

MEMORANDUM OF UNDERSTANDING
Between
COASTAL CAROLINA UNIVERSITY
And
ARAMARK EDUCATIONAL SERVICES, LLC
And
CITY OF MYRTLE BEACH

This Memorandum of Understanding (“MOU”) is made by and between Coastal Carolina University (hereinafter “CCU”), Aramark Educational Services, LLC, CCU’s current food service provider (hereinafter “Aramark”) and the City of Myrtle Beach, which may at times be referred to individually herein as a “Party” and collectively as the “Parties.”

WHEREAS, CCU is a public comprehensive liberal arts institution of higher education in Conway, South Carolina; and,

WHEREAS, Aramark is an American food service, facilities, and uniform services provider to clients in areas including education, healthcare, business, prisons, and leisure; and,

WHEREAS, Aramark is CCU’s current contractor and exclusive provider of food service operations and catering services including but not limited to the supervision of the procurement, preparation, and serving of food and food products, and providing all the management, personnel, food products supplies, equipment, materials, technical support, training, systems and effort necessary for the management of food service operations at a level of quality acceptable to the University on Coastal Carolina University’s campus; and,

WHEREAS, the City of Myrtle Beach created the City of Myrtle Beach Emergency Management Division (hereinafter “MBEMD”) to develop and coordinate emergency response plans for the city, working closely with county, state, and local officials to gather resources necessary to overcome a disaster or emergency situation, including but not limited to hurricanes, ice storms, floods and other largescale emergencies; and,

WHEREAS, the City of Myrtle Beach seeks to utilize some of the services that Aramark currently provides to CCU during a large-scale emergency; and,

WHEREAS, CCU agrees to permit the City of Myrtle Beach and Aramark to enter into an agreement for the provision of food services during emergency events so long as such agreement and/or the performance resulting from said agreement does not in any way interfere with Aramark’s services to Coastal Carolina University; and,

WHEREAS, this MOU is designed to articulate the terms and conditions of CCU’s conditional agreement to permit the City of Myrtle Beach to separately contract with Aramark to prepare safe, quality meals for MBEMD during emergency events by using CCU’s food service equipment and facilities. To the extent possible, no matter the emergency operating level the University may be operating under, such services may be permitted as long as it is safe to do so. Aramark will have sole discretion in determining whether it is safe for them to provide such services to the City of Myrtle Beach; and,

WHEREAS, it is understood that this agreement in no way and under no circumstances, commits CCU to providing or arranging food services for MBEMD; and,

WHEREAS, it is understood that this agreement in no way and under no circumstances, relieves Aramark of its duties and obligations to CCU, nor does it supersede any existing contracts between CCU and Aramark; and,

WHEREAS, the Parties hereto desire to set forth their responsibilities in connection with this agreement.

NOW THEREFORE, in consideration of the mutual promises set forth below, and other good and valuable consideration, the receipt of which is hereby acknowledged, and based upon the foregoing recitals, which form a part of the Agreement, it is hereby mutually agreed by the undersigned as follows:

A. TERM OF AGREEMENT

This MOU shall be effective for a term commencing on January 1, 2021, and ending on December 31, 2021. Should Aramark no longer serve as CCU's contracted food service provider, this MOU shall terminate and the City of Myrtle Beach shall request a new MOU between CCU and the new food service provider.

B. SCOPE OF SERVICES

CCU will allow Aramark to use CCU's food service equipment and facilities to prepare and deliver safe, quality meals for MBEMD during emergency events pursuant to an agreement reached between the City of Myrtle Beach and Aramark so long as Aramark's service to the City of Myrtle Beach does not disrupt or interfere with Aramark's duties and obligations to CCU.

C. COASTAL CAROLINA UNIVERSITY COMMITMENTS

1. CCU will allow Aramark to use CCU's food service equipment and facilities to prepare meals for MBEMD during emergency events so long as Aramark's service to the City of Myrtle Beach and/or its MBEMD does not disrupt or interfere with Aramark's duties and obligations to CCU.
2. CCU shall remain responsible for the management of and costs associated with the food service and other operations Aramark provides to CCU pursuant to Solicitation #5400019004 and the food services contract awarded to Aramark on or about July 17, 2020.
3. Notwithstanding CCU's commitments set forth in this MOU, CCU shall in no way be obligated to permit Aramark to use the University's food service equipment or facilities to prepare safe, quality, meals for MBEMD during emergency events, nor shall CCU be responsible for providing or arranging for food services for MBEMD. CCU shall not be held liable, in any way whatsoever, for any services Aramark provides to the City of Myrtle Beach and/or its MBEMD or Aramark's failure to provide services to the City of Myrtle Beach and/or its MBEMD.

D. ARAMARK COMMITMENTS

1. Aramark understands and agrees that it shall remain fully responsible for its duties and obligations to CCU and agrees that CCU's needs and requests shall at any and all times take precedence over any needs or requests from the City of Myrtle Beach and/or its MBEMD.
2. The general scope of services to be provided to MBEMD by Aramark shall be as set forth on Schedule 1 attached hereto.
3. Aramark understands and agrees that nothing in this MOU shall supersede any current or future contracts between CCU and Aramark.
4. Aramark, may at its option, agree to enter into a contract with the City of Myrtle Beach to provide meals to MBEMD during emergency situations, however, Aramark's performance under such a contract shall not disrupt or interfere with Aramark's duties and obligations to CCU. In the event of any conflict or inconsistency between the terms of this MOU and any agreement between the City of Myrtle Beach and Aramark, the terms and provisions of this MOU shall control.
5. Aramark will have the sole discretion in determining whether it is in its best interest to enter into an agreement with the City of Myrtle Beach, whether to honor a request to provide services during an emergency situation, and, during an emergency, whether it is safe for them to provide services to MBEMD.
6. Aramark shall be solely liable for any services Aramark provides to the City of Myrtle Beach and/or its MBEMD or Aramark's failure to provide services to the City of Myrtle Beach and/or its MBEMD and Aramark understands and agrees that CCU shall not be held liable for any such services or Aramark's failure to provide any such services.
7. Aramark will indemnify and hold harmless Coastal Carolina University and its current and former trustees, directors, officers, agents, employees, students, and volunteers from third party claims for bodily injury including but in no way limited to death, or property damage that may arise from Aramark's negligent use of the facilities and/or services provided under this MOU.

E. CITY OF MYRTLE BEACH COMMITMENTS

1. The City of Myrtle Beach shall be responsible for any contract or agreement that they enter into with Aramark for the provision of food services, however, before entering into the agreement, the City of Myrtle Beach shall submit the proposed agreement to CCU for review to ensure the contract, does not on its face, interfere with the services Aramark is contractually bound to provide to CCU. In the event of any conflict or inconsistency between the terms of this MOU and the agreement between the City of Myrtle Beach and Aramark, the terms and provisions of this MOU shall control.
2. The City of Myrtle Beach shall assume all responsibilities for the payment for any and all services Aramark provides to its MBEMD. It is understood that Aramark nor the City of

Myrtle Beach, in performing under their agreement, will seek any monetary contribution from CCU.

3. The City of Myrtle Beach understands and agrees that Aramark shall be responsible for any and all food services provided to MBEMD and further agrees that CCU shall not be held liable for such services or the failure to provide services.

F. MUTUAL AND JOINT COMMITMENTS OF THE PARTIES

1. An official request for the use of Coastal Carolina University facilities must be made by a representative of MBEMD and Aramark, detailing the type and quantity of food to be prepared, the duration of the proposed services, and the facilities and equipment needed to prepare the food for MBEMD.
2. Aramark shall be liable for any damage and will be responsible for restitution from any damage to any facilities, grounds, and/or equipment on Coastal Carolina University's campus arising from this MOU or a related agreement pursuant to this MOU.
3. Subject to the South Carolina Tort Claims Act and to the limits of City of Myrtle Beach's insurance, the City of Myrtle Beach shall be responsible for any loss or damage to any facilities or grounds on Coastal Carolina University's campus caused by the City of Myrtle Beach's employees or agents relating to this Agreement. The City of Myrtle Beach shall, at its sole expense, purchase and keep in force at all times during the term of this Agreement, a policy or policies of insurance, issued by an insurance company of generally recognized responsibility and licensed to do business in the State of South Carolina, insuring against liability for property damage arising or alleged to arise out of any activity or failure to act by City of Myrtle Beach in connection with this Agreement.
4. At all times relevant to this MOU, the Parties shall comply with all requirements of applicable federal and state laws, including but not limited to the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, the Age Discrimination Act of 1975, the Americans With Disabilities Act of 1990, the Violence Against Women Act, Title IX of the Federal Education Amendments of 1972, and the Drug Free Workplace Act.
5. Each party understands and acknowledges the ease with which COVID-19 (including variations thereof) spreads among infected individuals, including individuals who are asymptomatic, the impossibility of guaranteeing complete protection from COVID-19 for its employees, customers, students, business invitees and patrons, and the inherit risks associated with its operations during the COVID-19 pandemic. In this regard, each party assumes any and all risks associated with COVID-19 as to its business, operations, employees, customers, students, business invitees and patrons.

G. TERMINATION

CCU, the City of Myrtle Beach, or Aramark may terminate this MOU at any time by giving written notice of said termination to all Parties, should any Party fail to substantially perform its obligations under the MOU.

Any Party hereto may terminate this MOU without cause, at any time upon mutual agreement between the Parties or by giving the other Parties at least 90 days advance written notice which does not interrupt the service(s) in progress.

CCU may terminate this MOU at any time should it determine, in its sole discretion, that the provision of food services to MBEMD in any way interferes with Aramark's ability to provide services to CCU, or diminishes the quality of service Aramark provides to CCU.

H. NON-APPROPRIATIONS CLAUSE

The continuation of this Agreement is contingent upon whether the General Assembly appropriates sufficient funds, from year to year, thereby providing Coastal Carolina University with the fiscal ability to maintain and operate a food services program on campus. The Contract shall automatically terminate if such funds cease to be allocated or available for any reason.

I. CONFIDENTIAL INFORMATION

The Parties agree to hold all individually identifiable information obtained, learned, or developed under or in connection with this Agreement confidential in accordance with applicable federal, state and local laws and regulations.

All reports, information, or data furnished to, prepared, assembled, or used under this Agreement are to be held confidential and the same shall not be made available to any individual or organization without the prior written approval by CCU, the City of Myrtle Beach, and Aramark as appropriate, except as authorized or required by applicable law, rule, regulation promulgated by a governmental and/or judicial authority having jurisdiction.

The provisions of this Section shall remain in full force and effect following the termination of, or cessation of, the services required by this Agreement.

J. PUBLICITY

No reference to CCU or any other partnering agency shall be made in any advertising or public matter related to this Agreement without prior written approval from Coastal Carolina University.

K. SEVERABILITY

Should any provision of this MOU be declared or be determined by any court to be illegal or invalid, the validity of the remaining parts, terms and provisions shall not be affected thereby, and said illegal or invalid part, term or provision shall be deemed not to be a part of this MOU.

L. ASSIGNMENT

This MOU may not be assigned by either Party hereto without prior written consent of the other Parties. Nothing in this MOU, express or implied, is intended to confer upon any person, other than the Parties to this MOU and their successors and permitted assigns, any rights or remedies under or by reason of this MOU.

M. BINDING EFFECT

This MOU shall be binding upon and inure to the benefit of the Parties hereto and their respective

successors and permitted assigns.

N. RECOVERY OF FEES AND COSTS

If default be made in the performance of or compliance with any obligations herein, by any Party, the non-prevailing Party in any action brought to enforce the terms of this MOU shall be responsible to the prevailing Party for the reimbursement of all reasonable attorneys’ fees and costs incurred by the prevailing Party in such action.

O. HEADINGS, MODIFICATIONS AND AMENDMENTS

The headings contained in this MOU are for reference purposes only and shall not affect the meaning or interpretation of this Agreement. This Agreement may be modified or amended only by an instrument in writing executed by the Parties hereto.

P. NO AGENCY RELATIONSHIP BETWEEN THE PARTIES

Nothing in this Agreement is intended to or shall be construed to constitute or establish an agency, employer, employee, partnership, franchise, or fiduciary relationship between the Parties; and no Party shall have the right or authority or shall hold itself out to have the right or authority to bind any other Party.

Q. APPLICABLE LAW; JURISDICTION

This MOU shall be deemed to have been executed in South Carolina for purposes of jurisdiction. Any litigation concerning this MOU shall be conducted in the South Carolina Court of Common Pleas in the Horry County, South Carolina.

R. NOTICES

All notices or other communications required or permitted to be given under this MOU shall be in writing and shall be deemed given to a Party when (a) delivered by hand or by a nationally recognized overnight courier service (costs prepaid), (b) sent by facsimile or e-mail with confirmation of transmission by the transmitting equipment, or (c) received or rejected by the addressee, if sent by certified mail, postage prepaid and return receipt requested, in each case to the following:

If to Aramark:

Aramark – Coastal Catering
Lib Jackson Student Union, Suite B-102D
100 Spadoni Park Circle
Conway, SC 29526

If to CITY OF MYRTLE BEACH:

Tom Gwyer
Myrtle Beach Fire Chief
921-B Oak Street
Myrtle Beach, SC 29577

With a copy to:

Aramark Higher Education
Attn: Chief Financial Officer Aramark

With a copy to:

William Bryan, City Attorney
937 Broadway Street

Global Headquarters
2400 Market Street
Philadelphia, PA 19103

Myrtle Beach, SC 29577

If to CCU:
Carlos C. Johnson, Senior VP & University Counsel
Coastal Carolina University
Post Office Box 261954
Conway, SC 29528-60054

S. ENTIRE AGREEMENT AND COUNTERPARTS

This MOU constitutes the entire agreement of the Parties hereto, and supersedes all prior understandings with respect to the subject matter hereof. This MOU may be executed in counterparts, each of which shall be deemed an original, but all of which shall constitute the same instrument.

IN WITNESS WHEREOF, Coastal Carolina University has caused this Memorandum of Understanding to be executed as of the last date written below.

Witness

By: Michael T. Benson
Its: President

IN WITNESS WHEREOF, the City of Myrtle Beach has caused this Memorandum of Understanding to be executed as of the date first above written.

Witness

By: Tom Gwyer
Its: _____

IN WITNESS WHEREOF, Aramark has caused this Memorandum of Understanding to be executed as of the date first above written.

Witness

By: David Vandenberg
Its: Vice President

Schedule 1 - Scope of Services requested by MBEMD:

Catered Meal Service

Prepare quality and safe meals for remote delivery. Meals will be prepared at Coastal Carolina University food service locations. Meals may include, but may not be limited to, a variety of fully prepared meals following dietary guidelines consisting of hot or cold breakfasts, lunches, dinners, off-schedule or late-night meals (a/k/a sandwich or boxed meals), and beverage. For standard breakfast, lunch and dinner services, the City prefers a buffet line style presentation. The City will be invoiced at rates to be mutually determined on a case-by-case basis.

Serving Supplies and Utensils

The University's contracted food service provider shall not be responsible to serve meals, nor staff a serving line, but should provide adequate consumable supplies as needed for serving and consumption, based upon the projected meal count. This may include disposable buffet pans, serving utensils, disposable plates, dishes, cups, tumblers, eating utensils, napkins, etc. Buffet pans to be heated by wicked liquid fuel (no odor).

Delivery

Meals prepared on Coastal Carolina University's campus will be delivered to The City's designated Emergency Response Center(s) in accordance with schedules as agreed upon by both parties. All food will be held at proper temperature in order to ensure that proper sanitation and health control is maintained. Coastal Carolina University's food service provider will be responsible for the proper equipment needed to safely transport the food to each location. Aramark will also be responsible for retrieving hot and cold serving carts from prior meal service at delivery of the next meal(s).

Duration, Scheduling, and Quantity of Meal Services

Because of the unpredictability of all types of disasters and the length of time necessary to remediate them, both parties must identify and agree to an estimated response endurance, location(s) for delivery, and the number of staff to be fed. Aramark shall prepare and submit menus on a weekly basis, or as otherwise agreed upon by both parties during the activation period.

Serving Schedule

During a typical disaster response, The City targets buffet style meal service as follows:

Breakfast: 7:00 AM – 9:00 AM,
Luncheon: 12:00 PM – 2:00 PM, and
Dinner: 5:00 PM – 7:00 PM.

Any alternate arrangements will be as mutually agreed upon by Aramark and The City.

Contractor's Personnel

Uniforms and identification should distinguish Aramark's personnel from other service providers.

Aramark shall provide the following:

- Detailed invoice of charges by date/meal/location/quantity
- Certificate of Insurance showing adequate Liability and Workers' Compensation Coverage