

**State of New Jersey
Department of Agriculture**

**FOOD SERVICE MANAGEMENT COMPANY
PROTOTYPE CONTRACT LANGUAGE
SCHOOL YEAR 2017-2018**

THIS SECTION HAS BEEN LEFT BLANK INTENTIONALLY TO ADD AN OPENING PARAGRAPH IDENTIFYING THE SCHOOL FOOD AUTHORITY (“SFA”) AND THE FOOD SERVICE MANAGEMENT COMPANY (“FSMC”)

Article I: Federal and State Required Contract Language

A. CONTRACT DURATION / RENEWALS

- 1) This contract is for a term not longer than one year in duration, beginning on _____ and ending on _____,
(date) (date)

unless earlier terminated by either party as provided herein. [7 CFR 210.16(d)]. The SFA Request for Proposal and the FSMC Response to Proposal are incorporated into this Contract.

- 2) The Child Nutrition Programs included in this contract will be: (check all that apply—all chosen programs **must** be included in the Request for Proposal)
- School Breakfast
 - School Lunch
 - After School Snack
 - At-Risk After School Meals (Dinner)-Child and Adult Food Care Program (CACFP)
- 3) This contract may be renewed annually by mutual written agreement of the School Food Authority (the “SFA”) and the Food Service Management Company (the “FSMC”), for up to four additional one-year periods [7 CFR 210.16(d)], subject to the following limitations:
- a. Each renewal shall be awarded by resolution of the SFA upon a finding that the services are being performed in an effective and efficient manner;
 - b. The contract shall not be renewed or extended so that it runs for more than a total of five consecutive years;
 - c. Any price change included as part of a renewal shall be based upon the price of the original contract as cumulatively adjusted pursuant to any previous adjustment or renewal, and shall not exceed the change in the Index Rate (as defined in Public Schools Contract Law, N.J.S.A. 18A:18A-1 *et seq.*) for the 12

months preceding the most recent quarterly calculation available at the time the contract is renewed; and

- d. The terms and conditions of the contract shall remain substantially the same. [N.J.S.A. 18A:18A-42].
- 4) Each contract renewal is contingent upon the fulfillment by the FSMC of all provisions in this contract related to USDA donated foods [7 CFR 250.53(a) (12)]. Each contract renewal is subject to the availability and appropriation annually of sufficient funds as may be required to meet the extended obligation, and if funds are not available, this shall grant the SFA the opportunity to cancel the contract pursuant to the termination provisions of the contract.
- 5) Each contract renewal must use the current prototype addendum approved by the Division of Food and Nutrition in the New Jersey Department of Agriculture (the "State Agency"). Any change to the prototype addendum must be approved in writing by the State Agency before it is executed by either party. [7 CFR 210.16(a) (10) and N.J.S.A. 18A:18A-20].

B. SCHOOL FOOD AUTHORITY RESPONSIBILITIES

- 1) The SFA shall ensure that the food service operation is in conformance with the Agreement for School Nutrition, Programs between the SFA and the State Agency (the "Program Agreement") and shall monitor the food service operation through periodic on-site visits. [7 CFR 210.16(a) (2), (3)].
- 2) The SFA shall retain control of the quality, extent and general nature of its food service, and the prices charged to the children for meals. [7 CFR 210.16(a) (4)].
- 3) The SFA shall retain signature authority on the Program Agreements, the SFA's Free and Reduced Price Policy Statement, and Claims for Reimbursement. [7 CFR 210.16(a) (5)].
- 4) The SFA shall ensure that all federally donated foods received by the SFA and made available to the FSMC accrue only to the benefit of the SFA's nonprofit school food service and are fully utilized therein. [7 CFR 210.16(a) (6)].
- 5) The SFA shall maintain applicable health certification and assure that all State and local regulations are being met by the FSMC preparing or serving meals at a SFA facility. [7CFR 210.16(a) (7)].
- 6) The SFA shall establish an advisory board composed of parents, teachers and students to assist in menu planning. [7 CFR 210.16(a) (8)].
- 7) The SFA shall retain control of the nonprofit school food service account and overall financial responsibility for the School Nutrition Programs, and shall make expenditures of nonprofit school food service revenues in accordance with the financial management system established by the State Agency. [7 CFR 210.14(a)].
- 8) The SFA may apply a geographic preference when procuring unprocessed locally grown or locally raised agricultural products. When utilizing the geographic preference to procure such products, the SFA making the purchase has the discretion to determine the local area to which the geographic preference option will be applied.

For the purpose of applying the optional geographic procurement preference in this paragraph, "unprocessed locally grown or locally raised agricultural products" means only those agricultural products that retain their inherent character. The effects of the following food handling and preservation techniques shall not be considered as changing

an agricultural product into a product of a different kind or character: Cooling; refrigerating; freezing; size adjustment made by peeling, slicing, dicing, cutting, chopping, shucking, and grinding; forming ground products into patties without any additives or fillers; drying/dehydration; washing; packaging (such as placing eggs in cartons), vacuum packing and bagging (such as placing vegetables in bags or combining two or more types of vegetables or fruits in a single package); the addition of ascorbic acid or other preservatives to prevent oxidation of produce; butchering livestock and poultry; cleaning fish; and the pasteurization of milk.
[7 CFR 210.21(g) (1) (2)].

C. FOOD SERVICE OPERATION

- 1) In the operation of the SFA's food service, the FSMC shall comply with the requirements of the Program Agreement, the SFA's Free and Reduced Policy Statement and with all applicable USDA program policies and regulations, including 7 CFR Parts 210, 220, 245, 250, and 2 CFR 200.317-200.326 and applicable state and local laws. In order to operate an a la carte food service under this contract, the FSMC agrees to offer free, reduced price and full price reimbursable meals to all eligible children. [7 CFR 210.16(a)].
- 2) The FSMC shall adhere to the 21-day cycle menu contained in the SFA's Invitation to Bid or Request for Proposal for the first 21 days of meal service. Changes thereafter may be made with the approval of the SFA. [7 CFR 210.16(b) (1)].
- 3) No payment shall be made 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 specified in 7 CFR 210.10 (the School Lunch Pattern), or do not otherwise meet the requirements of the contract. [7 CFR 210.16(c) (3)].
- 4) The FSMC shall purchase, to the maximum extent possible, domestic commodities or products. "Domestic commodity or product" means an agricultural commodity that is produced in the United States, and a food product that is processed in the United States substantially using agricultural commodities that are produced in the United States. [7CFR 210.21(d)].
- 5) The FSMC shall not directly or indirectly restrict the sale or marketing of fluid milk (as described in 7 CFR 210.10(d) (4)) at any time or in any place on school premises or at any school-sponsored event. [7 CFR 210.21(e)].
- 6) The FSMC shall comply with the nutrition standards for competitive foods in 7 CFR §§ 210.11 and 220.12, as amended, and the requirements of the competitive food policy as set forth in N.J.A.C. 2:36-1.11. [7 CFR 210.11].

D. HEALTH CERTIFICATION

The FSMC shall have State or local health certification for any facility outside the school in which it proposes to prepare meals and the FSMC shall maintain this health certification for the duration of the contract. [7 CFR 210.16(c) (2)].

E. USDA DONATED FOODS

- 1) All USDA donated foods received for use by the SFA for the school year and made available to the FSMC shall be used in the SFA's food service. [7 CFR 250.50(a)].

2) The FSMC shall perform the following activities related to USDA donated foods, and shall perform such activities in accordance with the applicable requirements in 7 CFR Part 250:

- a. Preparing and serving meals;
- b. Ordering or selection of donated foods in coordination with the SFA;
- c. Storage and inventory management of donated foods;
- d. Payment of processing fees or submittal of refund requests to a processor on behalf of the SFA, or remittance of refunds for the value of donated foods in processed end products to the SFA; and
- e. Procurement of processed end products on behalf of the SFA. [7 CFR 250.53(a) (4)].

3) The FSMC shall credit the SFA for the value of all USDA donated foods received for use in the SFA's meal service in the school year (including both entitlement and bonus foods), and including the value of donated foods contained in processed end products, if applicable. [7 CFR 250.53(a) (1)].

The FSMC shall perform such crediting monthly and maintain backup documentation to substantiate the credit by [*insert method*, e.g., invoice reductions shown by separate line item; refunds; etc.]. [7 CFR 250.53(a) (2)].

If for the school year immediately preceding the beginning of this contract, the SFA's food service was self-operating, the FSMC shall also credit the SFA for the value of all USDA donated foods in the SFA's inventory carried over from the preceding school year.

4) In crediting the SFA for the value of USDA donated foods, the FSMC shall use the market value of donated foods as identified on the Monthly Warehouse Market Value Report from the New Jersey Department of Agriculture Food Distribution Program (the "Distributing Agency"). In crediting for the value of donated foods contained in processed end products, the FSMC shall use the annual pass thru value listed on the processor's approved SEPDS (State End Product Data Schedule) for the appropriate school year. [7 CFR 250.53(a) (3)].

5) The FSMC will use all donated ground beef and ground pork products, and all processed end products, in the SFA's food service. [7 CFR 250.53(a) (5)]. The FSMC will use all other donated foods, or will use commercially purchased foods of the same generic identity, of U.S. origin, and of equal or better quality than the donated foods, in the SFA's food service. [7 CFR 250.53(a) (6)].

6) In the procurement of processed end products on behalf of the SFA, the FSMC will comply with the requirements of Subpart C of 7 CFR Part 250 and with the provisions of the Distributing Agency or SFA processing agreements, and will credit the SFA for the value of donated foods contained in such end products at the processing agreement value. The FSMC will not itself enter into the processing agreement with the processor. [7 CFR 250.53(a) (7), (8)].

7) The FSMC will comply with the storage and inventory requirements for USDA donated foods as set forth in 7 CFR 250.14(b) and 7 CFR 250.52. [7 CFR 250.53(a) (9)]. The FSMC shall ensure that its system of inventory management does not result in the SFA being charged for USDA donated foods. [7 CFR 250.53(b)]

- 8) The FSMC shall maintain accurate and complete records with respect to the receipt, use/disposition, storage and inventory of all USDA donated foods. The FSMC will maintain records to document its compliance with the requirements relating to donated foods, in accordance with 7 CFR 250.54(b). [7 CFR 250.53(a) (11)].
- 9) The SFA, the Distributing Agency, the USDA, the Comptroller General, or their duly authorized representatives, may perform onsite reviews of the FSMC's food service operation, including the review of records, to ensure compliance with requirements for the management and use of donated foods. [7 CFR 250.53(a) (10)].
- 10) Upon termination of this contract, the FSMC shall return all unused donated ground beef, donated ground pork and processed end products, including those that may be stored off the SFA's premises, and shall also return all other unused donated foods that may be stored on or off the SFA's premises. [7 CFR 250.52(c)].
- 11) The SFA must ensure that the FSMC is in compliance with the requirements of 7 CFR Part 250 through its monitoring of the food service operation, and the SFA shall conduct a reconciliation at least annually, and upon termination of this contract, to ensure that the FSMC has credited it for the value of all donated foods received for use in the SFA's food service in the school year, including the value of donated foods contained in processed end products. [7 CFR 250.54(c)].
- 12) The FSMC must comply with the Food Distribution Agreement for Distribution and Use of USDA Foods found in SNEARS on the NJDA website. [7 CFR 250 *et. seq.*].

F. PURCHASE OF FRESH MILK

- 1) For all purchases of fresh milk for the SFA, the FSMC shall purchase an amount of fresh milk from New Jersey producers at least equal to the amount of fresh milk proposed to be furnished to the SFA, in accordance with N.J.S.A. 18A:18A-6 and N.J.A.C. 2:55-1.1 *et seq.*
- 2) Should the FSMC choose to purchase fresh milk for the SFA through a vendor, the FSMC shall require each vendor to agree in writing to purchase an amount of fresh milk from New Jersey producers at least equal to the amount of fresh milk proposed to be furnished to the SFA, in accordance with N.J.S.A. 18A:18A-6 and N.J.A.C. 2:55-1.1 *et seq.* The FSMC shall provide copies of any such agreements to the SFA for filing with the New Jersey Department of Agriculture, Division of Markets, PO Box 330, Trenton, NJ 08625-0330.
- 3) The FSMC shall be responsible for ensuring that all fresh milk purchases are made in conformance with N.J.S.A. 18A:18A-6 and N.J.A.C. 2:55-1.1 *et seq.*
- 4) The SFA shall file a copy of this agreement along with a copy of any vendor agreements received from the FSMC in accordance with N.J.S.A. 18A:18A-6 and N.J.A.C. 2:55-1.1 *et seq.*

G. ENVIRONMENTAL PROTECTION/ENERGY CONSERVATION/
CLEAN AIR/FEDERAL WATER POLLUTION CONTROL

- 1) The FSMC agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR Part 15).
- 2) The FSMC shall recognize mandatory standards and policies relating to energy efficiency which are contained in the State energy conservation plan issued in compliance with the Energy Policy and Conservation Act. (42 U.S.C. 6201).

H. EQUAL EMPLOYMENT / AFFIRMATIVE ACTION

During the performance of this contract, the FSMC agrees as follows:

- 1) It will not discriminate against any employee or applicant for employment because of age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex. Except with respect to affectional or sexual orientation and gender identity or expression, the FSMC will ensure that equal employment opportunity is afforded to such applicants in recruitment and employment, and that all employees are treated during employment, without regard to their age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex. Such equal employment opportunity shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The FSMC agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the SFA Compliance Officer setting forth provisions of this nondiscrimination clause. [N.J.A.C. 17:27-3.5].
- 2) It will in all solicitations or advertisements for employees placed by or on behalf of the FSMC, state that all qualified applicants will receive consideration for employment without regard to age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex. [N.J.A.C. 17:27-3.5].
- 3) It will send to each labor union with which it has a collective bargaining agreement, a notice to be provided by the SFA contracting officer, advising the labor union of the FSMC's commitments under this chapter and shall post copies of the notice in conspicuous places available to employees and applicants for employment. [N.J.A.C. 17:27-3.5].
- 4) It will comply with any regulations promulgated by the State Treasurer pursuant to N.J.S.A. 10:5-31 *et seq.*, as amended and supplemented from time to time [N.J.A.C. 17:27-3.5], and the Americans with Disabilities Act. This Act (28 CFR Part 35, Title II, Subtitle A) prohibits discrimination on the basis of disability in all services, programs, and activities provided to the public and State and local governments, except public transportation services.

- 5) It will make good faith efforts to meet targeted county employment goals established in accordance with N.J.A.C. 17:27-5.2. [N.J.A.C. 17:27-3.7].
- 6) It will inform in writing its appropriate recruitment agencies including, but not limited to, employment agencies, placement bureaus, colleges, universities, and labor unions, that it does not discriminate on the basis of age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex, and that it will discontinue the use of any recruitment agency which engages in direct or indirect discriminatory practices. [N.J.A.C. 17:27-3.7].
- 7) It will revise any of its testing procedures, if necessary, to assure that all personnel testing conforms with the principles of job-related testing, as established by the statutes and court decisions of the State of New Jersey and as established by applicable federal law and applicable federal court decisions. [N.J.A.C. 17:27-3.7].
- 8) In conforming with the targeted employment goals, it will review all procedures relating to transfer, upgrading, downgrading and layoff to ensure that all such actions are taken without regard to age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex, consistent with the statutes and court decisions of the State of New Jersey and applicable federal law and applicable federal court decisions. [N.J.A.C. 17:27-3.7].
- 9) Prior to executing this contract, the FSMC submitted to the SFA **[insert one of the following]** [N.J.A.C. 17:27-4.3].
 - a Letter of Federal Affirmative Action Plan Approval
 - a Certificate of Employee Information Report
 - an Employee Information Report Form AA302
- 10) It will furnish such reports or other documents to the New Jersey Department of Treasury, Division of Purchase & Property, Contract Compliance Audit Unit, EEO Monitoring Program, as may be requested by the office from time to time in order to carry out the purposes of the regulations, and the SFA shall furnish such information as may be requested by the Division of Purchase & Property, Contract Compliance Audit Unit, EEO Monitoring Program for conducting a compliance investigation pursuant to subchapter 10 of the Administrative Code at N.J.A.C. 17:27.
- 11) It will comply with all applicable federal Equal Employment Opportunity standards and orders under 41 CFR part 60, Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor and Executive Order 11246, as amended by Executive Order 11375, Amending Executive Order 11246 Relating to Equal Employment Opportunity.

I. WORK HOURS/WORKPLACE

- 1) The FSMC shall comply with Sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C.327-330) as supplemented by U.S. Department of Labor regulations (29 CFR Part 5).
- 2) *Drug-free Workplace Statement.* The FSMC agrees to provide a drug-free workplace for their employees and comply with the provisions and regulations of the Drug Free

Workplace Act of 1988 (41 U.S.C. 701 et seq., as amended) and applicable state laws and regulations. Failure to abide by these requirements may subject the SFA and/or FSMC to the penalties described in 7 CFR 3021.510.

J. MANAGEMENT FEE(S) / GUARANTEES

THIS SECTION HAS BEEN LEFT BLANK INTENTIONALLY TO INCLUDE:

- 1) ALL POTENTIAL FEES
- 2) ALL POTENTIAL GUARANTEE LANGUAGE
- 3) ALL POTENTIAL GUARANTEE CONDITIONS

K. REBATES, DISCOUNTS AND CREDITS

- 1) The FSMC shall charge the SFA only for costs that are actual and allowable, net of all discounts, rebates and other applicable credits accruing to or received by the FSMC, to the extent those credits are allocable to the allowable portion of the costs billed to the SFA. The FSMC's determination of allowable costs shall be made in compliance with the applicable USDA and Child Nutrition Program regulations and 2 CFR 200.403. [7 CFR 210.21(f) (1) (i) and (iii)].

[CHOOSE EITHER A OR B AND INSERT HERE:]

- A. The FSMC will separately identify on its billing documents, for each cost submitted for payment, the amount that is allowable and the amount that is unallowable. [7 CFR 210.21(f) (1) (ii) (A)].

OR

- B. The FSMC will exclude all unallowable costs from its billing documents and certify that only allowable costs are submitted for payment and that records have been established that maintain visibility of unallowable costs, including directly associated costs, in a manner suitable for contract cost determination and verification. [7 CFR 210.21(f) (1) (ii) (B)].

- 2) The FSMC shall identify the amount of each discount, rebate and other applicable credit on bills and invoices presented to the SFA for payment and individually identify the amount as a discount, rebate, or in the case of other applicable credits, the nature of the credit.

The FSMC shall report this information [*insert frequency*: may not be less frequent than annually.] [7 CFR 210.21(f) (1) (iv)].

- 3) The FSMC shall identify the method by which it will report discounts, rebates and other applicable credits allocable to the contract, that are not reported prior to the conclusion of the contract, by [*insert description* of specific method(s) of reporting]. [7 CFR 210.21(f) (1) (v)].

- 4) The FSMC shall maintain documentation of costs and discounts, rebates and other applicable credits, and shall furnish such documentation upon request to the SFA, State Agency or USDA. [7 CFR 210.21(f) (1) (vi)].

No expenditure shall be made from the nonprofit school food service account that permits or results in the FSMC's receiving payments in excess of its actual, net allowable costs. [7 CFR 210.21(f) (2)].

L. PROCUREMENT

All procurement of food, supplies, goods, and other services must comply with the cost principles in 2 CFR 400, the procurement standards prescribed in the Uniform Administrative Requirements for Grants and Agreements with institutions of Higher Education, Hospitals, and Other Non-Profit Organizations located at 2 CFR 200.317-200.326, and all applicable regulations found in 7 CFR Parts 210, 220, 245 and 250.

M. RECORDS

- 1) The FSMC shall maintain such records as the SFA will need to support its claim for reimbursement, shall report claim information to the SFA promptly at the end of each calendar month, at a minimum, and shall make such records available to the SFA upon request. [7 CFR 210.16 (c) (1)].
- 2) The FSMC shall grant the SFA, the New Jersey Department of Education, the New Jersey Department of Agriculture, the United States Department of Agriculture, the Inspectors General, the Comptroller General of the United States and its State counterparts, or any of their duly authorized representatives, access to any books, documents, papers and other records of the FSMC which are directly pertinent to this contract, for the purpose of making audit, examination, excerpts and transcripts; and shall provide timely and reasonable access to FSMC personnel for the purpose of interview and discussion related to such documents. [2 CFR 200.336].
- 3) The FSMC shall retain all records required or necessary under this contract for a period of three years from the date of final payment hereunder; except that in the event of litigation, claims, or audit findings, the records must be retained until all litigation, claims and audit findings involving the records have been resolved and final action taken. The FSMC will adhere to all additional exceptions, if applicable, as required by State and Federal law. [7 CFR 210.23(c) and 2 CFR 200.333].
- 4) The FSMC shall maintain all documentation related to products, transactions or services under this contract for a period of five years from the date of final payment. Such records shall be made available to the New Jersey Office of the State Comptroller upon request. [N.J.A.C. 17:44-2.2(b)].

N. SOC 1 REPORT

The FSMC shall have an annual service audit of the FSMC's internal controls performed by an independent audit firm engaged by the FSMC. The service audit shall be as prescribed in A.I.C.P.A. Statement on Standards for Attestation Engagements (SSAE) No. 16. The FSMC shall provide the SFA with a Service Organization Control (SOC) 1 Type 2 Report in

conformity with SSAE No. 16 to enable the SFA to meet its annual audit obligation under New Jersey Department of the Treasury Circular No. 15-08-OMB. [2 CFR 200.400-200.521; 7 CFR 3052.210(f); N.J.S.A. 18A:23-1].

O. BREACH BY FSMC / REMEDIES, SANCTIONS

In the event of the FSMC's nonperformance under this contract and/or its violation or breach of the contract terms, the SFA shall have the right to pursue all administrative, contractual, and legal remedies against the FSMC and shall have the right to seek all sanctions and penalties as may be appropriate. [2 CFR 200.338].

P. TERMINATION

- 1) The SFA or the FSMC may cancel this contract for cause by giving 60 days' written notification. [7 CFR 210.16(d)].
- 2) The SFA may terminate this contract at any time by giving [**insert number**] days' written notification to the FSMC setting forth the reason for and the effective date of termination. Upon such termination, the SFA and the FSMC shall make settlement of all amounts due hereunder as follows: [**insert description of all applicable payment terms**]. [2 CFR 200.343].

Q. NEW JERSEY BUSINESS REGISTRATION REQUIREMENTS

- 1) Prior to the time a contract, purchase order or other contracting document is awarded or authorized, the FSMC provided the SFA, for itself or any other named subcontractor, with a current Business Registration Certificate issued by the New Jersey Department of Treasury, Division of Revenue or, at the option of the SFA, with sufficient information for the SFA to verify proof of business registration of the FSMC through a computerized system maintained by the State of New Jersey.
- 2) The FSMC shall provide written notice to its subcontractors, if any, of the responsibility to submit proof of business registration to the FSMC. The FSMC shall not enter into a contract with a subcontractor unless the subcontractor first provides the FSMC with proof of a valid business registration. The FSMC shall maintain and submit to the SFA a list of any subcontractors, and their addresses that may be updated from time to time during the course of this contract. Before final payment on this contract is made by the SFA, the FSMC shall submit a complete and accurate list and the proof of business registration of each subcontractor or supplier used in the fulfillment of this contract, [N.J.S.A. 52:32-44(1) (c) and (d)], or shall attest that no subcontractors were used.
- 3) For the term of this contract, the FSMC, the subcontractor, if any, and each of its affiliates [N.J.S.A. 52:32-44(g) (3)] shall collect and remit to the Director, New Jersey Division of Taxation, the use tax due pursuant to the Sales and Use Tax Act, P.L.1966, c.30 (C.52:32B-1 *et seq.*) on all sales of tangible personal property delivered into New Jersey. [N.J.S.A. 52:32-44(g)].

R. POLITICAL CONTRIBUTIONS

- 1) ANNUAL REPORTING (“CHAPTER 271, Section 3” Reporting). The FSMC is advised of its responsibility to file an annual disclosure statement on political contributions with the New Jersey Election Law Enforcement Commission (ELEC), pursuant to N.J.S.A.19:44A-20.27 (L. 2005, c. 271, §3 as amended) if in a calendar year the FSMC receives one or more contracts valued at \$50,000.00 or more. It is the FSMC’s responsibility to determine if filing is necessary. Failure to file can result in the imposition of penalties by ELEC.
- 2) POLITICAL CONTRIBUTION DISCLOSURE. During the term of this contract, the FSMC and any person or business entity having an interest in the FSMC, shall not make any contribution reportable under N.J.S.A. 19:44A-1 *et seq.* to any member of the board of education of the SFA. [N.J.A.C. 6A:23A-6.3]. Prior to entering into this contract and included in its response to the SFA’s Request for Proposal, the FSMC signed and submitted a Political Contribution Disclosure Form listing the information set forth in N.J.S.A. 19:44A-20.26. [N.J.A.C. 6A:23A-6.3].

S. DEBARMENT/SUSPENSION CERTIFICATE

- 1) Prior to entering into this contract and included in its response to the SFA’s Invitation to Bid or Request for Proposal, the FSMC signed and submitted a Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion. [7 CFR 3017.300]
- 2) The FSMC shall provide immediate written notice to the SFA if it learns that its certification was erroneous when submitted or has become erroneous due to changed circumstances. A false certification can be grounds for suspension of payments, suspension or termination of the award or suspension or debarment [7 CFR 3017.630].

T. CERTIFICATE OF INDEPENDENT PRICE DETERMINATION/FSMC WARRANTY

- 1) Prior to entering into this contract, the SFA and the FSMC executed a Certificate of Independent Price Determination, certifying that the prices in the offer have been arrived at independently, without consultation, communication or agreement for the purpose of restricting competition.
- 2) The Certificate of Independent Price Determination shall be kept on file with the signed contract at the SFA.

U. CERTIFICATION REGARDING LOBBYING

- 1) Prior to entering into this contract and included in its response to the SFA’s Request for Proposal, the FSMC signed and submitted a Certification Regarding Lobbying and, if applicable, a Standard Form LLL – Disclosure of Lobbying Activities.
- 2) During the term of this contract the FSMC, shall file with the SFA a Standard Form LLL– Disclosure of Lobbying Activities at the end of each calendar quarter in which any event occurs that requires disclosure or that materially affects the accuracy of the information contained in any disclosure form previously filed by the FSMC. [7 CFR 3018.110].

V. STATEMENT OF OWNERSHIP INTEREST

Prior to entering into this contract and included in its response to the SFA's Request for Proposal, the FSMC submitted a statement setting forth the names and addresses of all stockholders and partners owning 10% or greater interest in the FSMC, as set forth in N.J.S.A. 52:25-24.2. [N.J.S.A. 18A:18A-4.4d]. The SFA will review this Statement to verify its consistency with the Political Disclosure form required under this contract in paragraph R.

W. DISCLOSURE OF INVESTMENT ACTIVITIES IN IRAN

Prior to entering into this contract and included in its response to the SFA's Request for Proposal, the FSMC signed and submitted a Disclosure of Investment Activities in Iran, pursuant to N.J.S.A. 18A:18A-49.4, which requires the SFA to implement and comply with the provisions of P.L. 2012, c. 25 [N.J.S.A. 52:32-55, et. seq.]. P.L. 2012, c. 25 requires all bidders to complete a certification that attests that neither the bidder, nor any of its parents, subsidiaries and/or affiliates is listed on the list developed by the New Jersey Department of Treasury's List of Persons or Entities Engaging in Prohibited Investment Activities in Iran. P.L. 2012, c. 25 [N.J.S.A. 52:32-58].

X. PROFESSIONAL STANDARDS

- 1) The FSMC shall provide to the SFA upon request documentation showing the annual training hours and topics completed by each of its employees in order to comply with the School Nutrition Program continuing education and training standards requirements. At a minimum:
 - a) All program directors shall complete twelve (12) hours of continuing education and training each year;
 - b) All managers shall complete ten (10) hours of continuing education and training each year;
 - c) All staff that works an average of at least twenty (20) hours per week shall complete six (6) hours of continuing education and training each year; and
 - d) All staff that works less than twenty (20) hours per week shall complete four (4) hours of continuing education and training each year.

[7 CFR 210.30]

- 2) The FSMC shall also ensure that all new School Nutrition Program Directors hired on or after July 1, 2015, have met the minimum education requirements based upon the size of the student enrollment as follows: 2,499 students or less; 2,500-9,999 students; and 10,000 or more students.

Y. CIVIL RIGHTS ASSURANCE:

The FSMC 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 FSMC 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 FSMC 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 FSMC, its successors, transferees, and assignees as long as it receives assistance or retains possession of any assistance from USDA. The person or persons whose signatures appear below are authorized to sign this assurance on the behalf of the FSMC.

Z. NON-DISCRIMINATION STATEMENT

This institution (SFA) is an equal opportunity provider.

In accordance with Federal civil rights law and 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, religious creed, disability, age, political beliefs, 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.

AA. AT-RISK AFTERSCHOOL MEALS PROGRAM (DINNER)-CACFP-IF APPLICABLE

- 1) The SFA shall provide the FSMC with a list of the schools to be furnished meals by the FSMC and the number of meals, by type, to be served at each location.
[7 CFR 226.6 (i) (1)].

- 2) The FSMC shall maintain such records, supported by invoices, receipts or other evidence, as the SFA will need to meet its responsibilities under 7 CFR 226, and shall promptly submit invoices and delivery reports to the SFA no less frequently than monthly. [7 CFR 226.6 (i) (2)].
- 3) The FSMC shall have Federal, State, or local health certification for the plant in which it proposes to prepare meals for use in the At-Risk Afterschool Meals Program, and it shall ensure that health and sanitation requirements are met at all times. In addition, NJDA may require the food service management company to provide for meals which it prepares to be periodically inspected by the local health department or an independent agency to determine bacteria levels in the meals being prepared. These bacteria levels shall conform to the standards which are applied by the local health authority with respect to the level of bacteria which may be present in meals prepared or served by other establishments in the locality. Results of these inspections shall be submitted to the SFA and NJDA. [7 CFR 226.6 (i) (3)].
- 4) The meals served under this agreement shall conform to the cycle menus upon which the bid or request for proposal was based, and to menu changes agreed upon by the SFA and the FSMC. [7 CFR 226.6(i) (4)].
- 5) The FSMC shall operate in accordance with current At-Risk Afterschool Meals Program regulations and all applicable CACFP State and Federal regulations (7 CFR Part 226). [7 CFR 226.6 (i) (6)].
- 6) The FSMC shall not subcontract for the total meal, with or without milk, or for the assembly of the meal. [7 CFR 226.21 (e)].
- 7) In addition to the requirements of paragraph L above, the FSMC shall comply with all Procurement requirements found in 7 CFR 226.22.
- 8) All meals served under the At-Risk Afterschool Meals Program shall meet the requirements for meals detailed in 7 CFR 226.20. [7 CFR 226.6 (i) (10)].

CONSTRUCTION AND EFFECT

The SFA and the FSMC agree that Article I of this contract is intended to comply with applicable Federal and State procurement and USDA program requirements. In the event that any provision contained in Article I should conflict with any other provision contained in this contract or any document incorporated into this contract, the provisions of Article I shall control. Thereafter, the priority of provisions shall be: first, the Request for Proposal; second, the Response to the Request for Proposal; third, Article II.

Article II: Additional Contract Language