

Contract Terms and Conditions

SECTION I: General

- 1.1** The FSMC shall comply with all laws, as amended, ordinances, rules, and regulations of all applicable federal, state, county, and city governments, bureaus, and agencies, regarding purchasing, sanitation, health, and safety of the food service operations including those requirements and regulations, instructions and policies, adopted by the Massachusetts Department of Elementary and Secondary Education and the United States Department of Agriculture and any conditions or amendments thereto. The FSMC shall procure and maintain all necessary licenses and permits. The SFA shall cooperate, as necessary, for the FSMC's compliance and procurement efforts. The FSMC shall conduct program operations in accordance with 7 CFR Sections: (check all that apply)
- ☒ **210 (National School Lunch Program);**
 - ☐ **210.10 (Afterschool Snack Program);**
 - ☐ **215 (Special Milk Program);**
 - ☒ **220 (School Breakfast Program);**
 - ☐ **225 (Summer Food Service Program);**
 - ☐ **226 (Child and Adult Care Food Program);**
 - ☐ **42 U.S.C. 1769 (Fresh Fruit and Vegetable Program);**
 - ☒ **245 (Determining Eligibility for Free and Reduced Price Meals and Free Milk in Schools)**
 - ☒ **250 (Donation of Foods for Use in the USDA Food Distribution Program);**
 - ☒ **FNS Instructions and policies**
- 1.2** The SFA shall retain control of the quality, extent and general nature of the food service program and prices to be charged. 7 CFR§210.16(a)(4)
- 1.3** The SFA shall be entitled to all receipts of the food service program.
- 1.4** All net income accruing to the SFA from the food service program shall remain in the program and be deposited by the FSMC into the nonprofit school food service account.
- 1.5** The FSMC shall be an independent contractor and not an employee of the SFA; nor are the employees of the FSMC employees of the SFA.
- 1.6** The FSMC, as an independent contractor, shall have the exclusive right to operate the school food service program and/or special milk program on behalf of the SFA.

SECTION II: Relationship of the Parties

- 2.1** The FSMC shall be an independent contractor and shall retain control over its employees and agents. Nothing in this contract shall be deemed to create a partnership, agency, joint venture, or landlord-tenant relationship.
- 2.2** FSMC Responsibilities.
- A.** The FSMC shall maintain such records as the SFA will need to support its Claim for Reimbursement; make all records available to the SFA upon request; and retain all records for a period of for a period of 6 years from the end of the contract for inspection and audit by representatives of the SFA, State Agency (SA), USDA and Office of Inspector General, at any reasonable time and place. In instances where audit findings have not been resolved, the records must be retained beyond the 6-year period until resolution of the issues raised by the audit. These records will be maintained at the school food service offices. [Recordkeeping, 2CFR§200.334, §210.16(c)(1), 7CFR §250.53(11) and 7CFR §210.23(c)]
 - B.** The FSMC shall, to the maximum extent possible, utilize USDA Foods made available by the SFA solely for the purpose of providing benefits for the SFA's food service operation. [7 CFR § 210.16(a)(6)]

- C. The FSMC shall prepare and serve a variety of appetizing, high quality, wholesome, and nutritious meals and a la carte items for the SFA's students, employees, and visitors in accordance with the terms and conditions of this contract. The FSMC agrees that it will perform the work described in this contract in full compliance with all applicable laws, rules, and regulations adopted or promulgated by any federal or state regulatory body or governmental agency.
- D. The FSMC agrees to meet all requirements and performance standards that may be specified by rule or regulation by any administrative officials or bodies charged with enforcement of any state or federal laws on the subject matter of this contract.
- E. The FSMC agrees to assume full responsibility for the payment of all contributions, assessments, both state and federal, including, but not limited to, wages, pension benefits, federal, state and local employment taxes, unemployment taxes, social security, and worker's compensation costs, as to all employees engaged by it in the performance of the contract.
- F. The FSMC agrees to furnish the SFA, upon request, a certificate or other evidence of compliance with state or federal laws regarding contributions, taxes, and assessments on payrolls.

2.3 SFA Responsibilities.

- A. The SFA shall ensure that the food service operation is in conformance with the *Child Nutrition Programs Permanent Agreement* and any addenda. [7 CFR § 210.16(a)(2)]
- B. The SFA shall monitor the food service operation through periodic on-site visits to ensure the food service is in conformance with program regulations. [7 CFR § 210.16(a)(3)] SFA shall monitor each site a minimum of twice per school year.
- C. The SFA shall retain control of the quality, extent, and general nature of its food service and the prices to be charged for meals. [7 CFR § 210.16(a)(4)]
- D. The SFA shall retain signature authority on the *Child Nutrition Programs Permanent Agreement* and any addenda, free and reduced-price policy statement and Claims for Reimbursement. [7 CFR § 210.16(a)(5)]
- E. The SFA shall retain title to all USDA Foods and ensure that all USDA Foods: are made available to the FSMC, including processed USDA Foods; accrue only to the benefit of the SFA's nonprofit school food service account; are fully utilized therein; and that all refunds, discounts, rebates and credits received from processors are retained by the SFA. [7 CFR § 210.16(a)(6)]
- F. The SFA shall establish and maintain an advisory board composed of parents, teachers, and students to assist in menu planning. [7 CFR § 210.16(a)(8)]
- G. The SFA shall make reasonable modifications with regard to all matters under its supervision and control, and the FSMC shall comply with them as soon as reasonably possible after proper notification is given.
- H. The SFA shall retain control of the nonprofit school food service account and overall financial responsibility for the nonprofit food service operation, including control for setting of all prices, including price adjustments, for meals served under the nonprofit school food service account, including but not limited to, pricing for reimbursable meals, a la carte service, vending machines, and adult meals. [7 CFR § 210.16(a)(4)]
- I. The SFA shall retain signature authority and responsibility for all contractual agreements in connection with the school child nutrition programs. [7 CFR § 210.21]
- J. The SFA shall ensure prompt resolution of findings from program administrative reviews and audit findings. [7 CFR § 210.9(b)(17)]

- K. The SFA shall maintain responsibility for the implementation of the free and reduced-price policy. [7 CFR § 245]
- L. The SFA shall develop, distribute, and collect the parent letter and application for free and reduced-price meals (as appropriate). [7 CFR § 245.6]
- M. The SFA shall determine eligibility and verify applications for free and reduced-price meals benefits and conduct any hearings related to such determinations. [7 CFR § 245.6, 6a, 7, 10]
- N. The SFA shall assure that the maximum amount of USDA Foods are received and utilized by the FSMC. [7 CFR § 210.9(b)(15)]
- O. The SFA shall maintain responsibility for procuring processing agreements, private storage facilities, or any other aspect of financial management relating to USDA Foods. [7 CFR § 250.15]

SECTION III: Food Service Program

- 3.1 The FSMC shall prepare and serve meals for the schools listed on Exhibit A (Schools/Enrollment/Attendance Factor Free - Reduced Percentage Serving Times/Child Nutrition Programs). The SFA is allowed to add schools to this contract as required up to a 10% increase in the number of schools in Exhibit A
- 3.2 All meals will be provided in accordance with the approved calendar, attached as Exhibit F. For the first twenty-one (21) days of food service, the FSMC will adhere to the 21-day cycle menu agreed upon by FSMC and the SFA. Changes thereafter may only be made with approval of the SFA. [7 CFR § 210.16 (b)(1)]
 - A. The SFA shall administer the application process for all free and reduced-price meals and shall establish and notify parents and guardians of program criteria for eligible students. Both the SFA and the FSMC shall be responsible for protecting the anonymity of students receiving free or reduced-price meals. [7 CFR § 210.16 (a)(5)]
- 3.3 In cooperation with the SFA, the FSMC shall conduct on-going nutrition awareness programs for students, teachers, parents, and other interested parties.
- 3.4 The FSMC shall, in accordance with SFA policy, program and regulations, supply special diets, per 7 CFR 210.10(m) and 7 CFR 220.8(m), for students where medically necessary and/or when prescribed by a licensed physician.
- 3.5 The FSMC shall cooperate with the SFA's Advisory Board, consisting of students, parents, SFA staff, and a FSMC representative in developing menus and other food service program initiatives.
- 3.6 Catering
 - ☐ SFA will not be requesting catered food service.

OR

- ☒ Upon request by the SFA, the FSMC shall provide catered food service at times and prices mutually agreed upon. The SFA may, if a price cannot be agreed upon or the FSMC cannot provide the service, obtain outside catering services. USDA Foods will not be used for catering. The FSMC shall provide the SFA with copies of invoices within ten (10) days after the end of each month. Catering invoices must be reflective of actual catering costs plus a reasonable profit. Invoices must be noted as "unallowable costs" and must be paid from an account other than the non-profit school food service account. All catering revenues are to be retained in the Non-Profit School Food Service Account.

- 3.7** If participating in the Fresh Fruit and Vegetable Program (FFVP)
- A. FSMC will ensure it documents allowable costs to include but not limited to; actual labor costs, administrative costs and fresh fruit and vegetable costs.
 - B. FSMC and SFA will ensure no more than ten percent (10%) of each awarded school's grant will be claimed for administrative costs (planning and managing the program).
 - C. FSMC will ensure it expends all FFVP funds received per school.
- 3.8** Clean Air Act – Federal Water Pollution Control Act. In performance of this contract, the FSMC shall comply with Section 306 of the Clean Air Act, Section 508 of the Clean Water Act, Executive Order 11738, and EPA Regulations 40 CFR § 15, et seq. Environmental violations shall be reported to the USDA and US EPA Assistant Administrator for Enforcement, and the FSMC agrees not to utilize a facility listed on the EPA's "List of Violating Facilities." [Appendix II to CFR § 200 (G)]
- 3.9** Energy Policy and Conservation Act. The SFA and the FSMC shall recognize mandatory standards and policies relating to energy efficiency, which are contained in the state conservation plan issued in compliance with the Energy Policy and Conservation Act. [42 U.S.C. 6201]
- 3.10** Davis-Bacon Act. In performance of this contract, the FSMC shall comply with the Davis-Bacon Act (40 U.S.C. 3141-3144 and 3146-3148), Copeland "Anti-Kickback" Act (40 U.S.C. 3145) and MA Prevailing Wage Law Ch.149 Section 27.
- 3.11** Debarment and Suspension. The FSMC shall complete and submit to the SFA the Certification Regarding Debarment. The certification must accompany each amendment for all additional one-year renewals. Debarment, Suspension, Ineligibility and Voluntary Exclusion, 2 CFR § 180 as adopted and modified by USDA regulations at 2 CFR § 417 – The SFA must check the Excluded Parties List System (EPLS), collect a certification, or include a clause in the contract. [Appendix II to CFR § 200 (H)] Executive Orders 12549 and 12689
- 3.12** Byrd Anti-Lobbying Amendment. Pursuant to section 1352, Title 31, US Code, the FSMC shall complete and submit a Certificate Regarding Lobbying and a Disclosure of Lobbying Activities to the SFA. These certifications must accompany each amendment for all additional one-year renewals. [Appendix II to CFR § 200 (I)]
- 3.13** Rights to Inventions Made Under a Contract or Agreement. In performance of this contract, the FSMC shall comply with the requirements of 37 CFR Part 401.
- 3.14** If operating SFSP and CACFP a food service management company may not subcontract for the total meal, with or without milk, or for the assembly of the meal. 7 CFR 225.6(h)(2)(ii) and 7 CFR 226.21(e)
- 3.15** Summer Food Service (if applicable)
- A. Dates of participation: _____ to _____
 - B. FSMC shall deliver meals to each of the annually selected and approved sites.

Section IV: USDA Foods

- 4.1 The FSMC will provide the following services in relation to USDA Foods (*Check only those duties below that the FSMC will provide*):
- ☒ Preparing and serving meals
 - ☒ Ordering or selection of USDA Foods, in coordination with the SFA in accordance with 7 CFR §250.58(a).
 - ☒ Storage and inventory management of USDA Foods in accordance with 7 CFR § 250.52.
 - ☐ Payment of processing fees and or submittal of refund requests to a processor on behalf of the SFA, or remittance of refunds for the value of USDA Foods in processed end products to the SFA, in accordance with subpart C of 7 CFR § 250.
- 4.2 The FSMC must credit the SFA for the value of all USDA Foods received for use in the SFA's meals service in a school year (including both entitlement and bonus foods) and including the value of USDA Foods contained in processed end products if the FSMC procures processed end products on behalf of the SFA or acts as an intermediary in passing the USDA Foods value in processed end products on to the SFA.
- 4.3 The FSMC shall credit for USDA Foods by disclosure, i.e., the FSMC shall credit the SFA for the value of USDA Foods by disclosing, in its billing for food costs submitted to the SFA, the savings resulting from the receipt of USDA Foods for the billing period. Crediting by disclosure does not affect the requirement that the FSMC shall only bill the SFA for net allowable costs. The FSMC shall use either the USDA's cost-per-pound donated food prices posted annually by the USDA (generated on or about November 15th), or the most recently published cost-per-pound price in the USDA donated foods catalog to report the value of USDA Foods in its disclosure of the value of USDA Foods to the SFA in its invoices.
- 4.4 Any activities relating to donated foods that the food service management company will be responsible for, in accordance with §250.50(d), and assurance that such activities will be performed in accordance with the applicable requirements in 7 CFR 250.
- 4.5 The food service management company will use all donated ground beef and ground pork products, and all processed end products, in the recipient agency's food service.
- 4.6 The food service management company will use all other donated foods or will use commercially purchased foods of the same generic identity, of U.S. origin, and of equal or better quality than the donated foods, in the recipient agency's food service.
- 4.7 The FSMC must meet the general requirements in 7 CFR § 250.14(a) for the storage and inventory management of USDA Foods. In accordance with 7CFR §250.52(b), the FSMC may store and inventory donated foods together with foods it has purchased commercially for the SFA's use, unless this is specifically prohibited in its contract. It may store and inventory such foods together with other commercially purchased foods only to the extent that such a system ensures compliance with the requirements for the use of donated foods in 7CFR §250.51(d). Additionally, the FSMC must ensure that its system of inventory management does not result in the SFA being charged for USDA Foods.
- 4.8 The FSMC must return all unused USDA Foods, including but not limited to ground beef, ground pork, and processed end products to the SFA when the contract terminates, is not extended, or renewed.
- 4.9 The SFA must ensure that the FSMC has credited it for the value of all USDA Foods received for use in the SFA's meal service in the school year. The FSMC agrees to cooperate and provide information reasonably requested by the SFA.

- 4.10** The FSMC must ensure compliance with the requirements of subpart C of 7 CFR § 250 and with the provisions of the distributing and/or the SFA's processing agreements in the procurement of processed end products on behalf of the SFA and will ensure crediting of the SFA for the value of USDA Foods contained in such end products at the processing agreement value.
- 4.11** The FSMC shall not enter into the processing agreement with the processor required in subpart C of 7 CFR § 250.
- 4.12** The distributing agency, sub-distributing agency, or SFA, the Comptroller General, the USDA, or their duly authorized representatives, may perform on-site reviews of the FSMC's food service operation, including the review of records, to ensure compliance with requirements for the management and use of USDA Foods.
- 4.13** The FSMC shall maintain records to document its compliance with 7 CFR § 250.54(b).
- 4.14** Any extension or renewal of the contract is contingent upon fulfillment of all provisions in this contract relating to USDA Foods.
- 4.15** The FSMC must maintain the following records relating to the use of USDA Foods:
- A. The USDA Foods and processed end products received from, or on behalf of, the SFA, for use in the SFA's food service operations;
 - B. Documentation that it has credited the SFA for the value of all USDA Foods received for use in the SFA's food service operations in the school year, including, in accordance with the requirements in 7 CFR §250.51(a), the value of USDA Foods contained in processed end products; and
 - C. Documentation of its procurement of processed end products on behalf of the SFA, as applicable.
- 4.16** The SFA shall ensure that the FSMC is in compliance with the requirements of this section through its monitoring of the food service operation, as required in 7 CFR §§ 210, 225, or 226, as applicable.
- 4.17** The SFA shall conduct a reconciliation at least annually (and upon termination of the contract) to ensure that the FSMC has credited it for the value of all USDA Foods received for use in the SFA's food service in the school year, including, in accordance with the requirements in 7 CFR §250.51(a), the value of USDA Foods contained in processed end products.
- 4.18** All USDA Foods received by the SFA and made available to the FSMC shall accrue only to the benefit of the SFA's non-profit school food service program and shall be used therein.
- 4.19** The FSMC shall have records available to substantiate the use of USDA Foods in reimbursable meal pattern meals.
- 4.20** The FSMC shall select, accept and use in as large quantities as may be used in SFA's non-profit school food service program, the type and quantities of available federally donated commodities, subject to the approval of the SFA.
- 4.21** Title of products purchased or processed using USDA Foods must remain within the SFA. Any charges incurred by the FSMC when processing or purchasing products containing government commodities shall be processed for payment by the FSMC and charged back to the SFA as a food cost.

SECTION V: Equipment

5.1 Equipment Purchases

☐ Equipment purchases were requested through the RFP.

The FSMC shall purchase equipment on behalf of the SFA as noted:

☐ As a yearly total value OR ☐ As a maximum annual amount to be purchased, which was identified in the RFP and included in the FSMC's proposal in response to the RFP. **FSMC must properly procure requested equipment in an amount not to exceed \$ _____ (MUST BE REVIEWED ANNUALLY).**

The FSMC shall amortize the investment on a straight-line basis over five (5) years, commencing with the date each piece of equipment is placed in service. Such amortization shall be charged as an Operating Expense. Title to the investment shall be vested with the SFA when it is placed in service. Payment must not commence prior to equipment being placed in service.

If the Agreement expires or is terminated prior to the complete amortization of the investment, the SFA shall on the expiration date, or within five (5) days after receipt by either party of any notice of termination or non-renewal of this Agreement the SFA will pay the unamortized balance in full to the FSMC that purchased the equipment.

OR

☒ The SFA did not request equipment purchases for this contract.

5.2 The FSMC may only charge the SFA for reasonable, necessary and allocable purchases

5.3 The FSMC may recommend to the SFA the purchase of new or replacement equipment as needed. The FSMC shall account for all equipment and protect it from pilferage or destruction, and will coordinate the repair or replacement of any equipment not functioning properly with the designated SFA personnel that has repair responsibility.

5.4 The FSMC shall operate and care for all equipment and food service areas (walls, windows, lights, etc.) in a clean, safe and healthy condition in accordance with standards acceptable to the SFA and comply with all applicable laws, ordinances, rules and regulations of federal, state and local authorities, normal wear and tear excepted.

5.5 The FSMC shall notify the SFA of any equipment belonging to the FSMC on SFA premises within ten (10) days of its placement on the SFA premises.

5.6 The FSMC, upon termination of the contract, shall surrender all equipment and furnishings belonging to the SFA and/or purchased through this agreement in good repair and condition, normal wear and tear excepted.

5.7 The SFA shall be responsible for repairs to all permanent fixtures such as faucets, lights, sewers, air conditioning, heating and all other electrical work not considered as being food equipment.

5.8 The SFA shall be responsible for any losses which may arise due to equipment malfunction or loss of electrical power not within the control of the FSMC.

5.10 The SFA shall not be responsible for loss or damage to equipment owned by the FSMC and located on the SFA premises except for loss or damage caused by SFA beyond normal wear and tear.

5.11 The SFA will provide the initial physical inventory of supplies and equipment available for use by the FSMC.

- 5.12 The SFA shall furnish and install any equipment or make any structural changes needed to comply with federal, state, and local laws.
- 5.13 Each party shall, at no cost to the other, make all repairs, alterations, modifications, or replacements which may be necessary to correct any conditions of premises or equipment owned, leased or controlled by such Party which violate applicable building, sanitation, health, or safety law, ordinance, rule or regulation.
- 5.14 All food preparation and serving equipment owned by the SFA shall remain on the premises of the SFA unless otherwise stated in writing by the SFA.
- 5.15 Transportation Equipment and Vehicle.
- ☒ The SFA does not require transportation equipment or vehicles.
 - ☐ If required, the SFA shall provide transportation vehicles and transportation equipment to be used in the food service program. Maintenance, fuel, insurance, and equipment for transportation shall be the responsibility of the SFA.

SECTION VI: Facilities

- 6.1 The SFA shall furnish at its expense, space, light, heat, power, hot and cold water and other utilities as are necessary for the operation of the food services to be furnished hereunder.
- 6.2 The SFA shall make available without cost to the FSMC, areas of the premises agreeable to both parties in which the FSMC shall render its services; such areas as are reasonably necessary for providing efficient food service. The SFA is responsible for maintaining the facilities in a good state of repair and free from vermin.
- 6.3 The SFA retains the right to rent food service facilities during non-school hours or weekends, provided that such rental does not interfere with the normal food service operation. When such activities take place, the SFA may require that a member(s) of the food service staff designated by the resident manager be on duty and be reimbursed. If the SFA approves the use of the facilities for extracurricular activities before or after the SFA's regularly scheduled meal periods, the SFA shall return facilities and equipment to the FSMC in the same condition as received, normal wear and tear excepted.
- 6.4 The FSMC shall not use the SFA's facilities to produce food, meals or services for other organizations without the approval of the SFA. If such usage is mutually agreeable, there shall be a signed agreement which stipulates the fees to be paid by the FSMC to the SFA for such facility usage.
- 6.5 The SFA shall have unlimited access to all areas used by the FSMC for purposes of inspections and audits.
- 6.6 The SFA shall provide suitable office facilities to the FSMC, including furniture and equipment, for use by the FSMC in performance of this contract. The FSMC shall take reasonable care of the office facilities and equipment and shall return them to the SFA in good condition upon termination of this contract, normal wear and tear excepted.

SECTION VII: Sanitation and Safety

- 7.1 The FSMC shall be responsible for usual and customary cleaning and sanitation of the SFA's food service facilities to include - housekeeping, preparation, storage, and equipment. The FSMC will also adjust practices and operation of equipment as required.
- 7.2 The FSMC shall be responsible for housekeeping and sanitation in areas used for food preparation, storage, and service, and shall clean and sanitize dishes, pots, pans, utensils, equipment, and similar items.

- 7.3 The FSMC shall comply with all local and state sanitation requirements in the preparation and service of food.
- 7.4 The FSMC shall maintain safety programs for employees as required by federal, state, and local authorities, including the FSMC's corporate policies.
- 7.5 The FSMC shall place garbage and trash in appropriate containers in the designated areas.
- 7.6 The FSMC shall cooperate in the SFA recycling program.
- 7.7 The FSMC shall clean the kitchen area, equipment, including but not limited to sinks, counters, tables, chairs, silverware, and utensils.
- 7.8 The SFA shall designate a refuse collection area and the FSMC shall be responsible for transporting refuse to the designated refuse collection area. The SFA shall remove all garbage and trash from the designated areas.
- 7.9 The SFA shall be responsible for cleaning of floors in the dining, serving and kitchen areas, walls, ceilings, tables and chairs in the cafeteria/dining area.
- 7.10 The SFA shall be responsible for painting and miscellaneous repairs within the kitchen and dining areas.
- 7.11 The SFA shall be responsible for the required cleaning and maintenance of dining areas, as well as periodic cleaning of all ceiling and light fixtures, air ducts, and hood vent systems (as per local ordinance). The SFA shall also provide and maintain adequate fire extinguishing equipment for food service areas and provide necessary pest control. If the SFA is unable to perform any of its responsibilities described in this paragraph, the FSMC may, with the written approval of the SFA, temporarily assume those responsibilities and shall bill the SFA for any costs incurred.
- 7.12 The SFA shall provide, at the SFA's expense, maintenance personnel and outside maintenance services, parts, and supplies as is necessary to properly maintain the food service facilities and equipment.
- 7.13 The SFA shall obtain necessary health permits and certification for its facilities. The premises and equipment provided by each party in performance of this contract shall comply with all applicable building, safety, sanitation, and health laws; and shall satisfy all permit requirements, ordinances, rules, and regulations, including the federal Occupational Health and Safety Act of 1970 or applicable state act and standards promulgated thereunder. The FSMC shall take reasonable and proper care of all premises and equipment in its custody and control and shall use them in a manner that will not cause violation of applicable laws, ordinances, rules, and regulations, including any reporting and record-keeping requirements. If at any time the FSMC is notified by an authorized government agency that the SFA's premises or equipment are not in compliance with any law, ordinance, rule, or regulation, the FSMC shall immediately inform the SFA of such notification.

SECTION VIII: Employees

- 8.1 The FSMC shall provide sufficient and qualified management and professional employees to manage the food service operations and supervise all employees employed therein who meet the USDA Professional Standards for Food Service Professionals.
- 8.2 It is expressly understood that all presently employed (SFA and/or FSMC) food service employees will be given the opportunity to interview for positions within the SFA as employees of the FSMC.
- Non-Management Employees.
- ☐ All non-management food service employees shall be employees of the FSMC.
- OR
- ☒ All non-management food service employees shall be employees of the SFA; will be directed and supervised by FSMC Food Service Director
- 8.3 Student Workers.
- ☒ The SFA does not utilize student workers in the food service program.
- OR
- ☐ The SFA has a policy of providing work experience for its students as part of the educational curriculum and as such, the SFA may assign students for work in the food service operation in such numbers as are agreed upon between the SFA and the FSMC.
- 8.4 The FSMC shall prepare and process the payroll for and shall pay its employees directly. The FSMC further warrants that it shall withhold or pay as appropriate all applicable federal and state employment taxes and payroll insurance with respect to its employees, specifically including, but not limited to, any income, social security, and unemployment taxes and workers' compensation payments.
- 8.5 Contract Work Hours and Safety Standards Act: The FSMC and its employees shall comply with all wage and hours of employment requirements of federal and state laws and regulations, including the Contract Work Hours and Safety Standards Act, Appendix II to § 200 (E) 40 U.S.C. 3701-3708. All employees of the FSMC shall be paid in accordance with the Fair Labor Standards Act, as amended and any other applicable statutes. In addition, the FSMC will comply with all applicable federal and state employment statutes, including those statutes pertaining to labor relations.
- 8.6 The FSMC shall establish schedules, wage rates, and benefit programs for all employees.
- 8.7 The FSMC shall have the sole responsibility to compensate its employees, including all applicable taxes, insurances and worker's compensation and shall be solely responsible for any losses incurred by the SFA, resulting from dishonest, fraudulent or negligent acts on the part of its employees or agents. The FSMC is required to provide a fidelity bond for all FSMC employees.
- 8.8 The FSMC shall procure Workers' Compensation Insurance or shall maintain a system of self-insurance in conformance with applicable state law covering its employees and shall provide proof of such coverage or system to the SFA.
- 8.9 The FSMC shall maintain its own personnel policies and fringe benefits for its employees. The FSMC shall supply with this proposal a full description of the proposed benefit package, including but not limited to, levels of coverage, co-pay features and any other limitations.
- 8.10 The FSMC must provide a resident Food Service Director who will be approved by the SFA and will be responsible for directing the food services program and implementing cooperatively agreed upon strategies for maximizing participation in the Child Nutrition Programs. The Director shall be available to meet with principals, students, and staff to determine ways to improve the program. The Director must also be available to participate in town or state meetings when food service matters are to be discussed with appropriate notice given.

8.11 The FSMC shall instruct its employees to abide by the policies, rules and regulations, with respect to its use of District premises as established by SFA from time to time and which are furnished in writing to the FSMC.

8.12 Civil Rights: The FSMC here by agrees that it will comply with:

- i. Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000 et seq.);
- ii. Title IX of the Education Amendments of 1972 (20 U.S.C. 1681 et seq.);
- iii. Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794);
- iv. Age Discrimination Act of 1975 (42 U.S.C. 6101 et seq.);
- v. Title II and Title III of the Americans with Disabilities Act (ADA) of 1990 as amended by the ADA Amendment Act of 2008 (42 U.S.C. 12131-12189);
- vi. Executive Order 13166, "Improving Access to Services for Persons with Limited English Proficiency." (August 11, 2000);
- vii. All provisions required by the implementing regulations of the Department of Agriculture (USDA) (7 CFR Part 15 et seq.);
- viii. Department of Justice Enforcement Guidelines (28 CFR Parts 35, 42 and 50.3);
- ix. Food and Nutrition Service (FNS) directives and guidelines to the effect that, no person shall, on the grounds of race, color, national origin, sex (including gender identity and sexual orientation), age, or disability, be excluded from participation in, be denied the benefits of, or otherwise be subject to discrimination under any program or activity for which the Program applicant receives Federal financial assistance from USDA; and hereby gives assurance that it will immediately take measures necessary to effectuate this Agreement.
- x. The USDA non-discrimination statement that in accordance with Federal civil rights law and U.S. Department of Agriculture (USDA) civil rights regulations and policies, the USDA, its Agencies, offices, and employees, and institutions participating in or administering USDA programs are prohibited from discriminating based on race, color, national origin, religion, sex, gender identity (including gender expression), sexual orientation, disability, age, marital status, family/parental status, income derived from a public assistance program, political beliefs, or reprisal or retaliation for prior civil rights activity, in any program or activity conducted or funded by USDA (not all bases apply to all programs).

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 that 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 Program applicant by USDA. This includes any Federal agreement, arrangement, or other contract that 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 assurance. By accepting this assurance, the FSMC agrees to compile data, maintain records, and submit records and reports as required, to permit effective enforcement of nondiscrimination laws and permit authorized USDA personnel during hours of program operation to review and copy such records, books, and accounts, access such facilities and interview such personnel as needed to ascertain compliance with the nondiscrimination laws. If there are any violations of this assurance, the Department of Agriculture, FNS, shall have the right to seek judicial enforcement of this assurance. This assurance is binding on the FSMC, 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 behalf of the FSMC.

8.13 The FSMC shall be responsible for obtaining any necessary fingerprint clearances for its employees as required by law. The FSMC shall provide all necessary forms and/or documentation for such employees to the SFA.

- 8.14** The FSMC shall ensure that all food service employees comply with the rules of the MA DESE regarding fingerprinting and criminal background checks. (MGL Ch 71 sec.38R)
- 8.15** The FSMC shall comply with all rules policies, processes and guidance pertaining to all MA DESE Civil Rights Complaint Procedures.

SECTION IX: Free and Reduced Price Policy Statement and Written Charge Policy

- 9.1** The written policy of the SFA requiring feeding of students who qualify for free, reduced, or full price meals, shall apply to the FSMC's food service operation. The policy is on file in the SFA office. The SFA shall be responsible for the implementation of this policy.
- 9.2** The FSMC will be responsible for implementing policies covering free, reduced price, and full price meals and milk programs for those students designated by the SFA as meeting federal and state agency requirements for those programs. All such meals shall be served and accounted for in a manner approved by the SFA so as to protect the anonymity of the recipients. Meals shall be served, and proper, accurate pupil participation records shall be maintained by the FSMC.
- 9.3** Per USDA Policy SP46-2016, the SFA shall have a written student meal charge policy, that ensures a "transparent approach to the issue", on file in the SFA office. The SFA shall be responsible for the implementation of this policy and supply the FSMC with a written copy. The FSMC will work with the SFA to administer policy.

SECTION X: Meals – Planning and Procurement

- 10.1** The FSMC may recommend meal prices for approval by the SFA. The FSMC shall not alter the prices once approved without prior notice and approval by the SFA. [7 CFR §210.16(a)(4)] The SFA shall retain control of the quality, extent, and general nature of its food service, and the prices to be charged the children for meals.
- 10.2** The FSMC shall submit with the proposal a twenty-one (21) day cycle menu and a Daily Menu Pattern for the SFA's schools. The FSMC must adhere to this cycle for the first twenty-one (21) days of meal service; thereafter, changes may be made with the mutual agreement of the SFA and the FSMC. However, the menu standard as presented in the first twenty-one (21) day menu and the Daily Menu Pattern, must be maintained as to type and quality of meal service. The Daily Menu Pattern should clearly indicate the number and type of choices and offerings that will be offered at all grade levels.
- 10.3** The FSMC shall be responsible for purchasing standards and specifications to bring about the best quality and price for the food service program. The FSMC shall comply with the grade, purchase unit, style, weight, ingredients, formulations, etc., for foods served as agreed upon with the SFA. The minimum procurement specifications are listed on Schedule B.
- 10.4** The FSMC shall serve reimbursable meal pattern lunches pursuant to the NSLP. For purposes of this proposal, lunch prices as per attached listing shall be used as a guide for calculations (reference Schedule C).
- 10.5** The FSMC may offer a choice of reimbursable meal pattern lunches and shall provide specified types of service as listed in Exhibit A.
- 10.6** The FSMC shall provide condiments and utensils as needed.
- 10.7** The FSMC shall use the SFA's facilities for the preparation of food to be served in the designated serving areas. This may include cafeterias, classrooms, hallways etc.

- 10.8** The FSMC shall promote maximum participation in the Child Nutrition Programs.
- 10.9** **BUY AMERICAN PROVISION:** The SFA and FSMC shall purchase, to the maximum extent practicable, domestic commodities or products which are either an agricultural commodity produced in the United States (U.S.) or a food product processed in the U.S. substantially using agricultural commodities produced in the U.S. for use in meals served in the SFA's Child Nutrition Programs in compliance with the Buy American Provision under 7 CFR § 210.21(d)(2) and 7 CFR § 250. FNS Policy Memo SP 38-2017 Exceptions to the Buy American Provision should be used as a last resort; however, an alternative or exception may be approved upon request. To be considered for the alternative or exception, the request must be submitted in writing to a designated official, a minimum of 5 _____ day(s) in advance of delivery. The request must include:
- A. Alternative substitute (s) that are domestic and meet the required specifications:
 - i. Price of the domestic food alternative substitution (s); and
 - ii. Availability of the domestic alternative substitute (s) in relation to the quantity ordered.
 - B. Reason for exception: limited/lack of availability or price (include price);
 - i. Price of the domestic food product; and
 - ii. Price of non-domestic product that meets the required specification of the domestic product.
- 10.10** The FSMC is prohibited from directly or indirectly restricting the sale or marketing of fluid milk at any time or in any place on school premises or at any school-sponsored event. [7 CFR 210.21(e)]

SECTION XI: Food Inventory and Storage

- 11.1** The FSMC shall purchase all food and non-food commodities at the lowest price possible, consistent with maintaining quality standards. The SFA retains the right to verify these standards.
- 11.2** Ownership of beginning and ending inventory of food and supplies, including USDA Foods, shall remain with the SFA.
- 11.3** The FSMC shall maintain adequate storage practices, inventory, and control of USDA Foods in conformance with SFA's agreement with the MA DESE.
- 11.4** The SFA and FSMC shall conduct a joint inventory of existing food and operational supplies at both the beginning and the end of this contract. If the ending inventory is less than the value of the beginning inventory the FSMC will credit the SFA for the difference. The cost of food and operational supplies ordered by the FSMC on behalf of the SFA in performance of this contract shall be paid for by the FSMC and the FSMC shall then be reimbursed for those costs incurred. The inventory of food and operational supplies shall remain the SFA's property.
- 11.5** The SFA and the FSMC shall inventory the equipment and USDA Foods owned by the SFA at the beginning of the contract year, including, but not limited to, consumable and non-consumable flatware, trays, china, glassware and food. The FSMC shall be responsible for reimbursing the SFA for all shortages noted on the year-end inventory.

SECTION XII: Financial: Accounting, Reporting Systems, Records, and Payment Terms

- 12.1** The FSMC shall assume accountability and responsibility for daily bookkeeping and recording functions, including state and federal reimbursements at a minimum:
- A. Monthly Profit and Loss Statements
 - B. Annual Budgeting

- C. Perpetual Inventory – Costs and Controls
 - D. Preparation of records for annual audit by SFA
 - E. USDA Foods Entitlement Summary Reports
 - F. Department of Defense (DoD Fresh) Program Reports
 - G. Usage Reports from K-12 Services and Processor Link demonstrating actual usage of pounds sent to processors
 - H. State reporting of Quarterly YTD Profit and Loss Statements and
 - I. State reporting of an Annual Balance Sheet.
- 12.2 The FSMC shall prepare information necessary for CNP claims for reimbursement from state and federal agencies and maintain such records, as the SFA will need to support its claims for reimbursement under the Child Nutrition Programs. The SFA shall retain signature authority on the MA DESE-SFA Agreement for Child Nutrition Programs (ED-099), including all addenda, free and reduced price policy statement and claims for reimbursement. The FSMC shall report the claim information to the SFA promptly at the end of each month or more frequently as specified by the SFA. [7 CFR § 210.16(c)(1)]
- 12.3 The FSMC shall maintain such records (supported by invoices, receipts, or other evidence) as the SFA will need to meet monthly reporting responsibilities and shall submit monthly operating statements, and particular records, in a format and timeline approved by the SFA. Reimbursement for direct expenses will only be allowed if previously included in the original or amended budget submitted to the SFA.
- A. The FSMC shall maintain records to support all allowable expenses appearing on the monthly operating statement in an orderly fashion according to expense categories.
 - B. The FSMC shall provide monthly and other reports to the SFA, which describes operating costs, meals per labor hour, meals served, etc.
 - C. The FSMC shall provide the SFA with a year-end financial statement.
- 12.4 The FSMC shall bill the SFA for the actual direct costs of operation incurred at the close of each month of program operation.
- 12.5 The SFA shall designate by name and title the employee whose responsibility it shall be to manage the SFA/FSMC contract and to ensure the SFA meets all its responsibilities hereunder.
- Name: Nancy Konisky Title: Director of Finance and Op
- 12.6 Books and records of the FSMC pertaining to the foodservice operations shall be available at the SFA for a minimum of six (6) years, plus the current year, from the date of the final payment to which they pertain, for inspection and audit by either state, or federal representatives and auditors. In instances where audit findings have not been resolved, the records must be retained beyond the 6-year period until resolution of the issues raised by the audit.
- 12.7 Allowable Costs.
- A. Allowable costs will be paid from the nonprofit school food service account to the FSMC net of all discounts, rebates and other applicable credits accruing to or received by the FSMC or any assignee under the contract, to the extent those credits are allocable to the allowable portion of the costs billed to the SFA.
 - B. The contractor must separately identify for each cost submitted for payment to the school food authority the amount of that cost that is allowable (can be paid from the nonprofit school food service account) and the amount that is unallowable (cannot be paid from the nonprofit school food service account).

- C. The contractor must exclude all unallowable costs from its billing documents and certify that only allowable costs are submitted for payment and records have been established that maintain the visibility of unallowable costs, including directly associated costs in a manner suitable for contract cost determination and verification.
- D. The FSMC's determination of its allowable costs must be made in compliance with the applicable USDA and Program regulations and Office of Management and Budget cost circulars as detailed in 2 CFR §200.
- E. The FSMC must identify the amount of each discount, rebate and other applicable credit, with the exception of the FSMC's prompt payment discounts for payments made to vendors, on bills and invoices presented to the SFA for payment and individually identify the amount as a discount, rebate, or in the case of other applicable credits, the nature of the credit. All payment discounts, rebates and allowances obtained from vendors must be credited to the SFA's food services account.
- F. The frequency of reporting this information must be monthly.
- G. The FSMC must identify in their proposal the method by which it will report discounts, rebates, and other applicable credits allocable to the contract that are not reported prior to the conclusion of the contract.

FSMC Response: we negotiate the best prices with suppliers net all rebates

- II. The FSMC must maintain documentation of cost and discounts, rebates and other applicable credits, and must furnish such documentation upon request to the school food authority, MA DESE, or the USDA. The FSMC shall return the value of all discounts, rebates and all other applicable credits allocable to the contract to the SFA.

12.8 The FSMC shall submit monthly operating statements to the SFA. This statement shall reflect all activity for the previous calendar month.

12.9 Invoice Due Date. Invoices submitted to the SFA by the FSMC will be paid within thirty (30) days of receipt.

12.10 The FSMC shall submit supporting documents and invoice to the SFA monthly for the following direct, actual costs, Administrative Fee and Management Fee:

- A. The actual and direct costs for the wages, taxes, and benefits of the FSMC employees at each site, food service director and other management employees on the FSMC's payroll.
12 Number of employees are employed by the SFA and paid directly by SFA.
- B. Direct operating costs paid by the FSMC arising from performance of this contract. Direct operating costs are defined as:

- food and supply purchases by the FSMC necessary to perform this contract
- food service program travel and mileage costs incurred
- advertising and promotions within the SFA
- the FSMC's insurance necessary for performance of this contract;
- service business and occupation tax
- employee training and development costs
- laundry, linen, and uniforms
- licenses and permits for performance of this contract; and
- USDA Foods delivery and storage fees.

- C. The FSMC's Management Fee (FSMC's profit) is:

☒ \$ 3000 per month for 6 months. Fee Total: \$ 18,000

OR

☐ \$ per meal and meal equivalent.

D. The FSMC's Administrative Fee is:

☒ \$ 2000 per month for number of months: 6 Fee Total: \$ 12000
OR

☐ \$ _____ per meal and meal equivalent.

The following functions are the FSMC's responsibility, and will be included in such fees:

- Corporate supervision;
- Financial reporting and analysis;
- Field auditing;
- Marketing Assistance; and
- Purchasing administration.

E. Per Meal Defined: Choose both options below *only if the per meal equivalent option in 12.10.c or 12.10.d was selected.*

☐ For Management Fee and Administrative Fee purposes, each reimbursable lunch shall be considered one (1) meal/meal equivalent, each reimbursable breakfast shall be considered two-thirds (2/3) of a meal/meal equivalent, and one reimbursable snack shall be considered one-third (1/3) of a meal/meal equivalent.

AND

☐ Per meal/meal equivalent defined for Management Fee and Administrative Fee purposes, the number of meal equivalents shall be determined by dividing the total of all sales except reimbursable meal sales (including cash for adult meals, a la carte meals, and snack bar sales) by the free reimbursement rate plus the per meal value of commodities of the current school year.

F. Fee Adjustments: Upon mutual written agreement of the SFA and the FSMC, the Management Fee and Administrative Fee may be adjusted annually. Except as otherwise agreed by the SFA and the FSMC, such adjustment shall be by no more than the percentage of change in the Consumer Price Index ("CPI") for all Urban Consumers (CPI-U U.S. city average), Northeast Region, Food Away from Home for the preceding year (April - March). Upon acceptance by the SFA, such increase in fees shall be incorporated into any renewal of this contract.

G. The SFA:

☐ Participates in FFVP, thus, the FSMC must provide assurances that it will document and track FFVP expenses separately and make this documentation easily accessible for the SFA to review.

☒ Does not Participate in FFVP

H. No payment shall be made for meals or snacks that are spoiled or unwholesome at the time of service, or do not meet specifications developed by the SFA, or do not otherwise meet the requirements of this contract. [7 CFR § 210.16 (c)(3).]

I. Every payment obligation of the SFA under this contract is conditioned upon the availability of funds appropriated or allocated for the payment of such obligation. If funds are not allocated and available for the continuance of this contract, this contract may be terminated by the SFA at the end of the period for which funds are available. No liability shall accrue to the SFA in the event this provision is exercised, and the SFA shall not be obligated or liable for any future payments or for any damages as a result of termination under this paragraph. Notwithstanding the foregoing, the SFA shall be liable for the payment of services rendered up through and including the date of termination.

- J. **Guaranteed Return:** The SFA and the FSMC shall work together to ensure a financially sound and well-run food service operation. For the term of the contract, including renewal years the FSMC shall guarantee that the food service program will achieve financial: *(select one option)*

☒ **Breakeven:** defined as "generated program revenues will be sufficient to cover all actual and direct operating costs incurred.

☐ **Surplus:** defined as "generated program revenues will exceed all actual and direct operating costs incurred. Click to Enter Dollar Value

☐ **Deficit:** defined as "generated program revenues will not be sufficient to cover all actual and direct operating costs incurred. Click to Enter Dollar Value

Actual and direct operating costs are as described in paragraphs 12.10A - E above.

****If the annual financial return for the Food Service Program falls short of the FSMC's guaranteed minimum amount, the FSMC shall pay the difference to the SFA.***

- K. **Force Majeure:** Neither Party shall be responsible to the other for any losses or failure to perform its respective obligations under the Agreement (other than a payment obligation) when such failure is caused by conditions beyond the Party's control, and not due to the fault or negligence of such party, including, but not limited to, fire, explosion, water, Acts of God, civil disorder or disturbances, labor disputes, vandalism, war, riot, sabotage, weather and energy-related closings, pandemic, epidemic, governmental rules and regulations or like causes or the damage or destruction of real or personal property from such causes. In the event that either party ceases to perform its obligations under this Agreement due to the occurrence of a Force Majeure Event, the party shall; (a) as soon as practicable notify the other party in writing of the Force Majeure Event and its expected duration; and (b) take all reasonable steps to recommence performance of its obligations under this Agreement as soon as possible. The party shall not be relieved of its responsibility to fully perform as to all other commitments in the Agreement. The party will not be liable for any failure of or delay in the performance of this agreement for the period that such failure or delay:
1. is beyond the reasonable control of a party,
 2. materially affects the performance of any of its obligations under this agreement, and
 3. could not reasonably have been foreseen or provided against, but
 4. will not be excused for failure or delay resulting from only general economic conditions or other general market effects.
- L. Unless otherwise expressly provided, the SFA and the FSMC shall remain responsible for all claims, liability, loss, and expense, including reasonable costs, collection expenses, and attorney's fees incurred, which arise by reasons of negligent or wrongful act or omission of the party, its agents, or its employees in the performance of its obligations under this agreement.
- M. The FSMC accepts liability caused by FSMC negligence for claims assessed as a result of Federal State reviews/audits, corresponding with the SFA's period of liability.
- N. The FSMC accepts liability for any negligence on its part that results in any loss of, improper use of, or damage to USDA donated foods.
- O. **Nonperformance.** The FSMC shall pay the SFA any over claims due to FSMC negligence or noncompliance with regulations, including those over claims based on review or audit findings. This provision shall be based on the 6-year record retention period as established in MA 30B regulations or the SFA's established record retention timeframe, whichever is greater.

SECTION XIII: Licenses, Fees and Taxes

- 13.1** The SFA shall obtain and post all applicable health permits for its facilities and assure that all state and local regulations are being met by the FSMC preparing or serving meals at a SFA facility. [7 CFR § 210.16(a)(7)]
- 13.2** The FSMC shall comply with all health and safety regulations required by federal, state or local law and shall have state or local health certification for any facility outside the SFA in which it proposes to prepare meals or meal components and the FSMC shall maintain this health certification for the duration of the contract. The FSMC must meet all applicable state and local health regulations in preparing and serving meals at the SFA facility. [7 CFR § 210.16(c)(2)]
- 13.3** The FSMC shall comply with all building rules and regulations. SFA shall supply FSMC with copy of any written aforementioned documents.

SECTION XIV: Performance Bond

- 14.1** If operating SFSP for contracts over \$100,000 as a condition to entry into this contract, the successful vendor shall provide to the SFA a performance bond equaling ten percent (10%) of the contract's value (total budgeted costs/expenses) associated with the Summer Food Service Program. This performance bond will guarantee the vendor's faithful performance. For the successful FSMC, the performance bond is required annually, in each year of the contract, to be submitted to the SFA Business Office within ten days of the awarding of the contract. 7 CFR Part 225.15(m) (5-7)

SECTION XV: Insurance

The FSMC shall maintain for the life of the contract, the insurance coverage set forth below for each accident provided by insurance companies authorized to do business in the state of Massachusetts with a rating by AM Best of "A" or better. A certificate of insurance indicating these amounts must be submitted at the time of award.

- 15.1** Comprehensive General Liability - \$1,000,000 Combined Single Limit includes coverage for:
- A. Premises-Operations,
 - B. Products/Completed Operations,
 - C. Contractual Insurance,
 - D. Broad Form Property Damage,
 - E. Independent Contractors,
 - F. Personal Injury, and
 - G. Employee Dishonesty.
- 15.2** Automobile Liability
- \$1,000,000 combined Single Limit
- 15.3** Worker's Compensation and Employer's Liability
- A. Worker's compensation – Statutory; and
 - B. Employer's Liability - \$500,000.
- 15.4** The Berlin-Boylston Public Schools and the Town/City of Berlin and Boylston shall be additional named insured's on Comprehensive General Liability, Auto, and Workers' Compensation (Employer's Liability Only) policies.
- 15.5** The contract of insurance shall provide for notice to the SFA of cancellation of insurance policies thirty (30) days before such cancellation is to take effect.

15.6 The FSMC agrees to indemnify and hold harmless the Berlin-Boylston Public Schools

and the town/city of Berlin and Boylston and each of their respective members, employees, officers and agents from and against any claims, demands, losses, costs or liabilities for personal injury or property damage or any other loss which may result from the FSMC's performance or lack of performance of the Contract. Such "losses" shall include all reasonable attorney's fees and costs incurred in the representation of the Board, the Town, or any of their respective members, officers, employees or agents in any suit or claim arising from the FSMC's performance or lack of performance of the Contract or arising from the enforcement of this provision.

15.7 The FSMC shall obtain and keep in force during this contract, for the protection of the SFA and the FSMC, Comprehensive General Bodily Injury and Property Damage Liability Insurance in the combined single limit of \$ 1,000,000 (no less than \$1,000,000). That insurance shall include, but not be limited to, Personal Injury Liability, Broad Form Property Damage Liability, Blanket Contractual Liability, and Products Liability, covering only the operations of the FSMC under this contract, and shall deliver to the SFA a certificate evidencing such policies and coverage within thirty (30) days after the execution of this agreement by the parties. The insurance policies shall contain a covenant by the issuing company that the policies will not be canceled unless a thirty (30) day prior written notice of cancellation is given to the SFA. The policies for \$ 1 000 000 coverage shall also name the SFA as an Additional Insured, but only with respect to operations of the FSMC under this agreement.

SECTION XVI: Contract Term, Renewal and Termination

16.1 This contract, dated: 12/12/23, is between FSMC Name: Whitsons Culinary Gr, the FSMC and Berlin-Boylston Public Schools, the SFA:

- A. This contract sets forth the terms and conditions upon which the SFA retains the FSMC to manage and operate the SFA's food service for the SFA's students, employees, and visitors.
- B. The life of the contract shall be for a period of 6 months with the school year beginning on or about 1/1/24, and ending 6/30/24 with no option to renew.

16.2 The contract cannot be assigned or otherwise transferred or conveyed by either party without the written consent of the other. Consideration for the contract renewal by the SFA and the FSMC will be made in compliance with the rules and regulations prescribed by the USDA.

16.3 Neither the FSMC nor the SFA shall be responsible for any losses if the fulfillment of the terms of the contract should be delayed by wars, acts of public enemies, strikes, fires, floods, act of God, or any acts not within the control of either the FSMC or the SFA, and which by the exercise of due diligence it is unable to prevent.

16.4 If both parties agree to a contract renewal, the parties will work together to gather and complete all required documents for submission. The SFA will be responsible for submitting all contract renewal documents to the MA DESE.

16.5 Recovery of prior year FSMC losses from current year food service program surpluses is unallowable.

TERMINATION

16.6 With the exception of payment obligations for prior performance under this contract, neither party shall be liable for the failure to perform their respective obligations under this contract when such failure is caused by fire, explosion, water, act of God, civil disorder, strikes, vandalism, war, riot, sabotage, weather and energy related closings, governmental rules or regulations, or other like causes beyond the reasonable control of such party, nor for any real or personal property destroyed or damaged due to such causes. The FSMC shall resume food service operations as soon as possible.

- 16.7** Either party may terminate the contract for cause by giving sixty (60) days' notice in writing to the other party of its intention to do so. [7 CFR § 210.16 (d)]
- 16.8** If a cure or remedy is found for the termination request by mutual agreement of the contracting parties, the termination or non-renewal letter must be withdrawn in writing by the terminating party within the sixty (60) day period as described in paragraph 16.7 above. This letter should be counter-signed by the receiving party and the letter should become an amendment to this contract. [Appendix II to § 200]
- 16.9** The SFA may terminate the contract without cause. The SFA shall give no less than sixty (60) days written notice to the FSMC of its intention to terminate the contract without cause.
- 16.10** The right of termination referred to in this contract is not intended to be exclusive, and is in addition to any other rights available to either party at law or in equity. If the FSMC breaches a material provision of the contract and fails to cure such breach within sixty (60) days after receiving written notice of such breach the SFA may elect to pursue any available legal, contractual or administrative remedy or the following sanctions: (i) for a first violation, a written reprimand; (ii) for a second violation, a \$ 1000 penalty; and (iii) for a third violation, a \$ 2000 penalty. For the purposes of the foregoing, a single violation means an event of the same or similar kind, without regard for the duration or number of personnel, equipment, students or meals involved. [Appendix II to § 200 (A)] 7 CFR Part 210.16(b)(2)
- 16.11** The FSMC shall ensure, upon termination or completion of contract, the SFA is provided with the following documents in accordance with 7 CFR 210.23(c) or the SFA's established record retention timeframe, whichever is greater: production records, menus, all documents to support monthly claims, all documents to support the use of USDA Foods, professional development training records, CEP data, PLE Tool data, all documents related to free/reduced meal application process including certification and verification (if applicable), and access to any documents and or recipes requested for an administrative review.
- 16.12** A waiver of any failure under this contract shall neither be construed as, nor constitute a waiver of, any subsequent failure. This contract supersedes all prior negotiations, representations, or agreements. The Article and Paragraph headings are used solely for convenience and shall not be deemed to limit the subject of the Articles and Paragraphs or be considered in their interpretation. The appendices referred to herein are made part of this contract by the respective references to them. This contract may be executed in several counterparts, each of which shall be deemed an original.
- 16.13** The parties cannot alter any provision in this agreement that is required by any law, rule or regulation. The parties cannot otherwise amend or alter this agreement, except as to minor, non-substantive provisions or issues that do not materially affect the scope of work or the cost of the contract.
- 16.14** Notification of Termination. The MA DESE shall be notified immediately of termination action and reason for termination.
- 16.15** The parties agree that the terms of this contract shall be in accordance with the RFP published by the SFA and any amendments to the RFP, and the proposal submitted by the FSMC are incorporated into this contract. In the event the contradictory statements are contained in the RFP, the FSMC proposal, and this contract, the following order of precedence shall apply: Amendments to contract, contract, Amendments to RFP, RFP, FSMC proposal.

SECTION XVII: Special and General Conditions

- 17.1** Confidential Proprietary Information
- A. The FSMC and SFA shall designate any information they consider confidential or proprietary, including recipes, surveys and studies, management guidelines, operating manuals, and similar documents which it regularly uses in the operation of their business or which they develop independently during the course of

this contract. Information so designated and identified shall be treated as confidential by the FSMC and SFA, and the FSMC and SFA shall exercise the same level of care in maintaining the confidences of the other party as they would employ in maintaining their own confidences. All such materials shall remain the exclusive property of the party that developed them and shall be returned to that party immediately upon termination of this contract. Notwithstanding, the federal awarding agency reserves a royalty-free, nonexclusive, and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use, for Federal Government purposes: (a) the copyright in any work developed under a grant, subgrant, or contract under a grant or subgrant; and (b) any rights of copyright to which a grantee, subgrantee or a contractor purchases ownership with grant support.[2 CFR § 200.315]

- B. The FSMCs shall identify any specific information which the FSMC is claiming should not be disclosed to the public, along with a citation to the applicable provision of the Massachusetts Freedom of Information Act or other applicable statute on which the FSMC is basing its claim of confidentiality or non-disclosure. Information marked as "not to be disclosed to the public" must meet the standards set forth in the Freedom of Information Act. Provided that nothing herein shall be construed to relieve any SFA or the MA DESE from its obligations under any applicable freedom of information laws or other legal obligations concerning document disclosure, including, but not limited to, civil discovery demands. In the event a request for information/documentation is made pursuant to the Massachusetts Freedom of Information Act (or other applicable statute or regulation), and the FSMC objects to the release of the requested information, the FSMC shall bear all reasonable costs and fees incurred in asserting such objection.
- 17.2 The FSMC shall adhere to all applicable laws, especially all Pure Food laws, and all related regulations prescribed by the Federal Government, the state of Massachusetts, and the local department of health. The FSMC will comply with the rules and regulations as set up by the SFA and with state and/or own laws, etc., covering and controlling food services at the facilities.
- 17.3 No alterations, changes or improvements shall be made to the areas granted to the FSMC without obtaining prior written permission of the SFA with the final decision as to the alterations, changes or improvements reserved solely for the SFA.
- 17.4 Any silence, absence or omission from these specifications concerning any point shall be regarded as meaning that only the best commercial practices are to prevail, and that only material (food, supplies, etc.) and workmanship of a quality that would normally be specified by the SFA are to be used.

- 17.5 Notice/Communication: Any notice or communication required or permitted under this contract shall be in writing and shall be delivered personally or sent by United States registered or certified mail, postage prepaid and return receipt requested, addressed to the other party as follows:

A. Notices to the SFA:

Name	Nancy Konisky
Address	Director of Finance and Operations
	215 Main Street
	Boylston, MA

B. Notices to the FSMC:

Name	Christine Catterton
Address	1800 Motor Parkway
	Islandia, NY 11749

AND

Name	
Address	

E-mail communication may also be allowable under the terms of this contract. Other persons or places may also be designated, in writing, by either of the parties, during the term of this contract. Notices shall be effective when received. Sent notices will be considered received forty-eight (48) hours after they are deposited in the United States mail.

SO AGREED:



Signature of Food Service Management Company's Authorized Representative

Beth Bunster

Printed Name of Food Service Management Company's Authorized Representative

CFO

Title

12/20/2023

Date

Signature of School Food Authority's Authorized Representative



Printed Name of School Food Authority's Authorized Representative Carol L. Costello

Superintendent

Title

12/22/23

Date

Schedule F – Food Service Management Company (FSMC) Fee

Fee Components

The FSMC's fees must be inclusive of all general and administrative fees, as well as profit, and in compliance with USDA rules and regulations.

In addition to the above requirements and any other requirements included in the Agreement, the following costs MAY NOT be included in any other expense charged to the SFA other than as indicated in the chart under paragraph 2 herein.

1. Menu development specific to the operation
2. Management meetings, and/or management development program specific to the operation
3. Nutrition education materials and program expense
4. Facilities layout and design services specific to the operation
5. Cost of developing training or procedures manuals
6. Food service control forms and supplies
7. Materials for food service promotions
8. All purchasing services
9. Education provided through classroom programs, parent/teacher meetings and school food service advisory committee meetings
10. All accounting and bookkeeping
11. All payroll reporting, recording and documentation including the issuance of weekly payroll checks for food service management company employees
12. Supply of all administrative, dietetic, nutritional, sanitation and personnel advice
13. Visitation/coverage by corporate chef during school food service promotions
14. Visitation/coverage by a principal or other executive of the food service management company
15. Other Fees not outlined by this RFP that are included in the fee must be delineated and listed below:

Fee Structure: Please mark the table below with an X for the components that make up the Administrative Fee/Management Fee or are to be directly billed to the SFA from the items listed above. Labor and food production costs are covered later in this section.

Administrative Fee: The FSMC shall charge the SFA [CHECK ONE AND INSERT \$]

☒ a fee of \$ 2000.00 per month for 6 months during each year of the contract. The fee represents the FSMC overhead expenses listed below

OR

☐ a fee of \$ _____ per meal meal equivalent. Meal equivalents shall be determined by _____. The fee represents the FSMC overhead expenses listed below

AND/OR

Management Fee: The FSMC shall charge the SFA [CHECK ONE AND INSERT \$]

☒ a fee of \$ 3000.00 per month for 6 months during each year of the contract. The fee represents the FSMC Profit

OR

☐ a fee of \$ _____ per meal meal equivalent. Meal equivalent's shall be determined by _____. The fee represents the FSMC Profit.

Management and/or Administrative Fee Proposal: Whitsons Culinary Grc, food service management company (hereinafter referred to as the FSMC), agrees to operate the school food service program of the SFA
Name: Berlin-Boylston Public Schools, a federal Child Nutrition Program School Food Authority (hereinafter referred to as the SFA).

Schedule G – Guaranteed Return

***Please note: This form must be completed by the FSMC and submitted separately in the sealed Price Proposal envelope.**

Guaranteed Return: The SFA and the FSMC shall work together to ensure a financially sound and well-run food service operation. For the term of the contract, including renewal years the FSMC shall guarantee that the food service program will achieve financial: *(select one option)*

- ☒ Breakeven: defined as "generated program revenues will be sufficient to cover all actual and direct operating costs incurred.
- ☐ Surplus: defined as "generated program revenues will exceed all actual and direct operating costs incurred. Dollar Value: _____
- ☐ Deficit: defined as "generated program revenues will not be sufficient to cover all actual and direct operating costs incurred. Dollar Value: _____

Actual and direct operating costs are as described in paragraphs 12.10A - E above.

****If the annual financial return for the Food Service Program falls short of the FSMC's guaranteed minimum amount, the FSMC shall pay the difference to the SFA.***

Exhibit N:

Non-Collusion Statement, Tax Compliance Certification, Certificate of Independent Price Determination, Certification of Clean Air and Water, Energy Policy and Conservation Act, Certification Regarding Debarment, Foreign Corporation Certificate of Registration, Certification Regarding Lobbying, Disclosure of Lobbying

**Non-Collusion Affidavit
Food Service Program**

By submission of this proposal, the FSMC certifies that:

- a. This proposal has been independently arrived at without collusion with any other proposer, competitor, potential proposer or potential competitor.
 - b. This proposal has not been knowingly disclosed and will not be knowingly disclosed prior to the opening of the proposals for the work to be performed or the goods to be sold, to any other proposer, competitor, potential proposer or potential competitor.
 - c. No attempt has been made, or will be made, to induce any other person to submit or not to submit a proposal. As used in this certification, the word "person" shall mean any natural person, business, partnership, corporation, union, committee, club, or other organization, entity, or group of individuals.
 - d. The person signing this proposal certifies that he/she has fully informed himself/herself regarding the accuracy of the statements contained in this certification, and under penalties of perjury, affirms the truth thereof, such penalties being applicable to the bidder, as well as the person signing in his/her behalf.
- c. That below is a certified copy of the resolution authorizing the execution of the certificate by the signatory of this proposal on behalf of the corporate proposer.

Signature of the person authorized to submit this proposal

Beth Bunster CFO

Typed or printed name of signatory and title

12/20/2023

Date

Resolve that _____ be authorized to sign and submit the proposal of this corporation _____ for the Food Service Management Program at the Berlin-Boylston Public Schools

Tax Compliance Certification

Pursuant to M.G.L. c. 62C §49A, I certify under the penalties of perjury that, to the best of my knowledge and belief, I am in compliance with all laws of the Commonwealth relating to taxes, reporting of employees and contractors, and withholding and remitting child support.

State tax paid to _____ using Federal ID or SS# _____

Dated: 12/20/2023

Whitsons Nutrition, LLC
Company or Corporation


Authorized Official's Signature

Certificate of Independent Price Determination

Both the school food authority and the Food Service Management Company (FSMC)(offeror) shall execute this Certificate of Independent Price Determination.

Whitsons Nutrition, LLC
Name of FSMC

Berlin-Boylston Public Schools
Name of School Food Authority

(A) By submission of this offer, the offeror certifies that in the case of a joint offer, each party thereto certifies as to its own organization, that in connection with this procurement:

- (1) The prices in this offer have been arrived at independently, without consultation, communication or agreement, for the purpose of restricting competition, as to any matter relating to such prices with any other offeror or with any competitor;
- (2) Unless otherwise required by law, the prices which have been quoted in this offer have not been knowingly disclosed by the offeror and will not knowingly be disclosed by the offeror prior to opening in the case of an advertised procurement, or prior to award in the case of a negotiated procurement, directly to any other offeror or to any competitor; and
- (3) No attempt has been made or will be made by the offeror to induce any person or firm to submit or not to submit an offer for the purpose of restricting competition.

(B) Each person signing this offer on behalf of the Food Service Management FSMC certifies that:

- (1) He or she is the person in the offeror's organization responsible within the organization for the decision as to the prices being offered herein and has not participated, and will not participate, in any action contrary to A.1. through A.3. above; or
- (2) He or she is not the person in the offeror's organization responsible with the organization for the decision as to the prices being offered herein, but that he or she has been authorized in writing to act as agent for the persons responsible for such decision in certifying that such persons have not participated and will not participate, in any action contrary to A.1. through A.3. above, and as their agent does hereby so certify; and he or she has not participated, and will not participate, in any action contrary to A.1. through A.3. above.

To the best of my knowledge, this food service management company (FSMC), its affiliates, subsidiaries, officers, directors and employees are not currently under investigation by any governmental agency and have not in the last three years been convicted or found liable for any act prohibited by State or Federal law in any jurisdiction, involving conspiracy or collusion with respect to bidding on any public contract, except as described on the attached sheet (if applicable).

Whitsons Nutrition, LLC [Signature] CFO
Name of FSMC Title and Signature of FSMC Authorized Representative

12/20/2023
Date

In accepting this offer, the sponsor certifies that no representative of the sponsor has taken any action which may have jeopardized the independence of the offer referred to above

Name of Sponsor Title and Signature of Sponsor's Authorized Representative

Date

Clean Air and Water Certificate

Applicable if the contract exceeds \$100,000 or the Contracting Officer has determined that the orders under an indefinite quantity contract in any one year will exceed \$100,000 or a facility to be used has been the subject of a conviction under the Clean Air Act (41 U.S.C. 1857c-8(c)(1) or the Federal Water Pollution Control Act 33 U.S.C. 1319(d) and is listed by EPA or the contract is not otherwise exempt. Both the School Food Authority (SFA) and Food Service Management Company (FSMC)(offeror) shall execute this Certificate.

NAME OF FOOD SERVICE MANAGEMENT COMPANY:

NAME OF SCHOOL FOOD AUTHORITY:

THE FOOD SERVICE MANAGEMENT COMPANY AGREES AS FOLLOWS:

- A. To comply with all the requirements of Section 114 of the Clean Air Act, as amended (41 U.S.C. 1857, et seq., as amended by Public Law 91-604) and Section 308 of the Federal Water Pollution Control Act (33 U.S.C. 1251, et seq. as amended by Public Law 92-500), respectively, relating to inspection, monitoring, entry, reports and information as well as other requirements specified in Section 114 and Section 308 of the Air Act and the Water Act, respectively, and all regulations and guidelines issued thereunder before the award of this contract.
- B. That no portion of the work required by this prime contract will be performed in a facility listed on the Environmental Protection Agency List of Violating Facilities on the date when this contract was awarded unless and until the EPA eliminates the name of such facility or facilities from such listing.
- C. To use his/her best efforts to comply with clean air standards and clean water standards at the facilities in which the contract is being performed.
- D. To insert the substance of the provisions of this clause in any nonexempt subcontract, including this paragraph.
- E. THE TERMS IN THIS CLAUSE HAVE THE FOLLOWING MEANINGS:
 - a. The term "Air Act" means the Clean Air Act, as amended (41 U.S.C. 1957 et seq., as amended by Public Law 91-604)
 - b. The term "Water Act" means Federal Water Pollution Control Act, as amended (33 U.S.C. 1251 et seq., as amended by Public Law 92-500).
 - c. The term "Clean Air Standards" means any enforceable rules, regulations, guidelines, standards, limitations, orders, controls, prohibitions, or other requirements which are contained in, issued under, or otherwise adopted pursuant to the Air Act or Executive Order 11738, an applicable implementation plan as described in section 110(d) of the Clean Air Act (42 U.S.C. 1957c-5(d), an approved implementation procedure or plan under Section 111(c) or Section 111(d), respectively, of the Air Act (42 U.S.C. 1857c-6(c) or (d), or approved implementation procedure under Section 112(d) of the Air Act (42 U.S.C. 1857c-7(d)).
 - d. The term "Clean Air Standards" means any enforceable limitation, control, condition, prohibition, standard, or other requirement which is promulgated pursuant to the Water Act or contained in a permit issued to a discharger by the Environmental Protection Agency or by a State under an approved program, as authorized by Section 402 of the Water Act (33 U.S.C. 1342) or by local government to ensure compliance with pretreatment regulations as required by Section 307 of the Water Act (33 U.S.C. 1317).
 - e. The term "Compliance" means compliance with clean air or water standards. Compliance shall also mean compliance with a schedule or plan ordered or approved by a court of competent jurisdiction, the Environmental Protection Agency or an Air or Water Pollution Control Agency in accordance with the requirements of the Air Act or Water Act and regulations issued pursuant thereto.
 - f. The term "facility" means any building, plant, installation, structure, mine, vessel, or other floating craft, location or sites of operations, owned, leased or supervised by the FSMC.

Signature of Food Service Management
Company's Authorized Representative

Signature of School Food Authority's
Authorized Representative

Title

Title

Date

Date

Energy Policy and Conservation Act

The Food Service Management Company (FSMC) and the School Food Authority (SFA) agree to comply with the Energy Policy and Conservation Act (P.L. 94-163) as amended through P.L. 114-255 (enacted December 13, 2016) for the duration of the contract year. An addendum agreeing to comply with this policy and act must be renewed with each renewal amendment.

Whitsons Nutrition, LLC

FSMC



Authorized Signature

CFO

Title

12/20/2023

Date

Berlin-Boylston Public Schools

SFA



Authorized Signature

Superintendent

Title

12-22-23

Date

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – Lower Tier Covered Transactions

SFAs are required to ensure that all sub-contractors and sub-grantees are neither excluded nor disqualified under the suspension and debarment rules found at 2CFR 200.214 by doing any one of the following:

- Checking the Excluded Parties List found at the System for Award Management www.SAM.gov;
- Collecting a certification that the entity is neither excluded nor disqualified. Since a Federal certification form is no longer available, the grantee or sub-grantee electing this method must devise its own;
- Including a clause to this effect in the sub-grant agreement and in any procurement contract expected to equal or exceed \$25,000, awarded by the grantee or a sub-grantee under its grant or sub-grant;
- Sub-grantee and contractors must obtain a DUNS Number. All Federal Government awards are required to have a DUNS number. To obtain a DUNS number, contact Dun and Bradstreet at 1-866-705-5711 or visit their website at <https://update.dnb.com/requestoptions.asp>. There is no charge for a DUNS number. The DUNS number serves as a means of tracking and identifying applications for Federal assistance and is required on all applications for Federal assistance.

This certification is required by the regulations implementing Executive Order 12549, Debarment and Suspension. 2CFR 200.214 Suspension and Debarment. The regulations were published as Part III of the December 26, 2013, Federal Register (pages 78590-78691). Copies of the regulations may be obtained by contacting the Department of Agriculture agency with which this transaction originated.

(BEFORE COMPLETING CERTIFICATION, READ INSTRUCTIONS ON NEXT PAGE)

1. The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.
2. Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

Whitsons Nutrition, LLC

Organization Name

PR/Award Number or Project Name

Beth Bunster, CFO

Name and Title(s) of Authorized Representative(s)

Signature(s)

12/20/2023

Date

Foreign Corporation Certificate of Registration
(M.G.L. chapter 156D, Section 15.03; 950 CMR 113.48)

Foreign Corporation Certificate of Registration

Certification Regarding Lobbying

Applicable to Grants, Subgrants, Cooperative Agreements, and Contracts Exceeding \$100,000 in Federal Funds

Submission of this certification is a prerequisite for making or entering into this transaction and is imposed by section 1352, Title 31, U.S. Code. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

The undersigned certifies, to the best of his or her knowledge and belief, that:

- (1) No federal appropriated funds have been paid or will be paid by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with the awarding of a Federal contract, the making of a Federal grant, the making of a Federal loan, the entering into a cooperative agreement, and the extension, continuation, renewal, amendment, or modification of a Federal contract, grant, loan, or cooperative agreement.
- (2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal grant or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying", in accordance with its instructions.
- (3) The undersigned shall require that the language of this certification be included in the award documents for all covered subawards exceeding \$100,000 in Federal funds at all appropriate tiers and that all subrecipients shall certify and disclose accordingly.

Whitsons Nutrition, LLC

Organization Name

1800 Motor Parkway, Islandia, NY 11749

Address

Beth Bunster

Name of Submitting Official

CFO

Title of Submitting Official

Signature

12/20/2023

Date

Disclosure of Lobbying Activities

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352 (see reverse for public burden disclosure) Approved by OMB 0348-0046

1. Type of Federal Action: ☐ a. contract ☐ b. grant ☐ c. cooperative agreement ☐ d. loan ☐ e. loan guarantee ☐ f. loan insurance	2. Status of Federal Action: ☐ a. bid/offer/application ☐ b. initial award ☐ c. post-award	3. Report Type: ☐ a. initial filing ☐ b. material change For material change only: Year _____ quarter _____ Date of last report: _____
4. Name and Address of Reporting Entity: Prime _____ Sub-awardee, Tier _____, if known: Name: <u>Whitsons Nutrition, LLC</u> Street 1: <u>1800 Motor Parkway</u> Street 2: _____ City: <u>Islandia</u> State: <u>NY</u> Zip Code: <u>11749</u> Congressional District, if known: _____		
5. If Reporting Entity in No. 4 is Sub-awardee, Enter Name and Address of Prime: Name: _____ Street 1: _____ Street 2: _____ City: _____ State: _____ Zip Code: _____ Congressional District, if known: _____		
6. Federal Department/Agency: _____	7. Federal Program Name/Description: CFDA Number, if applicable: _____	
8. Federal Action Number, if known: _____	9. Award Amount, if known: \$ _____	
10. a. Name and Address of Lobbying Registrant (if individual, last name, first name, MI): Prefix: _____ Last Name: _____ First Name: _____ MI: _____ Company Name: _____ Street 1: _____ Street 2: _____ City: _____ State: _____ Zip code: _____		
10. b. Individuals Performing Services (including address if different from No. 10a) last name, first name, MI): Prefix: _____ Last Name: _____ First Name: _____ MI: _____ Company Name: _____ Street 1: _____ Street 2: _____ City: _____ State: _____ Zip code: _____		
11. Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.		Signature:  Print Name: <u>Beth Bunster</u> Title: <u>CFO</u> Telephone No.: <u>631-424-2700</u> Date: <u>12/20/2023</u>
Federal Use Only		Authorized for Local Reproduction Standard Form - LLL (Rev. 7-97)