

[PLEASE NOTE THAT CHANGES TO RFP AND CONTRACT TERMS ARE NOT PERMITTED. DISTRICTS THAT MAKE CHANGES TO CONTRACT TERMS THAT HAVE NOT BEEN APPROVED BY TDA MUST USE NON-CHILD NUTRITION FUNDS TO PAY THE FSMC. CONTRACTS MUST BE AWARDED TO THE RESPONSIVE AND RESPONSIBLE BIDDER WHOSE PROPOSAL IS LOWEST OR MOST ADVANTAGEOUS TO THE PROGRAM WITH PRICE AND OTHER FACTORS CONSIDERED OF WHICH COST MUST BE THE PRIMARY CONSIDERATION.]

**SCHOOL NUTRITION PROGRAMS
FOOD SERVICE MANAGEMENT COMPANY**

ENNIS INDEPENDENT SCHOOL DISTRICT

REQUEST FOR PROPOSAL

AND

CONTRACT

NO. 03022021

**Texas Department of Agriculture
Food and Nutrition
P. O. Box 12847
Austin, Texas 78711-2847
Phone (877) TEX-MEAL
Fax (888) 203-6593
Website <http://www.squaremeals.org>**

The program applicant hereby agrees that it will comply with Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq.), Title IX of the Education Amendments of 1972 (20 U.S.C. § 1681 et seq.), Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 794), the Age Discrimination Act of 1975 (42 U.S.C. § 6101 et seq.); all provisions required by the implementing regulations of the Department of Agriculture; Department of Justice Enforcement Guidelines, 28 CFR Part SO.3 and 42; and 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 benefits of, or otherwise be subject to discrimination under any program or activity for which the program applicant receives Federal financial assistance from FNS; and hereby gives assurance that it will immediately take measures necessary to effectuate this agreement.”

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

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I. INTRODUCTION

This document contains a Request for Proposals for providing food service management services for Ennis ISD participation in the United States Department of Agriculture's School Nutrition Programs and sets forth the terms and conditions applicable to the proposed procurement. Upon acceptance, this document shall constitute the contract (Contract) between the offeror and the school food authority.

The Texas Department of Agriculture (TDA) is not and will not be a party to any contract between a school food authority (SFA) and a food service management company (FSMC). The school food authority has full responsibility for ensuring that the terms of the Contract are fulfilled. The Texas Department of Agriculture (TDA) is not involved with the enforcement of this Contract; however, TDA can deny payment for meals received or purchased under an invalid Contract.

II. REQUEST FOR PROPOSALS

A. Legal Notice

Notice is hereby given that Ennis ISD, hereinafter referred to as the School Food Authority (SFA), intends to examine alternatives to its present food service program.

No intent should be construed from this legal notice that the SFA intends to enter into a contract with any party for alternative food service unless, in the sole opinion of the SFA, it is in the SFA's best interest to do so.

All costs involved in submitting a response to this Request for Proposals (RFP) shall be borne in full by the party incurring said cost.

The SFA reserves the right to accept any proposal which it determines most favorable to the interest of the SFA and to reject any or all proposals or any portion of any proposal submitted which, in the SFA's opinion, is not in the best interest of the SFA.

The offeror to this RFP will be referenced as the FSMC, and any contract that may arise from this RFP will be between the FSMC and the SFA.

The SFA strongly encourages Historically Underutilized Businesses (HUB), Minority and Women Business Enterprises (MWBE), and labor surplus area vendors to compete for this RFP.

B. Request for Proposals

Proposals will be received until 2:00pm on April 21, 2021 for supplying **Ennis ISD** (SFA) with food service management services during the school year of 2021-2022, with options for renewal of the Contract for four (4) additional terms of one year each.

The SFA will only consider fixed meal rate proposals.

Competitive sealed proposals are subject to all the conditions and specifications attached hereto and will be received in the office of **Ennis ISD** and shall be marked on the envelope "**Food Service Management Proposal, # 03022021**" and also marked on the envelope with respondent's return address.

SFA reserves the right to reject any and all proposals and to waive any minor technicalities to take the action which it deems to be in the best interest of the SFA.

Additional information required to respond to this **RFP** may be obtained from SFA's business office telephone (972)872-7000.

Offerors must submit a complete response to this RFP, including all certifications, to provide a responsive proposal.

Contracts entered into based on submitted proposals are revocable if contrary to law. (See Standard Terms and Conditions herein below).

C. Procurement Method

The procurement method will be the Competitive Sealed Proposals method (commonly known as a Request for Proposals or RFP). The Competitive Sealed Proposals method differs from the traditional sealed bid method in the following ways:

- Competitive sealed proposals allow discussions with competing offerors and adjustments to the initial proposal.
- Comparative judgmental evaluations of proposals using scoring criteria when selecting from acceptable proposals for the award of the Contract. USDA policy requires the price to be the primary evaluation factor.

As provided herein, under state law and/or regulations and SFA's policy, discussions may be conducted with responsible offerors who submit proposals (Proposals) determined to be reasonably susceptible to be selected for an award, for the purpose of clarification, to assure full understanding of all terms and conditions of the response to this RFP and Contract's requirements. In conducting these discussions, there shall be no disclosure of any information derived from proposals submitted by competing offerors.

All procurement transactions shall be conducted in a manner that provides maximum full and open competition consistent with 2 CFR § 200.

D. Pre-Proposal Meeting

A meeting with interested offerors to review the specifications, to clarify any questions, and for a walkthrough of the facilities with school officials, will be on N/A at N/A. Location: N/A. Attendance is N/A. Vendor presentations will not be scheduled at this time.

E. Proposal Submission and Award

SFAs must use this prototype FSMC RFP and Contract to be approved. An SFA that does not complete the required procurement procedures cannot be approved for participation in the reimbursement programs.

Two copies of Competitive Sealed Proposals are to be submitted to:

Name: Ennis ISD
Mailing Address: PO Box 1420, Ennis, TX 75120
Physical Address: 303 W. Knox St.
City: Ennis
State/Zip: TX, 75119

Opening will be at 2:00pm (CST) April 21, 2021. Proposals will not be accepted after this time. All Proposals are to be submitted in a sealed envelope marked "Food Service Management Proposal, # 03022021."

SFA reserves the right to accept any proposal which it deems most favorable to the interest of SFA and to reject any or all Proposals or any portion of any Proposal submitted which, in SFA's opinion, is not in the best interest of SFA.

To be considered, each offeror must submit a complete response to this solicitation using the forms provided, along with any other documents submitted as a part of the Proposal and considered responsive to this RFP. No other documents submitted with the RFP and the Contract will affect the Contract provisions, and there may be no modifications to the RFP and Contract language. If an offeror modifies, revises, or changes the RFP and/or contract in any manner, the SFA may reject the offer as non-responsive.

Award will be made only to a qualified and responsible offeror whose proposal is responsive to this solicitation. A responsible offeror is one whose financial, technical, and other resources indicate an ability to perform the services required. The offeror shall submit for consideration such records of work and further evidence as may be required by the SFA's Board of Trustees. Failure to furnish such records and evidence, or the inclusion of any false or misleading information therein, shall be sufficient cause for the rejection of the Proposal or termination of any subsequent Contract.

The qualification data shall be submitted by each offeror along with the sealed Proposal. The offeror must be incorporated or licensed to do business in the State of Texas and must be registered with the Food and Nutrition Division (FND) of the Texas Department of Agriculture (TDA). The respondents should submit annual reports or financial statements for the past fiscal year in the format of an "accountant's review," including notes to the financial statements provided by a certified public accountant. If the offeror is doing business with like school systems and is familiar with the regulations about operations in such environments, the offeror will receive points for that experience in the evaluation of the weighted criteria. If the offeror is presently operating a comparable, successful National School Lunch Program (NSLP) and School Breakfast Program (SBP) in a school setting, the offeror will receive points for that experience in the evaluation of the weighted criteria.

Offerors or their authorized representatives are expected to fully inform themselves as to the conditions, requirements, and specifications before submitting proposals. Failure to do so will be at the offeror's own risk and therefore cannot secure relief on a plea of error. The SFA is not liable for any cost incurred by the offeror in submitting a proposal. **Paying the FSMC from School Nutrition Program funds is prohibited until TDA approval is provided and the Contract is signed.**

If additional information is requested, please contact Jason Gilstrap, Deputy Superintendent at (972)872-7000. Any additional information provided to one offeror will be available to all.

F. Late Proposals

Any proposal submitted after the time specified for receipt will not be considered and will be returned unopened.

G. Altering, Amending or Withdrawing Proposal

No proposal may be altered, amended, or withdrawn after the specified time for opening proposals.

H. Calculation of Time

Periods stated as a number of days shall be calendar days.

I. Firm Offer

By submitting a response to this RFP, and if such a response is not withdrawn before the time for opening proposals, the offeror understands and agrees that it is making a firm offer to enter into a contract, which may be accepted by SFA and which will result in a binding contract. **Such proposal is irrevocable for ninety (90) days after the time for opening proposals has passed. _____ (FSMC must initial and date here to show agreement)**

J. Final Contract

The complete Contract includes all documents included by the SFA in the RFP, and all documents submitted by the FSMC that have been mutually agreed upon by both parties (i.e., worksheets, attachments, and operating cost sheets) and identified in Section III, Paragraph 5 of the Standard Terms and Conditions.

(THIS SPACE INTENTIONALLY LEFT BLANK)

III. STANDARD TERMS AND CONDITIONS

A. Definitions

The following definitions shall apply within this document and its attachments:

1. "Accounting Periods" means monthly
2. "Allowable Cost" means costs that are allowable under 2 CFR Part 200, Subpart E, "Cost Principles."
3. "Applicable Credit" means the meaning established in 2 CFR 200.406(a).
4. "Charge" means any fixed priced meal rates as outlined in the contract. No additional administrative fees may be assessed.
5. "Contract" means this RFP and Contract, the exhibits attached to this RFP and Contract, and FSMC's Proposal, as accepted by SFA in its sole discretion.
6. "Direct Cost" means any Allowable Cost that is: (i) incurred by FSMC in providing the goods and services that are identified in SFA's Food Service Budget; and (ii) reasonably necessary in order for FSMC to perform the Services hereunder.
7. "Effective Date" means July 1, 2021.
8. "Fixed Price" means an agreed-upon amount that is fixed at the inception of the Contract. Within a Fixed price contract, the FSMC is the purchasing agent. The SFA is charged one fixed price. Included in the fixed price are:
 - a. Menu development specific to the operation
 - b. Nutrition education materials and program expense
 - c. Design services specific to the operation
 - d. Education programs via assembly programs, schoolroom programs, parent/teacher meetings, and school food advisory committee meetings
 - e. Personal representation, visitation, and coverage on a regular basis by a principle of FSMC
 - f. All accounting
 - g. All payroll costs and documentation
 - h. Administrative dietetic, nutritional, sanitation, and personnel advice
 - i. All costs incurred in hiring and relocating, if necessary, the FSMC management team
 - j. All training costs for FSMC employees
 - k. All travel costs for training for FSMC employees
 - l. All miscellaneous costs to operate the program: i.e., consumable marketing materials, posters, menu templates, proprietary printed materials.

9. "FSMC's Proposal" means Food Service Management Company's response to the RFP and Contract. Any expenses borne by the FSMC should be included in their proposed priced price.
10. "Meal Equivalent" can be derived in two ways to obtain the meal equivalency: 1) dividing the total cost of producing a la carte items sold by the unit cost of producing a reimbursable lunch; and 2) absent cost data, dividing the a la carte revenue by the per meal sum of the Federal and State Free reimbursement plus the value of USDA entitlement and bonus donated foods. A la carte revenue should include all sales to adults and a la carte sales to students. (*Contracting with Food Service Management Companies: Guidance for School Food Authorities*, May 2016)
11. "Non-profit School Food Service Account" means the restricted account in which all of the revenue from all food service operations conducted by the SFA principally for the benefit of school children is retained and used only for the operation or improvement of the Nonprofit School Food Service Account.
12. "Non-program foods" are defined to include adult meals, a la carte, catering, vending, concessions, and student stores operated, or any other sales generated through the non-profit school food service account and not already described.
13. "Program(s)" or "Child Nutrition Program(s)" means the USDA Child Nutrition Programs in which SFA participates.
14. "Program Funds" means all funds that are required to be deposited into the Non-profit School Food Service Account.
15. "Proposal" means Food Service Management Company's response to the RFP and Contract.
16. "RFP" means SFA's Request for Proposal and Contract, # 03022021, and all its attachments.
17. "Services" means the services and responsibilities of FSMC as described in this Contract, including any additional services described in Section O of this Contract.
18. "SFA" or "School Food Authority" means the school food authority as defined in 7 CFR § 210.2.
19. "SFA's Food Service Budget" means the Food Service Budget for the Current School Year, which is attached to this Contract as "Exhibit C" and fully incorporated herein.
20. "SFA's Food Service Facilities" means the areas, improvements, personal property, and facilities made available by SFA to FSMC for the provision of the food services as more fully described herein.
21. "SFA's Food Service Program" means the preparation and service of food to SFA's students, staff, employees and authorized visitors, including the following programs: the National School Lunch Program (NSLP), the School Breakfast Program (SBP), the After School Care Program (ASCP), Disaster Feeding, Seamless Summer Option (SSO), the Fresh Fruit and Vegetable Program (FFVP), the Child and Adult Care Food Program (CACFP), Special Milk Program (SMP), adult meals, catering, concessions, and the a la carte food service.

22. “SFA’s Food Service Location(s)” means the schools or other locations where Program meals are served to SFA’s schoolchildren.
23. “Summer Program” means either the Summer Food Service Program or the Seamless Summer Option identified herein below, and in which SFA participates.
24. “TDA” means the Texas Department of Agriculture.
25. “USDA” means the United States Department of Agriculture, Food and Nutrition Service.

B. Scope and Purpose

1. Duration of Contract. Unless terminated in accordance with Section III, paragraph L, this Contract will be in effect for a period of one year commencing on July 1, 2021, and terminating on June 30, 2022, and may be renewed for four (4) additional terms of one year each upon mutual agreement between SFA and FSMC and subject to fulfillment of all contract terms designated herein.
2. During the term of this Contract, FSMC shall operate SFA’s Food Service Program in conformance with SFA’s agreement with the Texas Department of Agriculture’s (TDA) Food and Nutrition Division (FND).
3. FSMC shall have the exclusive right to operate the programs checked below at the sites specified by SFA in the Schedule of Food Service Locations and Services Provided, which is attached to this Contract as “Exhibit A” and fully incorporated herein.

- National School Lunch Program (NSLP)
- School Breakfast Program (SBP)
 - Breakfast in the Classroom
 - Universal Breakfast
- After-School Care Program (ASCP—NSLP)
- Summer Food Service Program (SFSP)
- Seamless Summer Option (SSO-NSLP)
- Special Milk Program (SMP)
- Child and Adult Care Food Program (CACFP)
- Fresh Fruit and Vegetable Program (FFVP)
- À la Carte
- Adult Meals
- Catering

- Contract Meals
 - Vending (applies only to FSMC supplied vending machines)
 - Concessions (applies only to concessions operated by FSMC)
 - Disaster Feeding [Includes H1N1 and Hurricane Feeding]
 - Other: The CE is anticipating participation, if possible, in FFVP, if invited
-

4. 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.
5. The FSMC's operation of SFA's Food Service Program shall include the performance by the FSMC of all the Services described in this Contract, for the benefit of SFA's students, faculty, and staff.
6. The SFA shall retain signature authority for the application/contract, free and reduced-price policy statement, and Programs indicated in Section B, Paragraph 2, herein, and the monthly claim for reimbursement. (Reference 7 CFR § 210.9 (a) and (b) and 7 CFR § 210.16(a) (5))
7. The SFA shall be responsible for the establishment and maintenance of the free and reduced-price meals' eligibility documentation. (7 CFR § 210.7(c), 7 CFR § 210.9(b)(18) and 7 CFR § 245.6(e))
8. The FSMC shall implement an accurate point of service count using the counting system provided by SFA in its application to participate in the School Nutrition Programs and approved by TDA for the programs listed in Section B, Paragraph 3, herein, as required under USDA regulations. Such a counting system must eliminate the potential for the overt identification of free and reduced-price eligible students under USDA Regulation 7 CFR § 245.8(b).
9. The SFA shall be responsible for the development and distribution of the parent letter and Application for Free and Reduced-Price Meals and/or Free Milk and participating in Direct Certification. SFA shall be responsible for the determination of eligibility for free or reduced-price meals and free milk, if applicable. SFA shall be responsible for conducting any hearings related to decisions regarding eligibility for free or reduced-price meals and free milk, if applicable.
10. The SFA shall be responsible for verifying Applications for Free and Reduced-Price Meals as required by USDA regulations.
11. 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 United States Department of Agriculture (USDA) Regulations 7 CFR § 210.16(c) and 2 CFR § 200.323(d).
12. SFA shall be legally responsible for the conduct of SFA's Food Program and shall supervise the food service operations in such manner as will ensure compliance with all applicable statutes, regulations, rules,

and policies including regulations, rules, and policies of TDA and USDA regarding the School Nutrition Programs.

13. SFA shall retain control of the Non-profit School Food Service Account and overall financial responsibility for SFA's Food Service Program.
14. The SFA shall establish all selling prices, including price adjustments, for all reimbursable and non-reimbursable meals/milk and à 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.)
15. The SFA shall be responsible for ensuring the resolution of Program reviews and audit findings. FSMC shall fully cooperate with SFA in resolving review and audit issues, and FSMC shall indemnify SFA for any fiscal action, claims, losses or damages, fault, fraud, required repayment or restoration of funds, including reasonable attorney's fees incurred in defending or resolving such issues, that results from FSMC's intentional or negligent acts.
16. The SFA shall monitor the food service operation of FSMC through periodic on-site visits to ensure that the food service is in conformance with USDA program regulations. (7 CFR § 210.16(a)(3))
17. If there is more than one SFA Food Service Location, SFA or FSMC, on behalf of SFA, shall conduct an on-site review of the counting and claiming system at each SFA Food Service Location no later than February 1 of each year. If FSMC conducts the on-site review, FSMC will promptly report any findings to SFA. SFA shall always retain responsibility for the counting and claiming system. (7 CFR § 210.8(a)(1))
18. FSMC shall maintain all records necessary, in accordance with applicable regulations, for the SFA, TDA, and USDA to complete required monitoring activities and must make said records available to the SFA, TDA, and USDA upon request for the purpose of auditing, examination, or review. (7 CFR § 210.16(c)(1))
19. FSMC shall provide additional food services such as banquets, parties, and refreshments for meetings as requested by SFA. SFA or requesting organization will be billed for the actual cost of food, supplies, labor, and FSMC's overhead and administrative expenses if applicable to provide such service. USDA foods shall not be used for these special functions unless SFA's students will be primary beneficiaries. (Reference 7 CFR 250.1(a) through (c))
20. Payments on any claim shall not preclude the SFA from adjusting on any item found not to have been in accordance with the provisions of this RFP and Contract and bid specifications.
21. SFA may request of FSMC additional food service programs; however, 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 Child Nutrition Programs. Changes to the scope of services to be provided by FSMC beyond the original intent of this RFP and Contract that would constitute a material change to the RFP/Contract will require this Contract to be rebid. A critical factor in determining materiality is whether

other bidders knowing of the change would have responded differently. (Reference USDA Guidance Memo SP 2-2016, October 30, 2015.)

22. FSMC shall cooperate with SFA in promoting nutrition education, health and wellness policies, and coordinating SFA's Food Service Program with classroom instruction.
23. FSMC shall comply with applicable federal, state and local laws, rules and regulations, policies, and instructions of TDA and USDA and any additions or amendments thereto, including USDA Regulations at 7 CFR Parts 210, 220, 245, 250; 2 CFR Part 200; 2 CFR 200.318-326, Appendix II to Part 200; 2 CFR 400; 2 CFR 416; 2 CFR 418, and 2 CFR Part 180, as adopted and modified by USDA Regulation 2 CFR Part 417; 7 CFR Part 215 (SMP), if applicable; and 7 CFR Part 225 (SFSP), if applicable; 7 CFR Part 226 (CACFP); and 2 CFR Parts 200.38, 74, & 101(b)(1), and the other laws described in the "Schedule of Applicable Laws," which is attached to this Contract as "Exhibit G" and fully incorporated herein by reference.
24. Any changes to the terms or conditions of this Contract, which are required by Federal or State law or rule, or changes to Federal or State laws or rules, are automatically incorporated herein, effective as of the date specified in such law or rule.
25. FSMC shall comply with all SFA building rules and regulations.
26. Gifts from FSMC: The SFA's officers, employees, or agents shall neither solicit nor accept gratuities, favors, nor anything of monetary value from contractors nor potential contractors in accordance with all laws, regulations, and policies. To the extent permissible under federal, state, or local laws, rules, or regulations, such standards shall provide for appropriate penalties, sanctions, or other disciplinary actions to be applied for violations of such standards as outlined in the SFA's written code of conduct. (See SP 09-2015; and 2 CFR Parts 200.112 & 318).
27. Any additional payments to the SFA or any foundations or organizations associated with the SFA that are unrelated to food services, such as money or rebates for school improvements and student scholarships, are not allowable.
28. FSMC shall obtain and post all licenses and permits that it is required to hold under federal, state or local law.
29. In the event that the RFP requires FSMC to provide management services for SFA's School Nutrition Program, the parties shall operate the Program according to federal, state, and local regulations.
30. In the event that FSMC provides management services for the Fresh Fruit and Vegetable Program (FFVP) at any of SFA's Food Service Locations, SFA and FSMC shall operate the FFVP in accordance with the requirements of Section 19 of the National School Lunch Act, all applicable regulations and policies, and the FFVP Handbook for Schools, as well as USDA guidance issued via memorandum and the Administrative Review Manual (ARM). SFA and FSMC further agree that not more than 10% of the total

funds awarded to the school and/or schools for the operation of the FFVP may be used for administrative expenses.

31. If catering is checked in Subsection 3, above, and FSMC will be providing catering services under the contract, FSMC shall adhere to the following requirements applicable to catering:

- Catering will be billed as a separate line item;
- Catering is included within the definition of non-program foods, encompassing food, supplies and labor;
- Charges will include food, supplies, labor, FSMC fees and, if applicable, SFA fees;
- Catering is a non-program cost and must be kept separate and apart from program costs; and
- Funds in the Nonprofit School Food Service Account may be used to pay for catering charges or services only if the event is for the benefit of the SFA and total revenue realized from the catering event is deposited in or paid to the Nonprofit School Food Service Account .

If the FSMC is responsible for providing the SFA with non-program foods, the FSMC shall provide written documentation of food costs and revenues to the SFA on a monthly basis. The information must include food costs for reimbursable meals, food costs for non-program foods, revenue from non-program foods, and total revenue.

C. Food Service

1. FSMC shall serve meals on such days and times as aligned to the district calendar and the nutrition programs the SFA has indicated in Section B, Scope and Purpose in this document as requested by the SFA.
2. SFA shall retain control of the quality, extent, and general nature of food service.
3. FSMC shall offer free, reduced-price, and full-price reimbursable meals to all eligible children participating in SFA's Food Service Programs indicated in Section B, Paragraph 3 herein.
4. For an FSMC to offer à la carte food service, the FSMC must offer free, reduced-price, and paid reimbursable meals to all eligible children.
5. FSMC shall provide meals for all programs operated by the CE that meet the meal pattern set by USDA. TDA provides detailed information on applicable meal patterns in the *Administrator's Reference Manual* (ARM) which is available at *Squaremeals.org*.
6. FSMC shall receive no payment for meals that are spoiled or unwholesome at the time of serving, that do not meet the detailed specifications for each food component or menu item in accordance with 7 CFR § 210.6(c)(3), or that do not otherwise meet the requirements of the contract.

7. FSMC shall promote maximum participation in the Programs.
8. FSMC shall provide the specified types of service in the schools/sites listed in Exhibit A.
9. 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, and that meet School Nutrition Program requirements.
10. FSMC must make substitutions in the food components of the meal pattern for students with disabilities when their disability restricts their diet as stated in the students' Individual Educational Plans (IEPs) or 504 Plans and when the need for the substitution is certified by an appropriately licensed medical practitioner. Substitutions for disability reasons must be made on a case-by-case basis only when supported by a written statement of the need for substitutions that includes recommended alternate foods unless otherwise exempted by FNS. Such a statement must be signed by an appropriately licensed medical practitioner (reference: 7 CFR § 210.10(g)(1); SP 40-2017; SP 26-2017; and SP 59-2016). The FSMC may make a substitution for those nondisabled students who are unable to consume regular breakfast or lunch because of medical or other special dietary needs. Accommodations for special dietary needs for students without medical disabilities are an SFA decision. If a substitution is made to accommodate the special dietary needs of one student, the same accommodation must be made for all students with the same dietary need (reference: 7 CFR § 210.10(g)(2)). There will be no additional charge to the student for such substitutions. (USDA, *"Accommodating Children with Special Dietary Needs in the School Nutrition Programs Guidance for School Food Service Staff"*.)
11. FSMC shall make substitutions for fluid milk for non-disabled students who cannot consume fluid milk due to medical or special dietary needs. Substitutions shall be made when a medical authority or student's parent or legal guardian submits a written request for a fluid milk substitute identifying the medical or other special dietary need that restricts the student's diet. Notification of fluid milk substitutions shall remain in effect until the medical authority or the student's parent or legal guardian revokes such request in writing, or SFA changes its substitution policy for non-disabled students. Fluid milk substitutes shall provide nutrients as required by federal and state regulations. There will be no additional charge to the student for such substitutions. (Reference 7 CFR § 210.10 (d)(3) and 7 CFR § 220.8)

D. Use of Advisory Group/Menus

1. SFA shall establish, and the FSMC shall participate in the formation, establishment, and periodic meetings of an SFA advisory board composed of students, teachers, and parents to assist in menu planning. (Reference 7 CFR § 210.16(a)(8))
2. FSMC shall serve meals that follow the 21-day menu cycles that meet the food specifications contained in Food Specifications, which is attached to this Contract as "Exhibit E" and fully incorporated herein, and that meet School Nutrition Program requirements. The 21-day cycle menu templates developed and

provided by the SFA to allow the FSMC to determine their bid price. These templates should be followed after the contract is executed with any changes to specifications or menus agreed upon by the SFA. Such changes may not result in a different fixed rate. These templates are attached to this Contract as “Exhibit B” and fully incorporated herein. At a minimum, such Meal Specifications shall include: (i) a recipe for each menu item that includes the total yield, portion size, ingredients, and all USDA-required nutrient information; (ii) the identity of all branded items that may be used in the meal; and (iii) whenever possible, the grade, style, and condition of each food item and other information that indicates the acceptable level of quality for each food item. FSMC shall provide a detailed recipe for each Meal Specification identified for the 9th day in the NSLP menu cycle. A hard copy of these recipes shall be kept on file at SFA.

3. FSMC must follow: (i) the 21-day menu cycle and Meal Specifications developed by SFA for the NSLP; (ii) the 21-day menu cycle and Meal Specifications developed by SFA for the SBP; (iii) the 21-day menu cycle and Meal Specifications developed by SFA for the After School Snack Program; and (iv) the 21-day menu cycle and Meal Specifications developed by SFA for the Summer Program. (Reference 7 CFR § 210.16(b)(1))
4. FSMC shall serve a la carte items that meet all state and federal School Nutrition Program requirements. FSMC shall provide documentation that demonstrates that all non-program foods and meals, such as a la carte items, are in compliance with all applicable School Nutrition Program requirements.
5. FSMC may not change or vary the menus after the first menu cycle for the NSLP, SBP, ASCP, Summer Program, or the a la carte items without the written approval of the SFA. SFA shall approve the menus no later than two weeks prior to service. (Reference 7 CFR § 210.16 and 7 CFR § 210.10) Any changes or variances requested by an FSMC for substitutions to the SFA menu of lower quality food items shall be justified and documented in writing by FSMC. FSMC must maintain documentation for substitutions and justification of lower quality food items for the records retention period that is applicable to food production records and shall make such documentation available to SFA, TDA, and USDA for review upon request. (7 CFR § 210.16(c)(1) and 7 CFR § 210.23)
6. FSMC must submit an FFVP (Fresh Fruits and Vegetable Program) cycle menu based on the information contained in the 2004 Resource, *Fruits and Vegetables Galore: Helping Kids Eat More*, (available from the FNS website, and as described in current guidance from USDA and TDA.)
7. FSMC must comply with SFA’s local wellness policy. In addition, the FSMC must comply with all state and local laws that affect school meal preparation and/or service.

E. Purchases

1. Whether the SFA conducts its own procurement or whether the FSMC procures products on behalf of the SFA, FSMC may not require any additional liability coverage, regardless of dollar value, beyond that which SFA would require under procurements not involving FSMC.
2. FSMC shall document and track all FFVP expenses separately and make this documentation easily accessible for SFA or TDA review. Cost should be broken into two categories: (1) operational cost and (2) administrative cost.
 - a. Operational costs should cover the primary cost to run the FFVP to include purchase of fruits and vegetables, including the cost of pre-cut produce and delivery charges; non-food items or supplies that are used in serving and cleaning; and salaries and fringe benefits for employees engaged in preparing and distributing fresh fruits and vegetables and in maintaining a sanitary environment.
 - b. Administrative costs are used principally to support planning and to manage the program. Administrative costs cannot exceed ten (10%) percent of the SFA's FFVP costs. The SFA is required to strictly scrutinize all requests for reimbursement of FFVP costs, to ensure that those costs are: (i) allowable; (ii) actual costs; (iii) fully documented; (iv) utilized to purchase fresh fruits and vegetables in accordance with applicable law and regulations; and (v) do not request reimbursement for more than 10% for administrative costs. TDA will monitor the SFA and FSMC to ensure strict compliance with this provision.
 - c. The FSMC must return the full value of USDA foods to the CE.
3. FSMC shall complete such purchasing activities in a manner that does not result in duplication of services or expenses in accordance with 2 CFR § 200.318(d). An FSMC and SFA shall ensure that no conflict of interest exists between the third-party purchasing agent if any, and the SFA's contracted FSMC. The FSMC must not procure additional goods or services beyond what is stipulated in this Contract from the FSMC, the FSMC's parent company, or any subsidiaries of the FSMC's parent company to avoid duplication of services.
4. SFA shall ensure that FSMC shall comply with all applicable competitive bidding and open competition requirements for such purchases, as set forth in 2 CFR Part 200, including but not limited to 2 CFR §§ 200.318-326. In addition, SFA shall ensure that FSMC shall comply with all applicable federal, state and local laws, rules and regulations, policies, and instructions of TDA and USDA and any additions or amendments thereto, including USDA Regulation 7 CFR Parts 210, 220, 245, 250; 2 CFR Part 200; 2 CFR 200.318-326, Appendix II to Part 200; 2 CFR 400; 2 CFR 416; 2 CFR 418 and 2 CFR Part 180, as adopted and modified by USDA Regulation 2 CFR Part 417; 7 CFR Part 215 (SMP), if applicable; and 7 CFR Part 225 (SFSP), if applicable; 7 CFR Part 226 (CACFP); and 2 CFR Parts 200.38, 74, & 101(b)(1).
5. SFA and FSMC acknowledge that to the extent required by 7 CFR § 250.17(e), 2 CFR Part 200, SP 38-2017, and SP 32-2019, SFA must, to the maximum extent practicable, purchase only domestic food and

food products for the National School Lunch Program and School Breakfast Program that are produced and processed in the United States using over 51% domestic foods, by weight or volume. As required by the Buy American provision, all products must be of domestic origin as required by 7 CFR §210.21(d). A “domestic commodity or product” is defined as one that is either produced in the U.S. or is processed in the U.S. substantially using agricultural commodities that are produced in the U.S. as provided in 7 CFR § 210.21(d). Exceptions to the Buy American provision should be used as a last resort; however, the SFA only may approve an alternative or exception. Requests for exception must include the: a) Alternative substitute(s) that are domestic and meet the required specifications: i) Price of the domestic food alternative substitute (s), and ii) Availability of the alternative domestic substitute (s) in relation to the quantity ordered; and b) Reason for exception: limited/lack of availability or price (include price): iii) Price of the domestic food or food product; and iv) Price of the non-domestic food or food product that meets the required specification of the domestic food or food product.

6. To indicate a geographic preference, the SFA must check ONLY ONE of the following:

For this contract, SFA requires that FSMC work with the SFA to establish a process for incorporating geographic preference in the procurement of *unprocessed locally raised and locally grown agricultural products*.

For this contract, SFA does not require that FSMC work with the SFA to establish a process for incorporating geographic preference in the procurement of *unprocessed locally raised and locally grown agricultural products*.

F. USDA-Donated Foods

1. SFA shall retain title to all USDA-donated foods.
2. FSMC will conduct all activities relating to USDA-donated foods for which it is responsible in accordance with 7 CFR Parts 250, 210, 220, 225, and 226, as applicable.
3. SFA shall assure that the maximum amount of USDA-donated foods are received and utilized by FSMC. (7 CFR § 210.9(b)(15))
4. SFA shall ensure that FSMC has credited it for the value of all USDA-donated foods received for use in SFA’s meal service in each school year. The value of donated foods received shall appear as a credit on the invoice for the month in which the donated food was used except that the contractor must credit the SFA for the value of all USDA donated foods received for use in SFA meal service in the school year. This must include the value of USDA donated foods contained in processed end products, in accordance with the contingencies in 7 CFR § 250.51(a)
5. SFA shall maintain final responsibility for management and oversight of the procurement for processing agreements, private storage facilities, or any other aspect of financial management relating to USDA-donated foods. (7 CFR § 210.16, 7 CFR § 250.50(d))

6. FSMC shall accept and use all USDA-donated ground beef and ground pork products, and all processed end products in the SFA's Food Service Program. Upon termination of this Contract, or if this Contract is not extended or renewed, FSMC must return all unused donated ground beef, pork, and processed end products to SFA. (7 CFR § 250.52(c) ; 7 CFR § 250.53(a)(5))
7. FSMC further agrees to accept and use all other USDA-donated foods in SFA's food service. FSMC may use (substitute) commercially purchased foods of the same generic identity, of U.S. origin, and of equal or better quality than the USDA-donated foods, in SFA's Food Service Program. (7 CFR § 250.53(a)(6))
 - a. SFA shall consult with the FSMC in the selection of USDA-donated foods; however, the final determination as to the acceptance of USDA-donated foods must be made by the SFA.
 - b. Upon termination of this Contract, FSMC must, at SFA's discretion, return other unused USDA-donated foods to SFA. The value of other unused USDA-donated foods shall be based on the market value of all USDA-donated foods received for use in SFA's food service. The market value shall be the allocated value provided to the SFA in the Texas Unified Nutrition Program System (TX-UNPS). (7 CFR § 250.51(a))
 - c. At the end of the year, the FSMC shall reconcile the value of USDA foods received against credits provided on monthly invoices. The contractor shall provide final credit of any balance due to SFA. The total credit given for USDA foods in each year must equal the sum of the SFA's USDA foods entitlement (lunches served in the preceding year x USDA foods entitlement rate, also known as planned assistance level). plus any bonus donated foods accepted by the SFA.
8. FSMC agrees that any procurement of end products by FSMC on behalf of the SFA will comply with the requirements in subpart C of 7 CFR Part 250 and with the provision of SFA's processing agreements. The FSMC shall credit the SFA for the value of USDA donated foods contained in the end products at the processing agreement value not less frequently than annually. (7 CFR § 250.50(c); § 250.53(a)(3)). All refunds received from processors must be credited on invoices submitted to the SFA's Nonprofit School Food Service Account. (7 CFR § 250.51(a-b)) The method used to determine the donated food values may not be established through a post-award negotiation or any other method that may directly or indirectly alter the terms and conditions of the procurement or contract.
9. FSMC shall have records maintained and available to substantiate the receipt, use, storage, and inventory of USDA Foods. The FSMC must submit to the SFA monthly inventory reports showing all transactions for processed and non-processed USDA Foods. Failure by the FSMC to maintain records as required by 7 CFR § 250.16 shall be considered prima facie evidence of improper distribution or loss of USDA Foods and the FSMC shall be subject to the provisions of 7 CFR § 250.13(e). 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.

FSMC shall credit SFA for the full value of all USDA Foods received for use in the SFA's meal service during the school year (including both entitlement and bonus foods) regardless of whether the USDA Foods have actually been used. If the FSMC acts as an intermediary between a processor and the SFA, the FSMC shall credit the SFA for the value of USDA Foods contained in the processed end products at the USDA processing agreement value, unless the processor is providing such credit directly to the SFA. The FSMC will issue all such credit in full prior to the expiration of each Contract Term. Any extensions or renewals of this contract, if applicable, are contingent upon the fulfillment of all contract provisions related to donated foods.

10. FSMC shall credit SFA for the value of all USDA-donated foods received for use in SFA's meal service in the school year, whether the USDA-donated foods are used that year or not, including both entitlement and bonus foods and including the value of USDA-donated foods contained in processed end products.
11. FSMC must credit the SFA's monthly bill/invoice for the market value of all USDA-donated foods received for use in SFA's food service. The market value is based on the allocated value provided to the SFA in TX-UNPS. The FSMC is prohibited from cashing out USDA-donated foods. Credits to the SFA for USDA-donated foods must be identified as described in F.8. and F.10. (7 CFR § 250.52)
12. FSMC will comply with 7 CFR § 250.14(b); 250.52, and 250.53(a)(9) concerning storage and inventory management of USDA-donated foods in accordance with 7 CFR 250.52. (7 CFR 250.53(b)) Failure by FSMC to maintain the required records under this Contract shall be considered prima facie evidence of improper distribution or loss of USDA-donated foods.
13. FSMC will comply, as applicable, with 7 CFR 250.51 and 250.52 concerning 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 in products to the SFA, in accordance with requirements in 7 CFR Part 250 subpart C.
14. FSMC shall allow SFA and/or any state or federal representative or auditor, including the Comptroller General and USDA, or their duly authorized representatives, to perform onsite reviews of FSMC's food service operation, including the review of records, to ensure compliance with requirements for the management and use of USDA-donated foods. (7 CFR § 250.53(a)(10))
15. FSMC shall maintain records to document its compliance with requirements relating to USDA-donated foods in accordance with 7 CFR § 250.54(b). (7 CFR § 250.53(a)(11))
16. In this fixed-meal rate contract, the bid rate per meal must be calculated as if no USDA-donated foods were available.
17. FSMC acknowledges that the renewal of this Contract is contingent upon the fulfillment of all contract provisions herein relating to USDA-donated foods. (7 CFR § 250.53(a) (12))

18. The SFA shall conduct an end of year reconciliation to ensure and verify correct and proper credit has been received for the full value of all USDA donated foods received by the FSMC during the fiscal year. The district reserves the right to conduct USDA donated food credit audits throughout the year to ensure compliance with federal regulations.
19. FSMC shall ensure that all USDA- donated foods received by the SFA and made available to the FSMC accrue only to the benefit of the school food authority's Nonprofit School Food Service Account and are fully utilized therein. (7 CFR § 210.16(a)(6)) Any extensions or renewals of this contract, if applicable, are contingent upon the fulfillment of all contract provisions related to donated foods.
20. USDA Foods or processed end products containing USDA Foods shall not be used for catering or special functions conducted outside of the nonprofit school food service operation.

G. Employees

1. FSMC shall provide and pay a staff of qualified management (and operational) employees assigned to duty on SFA’s premises for the efficient operation of the Programs.
2. SFA must designate if current SFA employees, including site and area managers as well as any other staff, will be retained by SFA or be subject to employment by the FSMC. This must agree with the information reported in the List of Charts and Other Attachments, Chart 4, which is attached to this Contract as “Exhibit D” and fully incorporated herein, and the Schedule of FSMC Employees, which is attached to this Contract as “Exhibit H” and fully incorporated herein.

CHECK ONLY ONE:

- Employees retained by:
- | | |
|-------------------------------------|--|
| <input type="checkbox"/> | SFA (See Exhibit D, Chart 4.) |
| <input type="checkbox"/> | FSMC (See Exhibit H) |
| <input checked="" type="checkbox"/> | Both SFA and FSMC (See Exhibit D, Chart 4 and Exhibit H) |

For any employees retained by FSMC, SFA shall provide in Exhibit H a list of each FSMC food service position and the minimum qualifications acceptable to SFA for each position.

3. Any food service position not identified in the above-stated Exhibits shall be an employee of SFA. Such employees shall be supervised on SFA’s behalf by FSMC management employees; provided, however, that SFA shall retain the exclusive right to control the terms and conditions of the employment of such supervisory and non-supervisory employees, including, but not limited to, control over their hiring, firing, promotion, discipline, levels of compensation and work duties.
4. If SFA is sharing FSMC employees with other SFAs, SFA shall identify in Chart 9 of the “List of Charts and Other Attachments,” which is attached to this Contract as “Exhibit D” and fully incorporated herein,

each SFA with whom the FSMC employee is to be shared and state the percentage of time each employee will spend with each SFA. SFA's budget shall reflect the percentage of time each employee will work at SFA and for which SFA will be charged.

5. SFA shall have final approval regarding the hiring of Food Service Director.
6. FSMC shall comply with all wages and hours of employment requirements of federal and state laws. 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 Food Service Director. FSMC shall also be responsible for the hiring and termination of the non-management staff who are employees of FSMC.
7. If provided for in the Proposal, SFA and FSMC may transition SFA's food service employees to FSMC's payroll. If a transition occurs, the FSMC shall give first consideration to current employees of SFA or incumbent contractor when hiring employees to provide services pursuant to this Contract, but FSMC shall not be obligated to hire such employees. SFA shall not pay the cost of transferring SFA employees to FSMC payroll.
8. FSMC shall provide Workers' Compensation coverage for its employees, as required by law.
9. FSMC shall instruct its employees to abide by the policies, rules, and regulations with respect to the use of SFA's premises as established by SFA and which are furnished in writing to FSMC.
10. FSMC shall maintain its own personnel and fringe benefits policies for its employees, subject to review by SFA.
11. FSMC shall assign to duty on SFA's premises only employees acceptable to SFA.
12. Staffing patterns, except for the Food Service Director, shall be mutually agreed upon.
13. FSMC will remove any employee who violates health requirements or conducts himself or herself in a manner that is detrimental to the well-being of the students, provided such request is not in violation of any federal, state, or local employment laws. In the event of the removal or suspension of any such employee, FSMC shall immediately restructure the food service staff to avoid disruption of service.
14. FSMC shall cause all of its employees assigned to duty on SFA's premises to submit to health examinations as required by law and shall submit satisfactory evidence of compliance with all health regulations to SFA upon request.
15. All SFA and 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.
16. To the extent and in the manner required by state law, FSMC shall perform a security (background) check on any FSMC employee that will be working at SFA.
17. FSMC shall not blacklist or require a letter of relinquishment or publish or cause to be published or blacklisted any employee of FSMC or SFA discharged from or voluntarily leaving the service of FSMC

or SFA with the intent of and for the purpose of preventing such employee from engaging in or securing similar or other employment from any other corporation, company, or individual.

18. Neither SFA nor FSMC shall during the Term of this Contract or for one (1) year thereafter solicit to hire, hire or contract with the other's employees who manage any of the Programs or any other employees or who are highly compensated employees. In the event of such breach of this clause, the breaching party shall pay, and the injured party shall accept as liquidated damages, an amount equal to twice the annual salary of the subject employee. Such liquidated damages may not be paid from the Program funds. This provision shall survive the termination of this Contract.
19. Both SFA and FSMC shall ensure that their employees adhere to the professional standards and continuing education training requirements as required by federal regulations, codified at 7 CFR § 210.30, throughout the initial term and all renewals of this Contract. School food authorities that operate the National School Lunch Program, or the School Breakfast Program (7 CFR Part 220), must establish and implement professional standards for school nutrition program directors, managers, and staff, as defined in 7 CFR § 210.2. Both SFA and FSMC shall establish and implement the foregoing standards and requirements under this Contract.

H. Use of Facilities, Inventory, Equipment, and Storage

1. SFA will make available, without any cost or charge to FSMC, area(s) of the premises in which FSMC shall render its services. SFA shall always have full access to the food service facilities and for any reason, including inspection and audit.
2. At the commencement, termination, or expiration of this Contract, FSMC and SFA shall take a physical inventory of all non-expendable supplies and capital equipment owned by SFA, including, but not limited to, silverware, trays, chinaware, glassware, and kitchen utensils and all furniture, fixtures, and dining room equipment utilized in SFA's Food Service Program. FSMC and SFA shall mutually agree on the usability of such supplies and equipment and, at the expiration or termination of this Contract, FSMC shall surrender to SFA all non-expendable supplies and capital equipment in the condition in which it was received except for ordinary wear and tear, damage by the elements and except to the extent that said premises or equipment may have been lost or damaged by vandalism, fire, flood or other acts of God, or theft by persons other than employees of FSMC except through the negligence of FSMC or its employees, or for any other reason beyond the control of FSMC. FSMC and SFA will sign a summary of the beginning inventory at the commencement and at the expiration or termination of this Contract and keep a copy of each on file with this Contract.
3. At the commencement and at the expiration or termination of this Contract, FSMC and SFA shall jointly undertake a beginning and closing inventory of all food and supplies. USDA Foods shall also be inventoried by a separate inventory. FSMC and SFA shall determine whether any portion of the beginning

inventory is not suitable for SFA's continued use. Such inventory, when completed, shall become a part of this Contract by incorporation. FSMC shall be responsible for accounting for any difference between the beginning inventory and the ending inventory and shall compensate SFA for any shortfall in inventory not arising from (1) normal wear and tear; or (2) theft, fire, or other casualty loss beyond the control of FSMC and not arising from the negligence of FSMC or its agents. The value of the inventories, except for USDA Foods inventories, shall be determined by invoice cost. The value of USDA Foods inventories shall be the market value, which is the value in USDA's Electronic Commodity Ordering System (ECOS) at the time the USDA-donated foods are received by SFA.

4. During this Contract, title to all SFA food and supplies shall remain with the SFA.
5. FSMC shall maintain the inventory of silverware, chinaware, kitchen utensils, and other operating items necessary for the food service operation and at the inventory level as specified by SFA.
6. SFA will replace expendable equipment and replace, repair, and maintain nonexpendable equipment except when damages result from the use of less than reasonable care by the employees of FSMC.
7. FSMC shall maintain adequate storage procedures, inventory, and control of USDA-donated foods in conformance with SFA's agreement with TDA.
8. FSMC shall provide SFA with keys for all food service areas secured with locks.
9. SFA shall provide FSMC with local telephone service.
10. SFA shall provide water, gas and electric service for the food service program. If SFA is providing water, gas and electric service for the food service program, charges to the food service account shall be determined in the following manner: each month. District may use this formula:

District will:

- 1) Calculate the square footage of the kitchen by developing a percentage of utilities based on the square footage of the food service facilities in relation to the total school square footage.
- 2) Determine the percentage of time the kitchen is in use compared to the total campus use. (The kitchen may operate 7 hours but the school day with activities may be 9 hours.)
- 3) Apply percentages to the average cost of the total utilities.

The district will only charge utilities for kitchens during months of operation (if the kitchen was not operating in the summer. The district must not charge the food service operation for utilities during the summer months.) The district must not include cafeteria usage when the cafeteria is used for purposes other than feeding students (pep rallies, study hall, evening functions).

11. SFA shall furnish and install any equipment and/or make any structural changes to the facilities needed to comply with federal, state, or local laws, ordinances, rules, and regulations.
12. 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 FSMC.

13. FSMC shall not remove any food preparation and serving equipment owned by SFA from SFA's premises.
14. SFA shall not be responsible for loss or damage to equipment owned by FSMC and located on SFA premises.
15. FSMC shall notify SFA of any equipment belonging to FSMC on SFA premises within ten days of its placement on SFA premises.
16. FSMC shall comply with all SFA building rules and regulations.
17. FSMC shall not use SFA's facilities to produce food, meals, or services for third parties without the approval of SFA. If such usage is mutually acceptable, there shall be a signed agreement that stipulates the fees to be paid by FSMC to SFA for such facility usage. Such usage may not result in a cost to the Non-profit School Food Service Account.
18. SFA, on the termination or expiration of this Contract, shall conduct a physical inventory of all equipment, food, and supplies owned by the SFA.
19. Upon termination of this Contract, FSMC shall surrender to SFA all of SFA's equipment and furnishings used in SFA's Food Service Program in good repair and condition, reasonable wear and tear excepted.

I. Health Certifications/Food Safety/Sanitation

1. FSMC shall maintain, in the storage, preparation, and service of food, proper sanitation and health standards in conformance with all applicable State and local laws and regulations and comply with the food safety inspection requirements of 7 CFR § 210.13(b). (7 CFR § 210.9(b)(14))
2. FSMC shall maintain all State of Texas and local health certification for any facility outside the school in which it proposes to prepare meals and shall maintain this health certification for the duration of this Contract. (7 CFR § 210.16(c)(2))
3. FSMC shall obtain and post all licenses and permits as required by federal, state, and/or local law.
4. FSMC shall comply with all State of Texas and local and sanitation requirements applicable to the preparation of food. (7 CFR 210.16(a)(7))
5. SFA shall maintain applicable health certification and ensure that FSMC complies with all applicable state and local regulations pertaining to sanitation, preparing, or serving meals at a SFA facility. (7 CFR § 210.16(a)(7))
6. SFA shall provide sanitary toilet and hand washing facilities for the employees of FSMC.
7. FSMC shall be responsible for cleaning food service equipment, kitchen floors, hoods and grease filters.
8. SFA shall be responsible for the maintenance and expense of insect and pest control in all food service production and storage areas. FSMC will notify SFA of any problems in this area.
9. FSMC shall be responsible for removal of trash and garbage resulting from the food service program in compliance with SFA's schedule for waste disposal.

10. SFA shall be responsible for all regular food service-related building maintenance, with the exception of normal clean up.
11. FSMC shall clean the kitchen and dining room areas. (See Exhibit D, Chart 2, Designation of Program Expenses)
12. SFA shall provide regular cleaning service for cafeteria walls, windows, floors, light fixtures, draperies and blinds, and periodic waxing and buffing of floors.
13. FSMC shall place garbage and trash in containers in designated areas as specified by SFA.
14. 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 SFA and comply with all applicable laws, ordinances, regulations, and rules of federal, state, and local authorities, including laws related to recycling.
15. SFA shall routinely clean grease traps, ductwork, plenum chambers and roof fans.
16. SFA shall provide extermination services as needed.
17. Any cleaning or sanitation that is not specifically assigned herein shall be the responsibility of SFA.
18. FSMC shall adhere to the food safety program implemented by the SFA for all preparation and service of school meals, using a Hazard Analysis and Critical Control Point (HACCP) system as required by 42 U.S.C. § 1758(h)(5)(A).
19. FSMC shall 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 42 U.S.C. § 1758(h)(1).

J. Financial Terms

1. 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, catering, à la carte, vending, concessions, contract meals, grants, and loans shall be credited to the Non-profit School Food Service Fund on a daily basis. Any profit or guaranteed return shall remain in the SFA’s Non-profit School Food Service Fund.
2. All facilities, equipment, and services to be provided by the SFA shall be provided at SFA’s expense.
3. Computation of Meal Equivalency Rate
 - a. The Meal Equivalency Rate means the sum of the total reimbursement received for each lunch meal served and claimed. The Meal Equivalency Rate is used by the SFA to convert sales from second meals, a-la-carte, vending, extra sales, and catering to a meal equivalent. The equivalency factor shall remain fixed for the term of the Contract and all renewals.

MEAL EQUIVALENCY RATE	
Lunch Rate	
Current Year Federal Free Rate of Reimbursement:	\$ 3.5100
Current Year State Match Reimbursement Rate:	\$ <u>0.0248</u>

Current Year State Program Reimbursement Rate (If Applicable):	\$ 0.0000
Current Year Value of USDA Entitlement Donated Foods	\$ <u>0.3700</u>
Current Year Value of USDA Bonus Donated Foods (If Applicable):	\$ 0.0000
Current Year Value of Non-Program Foods (catering, vending, etc.)	\$ 267,761]**
Total Meal Equivalent Rate:	\$3.9048

** Note: Payment for adult meals shall not be made with Non-Profit School Food Service Account funds. Payment for a la carte, catering, vending, concessions, and student stores may be made from the Non-Profit School Food Service Account provided total revenue from the event is deposited in or paid to the Non-Profit School Food Service Account.

4. Payment Terms/Method

(Competitive Sealed Proposals) **Fixed-meal Rate Bid**—the FSMC must bid and will be paid at a fixed rate per meal/Meal Equivalent. The offer amount should be based on the assumption that no donated foods will be available for use. The method by which FSMC will use and account for USDA-donated foods shall be in accordance with Section F of the Standard Terms and Conditions hereinabove.

To be completed by the FSMC:	
Fixed Price Per Meal/Meal Equivalent:	
Breakfast	\$ _____
Lunch	\$ _____
Snack	\$ _____
A la Carte	\$ _____
Summer(SFSP/SSO)Fixed Price Per Meal/ Meal Equivalent:	
Breakfast	\$ _____
Lunch	\$ _____
Snack	\$ _____

Award Criteria

Proposals must be evaluated by an SFA committee based on the offer per meal/meal equivalent and the criteria, categories, and assigned weights as stated herein below (to the extent applicable). **Contracts must be awarded to the responsive and responsible bidder whose proposal is lowest or most advantageous to the program with the price and other factors considered. The cost must be the primary consideration. See United States Department of Agriculture’s Food and Nutrition Service Memo dated November 13, 2015, SP 12-**

2016. Committee members must consist of SFA employees familiar with the regulations and requirements of the school nutrition programs. If a committee member is an agent for, an employee of, or in any other manner associated with an FSMC, that FSMC will be precluded from participating in the RFP and subsequent Contract. Each area of the award criteria must be addressed in detail in the Proposal.

Weighted Evaluation Criteria

SFA must determine in advance what percentage (total of 100 points which equals 100%) each category below will be given when comparing proposals.

- (15) points Cost & Financial Proposal (USDA policy requires the price to be the primary evaluation factor.)
- (10) points Service Capability Plan (Identifies proposed food service team such as Food Service Director and demonstrates FSMC's ability to provide services as stated in the RFP/Contract)
- (10) points Experience, References
- (10) points Doing business with like school systems and familiarity with regulations pertaining to such operations/References
- (8) points Financial Condition/Stability, Business Practices
- (7) points Accounting and Reporting Systems
- (10) points Personnel Management
- (10) points Innovation
- (10) points Promotion of the School Food Service Program
- (10) points Involvement of Students, Staff, and Patrons

100 points TOTAL

The fixed price per meal/meal equivalent may be increased on an annual basis by the Yearly Percentage Change in the Consumer Price Index for All Urban Consumers, as published by the U.S. Department of Labor, Bureau of Labor Statistics, Food Eaten Away from Home South-Size D (all nonmetropolitan areas) (CPI). Such increases shall be effective on a prospective basis on each anniversary date of this Contract and will only be permitted if approved in advance by SFA. CPI fee increases for the upcoming Contract renewal year must be submitted to SFA by April 1 of each year. No other fee increases will be allowed.

5. Payment Terms/Method: FSMC shall invoice SFA within 10 days after the end of each Accounting Period for the total amount of SFA's financial obligation for that Accounting Period.
6. SFA shall make payment in accordance with the Texas Prompt Payment Act, Tex. Gov't Code Chapter 2251; however, no interest or finance charges that may accrue under this Contract may be paid from SFA's Nonprofit School Food Service Account.

7. FSMC must submit detailed documentation for each Accounting Period to support what the SFA is charged. Upon termination of the Contract, all outstanding amounts shall immediately become due and payable. Each invoice submitted by FSMC will include reconciliation for any overpayment or underpayment from prior Accounting Periods and shall identify and account for donated food as stated herein above.
8. 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. FSMC shall indemnify and hold SFA harmless for all claims arising from the non-payment of such taxes and fees.
9. SFA and FSMC shall cooperate to ensure that SFA's Food Service Program is operated in accordance with SFA's Food Service Budget. In the event that FSMC's operation of SFA's Food Service Program results in a deficit greater than the projected deficit stated in SFA's Food Service Budget or a return that is less than the projected return stated in the Food Service Budget, FSMC shall within 30 days pay SFA a guaranty payment as provided for by the "Schedule of Terms for FSMC Guaranty," which is attached to this Contract as "Exhibit I" and fully incorporated herein. In the event that the FSMC pays a guaranty, FSMC may not recover the guaranty from SFA in subsequent Contract years.
10. SFA shall not be responsible for any expenditure incurred by FSMC before the execution of this Contract and approval by TDA.

K. Books and Records

1. FSMC shall maintain such records (supported by invoices, receipts, or other evidence) as SFA will need to meet monthly reporting responsibilities and shall submit monthly operating statements in a format approved by the SFA no later than the 15th day following the month in which services were rendered. Participation records, including claim information by eligibility category, shall be submitted no later than the 10th day following the month in which services were rendered. SFA shall perform edit checks on the participation records provided by the FSMC prior to the preparation and submission of the claim for reimbursement.
2. FSMC shall maintain records to support the SFA's claim for reimbursement and maintain all such records available upon request. 7 CFR § 210.16(c)(1).
3. FSMC shall provide SFA with a year-end statement.
4. SFA and FSMC must provide all documents as necessary for the independent auditor to conduct SFA's single audit.
5. FSMC shall make its books and records pertaining to the Contract available, upon demand, in an easily accessible manner for a period of three years after the final claim for reimbursement for the fiscal year to which they pertain. The books and records shall be made available for audit, examination, excerpts, and

transcriptions by SFA and/or any state or federal representatives and auditors. If audit findings regarding FSMC's records have not been resolved within the three-year record retention period, the records must be retained beyond the three-year period for as long as required for the resolution of the issues raised by the audit. (Reference 7 CFR § 210.9(b)(17) and 2 CFR § 200.333).

6. Authorized representatives of SFA, TDA, USDA, and USDA's Office of the Inspector General (OIG) shall have the right to conduct on-site administrative reviews of the foodservice operation.
7. FSMC shall not remove federally required records from SFA premises upon the expiration or termination of this Contract.

L. Term and Termination

1. If at any time, the SFA shall make a reasonable decision that adequate funding from federal, state, or local sources shall not be available to carry out its financial obligation to FSMC, then the SFA shall have the option to terminate this contract by giving 10 days written notice to the FSMC.
2. In the event either party commits a material breach of this Contract, the non-breaching party shall give the breaching party written notice specifying the default, and the breaching party shall have 30 days within which to cure the default. If the default is not cured within that time, the non-breaching party shall have the right to then terminate this Contract for cause by giving 30 days additional written notice to the breaching party. If the breach is remedied prior to the proposed termination date, the non-breaching party may elect to continue this Contract. Notwithstanding the foregoing termination clause, in the event that the breach concerns sanitation problems, the failure to maintain insurance coverage as required by this Contract, failure to provide required periodic information or statements or failure to maintain quality of service at a level satisfactory to SFA, SFA may terminate this Contract immediately.
3. In the event that either party is prevented from performing its obligations under this Contract by war, acts of public enemies, fire, flood or acts of God (individually each known as a "Force Majeure Event"), that party shall be excused from performance for the period of such Force Majeure Event exists.
4. In the event of FSMC's nonperformance under this Contract or the violation or breach of the terms of this Contract, SFA shall have the right to pursue any and all available administrative, contractual, and legal remedies against FSMC.
5. FSMC shall promptly pay SFA the full amount of any meal overclaims, disallowed costs, or other fiscal actions that are attributable to the FSMC's actions hereunder, including those overclaims based on review or audit findings that occurred during the Effective Dates of original and renewal Contracts.
6. SFA is the responsible authority without recourse to USDA or TDA for the settlement and satisfaction of all contractual and administrative issues arising in any way from this Contract. Such authority includes, but is not limited to, source evaluation, protests, disputes, claims, or other matters of a contractual nature.

7. Upon service ending by either Contract expiration or termination, it shall be incumbent upon the FSMC to cooperate fully with the replacement FSMC or SFA if SFA is returning to self-operated food service and with TDA to ensure a smooth and timely transition to the replacement FSMC or SFA.

M. Insurance

1. FSMC shall maintain the insurance coverage set forth below for each accident provided by insurance companies authorized to do business in the state of Texas. A Certificate of Insurance of FSMC's insurance coverage indicating these amounts must be submitted at the time of the award.
2. The information below must be completed by SFA:
 - a. Comprehensive General Liability—includes coverage for:
 - 1) Premises—Operations
 - 2) Products - Completed Operations
 - 4) Contractual Insurance
 - 5) Broad Form Property Damage
 - 6) Independent Contractors
 - 7) Personal Injury
 - i. \$ 1,000,000 (one million) Combined Single Limit.
 - b. Automobile Liability coverage with a \$ 5,000,000 (five million) Combined Single Limit.
 - c. Workers' Compensation—Statutory; Employer's Liability with a combined single limit of
 - ii. \$ 2,000,000 (two million)
 - d. Excess Umbrella Liability with a combined single limit of \$ 10,000,000 (ten million)
2. The SFA shall be included as an additional insured on General Liability, Automobile, and Excess Umbrella policies.
3. The contract of insurance shall provide for notice to SFA of cancellation of insurance policies 30 days before such cancellation is to take effect.
4. Notwithstanding any other provision of this Contract, SFA shall not be liable to FSMC for any indemnity.

N. Trade Secrets and Proprietary Information

1. During the term of this Contract, FSMC may grant to SFA a nonexclusive right to access certain proprietary materials of FSMC, including menus, recipes, signage, food service surveys and studies, management guidelines and procedures, operating manuals, software (both owned by and licensed by FSMC) and similar compilations regularly used in FSMC business operations ("Trade Secrets"). SFA shall not disclose any of FSMC's Trade Secrets or other confidential information, directly or indirectly, during or after the term of this

Contract. SFA shall not photocopy or otherwise duplicate any such material without the prior written consent of FSMC. All trade secrets and other confidential information shall remain the exclusive property of FSMC and shall be returned to FSMC immediately upon termination of this Contract. SFA shall not use any confusingly similar names, marks, systems, insignia, symbols, procedures, and methods. Without limiting the foregoing and except for software provided by SFA, 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 FSMC and not SFA. Furthermore, SFA's access or use of such software shall not create any right, title, interest, or copyright in such software and SFA shall not retain such software beyond the termination of this Contract. In the event of any breach of this provision, FSMC shall be entitled to equitable relief, including an injunction or specific performance, in addition to all other remedies otherwise available. All of SFA's obligations under this section are subject to SFA's obligations under the Texas Public Information Act and any other law that may require SFA to use, reproduce, or disclose FSMC confidential information. This provision shall survive the termination of this Contract.

2. Any discovery, invention, software, or program, the development of which is paid for by SFA, shall be the property of SFA to which TDA and USDA shall have unrestricted rights.
3. During the term of this Contract, FSMC may have access to SFA confidential information ("SFA Confidential Information"), including student identifiable confidential information that is protected from disclosure by federal law (42 U.S.C. § 1758(b)(6)). FSMC agrees to hold any SFA Confidential Information in confidence during the term of this Contract and thereafter. FSMC further agrees that FSMC has no independent rights to this information and will not make any SFA Confidential Information available in any form to any third party or use Confidential Information for any purpose other than the performance of FSMC's obligations under this Contract. FSMC will use reasonable security measures to protect SFA's Confidential Information from unauthorized access, use, or disclosure and ensure that SFA's Confidential Information is not disclosed or distributed in violation of the terms of this Contract. Immediately upon the termination or expiration of this Contract, FSMC shall return to SFA any copies of SFA's Confidential Information provided to FSMC by SFA, and FSMC will destroy all other copies of SFA's Confidential Information in all forms, partial and complete, in all types of media and computer memory, and whether or not modified or merged into other materials.

O. Optional Requirements to Be Included

The scope of this Contract shall include these additional services. **Check options that apply.**

1. Financing of Certain Equipment.

(a) FSMC may finance equipment for SFA's Food Service Program in an amount not to exceed \$_____ per (school year/life of contract/or. SFA will follow its usual procurement procedures for any transaction that is financed by FSMC; FSMC cannot be the vendor for any procurement that it finances for SFA. SFA shall repay any financing provided by FSMC at the current lending rate specified when the equipment was purchased, which sum shall be charged to SFA as a Direct Cost to the food service program or the SFA may make payments in accordance with an amortization schedule, as agreed upon by the SFA and FSMC. Ownership of the equipment shall at all times remain with SFA. Any equipment costing \$5,000 or more must have prior written approval by TDA (2 CFR § 200.439(a)(3))

(b) If the contract expires or is terminated prior to the complete repayment of the investment, SFA shall, on the expiration date, or within five days after receipt by either party of any notice of termination under this Contract, either (**SFA must check appropriate box**):

1) Deliver the equipment or other items funded by the investment to the FSMC in full release of the unpaid balance.

OR

2) Retain the property and continue to make payments in accordance with the amortization schedule. (Reference: USDA Memo SP 40-2016, Updated Guidance: "Contracting with Food Service Management Companies, pages 42-43.)

2. Information Technology Systems.

All Fees Must Be Part of the Fixed-Meal Rate. FSMC shall provide, install, deploy into production, operate and maintain and support an information technology system (the "IT System") (which may include, but not be limited to, hardware, owned and licensed software and systems support) necessary for the operation of SFA's Food Service Programs. SFA shall provide, at its expense, a suitable environment, including such heat, air conditioning, phone, and utility service as may be required for the installation, implementation, operation, and maintenance of the IT System. FSMC's IT System shall provide the following services: None

3. SFA Transition Employee Positions and Dates of Transition.

4. Other.

P. Summer Food Service Program

Check One: SFA does or plans to participate in SFSP [*SFA must complete the entire section*]

SFA does not participate in SFSP [SFA must mark through the entire section]

1. ~~SFA shall be responsible for determining the eligibility of all SFSP sites.~~
2. ~~SFA, as a sponsor, shall be responsible for all management responsibilities of the SFSP, as described in 7 CFR § 225.15 (a)(3).~~
3. ~~Bonding requirements.~~
 - a. ~~Bid guarantee (when the SFSP portion of the bid exceeds the Simplified Threshold of \$50,000 as applicable): Offeror shall submit with his or her bid a bid guarantee in the amount of \$_____ [Enter an amount not less than 5 percent or more than 10 percent of the total bid price or may enter \$0, if SFSP bid does not exceed the Simplified Threshold of \$50,000 as applicable], which shall be in the form of a firm commitment such as bid bond, postal money order, certified check, cashier's check, or irrevocable letter of credit. (SFSP Memorandum 13 2014: Procurement Thresholds in the Summer Food Service Program, January 10, 2014). Bid guarantees other than bid bonds will be returned (a) to unsuccessful Offerors as soon as practicable after the opening of proposals and (b) to the successful Offeror upon execution of such further contractual documents. (i.e., insurance coverage) and bonds as may be required by the bid.~~
 - b. ~~Performance guarantee (when the SFSP portion of the Contract exceeds \$50,000, restrictive Texas simplified acquisition threshold): FSMC must obtain a performance bond in the amount of \$_____ [Enter an amount 10 percent nor more than 25 percent of the value of the Contract which shall be in the form of a firm commitment such as bid bond, postal money order, certified check, cashier's check, or irrevocable letter of credit. (SFSP Memorandum 13 2014: Procurement Thresholds in the Summer Food Service Program, January 10, 2014). Bid guarantees other than bid bonds will be returned to unsuccessful Offerors as soon as practicable after the opening of proposals. Performance bonds for the successful Offeror shall be held for the duration of the Contract. (7 CFR 225.15(m)(5-7)~~
4. ~~SFA shall immediately correct any problems found as a result of a health inspection and shall submit written documentation of the corrective action implemented within two weeks of the citation.~~
5. ~~FSMC must comply with the 21-day menu cycle developed by SFA for the SFSP (Exhibit B) and include it in the RFP. SFA shall approve any changes in the menus no later than two weeks prior to service after the initial cycle has been used. The SFA shall inform TDA of menu changes for the SFSP.~~

~~6. SFA, as an SFSP sponsor, is responsible for conducting and documenting the required SFSP site visits of all sites for pre-approval and during operation of the program.~~

~~7. SFA will make the final determination of the opening and closing dates of all SFSP sites, if applicable.~~

~~8. FSMC may use donated foods to conduct SFSP in accordance with Section F of the Standard Terms and Conditions herein above and 7 CFR Part 225 and 2 CFR Part 200.~~

Q. Certifications

FSMC shall execute and comply with the following Certifications: (i) Debarment certification shall be provided by a) the SFA providing the page from *The System for Award Management* and maintaining such record with other supporting documentation to demonstrate that the SFA had referenced *The System for Award Management*; or b) that by signing this Agreement that the FSMC certifies that neither it nor any principal is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this Contract by any federal department or agency or by the State of Texas; or c) submitting the TDA Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion for Covered Contracts form; and (ii) Anti-collusion Affidavit, which is attached to this Contract as Exhibit J and fully incorporated herein; (iii) Certification Regarding Lobbying, which is attached to this Contract as Exhibit K and fully incorporated herein; and (iv) Standard Form-LLL, Disclosure Form to Report Lobbying, when applicable, which is attached to this Contract as Exhibit L and fully incorporated herein; and (v) Discount and Rebate Certification, which is attached to this Contract as Exhibit M and fully incorporated herein.

R. Miscellaneous

1. Emergency Notifications.

a. SFA shall notify FSMC of any interruption in utility service of which it has knowledge.

Notification will be provided to:

Name :

Title:

Telephone number:

Alternate telephone number:

b. SFA shall notify FSMC of any delay at the beginning of the school day or the closing of school(s) due to snow or other emergency situations. Notification will be provided to:

Name :

Title:

Telephone number:

Alternate telephone number:

2. Governing Law. This Contract is governed by and shall be construed in accordance with Texas and federal law.

3. Headings. All headings contained in this Contract are for convenience of reference only, do not form a part of this Contract, and shall not affect in any way the meaning or interpretation of this Contract.

4. Incorporation/Amendments. This Request for Proposal and Contract, which includes the attached Exhibits A – M and FSMC’s proposal documents (collectively the “Contract Documents”), contain the entire agreement between the parties with relation to the transaction contemplated hereby, and there have been and are no covenants, agreements, representations, warranties or restrictions between the parties with regard thereto other than those specifically set forth in this Contract. In the event of a conflict between or among any of the terms of the Contract Documents, such conflicts shall be resolved by referring to the Contract Documents in the following order of priority: (i) SFA’s Request for Proposal and Contract and (ii) FSMC proposal documents. No modification or amendment to this Contract shall become valid unless it is made in writing, signed by the parties, and approved by TDA.

5. **INDEMNITY. EXCEPT AS OTHERWISE EXPRESSLY PROVIDED IN THIS CONTRACT, FSMC SHALL DEFEND, INDEMNIFY, AND HOLD SFA HARMLESS FROM AND AGAINST ALL CLAIMS, LIABILITY, LOSS, AND EXPENSES, INCLUDING REASONABLE COLLECTION EXPENSES, ATTORNEYS’ FEES AND COURT COSTS THAT MAY ARISE BECAUSE OF THE ACTIONS OF FSMC, ITS AGENTS OR EMPLOYEES IN THE PERFORMANCE OF ITS OBLIGATIONS UNDER THIS CONTRACT, EXCEPT TO THE EXTENT ANY SUCH CLAIMS OR ACTIONS RESULT FROM THE NEGLIGENCE OF SFA, ITS EMPLOYEES OR AGENTS. THIS CLAUSE SHALL SURVIVE TERMINATION OR EXPIRATION OF THIS CONTRACT.**

6. Nondiscrimination. Both SFA and FSMC agree that no child who participates in the NSLP, SBP, SMP, ASCP, CACFP, SSO, or SFSP will be discriminated against on the basis of race, color, national origin, sex, age, or disability.

7. Notices. All notices, consents, waivers, or other communications which are required or permitted hereunder, except those required under Emergency Notification herein above, shall be sufficient if given in writing and delivered personally, or by sending a copy thereof by first class or express mail, postage prepaid, courier service, charges prepaid or by facsimile transmission (followed by the original) to the address (or to the facsimile or telephone number), as follows (or to such other addressee or address as shall be set forth in a notice given in the same manner):

To SFA: Jason Gilstrap, Deputy Superintendent

303 W. Knox St., TX 75119

(972)872-7000

(972)875-4657 fax

To FSMC:

Copy to: Lisa Fincher, CFO

303 W. Knox St., TX 75119

(972)872-7000

(972)875-4657 fax

If such notice is sent by mail or courier service, it shall be deemed to have been given to the person entitled thereto when deposited in the United States mail or courier service for delivery to that person or, in the case of a facsimile transmission, when received.

8. Severability. If one or more provisions of this contract or the application of any provision to either party or circumstance is held invalid, unenforceable, or illegal in any respect, the remainder of this Contract and the application of the provision to other parties or circumstances shall remain valid and in full force and effect.

9. Silence, absence, or omission. 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 SFA are to be used.

10. Subcontract/Assignment. No provision of this Contract shall be assigned or subcontracted without the prior written consent of the SFA, except that FSMC may, after notice to SFA, assign this Contract in its entirety to an affiliated company or wholly-owned subsidiary without prior written consent and without being released from any of its responsibilities hereunder.

11. Waiver. The failure of FSMC or SFA to exercise any right or remedy available under this Contract upon the other party's breach of the terms, covenants, or conditions of this Contract or the failure to demand prompt performance of any obligation under this Contract shall not be deemed a waiver of such right or remedy; of the requirement of punctual performance; or of any subsequent breach or default on the part of the other party.

12. TDA review. This Contract may not be executed until TDA approval is provided. It is not effective until it is approved, in writing, by the TDA.

(THIS SPACE INTENTIONALLY LEFT BLANK)

AGREEMENT

Offeror certifies that the FSMC shall operate in accordance with all applicable state and federal regulations.

Offeror certifies that all terms and conditions within the Proposal shall be considered a part of this Contract as if incorporated herein.

This Contract shall be in effect for one year and may be renewed by mutual agreement for four additional one-year periods.

IN WITNESS WHEREOF, the parties hereto have caused this Contract to be signed by their duly authorized representatives.

ATTEST:

SCHOOL FOOD AUTHORITY:

Ennis Independent School District
Name of SFA

Signature of Authorized Representative

Jay Tullos
Typed Name of Authorized Representative

Superintendent
Title

Date Signed

ATTEST:

FOOD SERVICE MANAGEMENT COMPANY:

Name of FSMC

Signature of Authorized Representative

Typed Name of Authorized Representative

Title

Date Signed

Exhibit A

SCHEDULE OF FOOD SERVICE LOCATIONS AND SERVICES PROVIDED

Ennis High School – 2301 Ensign Rd. (NSLP, SBP, SSO-NSLP, CACFP, FFVP, catering)
Ennis Junior High – 3101 Ensign Rd. (NSLP, SBP, SSO-NSLP, CACFP, FFVP, catering)
Dorie Miller Intermediate – 2200 W. Lampasas (NSLP, SBP, SSO-NSLP, CACFP, FFVP, catering)
Jack Lummus Intermediate – 501 N. Clay St. (NSLP, SBP, SSO-NSLP, CACFP, FFVP, catering)
Stephen F. Austin Elementary – 1500 Austin Dr. (NSLP, SBP, SSO-NSLP, CACFP, FFVP, catering)
James Bowie Elementary – 501 Jeter Dr. (NSLP, SBP, SSO-NSLP, CACFP, FFVP, catering)
Sam Houston Elementary – 1701 S. Hall St. (NSLP, SBP, SSO-NSLP, CACFP, FFVP, catering)
William Travis Elementary – 200 Shawnee St. (NSLP, SBP, SSO-NSLP, CACFP, FFVP, catering)
David Crockett ECC – 1701 W. Lampasas (NSLP, SBP, SSO-NSLP, CACFP, FFVP, catering)
G.W. Carver ECC – 600 E. Martin Luther King Dr. (NSLP, SBP, SSO-NSLP, CACFP, FFVP, catering)
Central Office – 303 W. Knox (NSLP, SBP, SSO-NSLP, CACFP, FFVP, catering)

Exhibit B

PROGRAM MENU CYCLES

**MENU CYCLE FOR
NATIONAL SCHOOL LUNCH PROGRAM**

Attach a sample 21-day cycle lunch menu prepared by the SFA.
This menu must be used for the first 21-day cycle of the new school year.

2021 - 2022 School Year

Campus Level: ECC & Elementary

1 Cheeseburger Glazed Chicken Drumstick Kidzable Ham, Cheese & Flatbread Macaroni and Cheese, Bowtie, Garlic Knot Breadstick Vegetable Fruit Assorted Milk	2 Beef Soft Tacos Cheese Pizza Turkey Chef Salad Garlic Breadstick Vegetable Fruit Assorted Milk	3 Chicken Caesar Salad Chicken Nuggets Turkey Hot Dog Garlic Breadstick Vegetable Fruit Assorted Milk	4 Blueberry Patch Parfait, vanilla yogurt, blueberries Colby Jack Cheese Stick Breaded Chicken Sandwich Spaghetti w/ Meatballs Garlic Breadstick Vegetable Fruit Assorted Milk	5 Chicken Strips and Waffle Crispy Chicken Salad Sloppy Joe on Roll Garlic Breadstick Vegetable Fruit Assorted Milk
6 Chicken Soft Tacos Quesadilla with Chicken and Cheese Turkey Breast & Cheese Sub Vegetable Fruit Assorted Milk	7 Smothered Bean & Cheese Burrito Breaded Chicken Sandwich Buffalo Chicken Wrap Vegetable Fruit Assorted Milk	8 Beef and Cheese Nachos Diced Chicken Sliders BBQ Crispy Chicken Salad Vegetable Fruit Assorted Milk	9 American Sub Sandwich Beefy Macaroni Corn Dog Garlic Breadstick Vegetable Fruit Assorted Milk	10 Baked Penne Pasta Garlic Breadstick Cheese Pizza Crispy Chicken Salad Vegetable Fruit Assorted Milk
11 Chicken Nuggets Ravioli Mini Cheese w/Marinara Turkey Breast & Cheese Sub Dinner Roll Vegetable Fruit Assorted Milk	12 Cheese Stuffed Breadsticks with marinera sauce Glazed Chicken Drumstick Turkey Chef Salad Dinner Roll Vegetable Fruit Assorted Milk	13 Cheese Pizza Popeye Spinach Salad with chicken Turkey Hot Dog Dinner Roll Vegetable Fruit Assorted Milk	14 American Sub Sandwich Beef Soft Tacos Breaded Chicken Sandwich Vegetable Fruit Assorted Milk	15 Frito Chili Pie Turkey Ham and Cheese Sandwich Grilled Cheese Sandwich Garlic Breadstick Vegetable Fruit Assorted Milk

16 Bean and Cheese Burrito Spaghetti w/ Meatballs Turkey Breast & Cheese Sub Garlic Knot Breadstick Vegetable Fruit Assorted Milk	17 Chicken Soft Tacos Cheese Pizza Turkey Chef Salad Dinner Roll Vegetable Fruit Assorted Milk	18 Turkey Ham & Swiss Pinwheel Turkey Hot Dog Pork Honey BBQ Riblets Vegetable Fruit Assorted Milk	19 Cheese Stuffed Breadsticks with marinera sauce Cheeseburger Strawberry Banana Parfait, strawberry yogurt, bananas, strawberries, granola Cheddar Cheese Stick Graham Crackers Vegetable Fruit Assorted Milk	20 American Sub Sandwich Diced Chicken Sliders BBQ Ravioli Mini Cheese w/Marinara Garlic Breadstick Vegetable Fruit Assorted Milk
21 Cheeseburger Glazed Chicken Drumstick Kidzable Ham, Cheese & Flatbread Garlic Knot Breadstick Vegetable Fruit Assorted Milk				

Exhibit B Continued

**MENU CYCLE FOR
SCHOOL BREAKFAST PROGRAM**

Attach a sample 21-day cycle breakfast menu prepared by the SFA.
This menu must be used for the first 21-day cycle of the new school year.

2021 - 2022 School Year

Campus Level: ECC, Elementary, & Intermediate (breakfast in the classroom)

1 Cinnamon Toast Crunch Cereal Cinnamon Apple Crackers Fruit Assorted Milk	2 Chicken Sausage Biscuit Sandwich Fruit Assorted Milk	3 Churros, Cinnamon Cinnamon Apple Crackers Fruit Assorted Milk	4 Mini Cinnis Fruit Assorted Milk	5 Mini Pancake Bites Fruit Assorted Milk
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6 Frosted Flakes Cereal Bowlpak Vanilla Sports Bites Fruit Assorted Milk	7 Pancake on a stick Fruit Assorted Milk	8 Strawberry Nutrigrain Breakfast Bar Banana Bread Fruit Assorted Milk	9 Egg and Cheese Breakfast Sandwich Fruit Assorted Milk	10 French Toast Glaze Yogurt, Cherry, 4 oz. Cup Fruit Assorted Milk
11 Dino Bites Crackers Trix Cereal Fruit Assorted Milk	12 Morning Sausage Rolls Kolache Fruit Assorted Milk	13 Cinnamon Toast Soft Filled Bar Fruit Assorted Milk	14 Breakfast Pizza Fruit Assorted Milk	15 Blueberry Muffin Top Fruit Assorted Milk
16 Cinnamon Toast Crunch Cereal Cinnamon Apple Crackers Fruit Assorted Milk	17 Chicken Sausage Biscuit Sandwich Fruit Assorted Milk	18 Churros, Cinnamon Cinnamon Apple Crackers Fruit Assorted Milk	19 Mini Cinnis Fruit Assorted Milk	20 Mini Pancake Bites Fruit Assorted Milk
21 Frosted Flakes Cereal Bowlpak Vanilla Sports Bites Fruit Assorted Milk				

Exhibit B Continued

**MENU CYCLE FOR
AFTER SCHOOL CARE PROGRAM**

Attach a sample 21-day cycle after school care menu prepared by the SFA.
This menu must be used for the first 21-day cycle of the new school year.

2021 - 2022 School Year

Campus Level: All Campuses

1 Diced Peaches Lowfat White Milk 1%	2 Cinnamon Toast Crunch Cereal Lowfat White Milk 1%	3 Tortilla Chips Salsa Apple Juice	4 Baby Carrots Ranch Dressing Lowfat White Milk 1%	5 Cornbread Muffin Apple Juice
6 Nutrigrain Bar, Blueberry Lowfat White Milk 1%	7 String Cheese Saltine Crackers Lowfat White Milk 1%	8 Fresh Fruit Cup Lowfat White Milk 1%	9 Goldfish Crackers Lowfat White Milk 1%	10 Potato Smiles Lowfat White Milk 1%
11 1/2 Sunbutter and Jelly Sandwich Lowfat White Milk 1%	12 Fruity Cheerios Cereal Bar Lowfat White Milk 1%	13 Pretzels Lowfat White Milk 1%	14 Cucumbers & Broccoli Ranch Dressing Lowfat White Milk 1%	15 Diced Pears Lowfat White Milk 1%
16 Diced Peaches Lowfat White Milk 1%	17 Cinnamon Toast Crunch Cereal Lowfat White Milk 1%	18 Tortilla Chips Salsa Apple Juice	19 Baby Carrots Ranch Dressing Lowfat White Milk 1%	20 Cornbread Muffin Apple Juice
21 Nutrigrain Bar, Blueberry Lowfat White Milk 1%				

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Exhibit B Continued

**MENU CYCLE FOR
SEAMLESS SUMMER OPTION OR
SUMMER FOOD SERVICE PROGRAM**

Attach a sample 21-day cycle SSO or SFSP menu prepared by the SFA.
This menu must be used for the first 21-day cycle of the new school year.

2021 - 2022 School Year

Campus Level: All Campuses (breakfast & lunch)

<p>1 Cinnamon Toast Crunch Cereal Cinnamon Apple Crackers Fruit Assorted Milk</p> <p>Cheeseburger Glazed Chicken Drumstick Kidzable Ham, Cheese & Flatbread Macaroni and Cheese, Bowtie, Garlic Knot Breadstick Vegetable Fruit Assorted Milk</p>	<p>2 Chicken Sausage Biscuit Sandwich Fruit Assorted Milk</p> <p>Beef Soft Tacos Cheese Pizza Turkey Chef Salad Garlic Breadstick Vegetable Fruit Assorted Milk</p>	<p>3 Churros, Cinnamon Cinnamon Apple Crackers Fruit Assorted Milk</p> <p>Chicken Caesar Salad Chicken Nuggets Turkey HotDog Garlic Breadstick Vegetable Fruit Assorted Milk</p>	<p>4 Mini Cinnis Fruit Assorted Milk</p> <p>Blueberry Patch Parfait, vanilla yogurt, blueberries Colby Jack Cheese Stick Breaded Chicken Sandwich Spaghetti w/ Meatballs Garlic Breadstick Vegetable Fruit Assorted Milk</p>	<p>5 Mini Pancake Bites Fruit Assorted Milk</p> <p>Chicken Strips and Waffle Crispy Chicken Salad Sloppy Joe on Roll Garlic Breadstick Vegetable Fruit Assorted Milk</p>
<p>6 Frosted Flakes Cereal Bowlpak Vanilla Sports Bites Fruit Assorted Milk</p> <p>Chicken Soft Tacos Quesadilla with Chicken and Cheese Turkey Breast & Cheese Sub Vegetable Fruit Assorted Milk</p>	<p>7 Pancake on a stick Fruit Assorted Milk</p> <p>Smothered Bean & Cheese Burrito Breaded Chicken Sandwich Buffalo Chicken Wrap Vegetable Fruit Assorted Milk</p>	<p>8 Strawberry Nutrigrain Breakfast Bar Banana Bread Fruit Assorted Milk</p> <p>Beef and Cheese Nachos Diced Chicken Sliders BBQ Crispy Chicken Salad Vegetable Fruit Assorted Milk</p>	<p>9 Egg and Cheese Breakfast Sandwich Fruit Assorted Milk</p> <p>American Sub Sandwich Beefy Macaroni Corn Dog Garlic Breadstick Vegetable Fruit Assorted Milk</p>	<p>10 French Toast Glaze Yogurt, Cherry, 4 oz. Cup Fruit Assorted Milk</p> <p>Baked Penne Pasta Garlic Breadstick Cheese Pizza Crispy Chicken Salad Vegetable Fruit Assorted Milk</p>
<p>11 Dino Bites Crackers Trix Cereal Fruit</p>	<p>12 Morning Sausage Rolls Kolache Fruit</p>	<p>13 Cinnamon Toast Soft Filled Bar Fruit</p>	<p>14 Breakfast Pizza Fruit Assorted Milk</p>	<p>15 Blueberry Muffin Top Fruit Assorted Milk</p>

<p>Assorted Milk</p> <p>Chicken Nuggets Ravioli Mini Cheese w/Marinara Turkey Breast & Cheese Sub Dinner Roll Vegetable Fruit Assorted Milk</p>	<p>Assorted Milk</p> <p>Cheese Stuffed Breadsticks with marinera sauce Glazed Chicken Drumstick Turkey Chef Salad Dinner Roll Vegetable Fruit Assorted Milk</p>	<p>Assorted Milk</p> <p>Cheese Pizza Popeye Spinach Salad with chicken Turkey HotDog Dinner Roll Vegetable Fruit Assorted Milk</p>	<p>American Sub Sandwich Beef Soft Tacos Breaded Chicken Sandwich Vegetable Fruit Assorted Milk</p>	<p>Frito Chili Pie Turkey Ham and Cheese Sandwich Grilled Cheese Sandwich Garlic Breadstick Vegetable Fruit Assorted Milk</p>
<p>16 Cinnamon Toast Crunch Cereal Cinnamon Apple Crackers Fruit Assorted Milk</p> <p>Bean and Cheese Burrito Spaghetti w/ Meatballs Turkey Breast & Cheese Sub Garlic Knot Breadstick Vegetable Fruit Assorted Milk</p>	<p>17 Chicken Sausage Biscuit Sandwich Fruit Assorted Milk</p> <p>Chicken Soft Tacos Cheese Pizza Turkey Chef Salad Dinner Roll Vegetable Fruit Assorted Milk</p>	<p>18 Churros, Cinnamon Cinnamon Apple Crackers Fruit Assorted Milk</p> <p>Turkey Ham & Swiss Pinwheel Turkey Corndog Pork Honey BBQ Riblets Vegetable Fruit Assorted Milk</p>	<p>19 Mini Cinnis Fruit Assorted Milk</p> <p>Cheese Stuffed Breadsticks with marinera sauce Cheeseburger Strawberry Banana Parfait, strawberry yogurt, bananas, strawberries, granola Cheddar Cheese Stick Graham Crackers Vegetable Fruit Assorted Milk</p>	<p>20 Mini Pancake Bites Fruit Assorted Milk</p> <p>American Sub Sandwich Diced Chicken Sliders BBQ Ravioli Mini Cheese w/Marinara Garlic Breadstick Vegetable Fruit Assorted Milk</p>
<p>21 Frosted Flakes Cereal Bowlpak Vanilla Sports Bites Fruit Assorted Milk</p> <p>Cheeseburger Glazed Chicken Drumstick Kidzable Ham, Cheese & Flatbread Garlic Knot Breadstick Vegetable Fruit Assorted Milk</p>				

**Exhibit C, Food Service Budget
Fixed Meal Rate**

**Exhibit C, Food Service Budget Continued
FOOD SERVICE BUDGET–FIXED-MEAL RATE**

Ennis ISD SFA

School Year 2020 - 2021

Revenues:

 Cash Sales:

Student Breakfast Sales	\$0
Student Lunch Sales	\$220,669
Student Snack Sales	\$0
Student a la carte Sales	\$207,323
Adult Sales	\$19,324
Catering Sales	\$41,114
Interest Income	\$0
Concession Sales	\$0
Vended Meal Sales	\$0
Vending Machine Sales	\$0
 Total Cash	 \$448,430

 State and Federal Reimbursement/Funding

NSLP	\$1,727,090
SBP	\$1,090,143
ASCP	\$31,705
SSO	\$13,396
SFSP	\$0
State Matching Fund	\$15,032
USDA Foods Received	\$0
Other Funding	\$136,712
 Total Reimbursements	 \$3,014,078

Total Revenues: = All Cash Sales +
 All Reimbursements \$3,502,508

Exhibit C, Food Service Budget Continued

Expenses:

Reimbursable Breakfast Meal Rate Fee	_____	-
Reimbursable Lunch Meal Rate Fee	_____	-
Management Fee	\$ (9,441)	
A la Carte Equivalent Meal Rate Fee	_____	-
A la Carte management Meal Rate Fee	_____	-
SFA Direct Expense	_____	-
Total Expenses	_____	-

USDA-donated Foods Used (SFA may call TDA for amount)	\$268,891.68
Commodity Division for annual Usage amount for the SFA)	

USDA-donated Foods Delivery	\$5,040
USDA-donated Foods Processing	\$4,401

Surplus / Subsidy =

Total Revenues – Total Expenses	\$196,039
---------------------------------	-----------

FSMC Guaranteed Return	\$267,096
FSMC Guaranteed Break Even	\$0
FSMC Guaranteed Subsidy	\$0

SFA Employee responsible for submission of this budget data:

Name: Lisa Fincher, CFO

Telephone: (972)872-7000

FSMC Employee responsible for submission for this budget data:

Name: _____

Telephone: _____

Exhibit D

LIST OF CHARTS AND OTHER ATTACHMENTS

Chart 1: Enrollment Chart (By Campus)

Chart 2: Designation of Program Expenses

DESIGNATION OF PROGRAM EXPENSES

The SFA has deemed the following Program Expense schedule to be a necessary part of this bid specification as an indicator of who will bear ultimate responsibility for the cost. Costs that are not provided for under the standard contract terms and conditions, but are necessary for the effective on-site operation of the food service program and are directly incurred for the SFA’s operation, must be assigned by the SFA and included in the RFP. The column selected by the SFA for each expense represents whether the SFA or FSMC is ULTIMATELY responsible for that cost.

DESCRIPTION	FSMC	SFA	N/A*
FOOD:			
Food Purchases	X	N/A	
USDA-donated Foods Processing Charges	X		
Processing and Payment of Invoices	X	N/A	
LABOR:			
FSMC EMPLOYEES:			
Salaries/Wages	X		
Fringe Benefits and Insurance	X		
Retirement	X		
Payroll Taxes	X		
Workers’ Compensation	X		
Unemployment Compensation	X		
SFA EMPLOYEES:			
Salaries/Wages		X	
Fringe Benefits and Insurance		X	
Retirement		X	
Payroll Taxes		X	
Workers’ Compensation		X	
Unemployment Compensation		X	

*Not Applicable

Exhibit D Continued

The items listed below with two asterisks (**) are Direct Cost items that may or may not apply to the SFA. At local discretion, based upon actual practice and need, the SFA should assign cost responsibility for those items applicable to its operation or designate them as not applicable.

DESCRIPTION	FSMC	SFA	N/A*
OTHER EXPENSES:			
**Paper/Disposable Supplies	X		
Cleaning/Janitorial Supplies	X		
**Tickets/Tokens			X
China/Silverware/Glassware:	X		
Initial Inventory	X		
Replacement during Operation	X		
Telephone:		X	
Local		X	
Long Distance			
Uniforms	X		
**Linens	X		
Laundry	X		
Trash Removal:			
From Kitchen	X		
From Dining Area		X	
From Premises		X	
Pest Control		X	
Equipment Replacement:			
Nonexpendable		X	
Expendable		X	
Equipment Repair		X	
**Car/Truck Rental (Include Explanation in RFP)		X	
**Vehicle Maintenance		X	
**Courier Service (i.e., Bank Deposits, School Deliveries)		X	
**Storage Costs:			
Food	X		
Supplies	X		
**Office Supplies	X		
**Printing	X		
**Promotional Materials	X		

Exhibit D Continued

Cleaning responsibilities are listed below:

Food Preparation Areas (Include Equipment)	X		
Serving Areas	X		
Kitchen Areas	X		
Dining Room Floors		X	
Periodic Waxing and Buffing of Dining Room Floors		X	
Restrooms for Food Service Employees	X		
Grease Traps		X	
Daily Routine Cleaning of Dining Room Tables and Chairs		X	
Thorough Cleaning of Dining Room Tables and Chairs		X	
Cafeteria Walls		X	
Kitchen Walls	X		
Light Fixtures		X	
Windows		X	
Window Coverings		X	
Hoods		X	
Grease Filters		X	
Duct Work		X	
Exhaust Fans		X	
Other: (List Below)			

*Not Applicable

Chart 3: Projected Enrollment Chart (By Campus) – Projected new campuses and dates of the anticipated opening must be included

Chart 4: Staffing Chart (Identifying whether each position is SFA or FSMC personnel):
 A - Cafeteria Staffing (Elementary) B - Cafeteria Staffing (Secondary)

Chart 5: Participation Data for free, reduced-price and paid meals Chart

Chart 6: Chart stating Campus Serving Times

Chart 7: Chart stating Meal Prices and Costs per Meal

Chart 8: Chart/copies of Reimbursement Claims for Current and Prior School Years

Chart 9: Chart identifying: (1) each FSMC position that will be shared with other SFAs; (2) the SFAs with whom FSMC employees will be shared; and (3) the percentage of time FSMC employee will work at each SFA.

Chart 10: School Calendar for 2021-2022. If SFA does not have an approved school calendar, please submit the projected school calendar with the RFP.

Exhibit E

FOOD SPECIFICATIONS

All Food Specifications must meet requirements of the United States Department of Agriculture (“USDA”) *Food Buying Guide* (“FBG”), 7 CFR Part 210, USDA Guidance Memos, other applicable federal regulations, and TDA’s Administrative Reference Manual (“ARM”)

- All USDA-donated foods offered to the SFA and made available to FSMC are acceptable and should be utilized in as large a quantity as may be efficiently utilized.
- All food and food products purchased on behalf of the SFA must be in compliance with Buy American provisions. Food and Food products must be produced in the United States, and food products must be processed in the United States using over 51% domestic foods by weight or volume. 7 CFR § 250.17(e); 2 CFR Part 200; SP 38-2017; SP 32-2019; and 7 CFR Part 210.21(d).

For all other food components, specifications shall be as follows:

- Grains must be made from whole grain, whole-grain rich flour/meal, or enriched grain. Cereals may be whole grain, whole-grain rich, enriched grain, or fortified grain. All grains must be fresh (or frozen, if applicable) and must meet the minimum weight per serving as listed in the Child Nutrition Program Food Buying Guide (FBG) or as appropriately identified on a food nutrition label or product manufacturer’s statement. If applicable, the product should be in moisture-proof wrapping and pack code date provided.
- All meat and poultry must have been inspected by the USDA and must be free of color or odor.
 - Beef must be at least 70:30 lean to fat, preferably 80:20 lean to fat.
 - Poultry should be U.S. Grade A when applicable and should meet the recommendations outlined in *Specifications for Poultry Products, A Guide for Food Service Operators* from USDA.
 - For breaded and battered items, all flours must be whole-grain or enriched for bread/grains credit and breading/batter must not exceed 30% of the weight of the finished product.
 - For sausage patties, the maximum fat allowed is 50% by weight; industry standard of 38% to 42% fat preferred.
- All cured processed meats (bologna, frankfurters, luncheon meat, salami, others) shall be made from beef and/or poultry and must be processed in the United States using over 51% domestic meats. No variety meats, fillers, extenders, non-fat milk solids, or cereal will be allowed. Meats must not show evidence of greening, streaking, or other discoloration.
- All cheese must be from domestic milk sources and should be firm, compact and free from gas holes; free of mold; free of undesirable flavor and odors; pasteurized when applicable; preferably reduced or low-fat. All cheese should also have a bright, uniform, and attractive appearance; and have a pleasing flavor; demonstrate satisfactory melting; contain proper moisture and salt content, and processed in the United States.
- All fish must have been inspected by the United States Department of Commerce (USDC) and meet minimum flesh and batter/breading required for USDC Grade A product or product packed under federal inspection (PUFI) by the USDC. All fish must also be in compliance with the Buy American provisions for farmed and wild fish as described in SP 32-2019.

- All fresh fruits must be ripe and in good condition when delivered and must be ready for consumption per the USDA FBG. Fruits must at a minimum meet the food distributors' second quality level. Fruits should have characteristic color and good flavor and be well-shaped and free from scars and bruises. Size must produce a yield equal to or greater than the attached 21-day cycle menu requirements.
- All fresh vegetables must be from domestic sources, ripe and in good condition when delivered and must be ready for consumption per the FBG. Vegetables must at a minimum meet the food distributors' second quality level. Vegetables should have characteristic color and good flavor and be well-shaped and free from discoloration, blemishes, and decay. Size must produce a yield equal to or greater than the attached 21-day cycle menu requirements.
- All canned vegetables must be produced and processed in the United States using over 51% domestic vegetables by weight or volume; meet the food distributors' first quality level (extra fancy and fancy); canned fruits (standard) must meet the second quality level. Vegetables should have characteristic color and good fresh flavor and be free from discoloration, blemishes, and decay.
- Eggs must be from domestic sources, inspected and passed by the state or federal Department of Agriculture and used within 30 days of the date on carton. Eggs should be grade A, uniform in size, clean, sound-shelled, and free of foreign odors or flavors.
- Sauces, such as gravy, spaghetti sauce, pizza sauce, etc., must be smooth and uniform in color with no foreign substance, flavor, odor, or off-color.
- If applicable, the food production facility, manufacturing plant, and products must meet all sanitary and other requirements of the Food, Drug, and Cosmetic Act and other regulations that support the wholesomeness of products.
- Meals and food items must be stored and prepared under properly controlled temperatures and in accordance with all applicable health and sanitation regulations.
- Fluid milk must be from domestic sources and offered in a variety of at least two different fat contents. If flavored milk is offered in the National Lunch Program or School Breakfast program, unflavored milk must also be offered as a selection. The selection of milk must be consistent with the types of milk consumed the prior year. The milk must contain vitamins A and D at levels specified by the Food and Drug Administration and must be consistent with State and local standards.

Exhibit F

SCHEDULE OF APPLICABLE LAWS

- 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, 89 Stat. 871).
- FSMC shall comply with Sections 103 and 107 of the Contract Work Hours and Safety Standards Act (the “Act”), 40 U.S.C. § 3701 and 3704, as supplemented by Department of Labor regulations, 29 CFR Part 5. Under Section 103 of the Act, 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 40 hours in any workweek. Section 107 of the Act provides that no laborer or mechanic shall be required to work in surroundings or under working conditions, which are unsanitary, hazardous or dangerous to his health and safety as determined under construction, safety and health standards promulgated by the Secretary of Labor.
- FSMC shall comply with Executive Order 11246, entitled Equal Employment Opportunity, as amended by Executive Order 11375 of October 13, 1967, and as supplemented in Department of Labor regulations, 41 CFR Part 60.
- FSMC shall comply with the following civil rights laws, as amended: Title VI of the Education Amendments of 1972; Section 504 of the Rehabilitation Act of 1973; the Age Discrimination Act of 1975; Title 7 CFR Parts 15, 15a, and 15b; the Americans with Disabilities Act; and FNS Instruction 113-1, Civil Rights Compliance and Enforcement – Nutrition Programs and Activities.
- FSMC shall comply with the Buy American provision for contracts that involve the purchase of domestic food and food products in the United States using over 51% domestic foods by weight or volume, USDA Regulation 7 CFR § 210.21(d) and 7 CFR Part 250.
- FSMC has signed the Anti-Collusion Affidavit, Exhibit I, which is attached herein and is incorporated by reference and made a part of this Contract.
- FSMC shall comply with all applicable standards, orders, or requirements issued under Section 306 of the Clean Air Act (42 U.S.C. 7606), § 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency (EPA) regulations (Title 40 CFR).
- FSMC shall comply with the Lobbying Certification, Exhibit L, which is attached herein and is incorporated and made a part of this Contract. If applicable, FSMC has also completed and submitted Standard Form-LLL, Disclosure Form to Report Lobbying, Exhibit K herein, or will complete and submit as required in accordance with its instructions included in Exhibit K.
- FSMC shall strongly encourage the participation of Historically Underutilized Business (HUB), Minority and Women Business Enterprise (MWBE), and labor surplus area vendors to compete in procurement opportunities the FSMC conducts on behalf of the SFA.
- FSMC shall ensure that the nondiscrimination statement is affixed to all letters, notices, publications, and websites as required by FNS Instruction 113.1 (November 8, 2005).

Revised Equal Opportunity Public Notification (October 14, 2015)

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, sex, disability, age, or reprisal or retaliation for prior civil rights activity in any program or activity conducted or funded by USDA.

Persons with disabilities who require alternative means of communication for program information (e.g., Braille, large print, audiotape, American Sign Language, etc.), should contact the Agency (State or local) where they applied for benefits. Individuals who are deaf, hard of hearing, or have speech disabilities may contact USDA through the Federal Relay Service at (800) 877-8339. Additionally, program information may be made available in languages other than English.

To file a program complaint of discrimination, complete the *USDA Program Discrimination Complaint Form*, (AD-3027) found online at: http://www.ascr.usda.gov/complaint_filing_cust.html, and at any USDA office, or write a letter addressed to USDA and provide in the letter all of the information requested in the form. To request a copy of the complaint form, call (866) 632-9992. Submit your completed form or letter to USDA by:

- (1) mail: U.S. Department of Agriculture
Office of the Assistant
Secretary for Civil Rights 1400
Independence Avenue, SW
Washington, D.C. 20250-9410;
- (2) fax: (202) 690-7442; or
- (3) email: program.intake@usda.gov.

This institution is an equal opportunity provider.

Exhibit H

SCHEDULE OF FSMC EMPLOYEES

SFA must state in detail minimum qualifications for each FSMC position

Food Service Director

Education: Bachelor's degree, or equivalent educational experience, with academic major or concentration in food and nutrition, food service management, dietetics, family and consumer sciences, nutrition education, culinary arts, business, or a related field; or Bachelor's degree, or equivalent educational experience, with any academic major or area of concentration, and a State-recognized certificate in food and nutrition, food service management, dietetics, family and consumer sciences, nutrition education, culinary arts, or business; or Associate's degree, or equivalent educational experience, with academic major or concentration in food and nutrition, food service management, dietetics, family and consumer sciences, nutrition education, culinary arts, business, or a related field; and at least one year of relevant school nutrition programs experience.

Knowledge & Experience: Extensive relevant knowledge and experience in areas such as institutional food service operations, managements, business and/or nutrition education. Skills & Abilities Additional abilities and skills needed to lead, manage, and supervise people to support the mission of Child Nutrition Programs

Food Service Lead

High school diploma or GED and food manager certification. Knowledge of methods, materials, equipment and appliances used in food preparation. Ability to manage personnel, effective planning and organization skills. Ability to read and comprehend simple instructions, short correspondence and memos. Ability to write simple correspondence and have the ability to effectively present information in one on one and small group situations to customers, clients,, and other employees of the organization. Ability to add, subtract, multiple and divide in all units of measure, using whole numbers, common fractions, and decimals. Ability to apply common sense understanding to carry out detailed but uninvolved written or oral instruction.

Food Service Employee

High School Diploma or GED; or one to three months related experience and/or training; or equivalent combination of education and experience. Ability to read and comprehend simple instructions, short correspondence and memos. Ability to write simple correspondence and have the ability to effectively present information in one on one and small group situations to customers, clients,, and other employees of the organization. Ability to add, subtract, multiple and divide in all units of measure, using whole numbers, common fractions, and decimals. Ability to apply common sense understanding to carry out detailed but uninvolved written or oral instruction.

Exhibit I

SCHEDULE OF TERMS FOR FSMC GUARANTY

Financial Guarantee – If at the conclusion of the 2021-2022 school year, Ennis ISD’s food service program does not meet or exceed the agreed upon financial pro forma, FSMC will guarantee up to \$267,096.00.

Serving Days – Based on 173 full breakfast and lunch service days at all campuses.

District Enrollment – Average Daily Attendance (ADA) is projected as 95% of updated projected enrollment of 5799.

Annual Price Adjustment – FSMC’s fixed price may be increased on an annual basis by the yearly percentage change in the Consumer Price Index for all urban customers, as published by the US Department of Labor, Bureau of Labor Statistics, Food Eaten Away from Home, **South-Size D (all nonmetropolitan areas)**.

Exhibit J

ANTI-COLLUSION AFFIDAVIT

STATE OF)

COUNTY OF)

_____, of lawful age, being first sworn on oath says, that he/she is the agent authorized by the bidder to submit the attached bid. Affiant further states that the bidder has not been a party to any collusion among bidders in restraint of freedom of competition by agreement to bid at a fixed price or to refrain from bidding; or with any state official of employees to quantity, quality, or price in the prospective contract, or any other terms of said prospective official concerning exchange of money or other thing of value for special consideration in the letting of contract; that the bidder/contractor had not paid, given or donated, or agreed to pay, give or donate to any officer or employee either directly or indirectly in the procuring of the award of a contract pursuant to this bid.

Signed

Subscribed and sworn before me this _____ day of _____, 20_____

Notary Public (or Clerk or Judge) _____

My commission expires _____

Exhibit K

PROCUREMENT

Certification Regarding Lobbying

Applicable to Grants, Sub-grants, Cooperative Agreements, and Contracts Exceeding \$100,000 in Federal funds. Contractors that apply or bid for such an award must file the required certification.

Submission of this certification is a prerequisite for making or entering into this transaction and is imposed by Title 31, § 1352 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, an employee of a Member of Congress, or any Board Member, officer, or employee of **Ennis ISD** 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 Federally 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, an employee of a Member of Congress, or any Board Member, officer, or employee of **Ennis ISD** in connection with this Federal grant or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying", in accordance with its instructions.

The undersigned shall require that the language of this certification is included in the award documents for all covered sub-awards exceeding \$100,000 in Federal funds at all appropriate tiers and that all sub-recipients shall certify and disclose accordingly.

Name and Address of Organization

Name/Title of Submitting Official

Signature

Date

Exhibit L

PROCUREMENT

Disclosure of Lobbying Activities

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

(See next page for public burden disclosure.)

*Approved by OMB
0348-0046*

<p>1. Type of Federal Action:</p> <p><input type="checkbox"/> a. contract</p> <p><input type="checkbox"/> b. grant</p> <p><input type="checkbox"/> c. cooperative agreement</p> <p><input type="checkbox"/> d. loan</p> <p><input type="checkbox"/> e. loan guarantee</p> <p><input type="checkbox"/> f. loan insurance</p>	<p>2. Status of Federal Action:</p> <p><input type="checkbox"/> a. bid/offer/application</p> <p><input type="checkbox"/> b. initial award</p> <p><input type="checkbox"/> c. post-award</p>	<p>3. Report Type:</p> <p><input type="checkbox"/> a. initial offering</p> <p><input type="checkbox"/> b. material change</p> <p>For Material Change Only: Year _____ Quarter _____ Date of last report _____</p>
<p>4. Name and Address of Reporting Entity:</p> <p><input type="checkbox"/> Prime <input type="checkbox"/> Sub-awardee</p> <p>Tier _____, <i>if known:</i></p> <p>Congressional District, <i>if known:</i></p>	<p>5. If Reporting Entity in No. 4 is Sub-awardee, Enter Name & Address Of Prime:</p> <p>Congressional District, <i>if known:</i></p>	
<p>6. Federal Department/Agency:</p>	<p>7. Federal Program Name/Description:</p> <p>CFDA Number, <i>if applicable:</i> _____</p>	
<p>8. Federal Action Number, <i>if known:</i></p>	<p>9. Award Amount, <i>if known:</i></p> <p>\$ _____</p>	

Exhibit L Continued

<p>10. a. Name and Address of Lobbying Entity <i>(If individual, last name, first name, MI):</i></p> <p>(Attach continuation sheet(s) if necessary)</p>	<p>b. Individuals Performing Services</p> <p><i>(Incl. Address if different from No. 10a) (last name, first name, MI):</i></p>
<p>11. Amount of Payment <i>(check all that apply):</i></p> <p>\$ _____</p> <p>_____ Actual _____ Planned</p>	<p>13. Type of Payment <i>(check all that apply):</i></p> <p>_____ a. retainer</p> <p>_____ b. one-time fee</p> <p>_____ c. commission</p> <p>_____ d. contingent fee</p> <p>_____ e. deferred</p> <p>_____ f. other; specify: _____</p>
<p>12. Form of Payment <i>(check all that apply):</i></p> <p>_____ a. cash</p> <p>_____ b. in-kind; specify: nature _____ value _____</p>	<p>14. Brief Description of Services Performed or to be Performed and Date(s) of Service, including officer(s), employee(s), or member(s) contacted for Payment Indicated in Item 11:</p> <p align="center">(Attach continuation sheet(s) if necessary)</p>
<p>15. Continuation Sheet(s) attached: _____ Yes _____ No</p>	

Exhibit L Continued

<p>16. Information requested through this form is authorized by article 31 U.S.C. § 1352.</p> <p>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 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.</p>	<p>Signature: _____</p> <p>Print Name: _____</p> <p>Title: _____</p> <p>Telephone No: _____</p> <p>Date: _____</p>
<p><i>Federal Use Only:</i></p> <p><i>Authorized for Local Reproduction of:</i></p> <p>Standard Form – LLL</p>	

PROCUREMENT

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

This disclosure form shall be completed by the reporting entity, whether sub-awardee 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. § 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 the 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 sub-award recipient. Identify the tier of the sub-awardee, e.g., the first sub-awardee of the prime is the 1st tier. Sub-awards include but are not limited to subcontracts, subgrants, and contract awards under grants.
5. If the organization filing the report in item 4 checks “sub-awardee,” 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.”

Exhibit L Continued

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.
 - 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).
10. 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 boxes that apply. If this is a material change report, enter the cumulative amount of payment made or planned to be made.
11. Check the appropriate box (es). Check all boxes that apply. If payment is made through an in-kind contribution, specify the nature and value of the in-kind payment.
12. Check the appropriate box (es). Check all boxes that apply. If other, specify nature.
13. 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.
14. Check whether or not an SF-LLL-A continuation sheet(s) is attached.
15. 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 (0348-0046), Washington, D.C. 20503.

Exhibit M

PURCHASE DISCOUNTS, REBATES, AND CREDITS, PERTAINING TO VALUE OF USDA FOODS

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

(School District) (hereinafter SFA) has and will undertake all necessary oversight and monitoring measures to assure that the school district receives the full value of USDA foods. These measures shall include but are not limited to:

Upon execution of this contract, the SFA must strictly monitor the agreement throughout the year to ensure that they receive the full value of USDA Foods and are in compliance with Federal Regulations. Monitoring activities shall include but are not limited to:

- Identify the person within the SFA that will be responsible for oversight;
- Designate the position that will monitor the credits, discounts, and rebates;
- Determine the schedule of when the FSMC will submit documentation for the SFA to verify the accuracy of the credits, discounts, rebates, and value of USDA Foods.
- Examine the invoices and other documentation provided by the FSMC as agreed to in the contract;
- Determine the percentage of credits, discounts, and rebates reported in relation to the value of food purchased early in the contract year as a benchmark for future comparison;
- Calculate the average credit-purchase proportion received, or as applicable discount or rebate; and
- Examine products to ensure that to the maximum extent practicable; domestic foods/commodities are purchased. Visit storage facilities to observe the origin of purchased food printed on food labels and case units.

In the event of discrepancies during monitoring activities, follow up with FSMC to resolve the issues, and if necessary, request additional documentation from the FSMC to substantiate discrepancies. Potential discrepancies to consider may include:

- Frequency of reporting that does agree with contract provision;
- Labels identifying countries other than the U.S; and
- Credit-purchase proportions that fall below the average credit-purchase proportion established early in the year.

The SFA shall ensure that FSMC has credited it for the value of all USDA-donated foods received for use in the SFA’s meal service in the school year. (7 CFR § 250.51(a))
