

# Food Service Management Contract

## Fixed Meal Prices

### School Year 2019-20

With the exception of provisions in this contract template that require information to be inserted, no changes or additions may be made to the standard provisions of this contract template unless approved by the Minnesota Department of Education (MDE) prior to execution of the contract. Any changes or additions to the contract template are described in Section 25 and attached.

Whereas Athlos Academy of St Cloud School Food Authority (SFA) advertised for proposals for management of its school food service in accordance with the specifications attached and made a part of this contract and School Nutrition Programs (SNP) requirements, and

Whereas \_\_\_\_\_ (Company) submitted a proposal and has been awarded this contract, and

Whereas SFA has drafted this contract to meet SNP and SFA requirements and Company's proposal.

SFA and Company mutually agree:

#### 1. Scope and Purpose

- a. Company will operate the school food service as a benefit to SFA's students, faculty and staff, in conformance with SFA's agreement with MDE. Company will manage the school food service to promote maximum participation in the programs listed below in compliance with the program requirements of the U.S. Department of Agriculture (USDA) and MDE. Company shall provide its services in accordance with generally accepted standards of care and best practices in the industry.

Company will prepare meals:  on-site  off-site and transport food to SFA

- b. Company will provide staff to manage the food service operations and supervise employees. Company will be an independent contractor and not an employee of SFA. The employees of Company are not employees of the SFA.
- c. Company will have the exclusive right to operate the program(s) **indicated below** for approximately the number of annual serving days as shown on each attached Site Data Page. SFA **may** add or remove sites and/or adjust meal periods or make other changes at a site at any time unless the change would be a material change to the contract.

#### School Meal Programs

- National School Lunch Program (NSLP) and Food Distribution Program (FDP)
- School Breakfast Program (SBP)

#### Milk Programs

- Special Milk Program (SMP)
- Minnesota Kindergarten Milk Program (MKMP)

#### Afterschool Snack or Meal Programs

- At-Risk Afterschool Meals (area-eligible - Child and Adult Care Food Program (CACFP))
- Afterschool Snacks - NSLP

#### Summer Meal Programs

- Summer Food Service Program (SFSP)
- Seamless Summer Option (SSO) of NSLP

#### Child Care Program

- Child Care Center – CACFP

- d. Company will comply with the regulations and guidance of USDA and MDE that are applicable to the programs being administered, including but not limited to 7 Code of Federal Regulations (CFR) Parts 210, 215, 220, 225, 245, 250, and 2 CFR Parts 200 and 400, and additions or amendments thereto.
- e. All income accruing as a result of payments by children and adults, federal and state reimbursements, and all other income from sources such as donations, special functions, grants, loans, will be deposited daily in the SFA's food service account. Income in excess of expenses will remain in the SFA food service account.
- f. Company will comply with local or state sanitation requirements, including the requirements in Section 5 below.
- g. SFA will retain responsibility, in accordance with its agreement with MDE, to:
  - Ensure that the food service operation conforms to the SFA's agreement with MDE for child nutrition programs.
  - Control the quality, extent and general nature of the food service program.
  - Control and maintain the school food service account and overall financial responsibility for SNP.
  - Sign and submit forms to MDE including the permanent agreement/policy statement, the annual application, monthly claims for reimbursement (CLICS), reports, and all correspondence to MDE relating to the food service.
  - Distribute, approve or deny, and verify applications for meal benefits, conduct administrative hearings for denied meal benefits, use direct certification data, and maintain the free and reduced price meals eligibility roster, except for any functions relating to approval for school meal benefits that have been expressly contracted to Company in Section 7.
  - Establish internal controls that ensure the accuracy of meal counts prior to the submission of each monthly claim, including reviews of meal count data by site, and edit checks of meal counts data compared to attendance.
  - Monitor the food service. If SFA has more than one site, perform a documented on-site review of the lunch counting and claiming system at each site prior to February 1 of each year. Nothing in this paragraph relieves Company of its independent supervisory and monitoring responsibilities.
  - Approve menus and recipes, adjustments to menus, and other foods to be served or sold.
  - Establish the selling prices for reimbursable and non-reimbursable meals and milk, and a la carte foods.
  - Establish and maintain an advisory board composed of parents, teachers, and students to assist with menu planning.
  - Resolve program review and audit findings.
- h. SFA and Company are jointly responsible to protect the privacy and anonymity of students qualified for free or reduced-price meals, provided that nothing in this paragraph relieves Company of its independent obligation to protect the privacy and anonymity of students qualified for meal benefits.

- i. Company will cooperate with the SFA in promoting nutrition education, coordinating the SFA's food service with classroom instruction, and implementing SFA's Wellness Policy.
- j. Company will comply with the regulations and guidance of USDA and MDE that are applicable to the programs being administered, including but not limited to 7 Code of Federal Regulations (CFR) Parts 210, 215, 220, 225, 245, 250, and 2 CFR Parts 200 and 400, and additions or amendments thereto.
- k. SFA may request Company to provide additional food services such as special functions and catering. SFA will be billed for the cost of food, supplies, labor, and administrative overhead negotiated outside of this contract in an amount that ensures that the payments for additional food services are not subsidized by the nonprofit school food service.
- l. The SFA reserves the right to maintain, add or remove food and beverage vending machines.

**2. Meal Prices and Payment**

Company shall submit invoices by 5<sup>th</sup> of each month that services are provided for the number of meals served during the month at the fixed rate for each meal type shown on the attached Price Proposal accepted by the SFA including the number of "equivalent" lunches to be billed for any a la carte food service.

The fixed meal rates proposed by Company on the Price Proposal and accepted by SFA are:

\$ \_\_\_\_\_ per breakfast.

\$ \_\_\_\_\_ per lunch.

Other fixed rates: \_\_\_\_\_

Company did not take into account the value of USDA Foods to be provided during the contract year when setting the proposed meal prices. SFA will pay Company at the rates shown above and Company will provide credits to SFA for the value of USDA Foods received at the warehouse or processor as described in Section 4.

**3. Meals**

Company will prepare and serve reimbursable meals, snacks, or milk that meet program requirements for the meal services and sites as indicated on the attached Site Data page(s).

Company will serve meals on the days and at the times requested by SFA.

Company will comply with the twenty-one (21)-day menu developed by SFA for NSLP, and/or SBP, that SFA provided in the request for proposals. Any changes made by Company after the first twenty-one (21)-day menu may be made only with approval of SFA. SFA will approve menus no later than two (2) weeks prior to service.

Company will promote maximum participation in the reimbursable meal programs.

Company will sell on the premises only those foods and beverages authorized by the SFA and only at the times and places designated by the SFA.

No payment will be made to Company for meals that are spoiled or unwholesome at the time of delivery, do not meet detailed specifications as developed by the SFA for each food component in the meal pattern, or do not otherwise meet the requirements of the contract.

SFA will retain control of the quality, extent and general nature of the food service.

Company will offer free, reduced-price, and paid reimbursable meals to all eligible children at participating sites.

**4. USDA Foods**

a. Use of USDA Foods

Company will perform activities relating to USDA Foods in accordance with applicable requirements in 7 CFR 250. Allowable activities are preparing meals using USDA Foods or using equal quantities of domestically produced commercial foods supplied by Company that are of the same generic identity and of equal or better quality; selection and ordering of USDA Foods in coordination with SFA; storage and inventory management; payment of processing fees or submittal of refund requests to a processor on behalf of the recipient agency, or remittance of refunds for the value of USDA Foods in processed end products to the recipient agency.

b. Credits for USDA Foods

The fixed meal prices in Section II were calculated without taking into account the value of USDA Foods to be received at the warehouse or processor for the contract year, which will reduce food costs to Company. Company will credit SFA for USDA Foods received at the warehouse or processor during the contract year regardless of Company's use of the foods.

Company will provide cash credits to SFA for the value of USDA Foods, to be subtracted from the amount due to Company. Credits will include entitlement and bonus foods and the value of USDA Foods contained in any processed end products. Company will provide credits on a monthly basis unless crediting on a less frequent basis is described below. Company will disclose the types, amounts and cash values of USDA Foods received and provide credits as separate line items to SFA for the values of USDA Foods received at the warehouse and/or processor during the month. Company will provide credits for all USDA Foods received at the warehouse or processor for the contract year, including USDA Foods that were ordered in the spring survey by the SFA in coordination with the company during the previous contract year. Cash values of USDA Foods will be established by the most current information available from MDE at the time of crediting.

If this box is checked, Company will provide credits for USDA Foods to SFA less frequently than monthly, at least once within the contract year. Describe below the frequency and timing of providing credits to SFA, and the need for Company to provide credits less frequently than monthly:

Annual Reconciliation of Credits: After all USDA Foods for the contract year have been received at the warehouse or processor, SFA will reconcile the total credits for USDA Foods provided by Company to the total value of USDA Foods received at the warehouse or processor on the Reconciliation of Credits for USDA Foods form.

If the annual reconciliation shows that SFA has not received full credits for the contract year, Company will pay the amount due to SFA within 30 days and prior to the close of the contract year. Renewal of this contract for any additional year will be subject to the reconciliation for the prior contract year showing that SFA has been fully credited for USDA Foods.

c. Additional Requirements for USDA Foods

Company will use all USDA donated ground beef and ground pork products, and all processed end products, in SFA's food service. Company will use all other USDA Foods, or will use commercially purchased foods of the same generic identity, of U.S. origin, and of equal or better quality than the USDA Foods, in SFA's food service. Company will comply with the storage and inventory requirements for USDA donated foods in 7 CFR 250.52. Upon termination of the contract, Company will return all unused USDA donated ground beef, ground pork, end products and, at SFA's discretion, other unused USDA Foods.

Company assures SFA that the procurement of processed end products on behalf of SFA, as applicable, will comply with 7 CFR 250 and with provisions of MDE or SFA processing agreements. Company will disclose to SFA the value of USDA Foods contained in such end products at the processing agreement value. Refunds received from processors must be retained in the food service account. Company will not itself enter into a processing agreement with a processor.

Company and SFA will maintain records relating to the use of USDA Foods in accordance with 7 CFR 250.54. Company will have records available to substantiate that the SFA has received the benefit of the full value of received USDA Foods.

SFA will ensure that Company is in compliance with the requirements of 7 CFR 250 through SFA's monitoring of the food service operation as required in 7 CFR 210 and, if applicable, 225.

SFA, MDE, USDA, the Comptroller General, or their authorized representatives, may perform onsite reviews of Company's food service operation, including the review of records, to ensure compliance with requirements for the management and use of USDA Foods.

Company accepts liability for any negligence on its part that results in any loss of, improper use of, or damage to USDA Foods.

Company will promptly credit SFA's food service account for all discounts, rebates, and allowances received by the Company associated with the purchase of processed commodity products on behalf of SFA as well as the full value of USDA Foods.

*Notification to MDE of Change of Distributor: If award of this contract requires SFA to change its distributor, SFA must notify MDE of the change by May 15 preceding the effective start date of the contract. If notice is not provided to MDE by May 15, SFA must request MDE to grant an extension of the deadline for distributor selection.*

**5. Food Safety**

SFA will comply with food safety inspection requirements set by USDA for its facilities. SFA will ensure that state and local regulations are being met by Company preparing or serving meals at any SFA facility.

SFA will post and maintain, in a publicly visible location, all reports on the most recent food safety inspection and provide a copy of the reports to a member of the public upon request.

Company will maintain state and/or local health certifications for any facility outside the SFA in which it prepares meals and will maintain the health certification for the duration of the contract as required under 7 CFR 210.16(c). Company will comply with food safety inspection requirements set by USDA and shall ensure that state and local regulations are met in its facilities.

Company will provide a food safety or HACCP plan for use at the SFA facilities.

## 6. Substitutions for Medical or Special Dietary Needs

Company will substitute or modify food or beverage items for qualifying students as required by federal law, state law, or SFA policies, as specified in this section.

### a. Substitutions for Students with a Disability

Company must provide substitutions to, or modifications of, meals on a case by case basis as required by federal law for students who are documented by a licensed physician, physician assistant, or advanced practice registered nurse such as a certified nurse practitioner to be unable to consume the regular program meals due to a disability. The special diet statement, which is required to claim program reimbursement for meals that do not meet the meal pattern requirements, must identify the student's major life activity affected by the disability, the food(s) to be omitted from the student's diet, and the food(s) that must be substituted. The statement must be signed, dated, and maintained on file.

No additional charge will be billed to the student. Company may bill SFA for any excess costs of providing substitutions.

### b. Lactose-Reduced Milk for Students with Lactose Intolerance

Company must make available at least one of the following types of lactose-reduced milk that are specified in Minnesota Statutes section 124D.114, upon the written request of the parent of a lactose-intolerant student: lactose-reduced milk; milk fortified with lactase in liquid, tablet, granular, or other form; or milk to which lactobacillus acidophilus has been added. A portion of a lactose-reduced milk product may be poured or served from a large container. The parent's request must be maintained on file.

The following Section C applies if the box is checked

### c. Non-Dairy Fluid Milk Substitutes

In accordance with SFA policy and program requirements, Company will offer one or more non-dairy fluid milk substitutes that are nutritionally equivalent to cow's milk to all students. Company will maintain product information on file to document that the non-dairy fluid milk product(s) meet program standards for reimbursement.

The following Section D applies if the box is checked

### d. Other Substitutions

In accordance with SFA policy, Company may substitute food items within the meal pattern for students who do not have a disability as described in Section A, based on a request in writing that is accepted by the SFA. Company may bill SFA for any excess costs of providing substitutions.

## 7. Free and Reduced-Price Meals Benefits

One box is checked below to identify which party is responsible for determining the eligibility of students for free and reduced-price school meals.

SFA is responsible for determining eligibility for free and reduced-price meals.

SFA is responsible for the determination of eligibility for free and reduced-price meals, including the development, distribution, approval and verification of meal applications, direct certification data, and conducting any appeal hearings related to eligibility determinations.

SFA will provide Company with a list of students and their category of meal eligibility. The list will be updated when changes occur in a student's eligibility status. SFA will not disclose confidential information to Company from meal applications and direct certification data that is not needed for meal counts.

Company will use the private data on the eligibility status of students for school meal benefits only to provide correct, approved meal benefits to students and to determine accurate meal counts by eligibility category. The meal counting system must eliminate the potential for overt identification of students eligible for free and reduced-price meal benefits.

- Company is responsible for determining eligibility for free and reduced-price meals.
- a. Company will determine eligibility for free and reduced-price meals, including the development, distribution, approval and verification of meal applications, and direct certification data except as described below.
- b. Company will use the private information provided on meal application forms, and the eligibility status of students for school meal benefits, only to provide correct, approved meal benefits to students and to determine accurate meal counts by category. Company ensures that the meal counting system eliminates the potential for overt identification of students eligible for free and reduced-price meal benefits.
- c. SFA will conduct any appeals and hearings.

## 8. Books and Records

- a. Company will complete daily food production records in accordance with USDA requirements. Company will secure and maintain on file standardized recipes, child nutrition (CN labels), production formulation statements and other accompanying menu documents.
- b. Company will maintain such records (supported by invoices, receipts, or other evidence) as SFA will need to meet monthly and annual reporting responsibilities.
- c. Company will annually provide SFA with information on food costs and revenues for reimbursable meals and for non-program foods to determine compliance with program requirements for revenue from non-program foods.
- d. Company will submit monthly operating statements in a format approved by SFA no later than the tenth calendar day after the last day of the month in which services were rendered.
- e. Company will submit meal count records in a timely manner to facilitate claims submission by SFA no later than the fifth day after the last day of the month in which services were rendered. SFA will perform edit checks on the meal count records provided by Company prior to the preparation and submission of the claim for reimbursement. Company shall provide SFA with a year-end statement.
- f. Company will make available the books and records pertaining to the contract, upon demand, in an easily accessible manner for a period of three (3) years from the end of the contract term (including renewals) to which they pertain, for audit, examination, excerpts, and transcriptions by SFA and state or federal representatives and auditors. If audit findings regarding Company's records have not been resolved within the three (3) year record retention period, the records must be retained beyond the three (3) year period, for as long as required for the resolution of the issues raised by the audit.
- g. Upon termination of the contract, Company will surrender to SFA all records pertaining to the operation of the food service, including food and non-food inventory records, menus, production records, product

invoices, claim documentation and financial reports. Company will not remove state or federal required records from SFA premises upon contract termination.

## 9. Employees

Current SFA employees, including site and area managers, will be allowed to interview with the FSMC

SFA will have final approval authority regarding the hiring of Company's site manager.

- a. Company will provide SFA with a schedule of employees, positions, assigned locations, salaries and hours to be worked. Locations and assignments will be provided to SFA two full calendar weeks prior to start date of operations. Staffing patterns, with the exception of the site manager, will be mutually agreed upon.
- b. Company and SFA shall maintain the same minimum level of employee positions, hours, wages and benefits as listed on the **labor cost** attachments.
- c. Company will comply with applicable federal and state wage and hours of employment requirements.
- d. Company will 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 Company management and non-management staff, except the site manager. Company will provide SFA with a list of its personnel policies and employee handbook.
- e. Company will provide workers' compensation coverage for its employees. Company will maintain its own personnel and fringe benefits policies for its employees, subject to review by SFA.
- f. Company will instruct its employees to abide by the policies, rules and regulations, with respect to use of the SFA's premises as established by the SFA and which are furnished in writing to the Company.
- g. SFA will provide sanitary toilet and hand-washing facilities for Company employees.
- h. SFA may request Company in writing to remove any Company employee who violates health requirements or conducts herself/himself in a manner which is detrimental to the well-being of the students. In the event of the removal or suspension of any such employee, Company will immediately restructure the food service staff without disruption of service.
- i. SFA and/or Company personnel assigned to each school will be instructed in the use of all emergency valves, switches, and fire and safety devices in the kitchen and cafeteria areas.
- j. Company shall conduct periodic training on food service topics for all food service employees, including required annual civil rights training.

## 10. Monitoring

- a. SFA will monitor the food service operation of Company through periodic on-site visits to ensure that the food service is in conformance with USDA program regulations. If SFA has more than one site, SFA will conduct an on-site review of the counting and claiming system at each site no later than February 1 each year in accordance with its agreement with MDE.

If SFA participates in SFSP, SFA is responsible for conducting the required SFSP site visits including preapproval visits.

- b. Company will maintain the necessary records for SFA to complete required monitoring activities.



## 11. Advisory Group/Wellness Policy/Nutrition Standards for All Foods

Company will:

- Participate in the formation and establishment and periodic meetings of the SFA advisory board, comprised of students, teachers, and parents, to assist in menu planning in accordance with 7 CFR 210.16(a).
- Coordinate with SFA as needed to assist in implementation of SFA's wellness policy.
- Meet SNP "Smart Snacks" nutrition requirements for foods sold a la carte and any other foods served to students during the school day.

## 12. Use of Facilities, Inventory, Equipment, and Storage

- a. SFA will make available, without any cost or charge to Company, area(s) of the premises agreeable to both parties in which Company will render its services.
- b. SFA may request additional food service programs from Company. 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. SFA may expand food service operations outside the confines of the school/school district, such as expansion to non-affiliated charter schools, non-public, or neighboring public schools, which were not part of the original bid.
- c. Prior to the start of operations, Company and SFA will inventory food, including USDA Foods, and supplies on the premises. Company will utilize the inventory at a value determined by invoice. On termination of the contract, Company and SFA will take a closing inventory and add or subtract the difference to Company's cost of business.
- d. SFA will replace expendable equipment and replace, repair, and maintain non-expendable equipment, except when damages result from the use of less than reasonable care by Company employees.
- e. Company will maintain adequate storage practices, inventory and control of USDA Foods in conformance with SFA's agreement with MDE.
- f. SFA will provide Company with local telephone service.
- g. SFA will furnish and install any equipment and make any structural changes needed to comply with federal, state or local laws, ordinances, rules and regulations.
- h. SFA will be responsible for any losses, including USDA Foods, which arise due to equipment malfunction or loss of electrical power not within the control of Company.
- i. All food preparation and serving equipment owned by SFA must remain on SFA premises.
- j. Company will notify SFA of any equipment belonging to Company on SFA premises within ten (10) days of its placement on SFA premises. SFA will not be responsible for loss or damage to equipment owned by Company and located on SFA premises.
- k. SFA will have access, with or without notice, to all of the SFA's facilities used by Company, for purposes of inspection and audit.
- l. Company will not use SFA's facilities to produce food, meals or services for other organizations without the approval of SFA. If such usage is mutually agreeable, SFA and Company must have a signed agreement that stipulates the fees to be paid by Company for facility usage.
- m. Company will comply with all SFA building rules and regulations.
- n. SFA, on the termination or expiration of the contract, will conduct a physical inventory of equipment and furnishings owned by SFA. Company will surrender all SFA equipment and furnishings to SFA in good repair and condition. Company will be responsible for correcting any discrepancies and any equipment repairs that are not the result of normal wear and tear within 30 days of the inventory.

### 13. Purchases and Buy American

Foods purchased must meet the attached specifications.

- a. Company will meet applicable federal and state requirements when purchasing food and supplies for meals provided under this contract.
- b. Buy American Requirement: Company will purchase domestic agricultural commodities and products for use in the NSLP and SBP as provided in 7 CFR 210.21(d). A domestic agricultural commodity is one that is produced in the U.S. A domestic agricultural product is processed in the U.S. with agricultural commodities substantially produced in the U.S. that is with at least 51 percent of the agricultural commodities produced in the U.S.

### 14. Sanitation

- a. Company will comply with local and state sanitation requirements in the preparation of food.
- b. Company will place garbage and trash in containers in designated areas as specified by SFA. SFA will remove the garbage and trash from the designated areas.
- c. Company will clean the kitchen as indicated on the attached Cost Responsibility page. SFA will clean ducts and hoods above the filter line.
- d. SFA will clean the dining areas as indicated on the [Cost Responsibility Detail](#).
- e. Company will operate and care for 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.
- f. SFA will provide extermination services as needed.

### 15. Licenses, Fees and Taxes

- a. Company is responsible for paying all applicable taxes and fees, including but not limited to excise tax, state and local income tax, and payroll and withholding taxes for Company employees. Company will hold SFA harmless for all claims arising from payment of such taxes and fees. The extent of responsibility is designated in the Cost Responsibility attachment.
- b.  Company  SFA shall obtain and maintain required licenses or permits, as indicated on the Cost Responsibility attachment.

### 16. Nondiscrimination

- a. SFA and Company agree that no student who participates in the meal and/or milk programs under this contract will be discriminated against on the basis of race, color, national origin, age, sex, disability, or reprisal or retaliation for prior civil rights activity in any program or activity conducted or funded by USDA.

### 17. Emergency Closings

- a. SFA will notify Company of any interruption in utility service of which it has knowledge.
- b. SFA will notify Company of any delay in the beginning of the school day or the closing of school(s) due to snow or other emergency situations.

### 18. Nonperformance

- a. In the event of the Company's non-performance under this contract and/or the violation or breach of the contract terms, SFA has the right to pursue all administrative, contractual and legal remedies against

Company and to seek all sanctions and penalties as may be appropriate. SFA is the responsible authority without recourse to USDA or MDE for the settlement and satisfaction of all contractual and administrative issues. This authority includes, but is not limited to, source evaluation, protests, disputes, claims or other matters of contractual nature.

- b. If either party commits a material breach, the non-breaching party may terminate this agreement for cause by giving 60 days written notice. If the breach is remedied prior to the proposed termination date, the non-breaching party may elect to continue this agreement.
- c. Company will pay SFA the amount of any meal over-claims that are attributable to Company's negligence and that occurred during the effective dates of the contract, including over-claims based on audit or program review findings.

## **19. Additional Child Nutrition Programs**

SFA may, during the term of the contract, apply for and be approved for additional child nutrition programs, such as SFSP or the CACFP At-Risk Afterschool Care Program, which may be added to this contract if the additional responsibilities and payments are not a material change to the contract. The SFA must document the additional program(s) and fixed meal prices in an addendum to this contract. If adding a program to this contract would be a material change, the program may not be added to this contract and the SFA must conduct a competitive procurement for a new contract for the program.

During any period that SFA participates in SFSP:

- a. Company will perform the same food service management tasks for SFSP as are provided to SFA during the school year and will pay Company for SFSP meals using the same meal payment structure used during the school year, unless SFA requested different tasks and/or payment structure that are attached to this contract.
- b. School will maintain responsibility for administrative functions that are prohibited from being contracted out by SFSP regulations at 7 CFR 225.15(a)(3).
- c. Company may provide non-unitized / bulk quantities for SFSP, with instructions on the planned portion size for each food component. MDE's approval of SFA's SFSP application constitutes MDE's approval of a waiver from the SFSP requirement to provide only unitized meals.

## **20. Deficit**

The requirements of Minnesota Statutes Section 124D.111, Subdivision 3, will be met if a deficit exists in the food service fund at the end of the fiscal year for this contract or for any contract renewals.

## **21. Insurance**

Company will meet insurance requirements:

Attached to this contract.

Specified here:

- a. Company will maintain the insurance coverage set forth below for each accident provided by insurance companies authorized to do business in the state of Minnesota. A Certificate of Insurance of Company's insurance coverage indicating these amounts must be submitted at the time of contract award.
- b. Comprehensive General Liability – includes coverage for:
  - Premises – Operations.

- Products – Completed Operations.
- Contractual Insurance.
- Broad Form Property Damage.
- Independent Contractors.
- Personal Injury.

\$ 1,000,000 Combined Single Limit

- c. Automobile Liability: \$ 1,000,000 Combined Single Unit.
- d. Workers' Compensation-Statutory; Employer's Liability: \$1,000,000.
- e. Excess Umbrella Liability: \$1,000,000 Combined Single Unit.
- f. Company must name SFA as additional insured on General Liability, Automobile, and Excess Umbrella. Company must provide a waiver of subrogation in favor of SFA for General Liability, Automobile, Workers' Compensation, and Excess Umbrella.
- g. The contract of insurance shall provide for notice to SFA of cancellation of insurance policies 30 days before cancellation takes effect.

## **22. Miscellaneous**

- a. This contract will be construed under the laws of the State of Minnesota. Any action or proceeding arising out of this contract will be heard in the appropriate courts of the state of Minnesota.
- b. Company will comply with the provisions of the proposal specifications, which in all respects will be made a part of the contract.
- c. No provision of the contract will be assigned or subcontracted without prior written consent of SFA.
- d. No course of dealing or failure of a party to strictly enforce any term, right, or condition of this contract shall be construed as a waiver of the term, right or condition.
- e. The parties acknowledge that each party has had the opportunity to seek the advice of independent legal counsel and has read and understood all of the terms and provisions of this contract.
- f. Any silence, absence, or omission from the contract specifications concerning any point will be regarded as meaning that only the best commercial practices are to prevail and that only materials (e.g., food, supplies) and workmanship of a quality that would normally be specified by the SFA are to be used.
- g. Payments on any claim will not preclude the SFA from making a claim for adjustment on any item found not to have been in accordance with the provisions of this contract and proposal specifications.
- h. SFA is responsible for ensuring the resolution of program review and audit findings.
- i. This contract and SFA's information about its procurement process are subject to review by MDE for the purpose of determining whether federal and state requirements for SFA's participation in USDA Child Nutrition Programs have been met.
- j. MDE and USDA are not parties to this contract and are not responsible for any action or inaction by the SFA or Company.

## **23. Term, Renewal, Options, Termination**

The contract is effective 7/1/2019 through 6/30/2020.

- a. The contract may be renewed upon mutual agreement of SFA and Company for up to four (4) years after the original contract year, using the contract renewal document annually provided by MDE. Meal prices for a renewal contract may be adjusted up to the maximum percentage stated by MDE on the contract

renewal document, which is based on the Consumer Price Index (CPI) – Food Away from Home, Midwest Region (U.S. Bureau of Labor Statistics).

- b. SFA or Company may terminate the contract for cause as allowed in Section XVIII by giving sixty (60) days written notice.
- c. SFA and Company may terminate the contract without cause or for convenience, unless both parties mutually agree to terminate the contract for convenience.

Neither SFA nor Company is responsible for any losses resulting from fulfillment of the terms of the contract being delayed or prevented by wars, acts of public enemies, strikes, fires, floods, acts of God, or for any acts not within the control of SFA or Company, respectively, and which by the exercise of due diligence it was unable to prevent.

#### **24. Certifications**

- a. Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708). If the contract exceeds \$100,000, Company certifies that it will comply with 40 U.S.C 3702 and 3704, as supplemented by the Department of Labor regulations, 29 CFR Part 5. Under 40 U.S.C 3702 of the Act, Company is required to compute the wages of every laborer on the basis of a standard work week of forty (40) hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week.
- b. Clean Air Act (42 U.S.C. 7401-1671q) and Federal Water Pollution Control Act (33 U.S.C. 1251-1387) as amended. If the contract exceeds \$150,000, Company certifies that it will comply will applicable standards, orders, and regulations issued pursuant to the Clean Air Act and the Federal Water Pollution Control Act. Violations must be reported to USDA and the Regional Office of the Environmental Protection Agency.
- c. Company will comply with civil rights laws, as amended: Title VI of the Civil Rights Act of 1964; Title IX of the Education Amendments of 1972; Section 504 of the Rehabilitation Act of 1973; the Age Discrimination Act of 1975; 7 CFR Parts 15, 15a, and 15b; the Americans with Disabilities Act; and USDA-FNS Instruction 113-1, Civil Rights Compliance and Enforcement in School Nutrition Programs.
- d. Company will comply with the Buy American provision for the purchase of food products with federal fund. Company will purchase, to the maximum extent possible, domestic commodities or products that are either (1) an agricultural commodity produced in the United States (U.S.) or (2) a food product processed in the U.S. substantially using agricultural commodities produced in the U.S.
- e. Company has signed the following attached certifications, which are incorporated here by reference and made a part of this contract.
  - Certification of Independent Price Determination.
  - Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion.
  - Certification Regarding Lobbying and, if applicable, Disclosure Form to Report Lobbying.
- f. Company will comply with all other pertinent state and federal laws.

#### **25. Additional Provisions**

- If this box is checked, SFA and Company have agreed to additional provisions attached to this contract, which have been preapproved by MDE to be in compliance with program requirements. Each additional provision attached to this contract specifically identifies the section(s) of this contract that have been added to or modified.

**26. Attachments**

The following documents are attached to and incorporated into this contract:

- Certificate of Independent Price Determination.
- Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Suspension.
- Certification Regarding Lobbying and, if applicable, Disclosure Form to Report Lobbying.
- Price Proposal page.
- Meal Patterns as applicable.
- Sample menus.
- Site Data Page (from RFP)
- Cost Responsibility Detail (from RFP)
- Additional attachments as described here:

IN WITNESS WHEREOF, SFA and Company have executed this Agreement.

\_\_\_\_\_  
Name of SFA

\_\_\_\_\_  
Name and Title of SFA Authorized Representative

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Name of Company

\_\_\_\_\_  
Address of Company

\_\_\_\_\_  
Name and Title of Authorized Company Representative

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Name of Company Contact Person

\_\_\_\_\_  
Phone

\_\_\_\_\_  
Email

## Instructions for Certification Regarding Debarment Form

By signing and submitting this form, the prospective lower-tier participant is providing the certification set out on the reverse side in accordance with these instructions.

The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower-tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the federal government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

The prospective lower-tier participant shall provide immediate written notice to the person to whom this proposal is submitted if at any time the prospective lower-tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

The terms "covered transaction," "debarred," "suspended," "ineligible," "lower-tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.

The prospective lower-tier participant agrees by submitting this form that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower-tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

The prospective lower-tier participant further agrees by submitting this form that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower-Tier Covered Transactions," without modification, in all lower-tier covered transactions and in all solicitations for lower-tier covered transactions.

A participant in a covered transaction may rely upon a certification of a prospective participant in a lower-tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Excluded Parties List System (EPLS) on the U.S. System for Award Management website.

Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower-tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the federal government, the department or agency with which this transaction originated may pursue available remedies as appropriate, including suspension and/or debarment.

# Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion

## Lower-Tier Covered Transactions

This certification is required by the regulations implementing Executive Order 12549, Executive Order 12689, and 31 U.S.C. 6101; Debarment and Suspension, 2 CFR Part 417, Subpart C, Responsibilities of Participants Regarding Transactions Doing Business with Other Persons.

(Please read instructions on previous page before completing certification.)

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

Company Name: \_\_\_\_\_

Project: **National School Lunch Program**

Name of Company's Authorized Representative: \_\_\_\_\_

Title of Company's Authorized Representative: \_\_\_\_\_

Signature: \_\_\_\_\_

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



## Certification Regarding Lobbying

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

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

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. 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.

Company Name: \_\_\_\_\_

Project: **National School Lunch Program**

Name of Company's Authorized Representative: \_\_\_\_\_

Title of Company's Authorized Representative: \_\_\_\_\_

Signature: \_\_\_\_\_

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