



COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF EDUCATION
607 SOUTH DRIVE
HARRISBURG, PA 17120
www.education.pa.gov

**Food Service Management Company (FSMC)
Request for Proposal (RFP) and COST REIMBURSABLE Contract**

July 1, 2024 to June 30, 2025

Any School Food Authority (SFA) selecting to use a full-service FSMC must prepare a RFP utilizing this document which may not be re-typed or changed in any way. Addendums to the original or renewal year contract are not permitted. Should the SFA and FSMC enter into any addendum, the Division of Food and Nutrition (DFN) will not review the addendum and the language in this document prevails as binding. The standard form contract has open fields where additions can be made on the contract, itself, in lieu of attaching an addendum.

Agreement Page

The Pennsylvania Department of Education (PDE) provides this contract as a service to sponsors, therefore; PDE shall not be named as a party to this contract. The School Food Authority, hereafter referred to as the SFA, is the responsible authority, without recourse to PDE and the United States Department of Agriculture (USDA) regarding the settlement and satisfaction of all issues arising under this contract. This includes, but is not limited to, disputes, claims, protests of award or source evaluation.

The FSMC certifies that they shall operate in accordance with all applicable State and Federal regulations.

The FSMC certifies that all terms and conditions within the Bid Solicitation shall be considered a part of the contract as if incorporated therein.

This contract shall be in effect for one year starting **July 1, 2024** through **June 30, 2025** and may be renewed by mutual agreement for up to four additional one-year period(s).

IN WITNESS WHEREOF, the parties hereto have caused this contract to be signed by their duly authorized representative on the date signed.

SFA

FSMC

SFA Authorized Representative's **Digital** Signature

FSMC Authorized Representative's **Digital** Signature

Printed Name of SFA Authorized Representative

Printed Name of FSMC Authorized Representative

SFA Authorized Representative Title

FSMC Authorized Representative Title

General Information

A. Intent

This solicitation is for the purpose of entering into a contract for the operation of a food service program for herein after referred to as the School Food Authority (SFA).

The bidder is herein referred to as the Food Service Management Company (FSMC). The contract will be between the SFA and the FSMC.

B. Procurement Method

1. All procurement transactions shall be conducted in a manner that provides maximum full and open competition consistent with Title 2 CFR §200.318-§200.327.
2. This contract will be a Cost-Reimbursable contract whereas the FSMC will be paid on the basis of the direct costs (food, labor, and supplies) incurred plus fixed fees (administrative and management fees). Expenses that represent the administrative fee must be itemized. A management fee represents the profit to the FSMC.
3. The value of commodities received must be itemized in the regular monthly billing to the SFA to document savings resulting from commodity receipt. The FSMC will ensure that its system of inventory management will not result in the SFA being charged for donated foods.
4. The SFA must determine the existence of the proper pass-through value of the donated commodities; e.g., credits or reductions on the invoice in the month of receipt. The values are to be based on the values at the point the SFA receives the commodities from the Pennsylvania Department of Agriculture (PDA), and on USDA commodity prices pertinent to the time period and shall be in the meal cost that is included in the bidder's proposal.

C. Pre-Bid Meeting, Bid Submission and Award

1. Pre-Bid Meeting

- a. A meeting with interested bidders to review the specifications, to clarify any questions, and for a walk-through of the facilities with school officials will be held at

See the timeline, Section D, below for date and time. Attendance is required.

- b. FSMC may bring no more than
- c. Pictures

2. Bid Submission and Award

- a. Proposals are to be submitted to:

Proposals are due before the start of the Public Opening. See the timeline, Section D, below for the date and time of the Public Opening. Proposals will not be accepted after this time. Proposals are to be submitted in a sealed envelope marked Food Service Management Bid.

- b. The SFA will not conduct the procurement process in a manner that uses statutorily or administratively imposed in-state or local geographic preferences in the evaluation of bids or proposals in accordance with Title 2 CFR §200.319(c).
- c. The SFA is prohibited from entering into a contract with a FSMC that provides recommendations, develops or drafts specifications, requirements, statements of work, requests for proposals, contract terms and conditions, or other documents for use in conducting procurement.

- d. The SFA reserves the right to reject any or all bids, if deemed in the best interest of the SFA.
- e. For consideration, each FSMC must submit a complete response to this solicitation using only the forms provided. No additional forms will be accepted as part of this contract. DFN will not review or approve any additional forms added to this contract. Any additional forms added to this contract will not be binding.
- f. The SFA will award the contract to the most qualified and responsible FSMC whose proposal is responsive to this solicitation. A responsible FSMC is one whose financial, technical and other resources indicate an ability to perform the services required by this solicitation.
- g. The FSMC or authorized representative are expected to be fully informed of all conditions, requirements, and specifications before submitting bids; failure to do so will be at the FSMC’s risk and cannot secure relief on the plea of error. The SFA is not liable for any cost incurred by the bidder prior to PDE Division of Food and Nutrition’s (DFN) final approval of the contract, as dated on page 1 and the signing of the contract by all parties. Paying the FSMC from Child Nutrition (CN) program funds (non-profit school food service account) is prohibited until the contract is signed by both parties and final approval is provided by DFN. DFN approval must be initialed on each page of the contract prior to both parties signing the contract.
- h. If additional information is required, please contact:

D. Timeline

	Scheduled Date & Time	Postponed Date & Time ¹
Pre-Bid Meeting		
Last Date for Questions from FSMC		
SFA provides Answers to FSMC Questions by		
Public Bid Opening ²		

¹ **Postponed date is for any weather related or other postponements from the original scheduled date.**

² **Public bid opening must be at least two weeks after the Pre-Bid meeting or the date the SFA provides answers to FSMC questions, whichever date is later. Take into account the postponed Pre-Bid Meeting date when setting the original public bid opening date.**

E. Award Criteria

The contract will be awarded to the responsible bidder whose proposal is most advantageous to the program with price and other factors considered. An evaluation committee must be comprised of at least three people. Each committee member evaluates proposals independently. Select one of the following scoring methods:

One-Step Scoring Method: The relative value assigned to each criterion must be specified and “Cost” must be the primary factor (assigned 51% or more of the points or assigned the greatest number of points compared to other factors). Once the criterion has been evaluated and ranked, the SFA may negotiate with any bidder receiving an average of **the percentage indicated below** or more (criteria must be consistent with the RFP and cannot add or delete specifications/requirements. i.e. the scope cannot change). At the conclusion of the negotiations the proposals are rescored and the award is made to the bidder presenting the most advantageous proposal, with price used as the primary factor.

Percentage required for negotiation:

Total points possible:

Two-Step Scoring Method: Technical proposals are evaluated and ranked using the value assigned to each criterion before cost is considered. The SFA may negotiate with any bidder receiving an average of the percentage indicated below or more (criteria must be consistent with the RFP and cannot add or delete specification/requirements. i.e. the scope cannot change). At the conclusion of the negotiation the SFA requests bidders to submit best and final price. The award is made to the bidder submitting the lowest price.

Percentage required for negotiation:

Total points possible:

F. Bid Protests

Any action which diminishes full and open competition seriously undermines the integrity of the procurement process and may subject the SFA to bid protests. Pursuant to Title 2 CFR §200.318(k), SFAs are responsible for properly responding to protests and concerns raised by potential FSMCs. SFAs must attach their bid protest procedures to this RFP. SFAs must, in all instances, disclose all information regarding a protest to DFN.

G. Bonding Requirement

Bid Guarantee: The FSMC shall submit with its proposal, a bid guarantee for at least five percent (5%) of the total bid price (Total FSMC Costs) in the form of a firm commitment such as a bid bond, postal money order, certified check, cashier's check, or irrevocable letter of credit. Bid guarantees other than bid bonds will be returned (a) to unsuccessful FSMCs as soon as practicable after the opening of bids; and (b) to the successful FSMC upon execution of such further contractual documents (i.e., insurance coverage) and bonds as required by the proposal.

H. Captions

Captions in all sections of this document are provided only as a convenience and shall not affect the interpretation of this instrument, and its attachments.

I. Contract Terms

The contract shall be for a period of one year with the school year beginning on or about **July 1, 2024**, and ending **June 30, 2025**, with up to four one-year renewals with mutual agreement between the SFA and the FSMC.

This contract cannot be effective prior to the date of final approval by DFN, as dated on page 1, and signed by both parties.

J. Employees

Retention of the current food service employees is addressed in the Standard Terms and Conditions under subsection Employees.

K. Errors or Omissions

The proposing FSMC shall not be allowed to take advantage of any errors or omissions in the RFP specifications. Where errors occur in the RFP specification, the FSMC shall promptly notify the contact person listed. Inconsistencies in the RFP specifications are to be reported prior to proposals being submitted. The SFA must communicate to all potential bidders.

L. Final Contract

The complete contract includes all documents included by the SFA in the RFP and the proposal submitted by the FSMC. No additional addendums may be added.

M. Gifts from FSMC

The SFA's officers, employees, or agents shall neither solicit nor accept gratuities, favors, nor anything of monetary value from FSMCs nor potential FSMCs. To the extent permissible under State law, rules, or regulations, such standards shall provide for appropriate penalties, sanctions, or other disciplinary actions to be applied for violations of such standards.

N. Disqualified Bids

1. Non-Responsive Bids – Any FSMC that submits an incomplete proposal that fails to meet the specifications of this RFP shall not be considered in the scoring process. The FSMC may be considered non-responsive and the proposal may not be accepted. Any FSMC that submits a proposal for items or activities not requested by the SFA as specified in the RFP shall not be considered in the scoring process. In such instances, the FSMC also may be considered non-responsive and the proposal may not be accepted.
2. Late Bids – The SFA will not consider any bid received after the exact time specified for receipt.

O. Meal Equivalents

For the purpose of making the meal count computation, the number of meals served to children shall be determined by actual counts of reimbursable meals. The FSMC and SFA shall determine a la carte meal equivalents by dividing the a la carte revenue by the per-meal sum of the Federal and State free meal reimbursement plus the per meal value of USDA entitlement and bonus donated foods. A la carte revenue shall include adult meals and a la carte sales to students and adults. If applicable, include revenue from vending machine sales as part of the a la carte revenue.

P. Payment and Fees

The following definitions are provided to clarify what are allowable direct costs:

- Food: limited to those items purchased for use in the preparation and service of student, adult, and a la carte meals as specified under terms and conditions.
- Labor: limited to on-site employees responsible for the management, preparation, service, and clean-up of meals.
- Miscellaneous Expenses: paper supplies, equipment rental, cleaning materials, commodity handling and warehousing charges, travel as required for effective program management, uniforms, printing, taxes and licenses, insurance, and as contractually obligated herein. All expenses must be allowable and directly allocable to the food service operation.

Q. Additional Information

1. This proposal and contract are based on the SFA's 21-day menu. Please check a box below indicating whether or not additional proposals/worksheets will be considered. (Choose one)

No

Yes, the SFA will consider alternate menus when submitted with the proposal along with the Attachment CR3, Projected Operating Costs (POC), that demonstrate the cost associated with implementation of the alternate menu. The FSMC must also submit an Attachment CR3, POC, on the original menu.

2. Indicate whether or not the SFA provides meals to other sponsors and, if so, list the name of the sponsors to which the SFA provides meals. (Choose one)

No

Yes, the SFA provides/sells meals to other sponsors.

List Name of Other Sponsors:

*No FSMC employees are allowed to be onsite at these above-listed sponsors.

***Signed Sponsor to Sponsor Agreements* must be in place each year for each sponsor listed above. It is the purchasing sponsor's responsibility to submit to PDE.

3. Indicate the number of proposals to be submitted by the FSMC

paper copies

electronic copies

4. The SFA may add any additional items that need to be covered in the RFP/original contract below. The SFA may not add additional items to the Renewal Year Contracts without rebidding unless the item constitutes an immaterial change from the original contract. PDE cannot provide an exclusive listing of which changes are material regarding the many procurement actions undertaken in CN programs. The SFA should consult with legal counsel in making those determinations. However, PDE views a change as material when, had the new term been in the solicitation and original contract, it could have affected how the bidder and other competitors responded to the RFP.

If the services of the FSMC are to begin after the start of the school year and the beginning contract term date is later than July 1 (i.e. January 1), enter the beginning contract term date under this section and include that date in the advertisement and solicitation. It must also be addressed at the walk-through. The ending contract term date will always be June 30.

Do not repeat any items/specifications outlined under General Information (A-P) or the Standard Terms & Conditions (1-29).

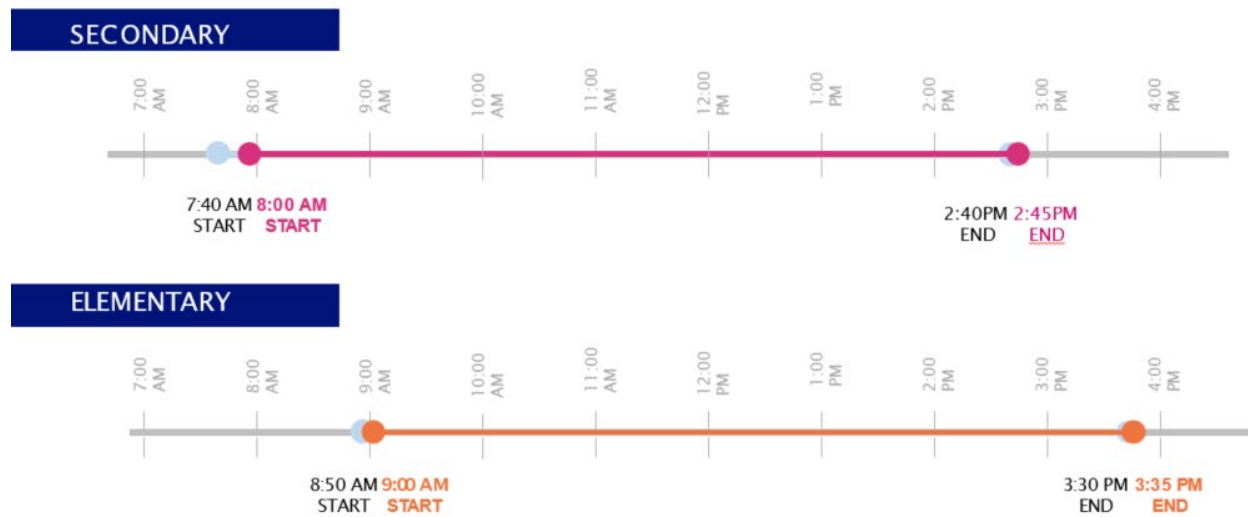
Section Q

An Overview of Downingtown Area School District and Upcoming Initiatives

The 2024-25 school year will be busy and exciting for Downingtown Area School District (DASD). We will see the start of a new food service contract, renovations of our East and West high school projects will end, and we will see the start of our renovation projects for Beaver Creek and West Bradford elementary schools.

In addition, the 2024-25 school year will have a new school calendar which will start all schools 20 minutes later than the 2023-24 school year. Secondary schools include the middle and high schools. The elementary schedule includes our ten elementary schools and the March Creek Sixth Grade Center.

PROPOSED SCHEDULE SHIFT FOR 2024-25

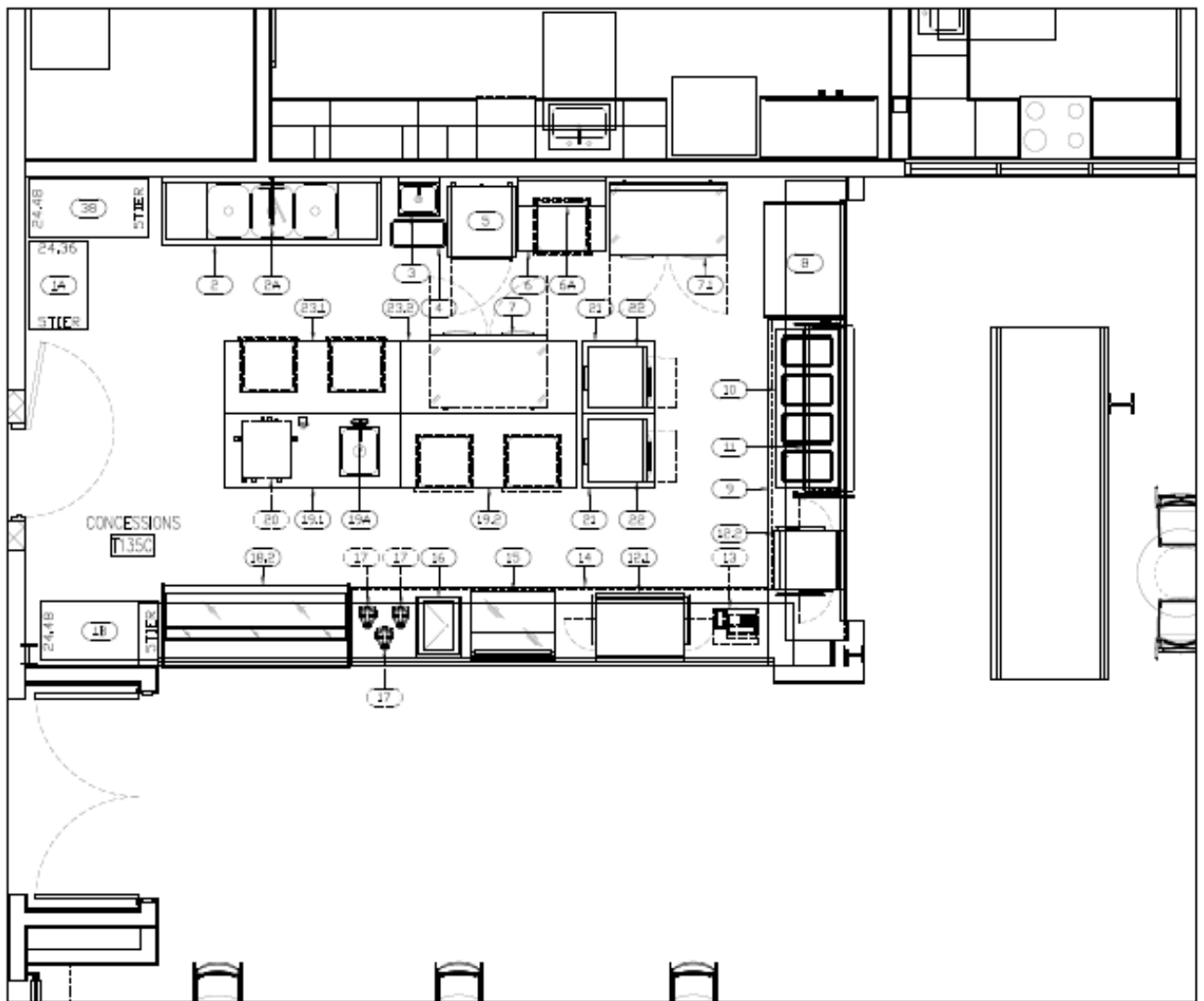


Lunch and Learn will be implemented at East and West high schools to feed 1,700+ students per school in about an hour. The STEM Academy implemented Lunch and Learn during 2023-24.

And finally, we will embark on a plan to walk more students to school in an effort to reduce the number of school buses required to transport students to/from school each day. In some elementary schools, this may impact the serving of breakfast during the first few weeks of school. Students may arrive to school a little late until they get familiar with the new walking patterns.

Construction at our East and West high schools will provide more collaborative space for students to work on projects. It will also provide two new spaces per building to serve students breakfast and lunch away from the main cafeteria. These new food service areas will help meet the goal of feeding students in about 45 minutes.

The new service areas are well stocked with cooking equipment and serving equipment (see sketch plans below). More detailed plans are available. The idea here is to give you a sense for the layout and equipment specified. The Food Service Management Company (FSMC) will be tasked with developing creative menus for these new serving areas to attract students away from the main cafeteria and to explore new sections of the building to eat with their friends. The FSMC will also likely need to increase staffing levels to operate these new serving areas.



1 EQUIPMENT PLAN—CONCESSIONS AREA D
1/4" = 1'-0"

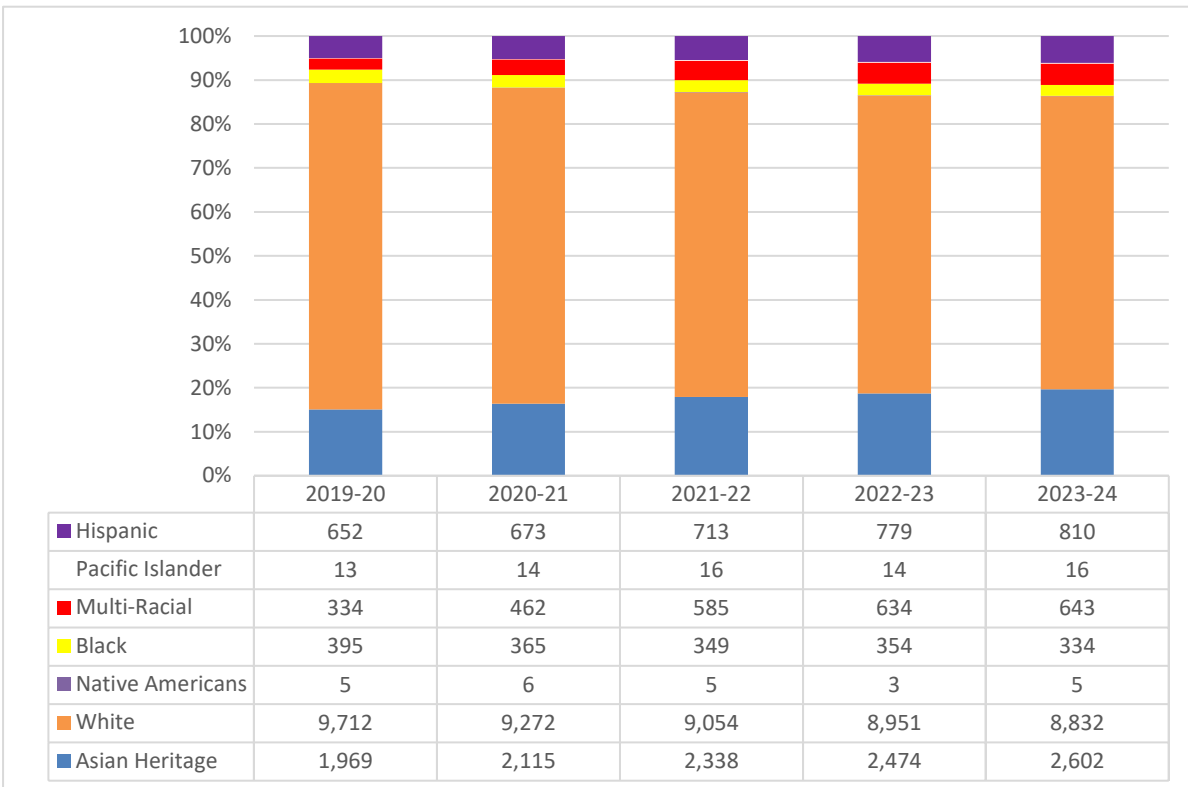
Concessions Equipment Schedule			
ITEM #	QTY.	ITEM	KEY
1A	1	Shelving, Metal Frame, 24"X36", 5-Tier, Mobile	New
1B	1	Shelving, Metal Frame, 24"X48", 5-Tier, Mobile	New
2	2	3 Compartment Sink	New
2A	2	Pre-Rinse Faucet Assembly, With Add On Faucet	New
3	2	Hand Sink w/ Side Splashes	New
4	2	Trash Receptacle, Indoor	New
5	1	Heated Holding Cabinet	New
6	1	Work Table w/ Partial Undershelf	New
6A	2	Shelving, Wall Mounted (Tiered)	New
7	3	Undercounter Refrigerator	New
7.1	1	Refrigerated Work Top	New
8	2	Open Display Merchandiser	New
9	1	Serving Counter	New
10	1	Hot / Cold Food Well Unit, Drop-In, Electric	New
11	1	Sneeze Guard w/ Lights & Heat	New
12.1	1	Display Merchandiser, Heated (36" Long)	New
12.2	1	Display Merchandiser, Heated (24" Long)	New
13	2	POS System	NIC
14	1	Serving Counter	New
15	1	Display Case, Non-Refrigerated Countertop	New
16	1	Cold Food Well Unit, Drop-In, Refrigerated	New
17	3	Airpot	NIC
18.1	1	Open Display Merchandiser	New
18.2	1	Open Display Merchandiser (Starbucks Style)	New
19.1	1	Work Table w/ Sink & Provisions for Water Filter	New
19.2	1	Work Table w/ Undershelf	New
19A	1	Deck Mount Faucet	New
20	1	Coffee/Tea Brewer w/ Water Filter	NIC
21	2	Work Table w/ Undershelf	New
22	2	Microwave Convection Oven	New
23.1	1	Work Table w/ Undershelf	New
23.2	1	Work Table	New
24	1	Serving Counter	New
25	1	Hot Food Holding Cabinet	New
26	0	Spare Number	Spare
27	1	Display Merchandiser, Heated, For Multi-Product	New
28	1	Hot / Cold Shelf	New
29	0	Spare Number	Spare
30	1	Conveyor Oven, Electric	New
31	1	Equipment Stand, Oven	New
32	1	Pizza Preparation Refrigerator	New
33	1	Work Table w/ Sink	New
33A	1	Deck Mount Faucet	New
34	2	Bun / Sheet Pan Rack	New
35	1	Roll-In Refrigerator	New
36	2	Shelving, Wall Mounted (Tiered)	New
37	1	Work Cabinet	New
38	1	Shelving, Metal Frame, 24"X48", 5-Tier, Mobile	New

As with all construction projects, there is always a potential that construction could be delayed. If final completion of the new food service areas is delayed, the FSMC will need to prepare alternate menus and alternate serving plans to implement the Lunch and Learn program. The FSMC could also prepare meals at other schools and provide satellite service operations until construction is complete. If meals are prepared in other schools, commodities are not to be used and co-mingled and staffing needs must be identified as participating site and non-participating site.

In the typical school year calendar, we have 179 meal serving days scheduled. To maximize the number of summer construction days as possible, we plan on using up to five virtual instruction days for bad weather during the 2024-25 school year. The virtual days will have students learning from home on their computers so these "snow" days will not be made up at the end of the school year. This means we could have 174 meal serving days during the 2024-25 school year (179 meal serving days less 5 virtual days = 174).

As you look through the specifications, you will see that we are highlighting a point of emphasis of adding more vegetarian menu options to our daily menus.

DASD has a growing population of residents with an Asian heritage. Currently, 20% of our student population has an Asian heritage. In the graph below, you can see the growth over time as well as the diversity within the community. The growth trend is expected to continue into the future.



Financial Results:

Over the past 4 years, food service fund revenues have exceeded expenses by:

2019-20 \$ 14,807
 2020-21 \$ 274,611
 2021-22 \$2,178,551
 2022-23 \$ 440,865

Specifications in addition to the Standard Terms and Conditions

The Downingtown Area School District holds its contractors to the highest standards. The following represents the additional contract requirements in the Standard Terms and Conditions section that the successful RFP respondent must address. As used herein, "CNP" shall mean "CN program" as used in the Standard Terms and Conditions section.

Section 1A – FSMC Employee Supervision: The FSMC shall properly supervise personnel providing services for and on behalf of FSMC under this Contract. The FSMC and its employees and contractors shall comply with the policies, rules and regulations of the SFA with respect to the use of SFA facilities and premises and with respect to employee conduct as established by the SFA from time to time and which are furnished in writing to FSMC. In addition to those requirements set forth in Item 11(F) of the "Standard Terms and Conditions" (hereinafter, the "ST&C"), supervision activities also include: (i) ensuring compliance with work rules established by the SFA, by FSMC or by applicable legal requirements; and (ii) appropriate employee discipline.

Section 1B – SFA Employee Supervision: Employees paid directly by SFA shall be SFA employees. Such employees shall be supervised on the SFA'S behalf by FSMC'S management employees; provided, however, the SFA shall retain the right to control the terms and conditions of the employment of such employees, including, but not limited to, control over their firing, discipline, levels of compensation and work duties.

Section 2 - Site Management Services: The FSMC shall appoint a full-time site manager, a full-time assistant site manager, a full-time Registered Dietician and an Executive Chef/Catering Manager assigned exclusively to the SFA for the entire Contract year who shall be employees of FSMC and who shall have authority to take all necessary and appropriate action to ensure that the services and responsibilities of FSMC are carried out on the site in accordance with this Contract. The SFA shall have the power and authority under this Contract to approve or disapprove the site manager, the assistant site manager and the dietician and executive chef/catering manager sought to be assigned by FSMC. In the event that the FSMC desires to change the site manager or assistant site manager, the FSMC shall provide a full-time substitute site manager until an SFA approved replacement site manager is appointed. The SFA is requesting the site manager, the assistant site manager, the registered dietician and the executive chef/catering manager meet the following criteria, respectively:

Site Manager - Five (5) years of relevant experience working for a food service management company in projects involving the NSLP, SBP, SFSP, and/or SMP is preferred;

Assistant Site Manager - Three (3) years of relevant experience working for a food service management company in projects involving the NSLP, SBP, SFSP, and/or SMP is preferred;

Registered Dietician – Must be a certified RD, LDN in addition to three (3) years of relevant experience working for a food service management company in projects involving the NSLP, SBP, SFSP, and/or SMP is preferred;

Executive Chef/Catering Manager – Three (3) years of relevant experience working in high production environment is preferred;

Site Manager - Five (5) years of experience working in a supervisory capacity supervising other employees is preferred;

Assistant Site Manager- Three (3) years of experience working in a supervisory capacity supervising other employees is preferred;

Preferred requirements for Site Manager and Assistant Site Manager: Will have a demonstrated ability, as certified by FSMC, to work cooperatively and effectively with cafeteria workers, administrators, parents, students, and contractors; have a demonstrated ability, as certified by FSMC, to insure that all aspects of FSMC's duties as set forth in this Contract are being fulfilled; have the authority to act for and on behalf of FSMC to insure that all aspects of FSMC's duties as set forth in this Contract are fulfilled; and devote his/her attention on a full-time basis to his/her job as site manager and assistant site manager. FSMC shall not pull the site manager off the job except for training or meetings required to enable him/her to perform his/her job.

Although a full-time Site Manager is to be assigned by the FSMC to the SFA, it is recognized and acknowledged that there may be times when: (i) the FSMC requires or assigns the Site Manager to duties not directly related to the Site Manager's duties to the SFA; (ii) the Site Manager is on an unpaid leave of absence; (iii) or the Site Manager is ill or disabled for a period of time longer then allowed under this Contract. In any such situation extending past five (5) school days, the FSMC shall provide a qualified substitute Site Manager.

Section 3 - Supply Inventory Services: The FSMC shall (i) replace at the sole cost of FSMC, and without charge back to the SFA, any inventory lost or damaged by FSMC's employees, agents or contractors where the loss or damage was caused by negligence or intentional misconduct; (ii) maintain and update as necessary a written inventory of all equipment owned by FSMC and kept on the SFA's premises; (iii) provide a copy of the inventory to the SFA within thirty (30) calendar days of the execution of this Contract; and (iv) provide an updated copy of the inventory within ten (10) calendar days of any change.

Section 4 - Equipment: At the end of the initial term of this Contract and at the end of any renewal term, the FSMC shall provide a report to the SFA which analyzes maintenance costs, energy operating efficiencies and cost, age of equipment and suggestions for equipment replacement. The FSMC shall work closely with the SFA to monitor food service equipment repair and make recommendations for improved efficiency. The FSMC Shall be responsible for all the costs of repair, maintenance and replacement of equipment, tools and supplies where the cost of the

individual repair, maintenance or replacement is less than Ten Thousand Dollars (\$10,000.00).

Section 5 - Services Safeguarding Money: In addition to those requirements set forth in Item 1(F) of the ST&C, the FSMC shall properly safeguard and account for all funds handled in connection with the services provided under this Contract. The FSMC shall be financially responsible for any loss of funds resulting from employee theft or mishandling of deposits.

Section 6 - Services Safeguarding Food: In addition to those requirements set forth in Items 6(B) and 14(F) of the ST&C, the FSMC shall maintain adequate and sanitary storage procedures, inventory and control of all food obtained in connection with this Contract. The FSMC shall be liable for any negligent or intentional act or omission on its part that results in any loss of, improper use of, or damage to any food belonging to the SFA, any third party or that is USDA donated food.

Section 7 - Advisory Board Services: In addition to those requirements set forth in Item 13(B) of the ST&C, the FSMC shall assist the SFA with agenda and scheduling of the periodic meetings of an advisory board sponsored by the SFA and composed of students, teachers, parents and representatives of the SFA to assist in menu planning.

Section 8 - Staffing Services: The FSMC shall remove any employee from providing services to the SFA or on SFA premises in conjunction with this Contract for proper cause, INCLUDING, violation of health or sanitation requirements, engaging in illegal conduct, sexual harassment, child abuse, racial intimidation, and/or repeated or serious violation of work rules. In the event of removal or suspension of such employee, FSMC shall immediately restructure the food service staff so as not to disrupt service.

Section 9 - Guaranteed Positive Return: The Guaranteed Amount for 2024-2025 school year from the SFA's Food Service/Cafeteria Operations must be submitted by the FSMC on PDE form CR3-POC – Projected Operating Costs.

The minimum guarantee preferred by the SFA is \$160,000.

Notwithstanding anything herein to the contrary, if the annual operating statement shows a Financial Return less than the Guaranteed Amount, the payments otherwise due to be paid by the SFA to FSMC under this Contract shall be reduced so that the SFA experiences a positive Financial Return that is at least equal to the Guaranteed Amount.

Section 10 - Additional Food Services: In addition to those requirements set forth in Item 1(K) of the ST&C, the FSMC shall provide a daily delivered lunch service, by Noon, to the staff located in the Administrative Office at 540 Trestle Bridge.

Section 11 - Utilization and Employment of Sufficient Competent and Qualified Individuals. The FSMC shall utilize only competent, skilled, trained and qualified individuals to perform services under this Contract.

Every individual employed or provided by FSMC to provide services under this Contract shall comply with all applicable regulations of governmental agencies or entities, pertaining to and including, age, fitness, competence, conduct, licensing, physical examination, drug and alcohol testing, and continued eligibility.

In addition to those requirements set forth in Item 11(Q) of the ST&C, the FMSC shall provide a Department of Human Services Clearance Statement pursuant to Act 151.

FSMC shall show the original documents of the foregoing and shall provide a copy of the foregoing documents to the SFA prior to any person performing work for the SFA under this Contract.

The FSMC shall adopt and/or maintain and enforce policies and practices to prohibit improper and unlawful conduct by its employees, contractors and volunteers, INCLUDING, unlawful discrimination, harassment and intimidation, child abuse and drug and alcohol infractions. Copies of FSMC's existing policies are attached hereto and the obligations of FSMC to properly enforce said policies are incorporated into this Contract as if fully set forth herein. FSMC shall provide any amendments to said policies promptly upon any such amendments being made by FSMC.

FSMC's MUST SUBMIT COPIES OF THEIR EXISTING POLICIES.

The FSMC shall assign a sufficient number of employees and/or contractors, when combined with the employees to be supplied by the SFA and previous FSMC employees in accordance with the terms and conditions of this Contract, so as to ensure an efficient and effective food service program to meet the needs of the SFA and of the students it serves.

Section 12 - Accounting Records: The FSMC shall maintain such records (supported by invoices, receipts or other necessary and appropriate evidence) as the SFA will need to meet reporting and audit responsibilities and as necessary to enable the SFA to make proper payments of fees and costs to FSMC in accordance with this Contract.

In addition to those requirements set forth in Item 10(A) of the ST&C, the FSMC shall submit separate monthly cost records for the CNP Participating sites and Non-Participating Sites.

In addition to those requirements set forth in Item 10(C) of the ST&C, the FSMC shall submit a year-end statement in such formats approved by the SFA no later than thirty (30) calendar days following the close of the YEAR in which services were rendered. The FSMC will provide separate year-end statements for CNP Participating sites and Non-Participating Sites All records required to be kept and maintained by FSMC pursuant to this contract or applicable law shall be kept in an orderly and professional manner according to expense categories and consistent with generally accepted accounting standards.

In addition to those requirements set forth in Item 10(G) of the ST&C, in the event that there is any dispute between the SFA and FSMC or an issue or dispute raised by audit, the records must be retained beyond the three (3) year period and for so long as required for until the dispute or issue is finally resolved.

Without limiting any and all remedies available to the SFA under law and in equity, in the event that FSMC shall fail or refuse to provide any report or record when required under this Contract, FSMC shall pay a liquidated damage to the SFA at the rate of Fifty Dollars (\$50.00) per day per report or record that is delayed. The amount is due within ten (10) days of receipt of a bill from the SFA and the failure to make a timely payment by FSMC shall constitute a material breach of this Contract.

Section 13 - SFA Access to Facilities and Property: The FSMC shall not take or allow its employees, agents or contractors to take, any action which will in any way limit or prevent access by the SFA to all SFA facilities, property, supplies or commodities. The FSMC shall provide the SFA with one set of keys for all food service areas secured with locks.

Section 14 – Insurance: In addition to those requirements set forth in Item 26(A)-(E) of the ST&C, the FSMC insurance coverage will be placed with a carrier having a financial rating of A-/VIII or better.

Section 15 – Indemnification: The FSMC shall indemnify, hold harmless and defend, the SFA and its board of school directors, officers, agents, employees and attorneys, in either their official or individual capacities, from and against any and all loss, damage, liability, claims, suits, judgments, and demands whatsoever (including attorney fees) arising from any injury to, or death of, any person or persons, or damage to property, arising out of or caused or claimed to have been caused by acts or omissions of FSMC, any subcontractor, employee or agent of FSMC, or any other person or entity directly or indirectly employed by any of them, whether or not caused in whole or in part, by actions or omissions of the SFA, its agents, employees or officials, or any representative of the SFA with respect to or in connection to services under this Contract; provided, however, that if any injury to or death of any person or persons, or damage to property, arises out of any actions or omissions of the SFA, its agents, employees or officials, or any representative of the SFA, then the indemnity required by this Contract by FSMC shall be proportionately reduced taking into account the relative degree of responsibility of FSMC, its agents, employees, representative and of the SFA and its agents, employees, and representatives; Any claims, suits, actions, losses and/or damages by any of FSMC's agents, employees or subcontractors against the SFA, its board of school directors, officers, agents, employees and attorneys in their official or individual capacities caused or allegedly caused by any alleged or actual acts or omissions of any SFA employee, agent, official, board member or attorney, unless (a) it is determined by a court of competent jurisdiction that the act or omission by the SFA employee, agent, official, board member or attorney was taken maliciously and in willful violation of the rights of FSMC's agents, employees or subcontractors and with no involvement by FSMC or its agents, officials or employees; or (b) the claim is based upon tort exclusively; is not based upon the deprivation of any employment, statutory or constitutional right of the Plaintiff; and is not barred by the Political Subdivision Tort Claims Act; Any claims, suits, actions, losses and/or damages by any person, including, students and parents, growing out of any alleged improper conduct of any

nature or type, including, physical, mental or sexual abuse or harassment, invasion of bodily integrity, personal injury, violation or civil rights, and/or unlawful discrimination, by or attributable to any of FSMC's employees, agents, officials or contractors; and the FSMC's breach of any term of this Contract.

Section 16 – Prohibitions: In addition to those requirements set forth in Item 14(P) of the ST&C, the FSMC shall not employ or retain any individual for work at the SFA or in connection with the Contract who would be disqualified from employment with the SFA pursuant to the Public School Code or the Wiretapping and Surveillance Control Act; Disclose any confidential information; Engage in any conduct that constitutes a conflict of interest under the law. Without restricting the generality of the foregoing, FSMC shall disclose to the SFA all contracts that it has with any affiliated entities to provide goods, materials, equipment, supplies or services, of any nature or kind, with respect to this Contract and with respect to any operating expenses.

Without prior written Contract by the SFA, impose upon or introduce into the cafeteria or the cafeteria operations any on or off-site advertising or promotional programs, market-research or product-testing projects in connection with the SFA.

Section 17 - SFA's DUTIES:

Except as otherwise provided in this Contract, and subject to the terms, conditions and limitations contained in this Contract, the SFA shall pay/reimburse FSMC as follows:

The FSMC may charge the SFA its Operating Expenses.

All invoices shall separately itemize operating expenses and Administrative/Management Fees. The FSMC shall only include allowable costs on the monthly invoice. The FSMC's determination of its allowable costs must be made in compliance with applicable Departmental and Program regulations and Office of Management and Budget cost circulars.

In addition to those requirements set forth in Item 10(A) of the ST&C, in the event that FSMC fails or refuses to provide the required documentation, the FSMC shall not be entitled and the SFA shall not be required to pay for the disputed item(s) for which supporting documentation was requested by provided by the FSMC.

In addition to those requirements set forth in Item 17(A)(1) of the ST&C, no interest may be charged by FSMC for any late payments unless there has been a willful refusal to pay without justification by the SFA. In the event that interest is due, the rate shall be the one hundred and twenty-five percent of the prime rate established by the Federal Reserve Bank as determined on the due date of the payment.

Section 18 - Initial Provision of food, service wares, small expendable equipment and cash registers: In addition to the requirements set forth in Item 14 of the SC&T, at termination of this Contract, the FSMC and the SFA shall jointly undertake a closing inventory. In the event the opening inventory is greater than the closing inventory, the difference shall be credited against FSMC's final billing. In the event the closing inventory is greater than the opening inventory, the difference shall be added to the FSMC's final billing as an operating expense.

Section 19 - Control and Oversight by SFA: In addition to the requirements set forth in Item 12 of the ST&C, the SFA shall provide such control over and oversight as is required by law. Oversight as required by the rules and regulations of PDE and of USDA; Establishing internal controls which ensure the accuracy of lunch counts prior to the submission of the monthly claim for reimbursement (7 CFR §210.8(a)). At a minimum, SFA shall: review edit check worksheets and make comparisons of daily free, reduced price and paid lunch counts against data which will assist in the identification of lunch counts in excess of the number of free, reduced price and paid lunches served each day to children eligible for such lunches; develop and implement a system for follow-up on those lunch counts which suggest the likelihood of lunch counting problems; and conduct an on-site review of the lunch counting and claiming system employed by each school within the jurisdiction of the SFA.

Section 20 - Program Responsibilities: In addition to those requirements set forth in Item 13(A) and 13(B) of the ST&C, the SFA shall comply with the Free and Reduced Price Meal Policy set forth in this Contract; Comply with the USDA Donated Foods Policy set forth in this Contract; Determine eligibility of all CNP sites; Form and establish an advisory board composed of student, teachers and parents to assist in menu planning and will schedule necessary meetings of the advisory board; determine the opening and closing dates of all CNP sites; maintain all applicable health certifications on its facilities; inform PDE of menu changes for the CNP; and adopt a 21-day cycle menu in conformance with 7 CFR §210.16(b)(1).

Section 21 – Inspections: The SFA shall conduct such inspections so as to ensure that all state and local regulations are being met by FSMC with respect to food being prepared or service at any SFA facility and ensure that the food service is in conformance with applicable program regulations.

The FSMC shall immediately correct any problems found as a result of a health inspection and shall submit written documentation of the corrective action implemented to the SFA within two weeks of the citation. The FSMC will incur a penalty of \$1,000 for each site that does not pass the County Health Department inspection report.

In addition to those requirements set forth in Item 12(A) of the ST&C, monitor FSMC'S food service operation through periodic on-site visits to ensure that the food service is in conformance with applicable federal, state and local regulations and/or ordinances.

Conduct and document CNP site visits of all sites for pre-approval and during the operation of the program.

Section 22 - Provision of Facilities, Equipment and Supplies: The SFA shall make food service equipment located in kitchens available for use by FSMC in performing services under this Contract; and Clean ducts and hoods above the filter line as necessary.

The SFA shall provide usual electrical and ventilation at those SFA facilities in which FSMC will be providing services under this Contract.

The SFA shall not be responsible for loss or damage to equipment or supplies owned by FSMC, whether on the premises of the SFA or not.

Miscellaneous Provisions:

Section 23 - Cafeteria Employees -

Existing rank and file SFA's cafeteria workers shall remain employees of the SFA and additional employees that may be needed by FSMC in order to provide the services necessary to fulfill its responsibilities under this Contract shall be employees of FSMC and not employees of the SFA.

The FSMC shall determine the number and category of cafeteria service employees needed to implement this Contract efficiently and effectively and shall prepare a written roster of vacancies reflecting the number and category of cafeteria service employees. The SFA will provide a list of current FSMC staff positions. To ensure that adequate human resources are available to meet operational requirements and to protect current staff levels for one (1) year, it is preferred that the FSMC staff roster submitted by the FSMC be equal or exceed the FSMC Labor & Benefits as of January 2024. All proposals submitted with staffing positions and costs less than what is listed on Attachment 12 are required to provide a detailed explanation for the decrease.

All cafeteria workers, who shall be employees of the FSMC, shall work under the direct supervision of the FSMC and shall be subject to the rules, regulations and policies of FSMC and may be subjected to discipline or discharge by FSMC, subject to legal requirements; provided, however, that no cafeteria worker shall violate any SFA policy.

Section 24 - Work Stoppage Contingency Plan:

FSMC shall provide a plan which shall address how it shall meet its contract obligations, in particular the operation of the programs set forth in the contract, during a strike by the FSMC's employees. If there is a FSMC work stoppage, FSMC shall provide alternative labor to avoid any disruption in the food service operation.

Section 25 - Termination of Contract:

In addition to those requirements set forth in Item 23 of the ST&C, this Contract may be terminated by the SFA under any of the following circumstances:

Default - The SFA shall have the right to terminate this Contract, without prejudice to any other Contract, in law or in equity or otherwise, upon the occurrence of any one or more of the following events at any time (each a "Default") that is not cured within any applicable cure period.

It is a Default if FSMC shall fail: (i) to maintain in full force and effect the insurance required by this Contract or (ii) to cause the policies or valid certificates of insurance to be in the custody of the SFA showing such insurance to be in effect; it is a Default if FSMC shall fail to make, maintain, submit, make available or disclose any reports or records required by this Contract on the date due; it is a Default if FSMC utilizes any

employees or contractors who are not properly qualified to work at the SFA or who do not meet the terms and conditions of this Contract; it is a Default if FSMC or its agents or employees fail to comply with any applicable law, regulation or ordinance; it is a Default if FSMC shall be unable to pay its debts when due, or shall make any assignment or an arrangement pursuant to any insolvency laws of any jurisdiction or shall permit a receiver or trustee to be appointed for its business or property; it is a Default if FSMC attempts to transfer or assign its rights under this Contract to any third party without the prior written consent of the SFA, which consent may be withheld at its sole and absolute discretion; and it is a Default if FSMC shall discontinue its business or if FSMC shall breach any other material term of this Contract.

In the event of any Default under this Contract, should the SFA desire to terminate this Contract, the SFA shall first give notice of Default in writing to FSMC by certified mail and regular mail. Whenever the SFA shall notify FSMC of the existence of any Default under this Contract, FSMC shall have ten (10) days to correct the Default. If such Default is not cured within this cure period, the SFA may terminate this Contract upon sixty (60) days notice, and without any opportunity being provided to FSMC to respond, and without any further right to cure on the part of FSMC. Notice of termination shall be effective on the date mailed, whether or not such notice is received by FSMC. Notwithstanding anything herein to the contrary, FSMC shall not be permitted to provide any services under this Contract during any period of time that the required insurance is not in place and effective.

In addition to those requirements set forth in Item 23 of the ST&C, notwithstanding anything herein to the contrary, this Contract may be terminated by the FSMC under any of the following circumstances:

Default - The FSMC shall have the right to terminate this Contract, without prejudice to any other rights that it may have for compensatory or equitable relief, whether under the provisions of this Contract, in law or in equity or otherwise, upon the occurrence of any one or more of the following events at any time (each a "Default") that is not cured within any applicable cure period.

It is a Default if the SFA shall be unable to pay its debts when due, or shall make any assignment or an arrangement pursuant to any insolvency laws of any jurisdiction or shall permit a receiver or trustee to be appointed for its business or property; it is a Default if the SFA attempts to transfer or assign its rights under this Contract to any third party without the prior written consent of FSMC, which consent may be withheld at its sole and absolute discretion; and it is a Default if the SFA commits a material breach of this Contract.

In the event of any Default under this Contract, should FSMC desire to terminate this Contract, FSMC shall first give notice of Default in writing to the SFA by certified mail and regular mail. Whenever FSMC shall notify the SFA of the existence of any Default under this Contract, the SFA shall have ten (10) days to correct the Default. If such Default is not cured within this cure period, FSMC may terminate this

Contract upon sixty (60) days notice, and without any opportunity being provided to the SFA to respond, and without any further right to cure on the part of the SFA. Notice of termination shall be effective on the date mailed, whether or not such notice is received by the SFA.

Section 26 - Survival of Designated Provisions beyond Termination of Contract:

Notwithstanding anything herein to the contrary, the following provisions shall survive termination of this Contract:

The indemnity, hold harmless and defense provisions of this Contract; and the provisions pertaining to FSMC providing information, data and reports to the SFA.

Section 27 - Confidential and Proprietary Information: SFA does not seek and does not desire to obtain any confidential or proprietary information from FSMC. In the event that FSMC believes that it is necessary to provide confidential or proprietary information to the SFA in order to perform its obligations under this Contract, FSMC shall stamp the word or words confidential and/or proprietary in large red and bold font and shall supply copies to the SFA'S designated representative before distributing it in any way to any other SFA employee. The SFA representative will meet with FSMC to discuss whether the material really is confidential, proprietary or necessary for FSMC'S performance of its obligations under this Contract and if it is agreed that the material is confidential and/or proprietary, and that its delivery to the SFA is necessary for FSMC'S performance of its obligations under this Contract, a written plan will be prepared that is designed to ensure that SFA employees do not improperly disclose any such confidential or proprietary information.

Section 28 - Estoppel Statements: FSMC hereby represents, warrants and certifies to the SFA that all of the facts set forth in this Contract are true and correct; that no employee, agent or contractor that it assigns to perform services under this Contract has been identified as a perpetrator in a founded report of child abuse or an indicated report of child abuse as defined by the Child Protective Services Law within the preceding five (5) years and has not abused, intentionally, maliciously or willfully injured or sexually exploited any child at any time; that no employee, agent or contractor, or employee or agent of any subcontractor, that it assigns to perform services under this Contract has been convicted of any one or more of the following crimes under the Pennsylvania Crimes Code or equivalent crime in another state within the preceding five (5) years:

- (a) Criminal Homicide;
- (b) Aggravated assault;
- (c) Kidnapping;
- (d) Unlawful restraint;
- (e) Rape;
- (f) Statutory rape;

- (g) Involuntary deviate sexual intercourse;
- (h) Indecent assault;
- (l) Indecent exposure;
- (j) Concealing death of a child born out of wedlock;
- (k) Endangering the welfare of children;
- (l) Dealing in infant children;
- (m) Prostitution and related offenses;
- (n) Obscene and other sexual materials;
- (o) Corruption of minors;
- (p) Sexual abuse of children; and
- (q) Any other crime that may be designated in Section 111 of the Public School Code, 24 P.S. §1-111, or any other similar law applicable to public SFAs or the protection of children.

That no employee, agent or contractor that it assigns to perform services under this Contract has been dismissed for cause from any other public school entity as a result of sexual misconduct or engaging in criminal misconduct and has not resigned from employment with any other public school entity in order to avoid dismissal for cause as a result of sexual misconduct or criminal conduct;

That FSMC knows of no reason why any of its employees, agents or contractors that it assigns to perform services under this Contract would pose a threat or risk to the health or safety of any other person.

The SFA is justified in relying on the representations made herein by FSMC; the FSMC agrees and understands that the SFA and others intend to rely upon the statements contained herein in agreeing to the terms and conditions of this Contract; the FSMC agrees that the SFA and others may justifiably rely on the statements contained herein.

Nothing herein contained shall be construed to place the SFA and FSMC in the relationship of partners, joint venturers or agents of the other, except that FSMC shall be the agent of the SFA for purposes of purchasing food as set forth in this Contract. The FSMC shall have no power or authority to obligate or bind the SFA in any manner whatsoever except as set forth this Contract when properly acting as purchasing agent for the SFA.

Section 29 - FSMC is an Independent Contractor: The parties hereto agree that FSMC and any agents, contractors and employees of FSMC in the performance of this Contract shall act in an independent contractor capacity and not as officers, employees or agents of the SFA. FSMC's employees shall at all times be and remain the sole employees of FSMC, and FSMC shall be solely responsible for payment of all employees' wages, benefits and other compensation. FSMC, without any cost or

expense to the SFA, shall faithfully comply with all applicable laws or regulation involving workers' compensation and unemployment insurance, social security and withholding of income tax from wages, and shall indemnify and hold the SFA harmless from any expenses or claims of whatsoever nature which may arise from an alleged violation of such applicable laws or regulations.

Section 30 – Inconsistent Provisions: In the event of any conflict or variance between any provision in this Section Q (4) prepared by the SFA, and any provision of PDE's standard form RFP and Cost Reimbursement Contract (the "PDE Standard Form"), the PDE Standard Form shall control.

Section 31 - Contract Executed in Duplicate: This CONTRACT is executed in duplicate, each of which shall be deemed an original, and each of which shall enjoy equal legal dignity and status.

Section 32 - Integration: This Contract constitutes the entire Contract of the parties and supersedes any negotiations or prior Contracts or understandings of the parties. This Contract may not be modified or amended by any oral statement or alleged course of conduct. There are no representations, promises, Contracts, warranties, covenants or undertakings of the parties other than those contained in the contract documents and this Contract.

No waiver by the SFA of any Default shall constitute a waiver of any subsequent event, and the SFA retains its right of election of remedies at all times.

All persons signing this Contract on behalf of FSMC hereby personally covenant and warrant to the SFA that they are authorized to enter into this Contract by the governing body of FSMC by all necessary resolutions or actions.

Section 33 - Severability: All Contracts and covenants herein contained are severable. In the event that any provision of this Contract should be held to be unenforceable, the validity and enforceability of the remaining provisions hereof shall not be affected thereby. Any court construing this Contract is expressly granted the authority to revise any invalid or unenforceable provision hereof in order to render same enforceable.

Section 34 - Consent to Jurisdiction: FSMC hereby irrevocably submits to the personal jurisdiction of the United States District Court for the Eastern District of Pennsylvania or the Court of Common Pleas of Chester County, Pennsylvania in any action or proceeding arising out of or relating to this Contract and FSMC hereby irrevocably agrees that all claims in respect of any such action or proceeding may be heard and determined in either such court.

Section 35 - Service of Process: FSMC hereby irrevocably consents to the service of any summons and complaint and any other process which may be service in any action or proceeding arising out of or relating to this Contract brought in the United States District Court for the Eastern District of Pennsylvania or the Court of Common Pleas of Chester County by the mailing by certified or registered mail of copies of such

process to FSMC at its address as maintained on the records of the SFA from time to time.

Section 36 - Venue: FSMC hereby irrevocably waives any objection which it now or hereafter may have to the laying of venue of any action or proceeding arising out of or relating to this Contract brought in the United States District Court for the Eastern District of Pennsylvania or the Court of Common Pleas of Chester County, Pennsylvania and any objection on the ground that any such action or proceeding in either of such courts has been brought in an inconvenient forum.

FSMC ACKNOWLEDGES THAT IT HAS READ AND UNDERSTANDS THE FOREGOING PROVISIONS AND THAT SUCH PROVISIONS ARE REASONABLE AND ENFORCEABLE.

Section 37 - SFA'S Liability Limitation: The SFA was created pursuant to the Public School Code of 1949, as amended. The obligations of the SFA created hereunder are not personally binding upon, nor shall resort be had to the property of, any of the directors of the school board, members of the Board of Control, officers, employees or agents of the SFA, and only that portion of SFA property necessary to satisfy the obligations of the SFA arising hereunder shall be bound or affected by the operation of this Contract.

Section 38 - Notices: Any notice or communication required by or permitted to be given under this Contract shall be in writing and either served personally, delivered by a nationally recognized courier, or sent by United States certified mail, postage prepaid with the return receipt requested and addressed to the other party.

To the School District:

The Superintendent – Dr. Robert O'Donnell, or his successor and
The Business Manager – Mr. David Matyas, or his successor
540 Trestle Place
Downingtown, PA 19335

Section 39 - The High Schools are not participating in the Child Nutrition Program; therefore, the District requires the following:

- a. The records for the meals served, cost of food, employee costs, etc. must be accounted for separately from those of the sites participating in the CNP.
- b. The FSMC's monthly invoices must identify the costs of all reimbursable meals and the costs of all nonprogram foods.
- c. The FSMC's monthly invoices must identify Revenues generated from reimbursable meal sales and the revenues from non-program food sales.
- d. USDA Commodities may not be used for any meals at the High Schools.
- e. Revenue cannot be comingled between program and non-program sites.
- f. Expenses cannot be comingled between program and non-program sites.

g. The nonprofit food service account may not be used for any High School expenses.

h. As a separate proposal that the SFA School Board wants to consider, the FSMC shall submit an alternate financial for the SFA to review which assumes participation in the National School Lunch and Breakfast Program at the elementary, middle and high school levels.

Section 40 – Food purchased shall be better than the grade of Donated Commodities.

Section 41 – The FSMC will be responsible for the distribution of food and food service supplies between sites. The SFA will supply a cargo van for use by FSMC employees for distribution of food and supplies. The FSMC is responsible for the proper use and maintenance of the vehicle.

Section 42 – Menus: The FSMC will offer daily at least: three (3) entrée choices at the elementary schools, Five (5) entrée choices at the middle schools and ten (10) entrée choices at the high schools with at least three (3) made-to-order stations at the high schools. In addition, the SFA requires two (2) vegetarian entrée choices at the elementary school, three (3) vegetarian entrée choices at the middle school and five (5) vegetarian entrée choices at the high schools be offered daily.

Section 43 – A sample of the monthly invoice/bill must be included with the RFP response. Expenses must be detailed and discounts disclosed. Donated food usage, inventory and values will be part of the monthly report.

Section 44 – Vending Machines – The FSMC is responsible for operating vending machines. Vending machine operation must follow the SFA wellness policy. Profits from vending operation are to accrue to the SFA. Hours of vending operation are determined by the SFA.

Section 45 – Catering – The SFA has no obligation to use the FSMC for catered events. The FSMC will submit a proposed catering menu in the proposal.

Section 46 – If there are changes due to the Healthy Hunger-Free Kids Act or other legislation during the duration of this agreement, the necessary changes shall be implemented and adjustments to menus, pricing and costs shall be made accordingly.

Section 47 – Serving Times – The SFA expects to change the start of the school day at all sites effective with the 2024/2025 school year. The Bell Schedules are not available but it is expected that the start of the school day will be delayed by 20 minutes which may result in different Meal Service Times than reported on Attachment 8 – SFA Site Listing.

Section 48 – High School Lunch Period – Effective with the 2024/2025 school year the SFA will implement a Lunch and Learn serving model at the High Schools. This will result in different serving times than reported on Attachment 8 – SFA Site Listing. All students will be served in a single one-hour Lunch and Learn period. The SFA is currently renovating the High Schools and additional serving areas are being added. This change could result in the need for additional staffing at the high schools.

Section 49 – School Construction – The SFA currently has construction projects at four (4) school sites. In the event of any of the four (4) school kitchens are not available at the start of the school year due to the construction the FSMC will have an alternative plan in place to provide meals to students.

Section 50 – Flexible Instructional Days – In the event of weather-related school closures the SFA can utilize up to five (5) Flexible Instructional Days where students will attend school virtually and these days would not be made up in person and could result in less serving days than reported on attachment 8 – SFA Site Listing and attachments CR3 – SNP Cost Reimbursable Projected Operating Costs for both Participating and Nonparticipating sites.

Section 51 – Breakfast Average Daily Participation – The average daily participation for Breakfast is based on the 2022/2023 participation. Breakfast for students participating in the CNP was funded from October 2022 – June 2023 by the State. If the State does not continue funding breakfast for CNP sites, the daily average participation for breakfast could be reduced.

Section 52 – Dietary Considerations – The SFA expects all food to be prepared fresh and presented to the students and staff in a manner, which will make the freshness and quality of the food served apparent to all program participants. Food is to be prepared fresh for each lunch period to maximize customer satisfaction.

The SFA desires a school lunch program that stresses lower fat foods, fiber rich grains and fresh fruits and vegetables, offering well prepared and well-presented selections that will entice both students and adults to make healthier choices. The SFA wants to increase the variety and quantity of vegetarian options to students.

Preparation and presentation of food should be consistent at all Schools.

Any programs implemented in the District by the FSMC are to be evaluated by the FSMC and the SFA after 15 days. If the program(s) prove unsuccessful, the SFA and FSMC can renegotiate the merits said program in the operation of the District’s School Lunch Program.

The FSMC shall:

- a. Offer more whole grain options as sides – such as bulgur wheat, whole wheat couscous, quinoa, barley (these are the more popular among kids)
- b. Offer more beans as part of side dishes (increases fiber)
- c. Reformulate recipes to prevent excessive use of butter, fats, salts and sugars in the cooking and preparation of menu items.
- d. Prepare food in batches as close to service time as possible. Newly prepared batches of food shall not be mixed with older batches.
- e. Use standardized recipes in all SFA schools insure consistency and quality of menu items. All recipes should be on file in each kitchen and should indicate all ingredients and portion size required insuring that all children receive the proper grade level portions of each meal component.

- f. Prepare enough food daily to ensure that the last child has the same menued meal options as the first student in line.
- g. Provide educational, holiday recognition, monotony breakers or spirit-lifter programs to enhance participation in the food service program at least once per month. FSMC is to submit with their bid a listing of the programs planned for the year.
- h. Prepare monthly menus that include full detail of each of the daily offerings at each school to provide community with all available lunch options.
- i. Post monthly menus outside of serving lines so customers can make their menu choice before getting in line.
- j. Provide to the SFA menus for all schools for their review a minimum of 10 days before each new month.
- k. Provide in proposal a full description of the monthly nutrition awareness and nutrition education programs the FSMC offers in each elementary, middle and high school. Bidder must include a schedule of dates for the monthly nutrition education activities they will conduct each year during the term of the contract and is to also include actual educational materials that they will introduce to students in the cafeteria and in the classroom. FSMC's nutrition education promotions should encourage children to understand why they should eat foods that are high in fiber and contain vitamins and minerals essential for good health. Monthly nutrition education efforts should stress and offer the food items that should be in children's diets and to include detailed listings of the foods that contain those items.
- l. Introduce new food items as well as fresh fruits and vegetables via taste tests and samplings.
- m. Offer a full assortment of vegetarian and vegan items daily at all sites, including a choice of entrees, sandwiches, salads and dressings.
- n. **Portion Sizes for the Menu Pattern Meal:**

Item	Portion Size
Chicken Nuggets, Popcorn Chicken, Chicken Tenders – CN label, white meat	2.0 oz. e. q. Elementary, 2.5 oz. e. q. MS 3.0 oz. e.q. HS
Chicken breast, fresh grilled & other preparations made from fresh product, whenever possible. Purchased whole muscle, pre-prepped chicken is also acceptable	Minimum 2.0 oz. e. q. Elementary, 2.5 oz. e. q. MS 3.0 oz. e. q. HS
Tacos	2.0 oz. e. q. Elementary 2.5 oz. e. q. MS

	3.0 oz. e. q. HS, PLUS CHEESE
Hot Dog, 8 per lb	2.0 oz e.q.
Hamburger, NOT pre-cooked- Must be of high quality	5/lb elementary, ¼ lb secondary
Grilled Cheese Sandwich	2 oz e. q. cheese Elementary, 2.5 oz. e. q. MS & HS
Meat Sauce	2.0 oz. e. q. Elementary, 2.5 oz. e. q. MS 3 oz. e. q. HS
Pizza, 100% cheese	Min 2 oz protein e. q., all grades
French Bread Pizza	5-6" club/hero roll or equal, 1/4 cup sauce and 2 ounces "100%" cheese or meat/meat alternative
Baked Macaroni & Cheese	MINIMUM 6 oz. elementary, 10 oz. MS & HS
Pasta portion	MINIMUM 6 oz. elementary, 8 oz. MS & HS
Meatballs, w/ pasta or on sandwich	2.5 oz. e. q. cooked Elementary, 3.0 oz. e.q. MS & HS
Turkey, Chicken, Roast Beef, Ham Cold Cuts	2.5 oz. + cheese e. q. Elementary 3 oz. + cheese e. q. MS & HS
Mixed Salad Sandwiches – includes egg salad, white meat tuna salad, chicken or turkey salad	2.5 oz e.q. Elementary, 3 oz. e.q. MS & HS

DAILY Deli Stations at high schools, both menued and daily option sandwiches, are to be offered as a lunch with the other required meal components – meat/meat alternate, bread/grain, fruit, vegetable and choice of milk.

- I. All sandwiches are to be made with a 3.0 oz. e. q. portion of meat/meat alternate or other protein (i. e. beans, etc.).
- II. Fresh roasted turkey is to be offered frequently. Jennie-O Oven Roasted Turkey Breast is also acceptable.
- III. Ham is to be a low sodium product approved through taste tests conducted in conjunction with the SFA.
- IV. All cold cuts are to be thinly sliced (shaved).
- V. Toppings of lettuce, tomato, onions, pickles and cheese are to be offered at no extra charge.

- VI. Two thin slices of cheese (American, mozzarella, provolone, Swiss, etc.), totaling between 1/2 and 1 ounce, are to be offered with every sandwich as an option.
- VII. Sandwiches are to be served on a variety of breads (rye, whole grain, etc.), pita breads, soft tacos, Kaiser rolls, bagels, wraps, gluten free option, etc., all to be offered at the same price.

Section 53 – Procurement Specifications - Section 104(d) of the William F. Goodling Child Nutrition Reauthorization Act of 1998 requires schools and institutions participating in the National School Lunch Program (NSLP) and School Breakfast Program (SBP) in the contiguous United States to purchase, to the maximum extent practicable, domestic commodities or products for use in meals served under the NSLP and S.BP. The legislation defines “domestic commodity or product” as one that is produced in the United States and is processed in the United States substantially using agricultural commodities that are produced in the United States. “Substantially” means that over 51 percent of the final processed product consists of agricultural commodities that were grown domestically. These provisions now apply to all funds in the food service account and not just to federal reimbursement.

Wherever possible, and within the guidelines stated in the previous paragraphs, the FSMC shall purchase foods which are labeled with a CN label by the manufacturer. In all other cases, the following grades, purchase units, style, weight, ingredients, formulation, etc., are designated as minimum standards and shall be complied with by the Food Service Management Company:

Dairy Products	U. S. Grade A
Butter	USDA 92 Score
Cheese	USDA Grade A
Bread	Emphasis on whole grain breads and pastas
Baked Products	Quality level commensurate with USDA breakfast/lunch requirements.
Meat	USDA Inspected Grade A Choice
Fish	US Government Inspected
Pork	US No. 1 or 2
Poultry	USDA Inspected Grade A
Eggs, Fresh	USDA Grade AA
Frozen Eggs	USDA Inspected
Frozen Fruits/Vegetables	USDA Grade A Choice or better
Canned Fruits	USDA Grade A Fancy, packed in juice or water
Canned Vegetables	USDA Grade A Choice or Fancy

Fresh Fruit/Vegetables USDA Fancy to USDA #1

Staple Groceries Quality level commensurate with USDA standards

Food and Beverage Procurement Specifications,

The FSMC is to note the following:

- a. Decrease the use of processed foods, using more “from scratch” preparations.
- b. Use turkey products in lieu of pork products such as bacon and sausage, when applicable
- c. Offer turkey burgers and (CN labeled) veggie burgers in addition to beef burgers.
- d. Rotate turkey taco, turkey chili and other entrée items in lieu of higher fat content beef offerings.
- e. Except where specifically listed in this bid specification, eliminate all use of products that contain Trans fats, hydrogenated and partially hydrogenated oils, MSG, high fructose corn syrup, artificial sweeteners, artificial colors and artificial flavors to the maximum extent possible.
- f. Significantly expand variety of fresh fruits and vegetables that are to be offered every day.
- g. The FSMC is encouraged to source fresh fruits and vegetables from local farmers. Local being defined as within 150 miles.
- h. Fresh fruits and vegetables must be delivered at least twice per week.
- i. All fruit cups are to be 1/2 cup full equivalent using 5 oz. containers.
- j. Apples and pears are to be 138 count or larger at the elementary schools, 113 count at the MS and HS. Oranges to be minimum 113 count and sectioned at all sites. Watermelon to be sliced 3/4" thick.
- k. Except for nutrient rich donated government commodity items, all vegetable sticks are preferred to be fresh cut.
- l. All bagels are to be freshly baked and delivered fresh daily. All rolls, French breads and Italian breads are to be fresh baked and delivered daily as needed for the menu. FSMC must submit samples and receive written approval from the SFA to serve any bread items that are not delivered fresh daily.
- m. All hamburger meat/beef is to be freshly ground or frozen fresh ground meat/beef. *For any other hamburger/beef products, the FSMC is to provide samples and receive written approval for any hamburger/beef items to be sold in the SFA's school lunch program.*
- n. The FSMC is required to offer ONLY whole muscle chicken products (nuggets, tenders, etc.) in secondary schools.
- o. Fresh brewed caffeinated and decaffeinated coffee and tea can only be sold to students at the High School level.
- p. All milk and chicken products are to be hormone free.

- q. It is the responsibility of the FSMC to ensure that all breakfast and lunch meals offered and served comply with the HHFKA regulations as it exists at time of serving.

Section 54 – Increased Student Participation – The FSMC is to provide a detailed plan for increasing the average daily participation (ADP) through improved quality and expanded menu offerings and methods of service at all schools. The proposed plan should include a discussion of the food service concept(s) to be offered at each site, suggested menus, equipment needs and proposed costs and staffing requirements to support participation success. Include, by site, the starting and proposed ending ADPs.

Section 55 – The paid breakfast revenue on Attachment CR3 – Participating Sites has been reduced by \$186,536.50 as instructed by PDE. Since the State is subsidizing the breakfast program PDE instructed the SFA to remove the paid breakfast rates in Section 1 - Actual “In-School” Revenue. The rates in Section 3 - State Reimbursements do not reflect the State paying for student breakfasts resulting in the Total Revenue being understated by \$186,536.50.

Failure to include in proposal information as requested in Section Q may result in the rejection of proposal. This information includes the following:

- **Transition Plan**
- **Sample of Monthly Invoice**
- **Sample Catering Menu**
- **Plan to Increase ADP**
- **List of Educational Programs for the Year**
- **Schedule of Dates for Nutritional Activities**
- **Detailed explanation of any staffing decreases**
- **Contingency Plan for Work Stoppage**
- **Contingency serving plan in the event construction delays prevent the use of kitchens at any of the following schools – Downingtown East HS; Downingtown West HS, Beaver Creek Elementary; West Bradford Elementary**

Standard Terms and Conditions

1. Scope and Purpose

- A. The FSMC shall operate in conformance with the SFA's Policy Statement/Agreement with PDE.
- B. The SFA *currently operates* the programs indicated below with a checkmark:

National School Lunch Program (NSLP)	Child and Adult Care Food Program (CACFP)
Extended School Year	At-Risk Supper
School Breakfast Program (SBP)	Special Milk Program (SMP)
Afterschool Snack Program (ASP)	Vending
Summer Food Service Program (SFSP)	A la Carte
Seamless Summer Option (SSO)	Community Eligibility Provision (CEP)

Proposals must be inclusive of all of the SFA's current programs. However, the SFA reserves the right to add and/or expand the federal CN program to provide the availability of food resources to children and students that can be served through these programs. Prior approval must be obtained by the State Agency before adding a CN program and both parties must agree to the addition. The SFA also reserves the right to remove CN programs.

- C. The FSMC shall be an independent contractor and not an employee of the SFA. The employees of the FSMC are not employees of the SFA.
- D. The food service provided shall be operated and maintained as a resource to the SFA's students, faculty, and staff and not as a source of profit to the FSMC.
- E. The FSMC shall comply with the rules, regulations, policies, and instructions of PDE and USDA, and any additions or amendments thereto, including but not limited to, Title 7 CFR parts 210, 215, 220, 245, 250; Title 2 CFR part 180, 200, 417, and 418; and Title 7 CFR parts 225 (SFSP) and 226 (CACFP), as applicable.
- F. All income accruing as a result of payments by children and adults, federal and state reimbursements, and all other income from sources such as donations, special functions, grants, loans, etc., shall be deposited in the SFA's non-profit school food service account. Any profit or guaranteed return shall remain in the SFA's non-profit school food service account. If there is a guaranteed return, it can be no less frequent than yearly. This is a non-profit program and, as such, the SFA's non-profit school food service account should retain a maximum balance of three (3) months operating expenses on hand as is required under Title 7 CFR §210.9(b)(2).
- G. The SFA and the FSMC agree that this contract is neither a "cost-plus-a-percentage-of-income" nor a "cost-plus-a-percentage-of-cost" contract as required under Title 7 CFR §210.16(c).
- H. The SFA shall be legally responsible for the conduct of the non-profit school food service program and shall supervise the food service operations in such manner as will ensure compliance with the rules and regulations of PDE and the USDA regarding each of the CN programs covered by this contract. The SFA shall not relinquish any prohibited responsibilities to the FSMC.
- I. The SFA shall retain control of the CN program's food service account and overall financial responsibility for the CN programs.
- J. The SFA shall establish all selling prices, including price adjustments, for all reimbursable and non-reimbursable meals/milk and a la carte (including vending, adult meals, contract meals, and catering) prices. (Exception: Non-pricing programs need not establish a selling price for reimbursable meals/milk.) These prices shall not be established by the FSMC. However, the FSMC may provide recommendations.

- K. The FSMC shall provide additional school-related food service, such as banquets, parties, refreshments for meetings, etc., as requested by the SFA. The SFA or requesting organizations will be billed for the actual cost of food, supplies and labor, and the FSMC's administrative expenses if applicable to providing such service. USDA commodities shall not be used for these special functions unless the SFA's students will be primary beneficiaries.
- L. Guarantee: The Projected Operating Costs (POC), Attachment CR3, supporting the guarantee must be submitted. The FSMCs guarantee (Breakeven, return, or loss) dollar amount is documented in section 7 of the POC. The estimated yearly income must support the stated guarantee. If the FSMC proposes a guaranteed return, loss, or breakeven, it must be **unlimited**. If a FSMC proposes a guarantee that is not supported by the POC provided by the SFA, the FSMC must provide the SFA with justification regarding their guaranteed amount. Guarantee options are explained below:
1. Guaranteed Loss: The FSMC guarantees that the SFA's invoiced Financial Obligation as stated on the POC shall exceed gross receipts for the current year by no more than stated and documented on Attachment CR3. The FSMC agrees to reimburse the SFA for the amount by which the SFAs actual deficit for the current year is greater than the Guaranteed Deficit for the current year.
 2. Guaranteed Breakeven: The FSMC guarantees the SFA's invoiced Financial Obligation as stated on the POC for the current year shall at a minimum, equal the SFA's documented gross receipts for the current year.
 3. Guaranteed Return: The FSMC guarantees that the documented gross receipts for the current year shall exceed the SFA's invoiced Financial Obligation as stated on the POC for the current year by at least the amount documented on Attachment CR3. The FSMC agrees to reimburse the SFA for the amount by which the SFA's actual return for the current year is less than the Guaranteed Return for the current year.
 4. No Guarantee.
- M. Guarantee Conditions and Assumptions: The FSMCs obligation to reimburse the SFA shall remain in effect only during the current year and any renewal year and is contingent upon the following conditions and assumptions remaining in effect for the current year. In the event one or more of the following conditions and assumptions does not remain in effect for the current year, the FSMC may reduce its reimbursement to the SFA by an appropriate amount:
1. Reimbursement rates for the food service program will not be less than those stated in the RFP.
 2. The per meal commodity value of USDA donated foods **offered** will not be less than the per meal commodity value of USDA donated foods received during the prior year.
 3. The number of full-service days on which breakfast and lunch are served will be at least the serving days listed on Attachment CR3. The participation and number of service day estimates for SFSP and CACFP shall be excluded from the guaranteed assumptions.
 4. The average daily student enrollment for the current year will be within two percent of the number stated on Attachment 1 – Averaged Daily Participation.
 5. The number of students eligible to receive free and reduced-price meals compared to the total student enrollment will not decrease from that provided on Attachment 1 – Average Daily Participation.
 6. The SFA will not require the FSMC to take an action which will cause the cost of wages and/or benefits for the FSMCs food service employees to exceed the levels set forth on Attachment 4 Summary, Attachment 4 Details, Attachment 5 Summary and Attachment 5 Details.
 7. The selling prices of school breakfast, lunch, and afterschool snacks will be no less than the meal prices listed on Attachment 1 – Average Daily Participation.
 8. Should costs reflected on Attachment CR3 be materially higher than projected due to price changes as documented by the Consumer Price Index for All Urban Consumers (CPI-U), U.S. base for food away from home, the guarantee will be commensurately reduced.

9. A change resulting in a drop in participation or sales greater than 2% of projected budgeted sales or participation unless the impact on the guarantee is reviewed and mutually agreed to in writing by both parties before any change occurs.
 10. No strikes, work stoppages, or school closings, and all make-up days due to inclement weather were implemented.
 11. There will be no changes in Federal, State or local regulations which cause financial impact to the Food Service Program.
- N. The SFA reserves the right, at its sole discretion, to sell or dispense any food or beverage before or after the SFA's regularly scheduled lunch or breakfast periods, provided such is not prohibited by Local Wellness Policies and state or federal program regulations. Specially exempted fundraiser foods or beverages may only be sold at the frequency specified by DFN per Title 7 CFR §210.11(b)(4).
 - O. The FSMC must not directly or indirectly restrict the sale or marketing of fluid milk at any time or in any place on school premises or at any school-sponsored event as required by Title 7 CFR §210.10(d)(4).
 - P. The FSMC shall cooperate with the SFA in promoting nutrition education and coordinating the SFA's food service with classroom instruction. The FSMC shall comply with the Local Wellness Policy including the nutrition guidelines as required.
 - Q. The FSMC shall make modifications and substitutions in school meals for students whose disabilities restrict their diet. Meal modifications and substitutions shall be made on a case-by-case basis and must be supported by a medical statement with the required information when the modification or substitution cannot be made within the Program meal pattern. There will be no additional charge to the student for such substitutions or modifications.
 - R. The SFA is responsible for all contractual agreements the SFA enters into in connection with the CN programs.
 - S. This contract shall be construed under the laws of the Commonwealth of Pennsylvania. Any action or proceeding arising out of this contract shall be heard in the appropriate courts of the Commonwealth of Pennsylvania.
 - T. The FSMC shall comply with the provisions of the bid specifications, which are hereby in all respects made a part of this contract.
 - U. No provision of this contract shall be assigned or subcontracted without prior written consent of the SFA and DFN.
 - V. No waiver of any default shall be construed to be or constitute a waiver of any subsequent claim.
 - W. This contract constitutes the entire contract between the SFA and the FSMC.
 - X. Any silence, absence, or omission from the contract specifications concerning any point shall be regarded as meaning that only the best commercial practices are to prevail, and that only materials (e.g., food, supplies, etc.) and workmanship of a quality that would normally be specified by the SFA are to be used.
 - Y. Payments on any claim shall not preclude the SFA from making a claim for adjustment on any item found not to have been in accordance with the provisions of this contract and bid specifications.
 - Z. The SFA shall be responsible for ensuring the resolution of program review and audit findings.
- AA. This contract must be reviewed and approved by DFN prior to execution, as noted in the final approval on page 1.
2. Signature Authority
 - A. The SFA shall retain signature authority for the policy statement/agreement to participate in the CN programs, including but not limited to the School Nutrition Program Financial Form, the Verification Report, and the on-line submission of the sponsor application/site information and other reports, and requests to PDE to amend the application.

- B. The SFA shall retain signature authority for the Monthly Claim for Reimbursement in the CN Program Electronic Application and Reimbursement System (CN PEARS).
 - C. The SFA is responsible for reviewing the data and signing the Edit Check Worksheet(s) prior to the submission of the monthly Claim for Reimbursement.
 - D. The FSMC may not be given access to CN PEARS, COMPASS, or the PrimeroEdge Student Eligibility System.
3. Free and Reduced Price Meals Policy
- A. The SFA shall be responsible for the establishment and maintenance of the free and reduced price meals' eligibility roster. This may not be delegated to the FSMC.
 - B. The FSMC shall implement an accurate point of service meal/milk count using the meal counting system submitted by the SFA in their application to participate in the CN programs and approved by DFN, as required under Title 7 CFR §210.8. Such meal/milk counting system must eliminate the potential for the overt identification of free and reduced price eligible students under Title 7 CFR §245.8 and prevent erroneous meal counts. The FSMC is responsible for ensuring students are not being claimed for meals when they were not in attendance at the time of the meal or did not receive a reimbursable meal. The SFA must have a system in place to monitor this.
 - C. The SFA shall be responsible for the completion, distribution, and collection of the parent letter and household application for free and reduced price meals and/or free milk. This may not be delegated to the FSMC.
 - D. The SFA shall be responsible for obtaining the Direct Certification List from COMPASS or PrimeroEdge (as applicable), as required throughout the school year, for use to determine eligibility for free meals without obtaining a household application for free and reduced price meals and/or free milk from parent/guardian. This may not be delegated to the FSMC.
 - E. The SFA shall be responsible for the determination of eligibility for free and reduced price meals and free milk and will not disclose confidential information to the FSMC, as required under Title 7 CFR §210.16(a). The SFA will provide the FSMC with a list of children. This list must be updated by the SFA when changes occur in a student's eligibility status. These activities may not be delegated to the FSMC.
 - F. The SFA shall be responsible for conducting any hearings related to determinations regarding eligibility for free and reduced price meals and free milk. This may not be delegated to the FSMC.
 - G. The SFA shall be responsible for verifying household applications for free and reduced price meals and follow-up activities as required by federal regulations. The SFA position responsible for completing the verification process (this may not be delegated to the FSMC) is
4. USDA Donated Foods
- A. The SFA shall retain title to all USDA donated foods.
 - B. The FSMC is prohibited from entering into any processing contracts utilizing USDA donated foods on behalf of the SFA. All refunds received from processors must be retained by the non-profit school food service account.
 - C. The FSMC shall accept liability for any negligence on its part that results in any loss of, improper use of, or damage to, USDA donated foods.
 - D. The FSMC shall select, accept and use USDA donated foods in as large quantities as may be efficiently utilized in the SFA's non-profit school food service, subject to approval of the SFA. The SFA shall consult with the FSMC in the selection of commodities; however, the final determination as to the acceptance of commodities must be made by the SFA.
 - E. The FSMC will use all 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 SFA's food service.

- F. The FSMC must assure that the procurement of processed end products on behalf of the SFA, as applicable, will ensure compliance with the requirements of Title 7 CFR Part 250 subpart C, and with the provisions of distributing or recipient agency processing agreements, and will ensure crediting of the SFA for the value of donated foods contained in such end products at the processing agreement value.
 - G. The FSMC shall have records available to substantiate that the full value of all USDA donated foods is used solely for the benefit of the SFA.
 - H. The FSMC shall perform the following activities in accordance with Title 7 CFR §250.50(d): (check all that apply)
 - Preparing and serving meals using donated foods.
 - Ordering or selection of donated foods (in coordination with the SFA).
 - Storage and inventory management of donated foods.
 - Payment of processing fees or submittal of refund requests to a processor on behalf of the SFA, or remittance of refunds for the value of donated foods in processed end products to the SFA.
5. Crediting For and Use of Donated Foods
- A. The FSMC must credit the SFA for the value of all donated foods received for use in the SFA's meal service in the school year (including both entitlement and bonus foods).
 - B. The FSMC must credit the SFA for the value of donated foods contained in processed end products if the FSMC is required to:
 - 1. Procure processed end products on behalf of the SFA, or
 - 2. Act as an intermediary in passing donated food value in processed end products on to the SFA.
 - C. All crediting must be done on no less than a monthly basis.
 - D. The FSMC must provide clear documentation of the crediting showing the value received from the donated foods. As determined by PDA's Bureau of Food Assistance in accordance with Title 7 CFR §250.51(c), the following methods shall be used for valuing donated foods:
 - a. Processed donated foods are credited based on the product values stated on the USDA November Material Price List pertinent to the appropriate School Year.
 - b. All other donated foods are credited based on the product values at the time the foods are received by the SFA, using either PDA's January Commodity Price List or PDA's July Commodity Price List. (Commodity Price Lists are available on PAMeals.)
 - E. Following Title 7 CFR §210.21(f)(iv), invoices must clearly display all applicable credits to the SFA.
6. Inventory, Storage and Record Retention of USDA Donated Foods
- A. When this contract or subsequent renewals terminates, the FSMC must return all unused donated ground beef, donated ground pork and processed end products. At the termination of the contract, the SFA (choose one)
 - will allow the FSMC to keep other unused donated foods.
 - will retain all other unused donated foods.
 - B. The FSMC will comply with the storage and inventory requirements for donated foods.
 - C. The SFA, the Comptroller General, PDA, PDE, 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 donated foods.
 - D. The FSMC will maintain records to document its compliance with requirements relating to donated foods, in accordance with Title 7 CFR §250.54(b).

- E. The SFA must maintain the following records relating to the use of donated foods:
 - 1. The donated foods and processed end products received and provided to the FSMC for use in the SFA's food service.
 - 2. Documentation that the FSMC has credited the SFA for the value of all donated foods received for use in the SFA's food service in the school year, including, in accordance with the requirements in Title 7 CFR §250.51(a), the value of donated foods contained in processed end products.
 - 3. The actual donated food values used in crediting.
- F. The FSMC must maintain the following records relating to the use of donated foods:
 - 1. The donated foods and processed end products received from, or on behalf of, the SFA, for use in the SFA's food service.
 - 2. The FSMC must show documentation that it has credited the SFA for the value of all donated foods received for use in the SFA's food service in the school year, including, in accordance with the requirements in Title 7 CFR §250.51(a), the value of donated foods contained in processed end products.
 - 3. The FSMC must maintain documentation of its procurement of processed end products on behalf of the SFA, as applicable.
- G. The SFA must ensure that the FSMC is in compliance with the requirements of this part through its monitoring of the non-profit school food service operation, as required in Title 7 CFR Parts 210, 220, 225, or 226, as applicable. The SFA position responsible for this monitoring process is
- H. The SFA must 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 donated foods received for use in the SFA's non-profit school food service in the school year. The annual Agency Summary Report provided by PDA's Bureau of Food Assistance is the basis for the donated food values.

7. Renewal Assumptions

- A. Assumptions: Financial terms of the Agreement are based upon existing conditions and the following assumptions. If there is a material change in conditions, including, without limitations, changes to the following assumptions, this contract (1) may be terminated at the end of the current term or (2) continue under the same terms as written if the material change is outlined in Section Q and approval is granted by DFN, whichever is mutually agreed upon.

The distinction between a minor change and a material change cannot be qualified for every action undertaken in the CN programs. However, at a minimum, a change is material when, had the new term been in the solicitation and original contract, it could have affected how the bidder and other competitors responded to the RFP.

Services or features contingent on multi-year contracts are not allowable, for example equipment installation may not be stipulated for contract renewal years.

- 1. The SFA reserves the right to expand the federal CN programs in order to provide availability of food resources to children and students that can be served through these programs so long as both parties are in agreement and prior approval is obtained by DFN.
- 2. The SFA's policies, practices, and service requirements shall remain materially consistent throughout the contract term and any subsequent contract renewals.

The term materially consistent shall mean that a change does not (1) materially increase FSMC's cost of providing management service or (2) materially decrease the net revenue derived from the food service operations.

- 3. Legislation, regulations, and reimbursement rates that create changes in the CN program shall be enforced on their effective date.
- 4. Usable commodities of adequate quality and variety required for the menu cycle, valued at an amount as set forth by USDA per pattern meal for the contract year will continue to be available.

5. The government reimbursement rates in effect shall remain materially consistent throughout the year.
 6. Meal components and quantities required by any of the programs selected in letter B, under 1 (Scope and Purpose) of the Standard Terms and Conditions remain consistent with prior years.
 7. Service hours, service requirements, and type or number of facilities selling food and/or beverages on SFA's premises shall remain materially consistent throughout the contract term and any subsequent contract renewal years.
 8. The state or federal minimum wage rate and taxes in effect shall remain materially consistent throughout the year.
 9. The projected number of full feeding days that shall remain materially consistent in renewal years are
 10. If participating in Seamless Summer Option (SSO), the projected number of full feeding days for SSO that shall remain materially consistent in renewal years are
If participating in Summer Food Service Program (SFSP) see Section 27.B.
 11. SFA revenue credited to the food service program shall include all state and federal amounts received specifically for CN operations.
- B. Contract Cost Increase: The FSMC may negotiate at the end of each one-year contract period for a cost increase. If there is an increase in the Administrative and Management Fees, it cannot exceed the annual percentage increase of the Consumer Price Index for All Urban Consumers (CPI-U) for the preceding year. The addition of new line items to the budget is not allowable in renewal years. The CPI-U can be used as a gauge for proposed increases to operating costs. However, the SFA must be able to justify approval for operating costs exceeding the CPI-U.
 - C. All contract renewals shall be for a period of one year beginning July 1 and ending June 30, with mutual agreement between the SFA and the FSMC. Renewal contracts cannot be effective prior to the final approval date by DFN and signed by both parties. Failure to have renewal contracts fully executed prior to July 1, will lapse this contract and require the SFA to re-bid the contract.
 - D. Renewal year contracts are contingent upon fulfillment of all contract provisions. If DFN determines during an Administrative Review, Procurement Review, audit, etc., that the FSMC is not meeting contractual obligations and is responsible for noncompliance of program regulations, DFN may decline to approve a renewal contract until it can be demonstrated that the FSMC is capable of meeting contractual obligations and being in compliance with program regulations.
8. Health Certifications
 - A. The SFA shall maintain all applicable health certifications on its facilities and shall ensure that all state and local regulations are being met by the FSMC preparing or serving meals at any SFA facility.
 - B. The FSMC shall maintain state and/or local health certifications for any facility outside the SFA in which it proposes to prepare meals and shall maintain this health certification for the duration of the contract as required under Title 7 CFR §210.16(c).
 - C. The FSMC shall adhere to the Food Safety Plan implemented by the SFA for all preparation and service of school meals, using a Hazard Analysis and Critical Control Point (HACCP) system as required under Public Law 108-265.
 - D. The FSMC agrees to allow at least two health inspections to be conducted by the Health Department at every site involved in school meal preparation and/or service as required by Public Law 108-265.
 - E. The SFA shall immediately correct any problems found as a result of a health inspection. The FSMC must support and cooperate with the necessary corrections.
 9. Meals
 - A. The FSMC shall serve meals on such days and at such times as requested by the SFA.

- B. The SFA shall retain control of the quality, extent, and general nature of the food service.
 - C. The FSMC shall offer free, reduced price and paid reimbursable meals to all eligible children participating in the CN programs.
 - D. In order for the FSMC to offer a la carte food service, the FSMC must offer free, reduced price and paid reimbursable meals to all eligible children.
 - E. The FSMC shall provide meals in the CN programs that meet the requirements as established in Title 7 CFR Part 210, Part, 215, Part 220, Part 225, and Part 226.
 - F. The FSMC shall provide the specified types of service in the schools/sites listed in Section 1, letter B.
 - G. The FSMC shall promote maximum participation in the CN programs. Proposal shall include plan for FSMC to increase participation, if applicable, and any cost that will be incurred as a result of the plan. Any guarantee dependent on participation must identify the change to the guarantee based upon participation factors.
 - H. The FSMC shall sell on the premises only those foods and beverages authorized by the SFA and only at the times and places designated by the SFA.
 - I. No payment will be made to the FSMC for meals that are spoiled or unwholesome at the time of delivery, do not meet detailed specifications as developed by the SFA for each food component in the meal pattern, or do not otherwise meet the requirements of the contract.
 - J. The SFA may request changes in delivery and packaging in cases of an emergency. Emergencies may include, but are not limited to, wars, acts of public enemies, strikes, work stoppages, natural disasters, acts of God, civil disorders, public health crises, freight embargos, or loss or malfunctions of utilities, respectively, and which by the exercise of due diligence they were unable to prevent. Any price adjustment resulting from the emergency, must be agreed upon by both parties in writing. Additionally, the length of the emergency period should be estimated and agreed to by both parties in writing.
10. Books and Records and Reports
- A. The FSMC shall maintain and provide to the SFA, on a monthly basis, detailed (itemized) documented cost records (supported by invoices, receipts, etc.). This documentation must be retained on-site by the SFA. The FSMC is required to identify the amount of each discount, rebate, and other applicable credits. All costs must be fully supported, mutually agreeable to the SFA and the FSMC and be allowed by federal regulations. The FSMC shall submit the detailed monthly documentation no later than the tenth (10th) calendar day succeeding the month in which services were rendered. Participation records shall be submitted no later than the fifth (5th) working day succeeding the month in which services were rendered. The SFA shall perform edit checks on the participation records provided by the FSMC prior to the preparation and submission on-line of the Claim for Reimbursement. The SFA shall reconcile Edit Check worksheets and daily/monthly meal counts against student attendance records and daily transaction worksheets/logs.
 - B. The FSMC shall maintain records at the SFA to support all expenses and revenue appearing on the monthly operating statement attributable to the SFA. These records shall be kept at the SFA in an orderly fashion according to expense categories. This includes, but is not limited to invoices, receipts, and timesheets to support all expenses charged to the SFA.
 - C. The FSMC shall provide the SFA with a year-end statement.
 - D. The SFA shall conduct an internal audit of food, labor and other large expense items quarterly, as well as performing random audits on smaller expense categories. This includes, but is not limited to, conducting inventory counts and analyzing and reconciling invoices, receipts and time sheets on no less than a quarterly basis. The SFA shall maintain documentation for a period of three (3) years from the end of the contract term (including renewals) to which they pertain.
 - E. Should the SFA have any concern as to the FSMC's compliance of regulatory rules due to internal audits, monitoring, an Administrative Review, or a Procurement Review conducted by PDE, the SFA shall have the right to request an audit of the FSMC and the selection of the auditor(s) to perform the audit. The FSMC will be responsible for bearing the costs that occur as a result of this audit.

- F. The SFA and the FSMC must provide all documents as necessary for the independent auditor to conduct the SFA's single, program, or financial audit.
- G. Books and records of the FSMC pertaining to the CN program operations shall be made available, upon demand, in an easily accessible manner for a period of three (3) years from the end of the contract term (including renewals) to which they pertain, for audit, examination, excerpts and transcriptions by the SFA and/or any state or federal representatives and auditors.
- H. If audit findings regarding the FSMC's records have not been resolved within the three-year period, the records must be retained beyond the three-year period for as long as required for the resolution of issues raised by the audit. (Title 2 CFR §200.334).
- I. The FSMC shall not remove federally required records from the SFA premises. Upon contract termination, the FSMC must leave copies of the records at the SFA premises.
- J. The SFA is responsible for ensuring resolution of program review and audit findings.

11. Employees

- A. The SFA reserves the right to interview and approve the on-site food service manager/director.
- B. The SFA must designate if the **current** SFA employees, including site and area managers as well as any other staff, will be retained by the SFA or be subject to employment by the FSMC. (Choose One)
 - Employees will be retained by the SFA.
 - Employees will be retained by the FSMC.
 - Employees will be retained by the SFA and FSMC.
 - There are currently no SFA employees, charged to the non-profit Food Service Account.
- C. The SFA must have a written code of conduct for all employees, which the FSMC must uphold for all employees working with the food program. (Title 2 CFR §200.318(c)).
- D. The FSMC shall provide the SFA with a schedule of employees, positions, assigned locations, salaries, and hours to be worked as part of the proposal. Specific locations and assignments will be provided to the SFA two full calendar weeks prior to the commencement of operation.
- E. The FSMC must provide time sheets for each FSMC employee and indicate the pro-ration of shared employees. These time sheets must be submitted monthly with each invoice that is submitted for payment. The time sheets need to clearly indicate all locations that each employee and pro-rated employee worked and the percent of time that the employee worked in each location.
- F. The FSMC shall comply with all wage and hours of employment requirements of federal and state laws. The FSMC shall be responsible for supervising and training personnel, including SFA employed staff. Supervision activities include employee and labor relations, personnel development, and hiring and termination of FSMC management staff except for the site manager. The FSMC shall also be responsible for the hiring and termination of non-management staff who are employees of the FSMC.
- G. The SFA must identify a SNP director who is an employee of the SFA. The SNP director must meet the minimum Professional Standards hiring and annual training requirements. In addition, the SNP director must ensure program oversight, including but not limited to, ensuring that the FSMC's food service director and all food service staff also meet the Professional Standards requirements (Title 7 CFR §210.30). Directors must accrue eight (8) hours of food safety training upon hire and every five (5) years thereafter. The SNP director responsibilities will be fulfilled by this position:
- H. The SFA and FSMC must ensure that all food service employees meet and continue to meet all of the Professional Standards for hiring and training requirements. All trainings must be documented in PrimeroEdge Teamwork.
- I. The FSMC shall maintain its own personnel and fringe benefits policies for its employees. A copy of these policies must be submitted with all proposal documents. These policies are subject to review by the SFA.
- J. Staffing patterns shall be mutually agreed upon.

- K. The FSMC shall not hire employees in excess of the number required for efficient operation.
- L. The SFA shall provide sanitary toilet and hand washing facilities for the employees of the FSMC.
- M. The SFA may request in writing the removal of any employee of the FSMC who violates health requirements or conducts himself/herself in a manner that is detrimental to the well-being of the students.
- N. In the event of the absence, termination, removal or suspension of any such employee, the FSMC shall immediately restructure the food service staff without disruption of service.
- O. All SFA and/or FSMC personnel assigned to the food service operation in each school shall be instructed in the use of all emergency valves, switches, and fire and safety devices in the kitchen and cafeteria areas.
- P. The use of student workers or students enrolled in vocational classes in the food service shall be mutually agreed upon.
- Q. The FSMC shall provide proof that each prospective employee working with children has had a Pennsylvania State Criminal History Background Check and a Federal Criminal History Record that is not more than one (1) year old. (Section 111 of the Public School Code. See Act 48 of 2003 Section 111 for specific convictions that this applies to.)
- R. The FSMC shall provide proof that each prospective employee working with children has had the required number of hours of approved child abuse recognition and reporting training. (Act 31 of 2014)

12. Monitoring

- A. The SFA shall monitor the food service operation of the FSMC through periodic on-site visits to ensure that the food service is in conformance with USDA program regulations per Title 7 CFR §210.16. On-site monitoring is required regardless of the number of sites. An On-Site Review Checklist (Monitoring Form) for monitoring can be found on PEARS/Applications/Download Forms under section SNP-Forms. Further, if there is more than one site, there is an additional requirement that the SFA conduct an on-site review of the counting and claiming system no later than February 1, of each year as required by Title 7 CFR §210.8. The SFA position responsible for performing all on-site reviews is
- B. The records necessary for the SFA to complete the required monitoring activities must be maintained on-site by the FSMC under this contract, and must be made available to the Auditor General, USDA, PDE, PDA, and the SFA upon request for the purpose of auditing, examination, and review.

13. Menus/Advisory Boards

- A. The FSMC must comply with the 21-day menu developed by the SFA for the programs checked in section 1, letter B of this contract, and is included in the RFP (the exception to this would be the SFSP which only requires an 11-day menu). Minor changes made by the FSMC after the first 21-day cycle must be approved by the SFA. The SFA shall approve menus no later than two weeks prior to service. Major changes to the menu are not allowable unless included as part of the RFP process and acceptable by the SFA as indicated in Section Q. FSMC proposals must identify if they plan to change the 21-day menu included in the RFP, as indicated by the SFA in Section Q. If so, the FSMC must identify how it will change the menu and the financial impact to revenues and expenses.
- B. The SFA is responsible for the formation and establishment of an advisory board composed of parents, teachers, and students meeting periodically to assist in menu planning and other activities related to food service. The FSMC may participate in these periodic meetings as deemed appropriate by the SFA. The establishment of the advisory board may not be delegated to the FSMC.

The advisory board will be overseen by this position:

The frequency of advisory board meetings will be:

- C. The SFA must maintain records of the advisory board including agenda, meeting minutes, and detailed sign-in sheet indicating role of attendees as either parents, teachers, or students. These records must be made available, upon request, in an easily accessible manner for a period of three (3) years from the end of the contract term (including renewals) to which they pertain, for audit, examination, excerpts and transcriptions by the SFA and/or state or federal representatives and auditors.

14. Use of Facilities, Inventory, Equipment & Storage

- A. The SFA will make available, without any cost or charge to the FSMC, area(s) of the premises agreeable to both parties in which the FSMC shall render its services.
- B. The SFA reserves the right, at its sole discretion, to sell or dispense food or beverages, provided such use does not interfere with the operation of the CN programs.
- C. The FSMC and the SFA shall inventory the equipment and commodities owned by the SFA at the beginning of the school year, including but not limited to, silverware, trays, chinaware, glassware, and/or kitchen utensils.
- D. The FSMC shall maintain the inventory of silverware, trays, chinaware, glassware, kitchen utensils, and other operating items necessary for the food service operation at the inventory level as specified by the SFA.
- E. The SFA will replace expendable equipment and replace, repair and maintain non-expendable equipment except when damages result from the use of less than reasonable care by the employees of the FSMC.
- F. The FSMC shall maintain adequate storage procedures, inventory, and control of USDA donated foods in conformance with the SFA's agreement with PDA.
- G. The SFA shall provide the FSMC with one set of keys for all food service areas secured with locks.
- H. The SFA shall provide the FSMC with local telephone service.
- I. The SFA shall furnish and install any equipment and/or make any structural changes needed to comply with federal, state, or local laws, ordinances, rules and regulations.
- J. Check one of the following regarding equipment:

The SFA is not requesting the FSMC to propose purchase of equipment. The FSMC may not propose purchase of equipment in proposal and equipment may not be charged, directly or indirectly, to the SFA throughout the duration of the contract.

The SFA is allowing the FSMC to propose equipment necessary for implementation or enhancement of operation. The FSMCs may recommend equipment for the SFAs food service operation in an amount not to exceed . If the SFA approves the recommendation, the SFA will procure and finance the equipment.

The SFA must obtain preapproval from DFN for each item of equipment costing \$5,000 or greater through the Capital Expenditure Request process if non-profit school food service account funds are going to be used at any time during the process for the purchase.

The SFA is allowing the FSMC to propose equipment necessary for implementation or enhancement of operation. The FSMC may finance equipment for the SFAs food service operation in an amount not to exceed _____, for the life of the contract including optional renewal. Any equipment not included in FSMC proposal may not be charged, directly or indirectly, to the SFA throughout the duration of the contract. **If this option is selected, the SFA may provide specifications in Section Q, Additional Information.**

The SFA must obtain preapproval from DFN for each item of equipment costing \$5,000 or greater through the Capital Expenditure Request process if non-profit school food service account funds are going to be used at any time for the purchase (even if the FSMC purchases).

The FSMC shall be subject to the same procurement requirements to which the SFA is subject in purchasing equipment and may not serve as a vendor when purchasing equipment on behalf of the SFA. Ownership of the equipment will vest in the SFA immediately upon purchase of the equipment. The SFA shall repay the FSMC at the rate agreed upon when the equipment is purchased.

If the contract expires or is terminated prior to complete repayment of the investment, the SFA shall, on the expiration date, or within five days after receipt by either party of any notice of termination under this Contract, either (choose one)

Retain the property and continue to make payments in accordance with the amortization/payment schedule.

Pay the remaining balance immediately.

Deliver the equipment or other items funded by the investment to the FSMC. Dependent upon the amount paid compared to the amortized value, one of the respective parties may be credited.

- K. The SFA shall be responsible for any losses, including USDA donated foods, which may arise due to equipment malfunction or loss of electrical power not within the control of the FSMC.
 - L. All food preparation and serving equipment owned by the SFA shall remain on the premises of the SFA.
 - M. The SFA shall not be responsible for loss or damage to equipment owned by the FSMC and located on the SFA premises.
 - N. The FSMC shall notify the SFA of any equipment belonging to the FSMC on SFA premises within 10 days of its placement on SFA premises.
 - O. The SFA shall have access, with or without notice, to all of the SFA's facilities used by the FSMC for purposes of inspection and audit.
 - P. 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 acceptable, there shall be a signed agreement, which stipulates the fees to be paid by the FSMC to the SFA for such facility usage.
 - Q. The SFA, on the termination or expiration of the contract, shall conduct a physical inventory of all equipment and commodities owned by the SFA.
 - R. The FSMC shall surrender to the SFA upon termination of the contract, all equipment, and furnishings in good repair and condition.
15. Purchases
- A. If the FSMC is procuring goods or services which are being charged to the SFA under the contract, the FSMC is acting as an agent for the SFA and must follow the same procurement rules under which the SFA must operate and that the FSMC may not serve as a vendor. Check one of the below options:

The SFA will do all purchasing for the non-profit school food service.

The FSMC bills the SFA for foods when purchased. At the option of the SFA, the FSMC will purchase back unused supplies from the SFA at the termination of the contract in order to prevent overbuying.

The FSMC bills the SFA for food when used. At the option of the SFA, the SFA will buy the ending inventory from the FSMC.

- B. This contract shall not prevent the SFA from participating in food co-ops or purchasing food from vendors with whom the FSMC normally does not do business.
- C. Under Title 7 CFR §210.21(f)(i):
1. Only allowable costs will be paid from the non-profit school food service account to the FSMC net of all discounts, rebates and other applicable credits accruing to or received by the FSMC; to the extent, those credits are allocable to the allowable portion of the costs billed to the SFA.
 2. The FSMC must separately identify for each cost submitted for payment to the SFA the amount of each cost that is allowable and unallowable.
 3. Proprietary information, such as brand name, may be redacted, provided sufficient information is provided for SFA to reconcile monthly billing invoice against supporting documentation.
 4. The FSMC must individually identify the amount of each discount, rebate and other applicable credits on all bills and invoices presented to the SFA. In the case of other applicable credits, the nature of the credit must be identified.
 5. The FSMC must identify, on the final invoice of the school year, the method by which it will report discounts, rebates and other applicable credits allocable to the contract that cannot be reported prior to the conclusion of the contract.
 6. The FSMC must maintain documentation of costs and discounts, rebates and other applicable credits, and must furnish such documentation to the SFA and, upon request, to DFN, or USDA.
- D. No expenditure may be made from the non-profit school food service account for any cost resulting from a cost reimbursable contract that fails to include requirements of this section, nor may any expenditure be made from the non-profit school food service account that permits or results in the FSMC receiving payments in excess of the FSMC's actual, net allowable costs.
- E. P.L. 110-246, Section 4302 of the Richard B. Russell National School Lunch Act (NSLA), allows SFAs to purchase unprocessed locally grown and locally raised agricultural products. NSLA allows SFAs, if they choose to do so, to apply a geographic preference when procuring unprocessed locally grown and locally raised agricultural products. The SFA may just apply a preference, they cannot make this a requirement.

16. Nonprogram Foods

- A. Nonprogram foods include any non-reimbursable foods and beverages purchased using funds from the non-profit school food service account. This would include, but is not limited to, a la carte; catering; vending, second meals and non-reimbursable suppers.
- B. The FSMC must identify the following on the monthly invoice:
- Costs of all reimbursable meals;
 - Costs of all nonprogram foods.
- C. The SFA is responsible for maintaining documentation of all revenues for reimbursable meals and all revenues for nonprogram foods.
- D. Documentation to identify the separation of:
- Revenues of reimbursable meals from revenues of nonprogram foods
 - Costs of reimbursable meals from costs of nonprogram foods
- This documentation must be made available to the Auditor General, USDA, PDE, PDA, and the SFA upon request for the purpose of auditing, examination, and review.

17. Payment Terms/Method

- A. Invoices
1. The FSMC shall invoice the SFA monthly for amounts due based on on-site records. The SFA shall make payments within 30 days of the invoiced date.

2. Invoices must be itemized by cost categories such as food, including commodities, labor, supplies, rebates, discounts, credits, etc. Detailed (itemized) cost documentation must be submitted monthly to support what the SFA is charged for each cost, charge, or expense. This documentation must be retained on-site by the SFA.
3. The FSMC is required to identify the amount of each discount, rebate, and other applicable credits on bills and invoices presented to the SFA for payment as required by Title 7 CFR §210.21(f)(iv). An example of the invoice, identifying commodities (USDA entitlement balances), discounts, rebates and credits must be included with the proposal.
4. Costs, charges, and expenses must be mutually agreeable to the SFA and the FSMC and be allowed by federal regulations.
5. The FSMC must submit a monthly reconciliation to the SFA comparing the invoice and revenue against the projected revenue and expenses. (Used in the Attachment CR3, Projected Operating Costs of the proposal.)
6. DFN may randomly request SFAs to submit copies of invoices for compliance with the above items.
7. The payment of interest and late fees from the non-profit school food service account fund is prohibited.
8. Upon termination of the Agreement, all outstanding amounts shall immediately become due and payable.

B. Advance Payment – Indicate whether or not the SFA will consider an advance payment.

No, the SFA will not consider providing an advance payment to the FSMC.

Yes, the FSMC may provide an explanation regarding the financial benefits of allowing an advance and the SFA may consider a request from the FSMC for an advance payment for operational expenses. If an advance is paid it must be reconciled by the end of the first six months from the start of each school year (July 1).

If after the SFA has considered and agreed to paying an advance, the advance will be paid (choose one):

Using the general fund. A loan agreement between the general fund and the non-profit school food service account must be in place.

Using the non-profit school food service account.

C. Payment Incentives – Indicate whether or not the SFA will consider payment incentives. (Choose one)

No, the SFA will not consider any payment incentives such as discounts or credits for prompt payment, electronic payment, etc.

Yes, the SFA will consider payment incentives such as discounts or credits for prompt payment, electronic payment, etc. Payment incentives only apply if the invoice is paid according to payment terms.

18. Buy American

- A. The 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.
- B. The FSMC must document and the SFA must approve any exceptions to Buy American. Exceptions are allowable when the domestic foods are not produced or manufactured in the US in sufficient and reasonably available quantities; or competitive bids reveal the costs of a US product are significantly higher than the non-domestic product.
- C. The FSMC shall certify the percentage of U.S. content in the products supplied to the SFA.
- D. The SFA reserves the right to review vendor purchase records to ensure compliance with the Buy American provision.

19. Sanitation

- A. The FSMC shall place garbage and trash in the containers in the designated areas as specified by the SFA.

- B. The SFA shall remove all garbage and trash from the designated areas.
 - C. The FSMC shall clean the kitchen and dining room areas as indicated on the Attachment 2, Cost Responsibility Detail Sheet.
 - D. The FSMC shall operate and care for all equipment and food service areas in a clean, safe, and healthy condition in accordance with the standards acceptable to the SFA and comply with all applicable laws, ordinances, regulations, and rules of federal, state, and local authorities, including laws related to recycling.
 - E. The FSMC shall comply with all local and state sanitation requirements in the preparation of food.
20. Licenses, Fees and Taxes
- A. The FSMC shall be responsible for paying all applicable taxes and fees, including but not limited to, excise tax, state and local income tax, payroll and withholding taxes for FSMC employees; the FSMC shall hold the SFA harmless for all claims arising from payment of such taxes and fees.
 - B. The FSMC shall obtain and post all licenses and permits as required by federal, state, and/or local law.
 - C. The FSMC shall comply with all SFA building rules and regulations.
21. Civil Rights
- A. Both the SFA and FSMC hereby agrees that it will comply with:
 1. Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.);
 2. Title IX of the Education Amendments of 1972 (20 U.S.C. 1681 et seq.);
 3. Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794);
 4. Age Discrimination Act of 1975 (42 U.S.C. 6101 et seq.);
 5. 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);
 6. Executive Order 13166, "Improving Access to Services for Persons with Limited English Proficiency." (August 11, 2000);
 7. All provisions required by the implementing regulations of the Department of Agriculture (USDA) (7 CFR Part 15 et seq.);
 8. Department of Justice Enforcement Guidelines (28 CFR Parts 35, 42, and 50.3);
 9. Food and Nutrition Service (FNS) directives and guidelines to the effect that, no person shall, on the grounds of race, color, national origin, sex, 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 Contract;
 10. The USDA nondiscrimination 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).
 - B. 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.

- C. By accepting this assurance, the SFA and FSMC agree 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 Sponsor, its successors, transferees, and assignees as long as it receives assistance or retains possession of any assistance from USDA.

22. Emergency Closing

- A. The SFA shall notify the FSMC of any interruption in utility service of which it has knowledge.
- B. The SFA shall notify the FSMC of any delay in the beginning of the school day or the closing of school(s) due to snow or other emergency situations.

23. Term and Termination

- A. The SFA or the FSMC may terminate the contract for cause or for convenience by giving 60 days written notice.
- B. At any time, because of circumstances beyond the control of the FSMC or the SFA, either party may terminate the contract by giving 10 days written notice to the other party.
- C. Force Majeure. Neither the FSMC nor the SFA shall be responsible to the other for losses should the fulfillment of the terms of the contract be delayed or prevented by causes beyond its control and without the fault or negligence of either party. Causes beyond a party's control may include, but are not limited to, wars, acts of public enemies, strikes, work stoppages, natural disasters, acts of God, civil disorders, public health crises, freight embargos, or loss or malfunctions of utilities, respectively, and which by the exercise of due diligence they were unable to prevent.
- D. The SFA is protected under the Commonwealth of Pennsylvania's Tort Claims Act (act), and as such, cannot and shall not be held responsible or otherwise liable for those actions or inactions specifically enumerated under the Act. Based on the foregoing, each party agrees to protect, indemnify, and hold harmless the other party and its agents, employees, directors, officers, affiliates, consultants, and/or contractors from and against any and all damages, injuries (including bodily injury, dismemberment, and/or death), claims, liabilities, and costs (including reasonable attorneys' fees), which arise or may be suffered or incurred in whole or in part as a result of the acts or omissions of the indemnifying party, its agents, employees, directors, officers, affiliates, consultants, and/or contractors, and whether arising under this Agreement, to the extent permitted by law.

24. Nonperformance by the FSMC

- A. The FSMC is required to provide a Performance Bond in the amount of (dollar amount or percentage of the total bid price [Total FSMC Costs]) as a guarantee of performance of all terms outlined under this contract. The amount/percentage should not be unreasonable in that it would prevent full and open competition. The Performance Bond provides the SFA recourse in the event that contractual obligations are not satisfactorily performed.
- B. In the event of the FSMC's nonperformance under this contract and/or the violation or breach of the contract terms, the SFA shall have the right to pursue all administrative, contractual, and legal remedies against the FSMC and shall have the right to seek all sanctions and penalties as may be appropriate.
- C. The FSMC shall reimburse the SFA the full amount of any meal over-claims which are attributable to the FSMC's negligence, including those over-claims based on review or audit findings that occurred during the effective dates of the original and renewal contracts.

D. The SFA shall notify DFN in the event of nonperformance by the FSMC.

25. Certifications

- A. The FSMC shall comply with Sections 3702 of the Contract Work Hours and Safety Standards Act (Act), 40 U.S.C. §3701-3708, as supplemented by the Department of Labor regulations, Title 29 CFR Part 5. Under Section 3702 of the Act, the FSMC shall be required to compute the wages of every laborer on the basis of a standard workweek of 40 hours. Work in excess of the standard workweek is permissible, provided that the worker is compensated at a rate of not less than 1 ½ times the basic rate of pay for all hours worked in excess of forty hours in any work week.
- B. The FSMC shall comply with Executive Order 11246, entitled “Equal Employment Opportunity,” as amended by Executive Order 11375, and as supplemented in Department of Labor regulations, Title 41 CFR Part 60.
- C. The FSMC shall comply with the Buy American provision for contracts that involve the purchase of food, Title 7 CFR §210.21(d).
- D. The FSMC shall sign the Certification Regarding Debarment and Suspension, Appendix D, which is made a part of this contract. (Title 2 CFR Part 180) This certification assures the SFA that the FSMC has not been debarred from entering into contracts with the Federal Government, or any other entity receiving Federal funds, or suspended from entering contracts during a time when the FSMC is being investigated for a legal action which is being taken to debar the FSMC from contracting activities.
- E. The FSMC shall comply with all applicable standards, orders, or requirements issued under the Clean Air Act (Title 42 U.S.C. 7401-7671), and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency. Violations can be reported electronically at <https://www.epa.gov/enforcement/report-environmental-violations>.
- F. The FSMC shall comply with the mandatory standards and policies relating to energy efficiency that are contained in the State energy conservation plan issued in compliance with the Energy Policy and Conservation Act (P.L. 94-163).
- H. The FSMC shall sign the Lobbying Certification, Appendix E, which is made a part of this contract. If applicable, the FSMC has also completed and submitted Standard Form-LLL, Disclosure of Lobbying Activities, Appendix E. If no lobbying activity occurred, the FSMC is still required to sign the Disclosure of Lobbying Activities, Appendix E. (Title 2 CFR Part 418)
- I. The FSMC shall sign the Certification of Independent Price Determination, Appendix F, which is incorporated herein by reference and made part of this contract.

26. Insurance

- A. The FSMC is required to be insured adequately to support the terms of the contract. The FSMC shall maintain the insurance coverage set forth below for each accident provided by insurance companies authorized to do business in the state of Pennsylvania. A Certificate of Insurance of the FSMC’s insurance coverage indicating these amounts must be submitted at the time of award.
- B. The FSMC shall have in effect during all times under this agreement, comprehensive general liability insurance, including products and completed operations liability, contractual liability, and independent contractor’s liability coverage and personal injury. Minimum coverage shall be \$1,000,000 per incident/per person for general liability.
 - 1. General Liability
 - 2. Worker’s Compensation
 - 3. Vehicle Insurance
 - 4. Umbrella Liability

- C. The SFA shall be named as additional insured on the General Liability and Automobile insurance policy. The FSMC must provide a waiver of subrogation in favor of the SFA for General Liability, Automobile, and Worker's Compensation.
- D. In addition, the FSMC shall provide fire and theft insurance at its own expense to cover any risk created by fire and/or theft to its property located on the premises of the SFA. The FSMC further agrees to provide all necessary fire and/or theft insurance to cover clothes, garments and other articles owned by their employees.
- E. The contract of insurance shall provide for notice to the SFA of cancellation of insurance policies 30 days before such cancellation is to take effect.

27. Summer Food Service Program (SFSP) (See letter B under 1 (Scope and Purpose) of the Standard Terms and Conditions for verification of participation)

A. If participating, then the SFA shall offer free meals to all eligible children participating in the SFSP. If the FSMC will operate the SFSP (including the preparation, record keeping, and delivery of meals), a flat price per meal cost must be submitted as part of this RFP for the SFSP (Attachment SFSP1, SFSP Projected Operating Costs). In accordance with Title 7 CFR §225.15 the SFA cannot contract out the management responsibilities of the SFSP. The SFA shall be responsible for ensuring that the food service operation conforms to all program requirements outlined in Title 7 CFR Part 225. The SFA shall be responsible for determining eligibility for all SFSP sites. The SFA as a SFSP sponsor is responsible for conducting and documenting the required site visits of all sites for pre-approval and during operation of the program.

B. The SFSP will operate from _____ to _____.

28. Child and Adult Care Food Program (CACFP) (See letter B under 1 (Scope and Purpose) of the Standard Terms and Conditions for verification of participation)

If participating, then the SFA shall offer meals to all eligible children and adults participating in the CACFP, respectively. If the FSMC will operate the CACFP (including the preparation, record keeping, and delivery of meals), a flat price per meal cost must be submitted as part of this RFP for the CACFP (Attachment CACFP1, CACFP Projected Operating Costs). In accordance with Title 7 CFR §226.15 the SFA cannot contract out the management responsibilities of the CACFP. The SFA shall be responsible for ensuring that the food service operation conforms to all program requirements outlined in Title 7 CFR Part 226.

29. Trade Secrets and Proprietary Information

A. During the term of the contract, the FSMC may grant to the SFA a nonexclusive right to access certain proprietary materials of the FSMC, including menus, recipes, signage, food service surveys and studies, management guidelines and procedures, operating manuals, software (both owned by and licensed by the FSMC), and similar compilations regularly used in FSMC business operations (trade secrets). The SFA shall not disclose any of the FSMC's trade secrets or other confidential information, directly or indirectly, during or after the term of the contract. The SFA shall not photocopy or otherwise duplicate any such material without the prior written consent of the FSMC. All trade secrets and other confidential information shall remain the exclusive property of the FSMC and shall be returned to the FSMC immediately upon termination of the contract. The SFA shall not use any confusingly similar names, marks, systems, insignia, symbols, procedures, and methods. Without limiting the forgoing and except for software provided by the SFA, the SFA specifically agrees that all software associated with the operation of the food service, including without limitation, menu systems, food production systems, accounting systems, and other software, are owned by or licensed to the FSMC and not the SFA. Furthermore, the SFA's access or use of such software shall not create any right, title interest, or copyright in such software and the SFA shall not retain such software beyond the termination of the contract. In the event of any breach of this provision, the FSMC shall be entitled to equitable relief, including an injunction or specific performance, in addition to all other remedies otherwise available. This provision shall survive termination of the contract.

B. Any discovery, invention, software, or programs paid for by the SFA shall be the property of the SFA to which the State Agency and USDA shall have unrestricted rights.

Appendix A

SFA Certification of Acknowledgement

Initial below next to each statement certifying that you have read and fully understand the contents of this contract.

- A. I certify that I, _____, on behalf of **the SFA**, have read and fully understand the contents of this contract. I understand that **the SFA** must maintain oversight of the food service operations and that these responsibilities will not be delegated to the FSMC. I also understand that **the SFA** is responsible for closely monitoring the FSMC contract and the FSMC's daily activities.

Initial Here:

- B. I certify that I have chosen a Cost Reimbursable contract, and will follow the respective procedures.

Initial Here:

- C. I certify that I will not enter into a contract with an FSMC that has a real or apparent conflict of interest. This includes FSMCs that provide recommendations, develop or draft specifications, requirements, statements of work, requests for proposals, contract terms and conditions, or other documents for use in conducting procurement.

Initial Here:

- D. I certify that I, nor any employees (including School Board members) of **the SFA**, will not solicit or accept donations, gratuities, nor favors from current or potential FSMCs (i.e. gifts, golf outings, meals, etc.).

Initial Here:

- E. I certify that I will appropriately and in a timely manner respond to all bid protests and concerns raised by potential FSMCs.

Initial Here:

- F. I certify that **the SFA** has a written Code of Conduct that addresses conflicts of interest and governing the performance of its employees engaged in the selection, award and administration of contracts, and will make sure all employees are aware of said standards.

Initial Here:

- G. I have read and understand what the allowable costs are for all of the applicable CN programs.

Initial Here:

- H. I certify that **the SFA** will be legally responsible for the conduct of the non-profit school food service program, and shall supervise the food service operations in such manner as will ensure compliance with the rules and regulations of PDE and the USDA regarding each of the CN programs covered by this contract.

Initial Here:

- I. I certify that this **SFA position** will fulfill the SNP director responsibilities. The SNP director must meet the minimum Professional Standards hiring and annual training requirements and provide program oversight, including but not limited to, ensuring that the FSMC's food service director and all food service staff also meet the Professional Standards requirements (Title 7 CFR §210.30). Directors must accrue eight (8) hours of food safety training upon hire and every five (5) years thereafter.

Initial Here:

- J. I certify that **the SFA** shall retain control of the CN programs' non-profit school food service account, signature authority, and overall financial responsibility for the CN programs. This includes access to CN PEARS, COMPASS, or PrimeroEdge Student Eligibility System.

Initial Here:

K. I certify that CN programs are the responsibility of **the SFA** and **the SFA** is responsible for all contractual agreements entered into in connection with the CN programs.

Initial Here:

L. I certify that **the SFA** will be responsible for determining student eligibility for all applicable programs and that the FSMC will have no involvement in the process.

Initial Here:

M. I certify that **the SFA** will retain all records for the current year plus three years from the end of the contract including any renewals.

Initial Here:

N. I certify that all food will be in compliance with the current meal standards and Local Wellness Policy.

Initial Here:

O. I certify that **the SFA** will monitor the FSMC in order to ensure compliance with USDA regulations.

Initial Here:

P. I certify **the SFA** will create an advisory board composed of students, teachers, and parents to assist in menu planning.

Initial Here:

Q. I certify that **the SFA** will not delegate any of the above responsibilities to the FSMC.

Initial Here:

R. I hereby certify that neither **the SFA** nor its principals/authorized representatives is presently debarred, suspended, proposed for debarment, declared ineligible, disqualified, or voluntarily excluded from participation in this transaction by any Federal/State department or agency.

Initial Here:

S. I further certify that neither **the SFA** nor any of its principals/authorized representatives has a reported criminal background that would affect the receipt of Federal funds.

Initial Here:

T. I certify that the FSMC is not a paid consultant or contractor with **the SFA** in any other capacity than for this contract.

Initial Here:

I certify under penalty of perjury that the information on these forms is true and correct, and that I will immediately report to the state agency any changes that occur to the information submitted. I understand that this information is being given in connection with receipt of federal funds. The state agency may verify information; and the deliberate misrepresentation of information will subject me to prosecution under applicable federal and state criminal statutes.

On behalf of **the SFA**, I hereby agree to comply with all state and federal laws and regulations governing the CN programs administered by the state agency. In accordance with Federal law and USDA policy, **the SFA** does not discriminate on the bases of race, color, national origin, sex, disability, age, or reprisal or retaliation for prior civil rights activity in any program or activity conducted or funded by USDA. I will ensure that all monthly claims for reimbursement are true and correct and that records are available to support these claims.

Printed Name of SFA Authorized Representative _____

SFA Authorized Representative Title _____

SFA Authorized Representative Signature _____

Appendix B

FSMC Certification of Acknowledgement

Initial below next to each statement certifying that you have read and fully understand the contents of this contract.

- A. I certify that I, _____ on behalf of **the FSMC**, have read and fully understand the contents of this contract.

Initial Here:

- B. I certify that I, nor any of the employees of **the FSMC**, have not received any solicitations from any **the SFA** employee. In addition, I certify that no gifts, donations, or anything of monetary value (i.e. golf outings, meals, etc.) have been provided.

Initial Here:

- C. I certify that employees of **the FSMC** will be trained to understand and comply with all necessary trainings including the current written Code of Conduct authored by **the SFA**.

Initial Here:

- D. I certify that all of **the FSMC** food service employees meet the minimum Professional Standards requirements.

Initial Here:

- E. I certify that **the SFA** will be legally responsible for the conduct of the non-profit school food service program, and shall have access to all necessary documents, which will be maintained onsite, including but not limited to all contracts with vendors so that they may supervise the food service operations in such manner as will ensure compliance with the rules and regulations of PDE and the USDA regarding each of the CN programs covered by this contract.

Initial Here:

- F. I certify that **the FSMC** will not have control of the CN programs' non-profit school food service account, signature authority, and overall financial responsibility for the CN programs. This includes access to CN PEARS, COMPASS, or the PrimeroEdge Student Eligibility System.

Initial Here:

- G. I certify that **the SFA** will be responsible for determining student eligibility for all applicable programs and that the FSMC will have no involvement in the process.

Initial Here:

- H. I certify that **the FSMC** will follow the 21-day menu for the first 21-days of service, without change.

Initial Here:

- I. I certify that all food will be in compliance with the current meal standards and Local Wellness Policy.

Initial Here:

- J. I certify that **the FSMC** will comply with all applicable standards, orders, or requirements issued under the Clean Air Act and the Federal Water Pollution Control Act and will report violations to the Federal awarding agency and the Regional Office of the Environmental Protection Agency.

Initial Here:

- K. I hereby certify that neither **the FSMC** nor its principals/authorized representatives is presently debarred, suspended, proposed for debarment, declared ineligible, disqualified, or voluntarily excluded from participation in this transaction by any Federal/State department or agency.

Initial Here:

L. I further certify that neither **the FSMC** nor any of its principals/authorized representatives has a reported criminal background that would affect the involvement in CN programs.

Initial Here:

M. I certify that **the FSMC** is not a paid consultant or contractor with **the SFA** in any other capacity than for this contract.

Initial Here:

I certify under penalty of perjury that the information on these forms is true and correct, and that I will immediately report to **the SFA** any changes that occur to the information submitted. I understand that this information is being given in connection with receipt of federal funds. The state agency may verify information; and the deliberate misrepresentation of information will subject me to prosecution under applicable federal and state criminal statutes.

On behalf of **the FSMC**, I hereby agree to comply with all state and federal laws and regulations governing the CN programs administered by the state agency. In accordance with Federal law and USDA policy, **the FSMC** does not discriminate on the bases of race, color, national origin, sex, disability, age, or reprisal or retaliation for prior civil rights activity in any program or activity conducted or funded by USDA.

Printed Name of FSMC Authorized Representative _____

FSMC Authorized Representative Title _____

FSMC Authorized Representative Signature _____

Appendix C

Acknowledgement of Personnel Relationships

Yes No (choose one), **the SFA** employs the same person/people that is/are employee(s) of **the FSMC**.

If Yes, we the undersigned certify that the employee(s):

- Does/will not have a real or apparent conflict of interest.
- Does/will not participate in the selection, award, or administration of the contract.
- Does/will not have access to or control of the food service financial account.
- Does/will not be involved in the establishment of the selling prices for all reimbursable and non-reimbursable meals, a la carte items, adult meals, catering, or vending items.
- Does/will not have access to CN PEARS, COMPASS, or the PrimeroEdge Student Eligibility System.
- Does/will not be involved in the completion, distribution or collection of the parent letters and household applications for free and reduced price meals.
- Does/will not be involved in the determination or verification of eligibility for free and reduced price meals.

Employee Name	SFA Position Title and Job Duties	FSMC Position Title and Job Duties

SFA

FSMC

SFA Authorized Representative Signature

FSMC Authorized Representative Signature

Printed Name of SFA Authorized Representative

Printed Name of FSMC Authorized Representative

SFA Authorized Representative Title

FSMC Authorized Representative Title

Appendix D

Certification Regarding Debarment and Suspension

This certification is required by the regulations implementing Executive Order 12549 and 12689, “Debarment and Suspension” (Title 2 CFR Part 180). These regulations restrict awards, subawards, and contracts with certain parties that are debarred, suspended, or otherwise excluded from or ineligible for participation in Federal assistance programs or activities.

- (1) The prospective participant certifies, by submission of this proposal, that neither it nor its principals:
 - (a) Are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency;
 - (b) Have not within a three-year period preceding this application been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
 - (c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and
 - (d) Have not within a three-year period preceding this application had one or more public transactions (Federal, State, or local) terminated for cause or default.
- (2) Where the prospective participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

FSMC _____
Printed Name of FSMC Authorized Representative _____
FSMC Authorized Representative Title _____
FSMC Authorized Representative Signature _____

Appendix E

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 any agency, a Member of Congress, 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 of Lobbying Activities," 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.

FSMC

Printed Name of FSMC Authorized Representative

FSMC Authorized Representative Title

FSMC Authorized Representative Signature

Disclosure of Lobbying Activities

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352

Applicable
Not Applicable
 (This form must be signed regardless of Applicability)

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 Subawardee Tier, if known: Congressional District, if known:	5. If Reporting Entity in No. 4 is Subawardee, Enter Name and Address of Prime: 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 Entity: (last name, first name, MI) 10. b. Individuals Performing Services (including address if different from No. 10.a.) (Attach Continuation Sheet(s) SF-LLL-A If Necessary) (if individual, last name, first name, middle)		
11. Amount of Payment (check all that apply): \$ _____ Actual \$ _____ Planned	13. Type of payment (check all that apply): ___ a. retainer ___ b. one-time fee ___ c. commission ___ d. contingent fee ___ e. deferred ___ f. other; specify:	
12. Form of Payment (check all that apply): ___ a. cash ___ b. in-kind; specify: Nature _____ Actual _____		
14. Brief Description of Services Performed or to be Performed and Date(s) of Service, including officer(s), employee(s), or member(s) contracted for Payment indicated in Item 11: (Attach Continuation Sheet(s) SF-LLL-A, if necessary)		
15. Are Continuation Sheet(s) SF-LLL-A Attached: Yes _____ (Number _____) No _____		
16. 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: Name: Title: Telephone:	

Disclosure of Lobbying Activities
Continuation Sheet SF-LLL-A

Reporting Entity: _____ Page _____ of _____

Instructions for Completion of SF-LLL, Disclosure of Lobbying Activities

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, at the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U.S.C. Section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity 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 a covered Federal action. Use of SF-LLL-A Continuation Sheet for additional information if the space on the form is inadequate. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.
2. Identify the status of the covered Federal action.
3. Identify the appropriate classification of this report. If this is a follow-up report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.
4. Enter the full name, address, city, state, and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee; e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.
5. If the organization filing the report in item 4 checks "Subawardee", then enter the full name, address, city, state, and zip code of the prime Federal recipient. Include Congressional District, if known.
6. Enter the name of the Federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.
7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.
8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g., Request for Proposal (RFP) Number, Invitation for Bid (IFB) Number; grant announcement number; the contract, grant or loan award number; the application/proposal control number assigned by the Federal agency). Include prefixes e.g., "RFP-DE-90-001".
9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.
10. (a) Enter the full name, address, city, state, and zip code of the lobbying entity engaged by the reporting entity identified in item 4 to influence the covered Federal action.
(b) Enter the full names of the individual(s) performing services and include full address if different from 10(a). Enter Last Name, First Name, and Middle Initial (MI).
11. Enter the amount of compensation paid or reasonably expected to be paid by the reporting entity (item 4) to the lobbying entity (item 10). Indicate whether the payment has been made (actual) or will be made (planned). Check all that apply. If this is a material change report, enter the cumulative amount of payment made or planned to be made.
12. Check all that apply. If payment is made through an in-kind contribution, specify the nature and value of the in-kind payment.
13. Check all that apply. If other, specify nature.
14. Provide a specific and detailed description of the services that the lobbyist has performed or will be expected to perform, and the date(s) of any services rendered. Include all preparatory and related activity, not just time spent in actual contact with Federal officials. Identify the Federal official(s) or employee(s) contacted or the officer(s), employee(s), or Member(s) of Congress that were contacted.
15. Check whether a SF-LLL-A Continuation Sheet(s) is attached. List number of sheets, if yes.
16. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

Public reporting burden for this collection of information is estimated to average 30 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget. Paperwork Reduction Project (0348-00046), Washington, DC 20503.

Appendix F

Independent Price Determination Certificate

Both the School Food Authority (SFA) and Food Service Management Company (offeror) shall execute this Certificate of Independent Price Determination.

SFA

FSMC

(A) By submission of this offer, the offeror certifies, and 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 or indirectly 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 Company 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 offeror's organization responsible within 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, 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.

FSMC Authorized Representative Signature

FSMC Authorized Representative Title

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

SFA Authorized Representative Signature

SFA Authorized Representative Title

NOTE: ACCEPTING A BIDDER'S OFFER DOES NOT CONSTITUTE AWARD OF THE CONTRACT.

Appendix G

Sample Minimum Food Specifications

These are minimum specifications. The SFA is encouraged to provide more details that align with the 21-day menu.

Meat/Seafood

All meats, meat products, poultry, poultry products, and fish must be Government inspected.

- Beef, lamb, and veal shall be USDA Grade Choice or better.
- Pork shall be U.S. No. 1 or U.S. No. 2.
- Poultry shall be U.S. Government Grade A.
- Seafood to be top grade; frozen fish must be a nationally distributed brand, packed under continuous inspection of USDA.

Dairy Products

All dairy products must be Government inspected.

- Fresh eggs shall be USDA Grade A or equivalent, 100% candled.
- Frozen eggs must be USDA inspected.
- Milk shall be pasteurized Grade A.

Fruits and Vegetables

- Fresh fruits and vegetables selected according to written specifications for freshness, quality, and color – U.S. Grade A Fancy.
- Canned fruits and vegetables selected to requirements U.S. Grade A Choice or fancy (fruit to be packed in light syrup or natural juices).
- Frozen fruits and vegetables shall be U.S. Grade A Choice or better.

Baked Products

- Bread, rolls, cookies, pies, cakes, and pudding either prepared or baked on premises or purchased on a quality level commensurate with meeting USDA breakfast and lunch requirements as applicable.

Staple Groceries

- Staple groceries to be a quality level commensurate with previously listed standards.