxes (including Social Security and Medicare taxes), and unemployment taxes. EASTER SEALS agrees that any tax obligation of EASTER SEALS arising from the payments made under this Agreement will be EASTER SEALS's sole responsibility. EASTER SEALS will indemnify SCHOOL DISTRICT for any tax liability, interest, and/or penalties imposed upon SCHOOL DISTRICT by any taxing authority based upon EASTER SEALS's failure to withhold any amount from the payments for tax purposes.

8. **AUTHORIZATION OF SCHOOL DISTRICT:** EASTER SEALS shall coordinate all services through the Assistant Superintendent for Business Office or any other authorized office of SCHOOL DISTRICT.

9. **TERMINATION NOTICE:**

- a. This Agreement may be terminated by either party upon seven (7) days' written notice to the other party. In the event of such termination, the parties will adjust the accounts due and payable to SCHOOL DISTRICT for services rendered. Neither party will incur any additional expenses upon receipt of notification that services have been terminated. Upon any such termination, the parties shall endeavor in an orderly manner to wind down activities hereunder. In the event of termination, all reports and services due must be completed within thirty (30) days of the termination date.
- b. This Agreement may be terminated by either party upon three (3) days' written notice to the other party in the event of a material breach by the other.

19. **HIPAA and FERPA ACKNOWLEDGMENT:** Both parties to this Agreement understand that they may receive and/or come into contact with *protected health information* as defined by the Health Insurance Portability and Accountability Act of 1996 ("HIPAA") and information protected by the Family Educational Rights and Privacy Act ("FERPA"). The Parties hereby acknowledge their respective responsibilities pursuant to HIPAA and FERPA and, if necessary, shall execute a Business Associate Agreement in connection with such responsibilities.

20. **INDEMNIFICATION and HOLD HARMLESS:** EASTER SEALS further agrees that it shall defend, indemnify and hold harmless SCHOOL DISTRICT, its officers, directors, agents and employees for all loss, costs, damages and expenses, including attorneys' fees, judgments, fines and amounts paid in settlement in connection with a terminated, pending or completed action, suit or proceeding arising from any act, error or omission, misstatement, misleading statement, neglect or breach of duties by EASTER SEALS or any of its officers, directors, agents or employees taken or made with respect to this Agreement. It is expressly acknowledged that EASTER SEALS shall be solely responsible for ensuring the safety of students with food borne allergies. The SCHOOL DISTRICT shall not be liable for any damages resulting from student allergies. While the District warrants that it shall comply with applicable food storage and handling requirements, the SCHOOL DISTRICT assumes no liability or obligation for contaminated or spoiled food products.

21. **INSURANCE:** EASTER SEALS shall purchase from and maintain in a company or companies lawfully licensed to do business in the State of New York such insurance as will protect EASTER SEALS and SCHOOL DISTRICT from claims set forth below for which EASTER SEALS may be legally liable, whether such operations be by EASTER SEALS or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable. Notwithstanding any terms, conditions or provisions, in any other writing between the parties, EASTER SEALS hereby agrees to effectuate the naming of SCHOOL DISTRICT as an additional insured on EASTER SEALS's insurance policies, with the exception of workers' compensation, N.Y. State disability and professional liability. If the policy is written on a claims-made basis, the retroactive date must precede the date of the contract. The policy naming SCHOOL DISTRICT as an additional insured shall:

- a. Purchase an insurance policy from an A.M. Best rated "secured" insurer, licensed in New York State.
- b. State that the organization's coverage shall be primary and non-contributory coverage for SCHOOL DISTRICT, its Board, employees and volunteers.
- c. State that the policy affirmatively provides coverage for claims of negligent hiring, training and supervision, which may arise in the context of sexual molestation, abuse harassment, or similar sexual conduct.
- d. SCHOOL DISTRICT shall be listed as an additional insured by using endorsement CG 2026 or equivalent. A completed copy of the endorsement must be attached to the certificate of insurance.
- e. The certificate of insurance must describe the specific services provided by the EASTER SEALS that are covered by the commercial general liability policy and the umbrella policy.
- f. At SCHOOL DISTRICT's request, the EASTER SEALS shall provide a copy of the declaration page of the liability and umbrella policies with a list of endorsements and forms. If so requested, the EASTER SEALS will provide a copy of the policy endorsements and forms.
- g. Required Insurance:
  - i. Commercial General Liability Insurance: \$1,000,000 per occurrence/ \$2,000,000 aggregate.
  - ii. Workers' Compensation and N.Y.S. Disability: Statutory Workers' Compensation, Employers' Liability and N.Y.S. Disability Benefits Insurance for all employees. Proof of coverage must be on the approved specific form, as required by the New York State Workers' Compensation Board. ACORD certificates are not acceptable. A self-employed person and certain partners and corporate officers are excluded from the definition of "employee" pursuant to Workers' Compensation Law Section 2(4). As such, individuals in such capacity are excluded from Workers' Compensation Law coverage requirements. A person seeking an exemption must file a CE-200 form with the state. The form may be completed and submitted online:

[http://www.wcb.ny.gov/content/ebiz/wc\\_db\\_exemptions/requestExemptionOverview.jsp](http://www.wcb.ny.gov/content/ebiz/wc_db_exemptions/requestExemptionOverview.jsp)

- iii. Professional Errors and Omissions Insurance: \$2,000,000 per occurrence/ \$2,000,000 aggregate for the professional acts of the EASTER SEALS performed under the contract for SCHOOL DISTRICT. If written on a "claims-made" basis, the retroactive date must pre-date the inception of the contract or agreement. Coverage shall remain in effect for two (2) years following the completion of work.
- iv. Excess Insurance: \$1,000,000 each occurrence and aggregate. Excess coverage shall be on a follow-form basis.
- h. EASTER SEALS acknowledges that failure to obtain such insurance on behalf of SCHOOL DISTRICT constitutes a material breach of contract. The EASTER SEALS is to provide SCHOOL DISTRICT with a certificate of insurance, evidencing the above requirements have been met, prior to the commencement of work or use of facilities. The failure of SCHOOL DISTRICT to object to the contents of the certificate or the absence of same shall not be deemed a waiver of any and all rights held by SCHOOL DISTRICT.
- i. SCHOOL DISTRICT is a member/owner of the NY Schools Insurance Reciprocal (NYSIR). EASTER SEALS further acknowledges that the procurement of such insurance as required herein is intended to benefit not only SCHOOL DISTRICT but also the NYSIR, as SCHOOL DISTRICT's insurer.
- j. In the event that any of the insurance coverage to be provided by EASTER SEALS contains a deductible, EASTER SEALS shall indemnify and hold SCHOOL DISTRICT harmless from the payment of such deductible, which deductible shall in all circumstances remain the sole obligation and expense of EASTER SEALS.
- k. EASTER SEALS shall provide SCHOOL DISTRICT with evidence of the above insurance requirements upon execution of the within Agreement. EASTER SEALS further acknowledges that its failure to obtain or keep current the insurance coverage required by this Agreement shall constitute a material breach of contract and subjects EASTER SEALS to liability for damages including, but not limited to, direct, indirect, consequential, special and any other damages SCHOOL DISTRICT sustains as a result of this breach. In addition, EASTER SEALS shall be responsible for the indemnification to SCHOOL DISTRICT of any and all costs associated with such lapse in coverage including, but not limited to, reasonable attorneys' fees.
- l. Prior to commencement of its services, EASTER SEALS shall obtain and pay for insurance as may be required to comply with the indemnification and hold harmless provisions outlined under this Agreement.

22. **NOTICES:** Any notices to be given under this Agreement by either party to the other may be effected by personal delivery in writing, recognized overnight courier service which provides a receipt against delivery, or by mail, registered or certified, postage prepaid with return receipt requested. Each party may change the address by written notice in accordance with this paragraph. Notices delivered personally will be deemed communicated as of actual receipt;

mailed notices will be deemed communicated as of two (2) days after mailing. Notice shall be delivered or mailed to:

Easter Seals/Project Discovery  
8 E. Main Street,  
Port Jervis, New York 12771

Port Jervis City School District  
9 Thompson Street  
Port Jervis, New York 12771  
Attn: Assistant Superintendent for Business

23. **ASSIGNMENT OF AGREEMENT:** Neither SCHOOL DISTRICT nor EASTER SEALS shall assign, transfer or convey any of its respective rights or obligations under this Agreement without the prior written consent of the other party.
24. **DISCRIMINATION PROHIBITED:** Neither SCHOOL DISTRICT nor EASTER SEALS will discriminate against any individual because of his/her age, race, creed, color, national origin, sexual orientation, military status, sex, disability, predisposing genetic characteristics or marital status and will ensure that each individual is afforded equal opportunities without discrimination because of his/her age, race, creed, color, national origin, sexual orientation, military status, sex, disability, predisposing genetic characteristics or marital status.
25. **GOVERNING LAW:** This Agreement shall be governed by, and interpreted and enforced in accordance with, the laws of the State of New York without regard to conflicts or choice of law provisions that would defer to the substantive laws of another jurisdiction. Each of the parties hereto consents to the jurisdiction of any state court located within the County of Orange, State of New York, or federal court in Federal District Court for the Southern District of New York located in the County of Westchester, State of New York, and irrevocably agrees that all actions or proceedings relating to this Agreement must be litigated in such courts, and each of the parties waives any objection which it may have based on improper venue or *forum non conveniens* to the conduct of and proceeding in any such court.
26. **SEVERABILITY:** If any term, provision, covenant or condition of this Agreement, or the application thereof to any person, place or circumstance, shall be held by a court of competent jurisdiction to be invalid, unenforceable or void, the remainder of this Agreement and such term, provision, covenant or condition as applied to other persons, places and circumstances shall remain in full force and effect.
27. **NO PRIOR AGREEMENTS:** This Agreement constitutes the full and complete Agreement between SCHOOL DISTRICT and EASTER SEALS, and supersedes all prior written and oral agreements, commitments or understandings with respect thereto. This Agreement may not be altered, changed, added to, deleted from or modified except through the mutual written consent of the parties.

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28. **AGREEMENT CONSTRUCTION.** This Agreement has been arrived at mutually and is not to be construed against any party hereto as being the drafter hereof or causing the same to be drafted.

29. **REPRESENTATIONS AND WARRANTIES.** EASTER SEALS represents and warrants: 1) that EASTER SEALS has no obligations, legal or otherwise, inconsistent with the terms of this Agreement; 2) that the performance of the services to be provided in this Agreement does not and will not violate any applicable law, rule or regulation or any proprietary or other right of any third party; and 3) that EASTER SEALS has not entered into or will not enter into any Agreement (whether oral or written) in conflict with this Agreement.

30. **AMENDMENT:** This Agreement may be amended only in writing and signed by the parties.

31. **NON-WAIVER:** No course of dealing of any party hereto, no omission, failure or delay on the part of any party hereto in asserting or exercising any right hereunder, and no partial or single exercise of any right hereunder by any party hereto shall constitute or operate as a waiver of any such right or any other right hereunder. No waiver of any provision hereof shall be effective unless in writing and signed by or on behalf of the party to be charged therewith. No waiver of any provision hereof shall be deemed or construed as a continuing waiver, as a waiver in respect of any other or subsequent breach or default of such provision, or as a waiver of any other provision hereof unless expressly so stated in writing and signed by or on behalf of the party to be charged therewith.

32. **AUTHORIZATION TO ENTER AGREEMENT:** The undersigned representative of EASTER SEALS hereby represents and warrants that the undersigned is an officer, director, or agent of EASTER SEALS with full legal rights, power and authority to enter into this Agreement on behalf of EASTER SEALS and bind EASTER SEALS with respect to the obligations enforceable against EASTER SEALS in accordance with its terms.

33. **IN WITNESS WHEREOF,** the parties hereto have executed this agreement the day and year first above written.

PORT JERVIS CITY SCHOOL DISTRICT

Date: \_\_\_\_\_

By: \_\_\_\_\_

Date: 8/31/14

By: \_\_\_\_\_

EASTER SEALS/PROJECT DISCOVERY

CLAS STENNIS  
ESNY Exec. Dir.



## VENDOR CONTRACT to Provide Meals and/or Snacks

1. This is a Contract between Easter Seals New York (referred to as the Organization) and the food service management company or caterer Port Jervis School District (referred to as the Vendor) to provide meals and/or snacks to the following centers:

Name of Center	Address of Center	Number of Breakfasts per day	Number of Lunches/Suppers per day	Number of Snacks per day
Project Discovery	88 East Main Street Port Jervis NY 12771	~34	~34	~68

*Attach additional sheets if necessary*

The Organization may add or delete centers to this Contract or change any center's delivery address with 30 days written notice to the Vendor.

2. This Contract is in effect from 10/ 10/ 16 to 09 12/ 17 and may be terminated by mutual consent or by either party for reasons of cause with at least 30 days notice.
3. The Vendor will provide meals and snacks that meet or exceed the CACFP Meal Pattern requirements described on page 3, as well as policy memos issued by NYS CACFP and USDA, the Food Buying Guide for Child Nutrition Programs and the manual *Crediting Foods in CACFP*. These materials are available from the Organization and CACFP for reference in food preparation and service.
4. The price per meal, based on the menus on page 4 or attached by the Organization, including food, labor, paper products and delivery is:

Breakfast	\$ <u>1.25</u>	each			
Lunch/Supper	\$ <u>2.40</u>	each	Milk	\$ <u>.40</u>	per half pint
Snack	\$ <u>.25 - .75</u>	each			
<b>Total Bid</b>	\$ _____				

5. The Organization is required to pay the Vendor within:
- 30 days of billing     60 days of billing     other 20 days from receipt of invoice

6. The number of meals indicated above is only an estimate and not a purchase commitment. The Organization may increase or decrease the number of meals by calling the Vendor (choose one):

before \_\_\_\_\_ am/pm the preceding day     48 hours in advance

before \_\_\_\_\_ am/pm on the day of service     other: by 5:00 pm preceding day

The Vendor will deliver each meal either:  individually packaged (unitized) OR  food in bulk

at the following times: Breakfast 9:30 am    Lunch/Supper 12:30 pm    Snack \_\_\_\_\_ pm

7. When an emergency situation exists which might prevent the Vendor from delivering a meal component as specified on the approved menu or the entire meal, the Vendor shall notify the Organization immediately so substitutions can be agreed upon or the Organization can make alternative arrangements.



8. Meals provided will be tasty and appetizing and prepared in a manner that conserves the nutritive quality of foods at all stages of food preparation, delivery and service. Preparation and delivery shall meet all state and local health and sanitation requirements.
9. The Vendor has a state or local health department permit for any facility in which meals are prepared. The Vendor will maintain this health certification for the duration of the Contract. The Organization has the right to inspect the Vendor's meal preparation facilities and delivery vehicles.
10. The Organization is not required to pay for meals that:
  - a. do not meet CACFP requirements
  - b. are spoiled or unwholesome at the time of delivery
  - c. have not been prepared or held according to state or local health codes
  - d. are delivered later than the specified meal times without permission from the Organization OR
  - e. have been changed without agreement by the Organization
11. In the case of handicapped CACFP participants as defined in 7 CFR 15b, the Vendor will work with the Organization to meet the needs of special diets at no additional cost. In the case of non-handicapped CACFP participants, the Vendor will make an effort to accommodate physician's orders, to the extent practicable, at no additional cost.
12. The Vendor will provide to the Organization:
  - a. daily delivery invoices (see samples on page 5) which indicate the actual food items delivered and the quantity of each item:
    - for unitized meals, the invoice will include the portion size of each food item, the number of meals, the date of delivery and a signature line for center staff
    - for food delivered in bulk, the invoice will include the number of pans or containers, the number and size of servings per pan or container and the size or weight of cans, boxes, etc.
  - b. a monthly bill which includes the total number of meals delivered and the unit price per meal
  - c. monthly menus
13. The Vendor will maintain full and accurate records including daily production records, recipes, CN labels for commercially prepared foods, receipts for meal costs, and billing statements which will be available to the Organization and any state or federal official at any reasonable time and place, for three years after the end of the fiscal year to which they pertain (or longer if an audit is in progress).
14. Prior to the end of the Contract, the Organization purchasing meals may offer to extend the Contract. If so, the Organization and Vendor must sign a one-year Extension of Vendor Contract every year. The Contract may be extended four times.

<p><b>Certification by authorized representative of the Organization purchasing meals:</b> By signing this agreement the Organization agrees to pay the Vendor for all meals and snacks provided under the terms of this Contract.</p> <p>Signature _____</p> <p>Print Name _____</p> <p>Title _____</p> <p>Date ____/____/____</p>	<p><b>Certification by Vendor representative:</b> By signing this agreement the Vendor agrees to provide the Organization with meals and snacks that meet CACFP requirements under the terms of this Contract.</p> <p>Signature _____</p> <p>Print Name _____</p> <p>Title _____</p> <p>Date ____/____/____</p>
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**Organization – Use the sample menus on page 4 or develop and attach your own menu.**

**Vendor – Attach a copy of health department permit, four-week cycle menu and daily delivery invoice.**