

CHILD NUTRITION PROGRAMS

SPONSOR

VENDED MEALS

REQUEST FOR PROPOSAL

AND

CONTRACT

Colorado Department of Education

School Nutrition Unit

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In accordance with federal civil rights law and U.S. Department of Agriculture (USDA) civil rights regulations and policies, this institution is prohibited from discriminating on the basis of race, color, national origin, sex (including gender identity and sexual orientation), disability, age, or reprisal or retaliation for prior civil rights activity.

Program information may be made available in languages other than English. Persons with disabilities who require alternative means of communication to obtain program information (e.g., Braille, large print, audiotape, American Sign Language), should contact the responsible state or local agency that administers the program or USDA's TARGET Center at (202) 720-2600 (voice and TTY) or contact USDA through the Federal Relay Service at (800) 877-8339.

To file a program discrimination complaint, a Complainant should complete a Form AD-3027, USDA Program Discrimination Complaint Form which can be obtained online at: <https://www.usda.gov/sites/default/files/documents/USDA-OASCR%20P-Complaint-Form-0508-0002-508-11-28-17Fax2Mail.pdf>, from any USDA office, by calling (866) 632-9992, or by writing a letter addressed to USDA. The letter must contain the complainant's name, address, telephone number, and a written description of the alleged discriminatory action in sufficient detail to inform the Assistant Secretary for Civil Rights (ASCR) about the nature and date of an alleged civil rights violation. The completed AD-3027 form or letter must be submitted 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; or

2. fax:

(833) 256-1665 or (202) 690-7442; or

3. email:

program.intake@usda.gov

This institution is an equal opportunity provider.

REQUEST FOR PROPOSAL AND CONTRACT INDEX

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I. INTRODUCTION

This document contains a Request for Proposal for providing vended meals for _____ (Sponsor)'s participation in the United States Department of Agriculture's (USDA) Child Nutrition Programs (CNP) and sets forth the terms and conditions applicable to the proposed procurement. Upon acceptance, this document, the offeror's proposal, and approved amendments or addendums to this document shall constitute the contract between the offeror and the School Food Authority.

The Sponsor has full responsibility for ensuring that the terms of the contract are fulfilled. Sponsors must maintain oversight to ensure that contractors perform in accordance with the terms, conditions, and specifications of the contract. The Colorado Department of Education (CDE) is never a party to any contract between a sponsor and a Vendor. CDE has no involvement with the enforcement of this contract; however, payment can be denied for all meals received / purchased, if a vendor fails to meet the terms and conditions of the contract.

The Sponsor alone must be responsible, in accordance with good administrative practice and sound business judgment, for the settlement of all contractual and administrative issues arising out of procurements. These issues include, but are not limited to, source evaluation, protests, disputes, and claims. These standards do not relieve the Sponsor of any contractual responsibilities under its contracts. USDA will not substitute its judgment for that of the Sponsor unless the matter is primarily a Federal concern. Violations of law will be referred to the local, state, or Federal authority having proper jurisdiction.

II. REQUEST FOR PROPOSAL / INSTRUCTIONS

A. Legal Notice

Notice is hereby given that _____, hereinafter referred to as the Sponsor, intends to examine alternatives to its present food service program, including self-preparation.

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

All costs involved in submitting a response to this Request for Proposal (RFP) shall be borne in full by the interested party.

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

The Offeror to this RFP will be referred to as the Vendor, and any contract that may arise from this Request for Proposal (RFP) will be between the Vendor and the Sponsor.

B. Request for Proposal

1. Sponsor will consider a proposal for fixed fee per meal only. The fixed fee per meal shall be inclusive of delivery and other services requested by the Sponsor such as serving the meals or running the point-of-sale system.
2. In accepting proposals, _____ reserves the right to reject any and all proposals and to waive any minor informality in order to take the action which it deems to be in the best interest of Sponsor.
3. Offerors must submit a complete response to this Request for Proposal (RFP), including all certifications, for consideration as a responsive proposal.
4. Contracts entered into on a basis of submitted proposals are revocable if contrary to law.
5. See Standard Terms and Conditions herein below.

C. Procurement Method

1. Procurement Method will be the Competitive Proposal which differ from the traditional sealed bid method with the application of the following requirements:
 - a. The CDE Vended Request For Proposals Template is required when the estimated contract value exceeds the Federal Simplified Acquisition Threshold of \$250,000. The Sponsor must incorporate all CDE required changes to its solicitation documents before issuing those documents
 - b. Requests for proposals will be publicized and identify all evaluation factors and their relative importance. Any response to publicized requests for proposals shall be honored to the maximum extent practical;
 - c. Proposals will be solicited from an adequate number of qualified sources;
 - d. Sponsor must have a written method for conducting technical evaluations of the proposals received and for selecting awardees;
 - e. Awards will be made to the responsible firm whose proposal is most advantageous to the program, with price and other factors considered;
 - f. Awards will be made only to responsible contractors possessing the ability to perform successfully under the terms and conditions of a proposed procurement. Consideration will be given to such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources.
2. Discussions for the purpose of clarification may be conducted with responsible offerors who submit proposals determined to be considered for award selection, to assure full understanding of all terms and conditions of the RFP response and Contract requirements following state regulations and Sponsor policy. It is expected that the negotiation process will result in the selection of the successful offeror. However, if after negotiations, two or more offerors are still under consideration, the SFA must make a final selection, using an unbiased method, e.g., the bidders are asked to submit a best and final price. The offerors should be informed of the situation and the method the SFA will use to select the successful offeror. The award should be made to the responsible offeror whose proposal is most advantageous to the SFA, price and other factors considered, with price the primary factor.
3. In conducting these discussions, there shall be no disclosure of any information derived from proposals submitted by competing offerors.
4. All procurement transactions shall be conducted in a manner that provides maximum open and free competition consistent with 2 CFR § 200.319. Some of the situations considered to be restrictive of competition include but are not limited to: placing unreasonable requirements on firms in order for them to qualify to do business, requiring unnecessary experience and excessive bonding, Noncompetitive pricing practices between firms or between affiliated companies, noncompetitive awards to consultants that are on retainer contracts, organizational conflicts of interest, specifying only a "brand name" product instead of allowing "an equal" product to be offered and describing the performance of other relevant requirements of the procurement, and any arbitrary action in the procurement process.
5. The Sponsor must maintain written standards of conduct covering conflicts of interest and governing the actions of its employees engaged in the selection, award and administration of contracts. No employee, officer, or agent may participate in the selection, award, or administration of a contract supported by a Federal award if he or she has a real or apparent conflict of interest. This applies if the Sponsor has a parent, affiliate, or subsidiary organization that is not a state, local government or Indian tribe.
6. Sponsor will maintain records sufficient to detail the significant history of the procurement. These records must include, but are not limited to the following: rationale for the method of

procurement, selection of contract type, contractor selection or rejection, and the basis for the contract price.

D. Pre-Proposal Meeting / Timeline

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 at

1. Date/ Time: _____
2. Location or link to virtual meeting: _____
3. Attendance is *required/ not required*.
4. Vendor presentations will/*will not* be scheduled at this time.

E. Proposal Submission and Award

1. Sponsor must use this CDE prototype Vendor Request for Proposal and Contract. Sponsors who do not complete the required procurement procedures cannot be approved for participation in the USDA reimbursement programs.
2. Sponsor must select the method in which to submit proposals:
Submit Competitive Proposals via email to:
Name of Sponsor Contact: _____
Email Address: _____
Submit Competitive Proposals via mail to:
Name of Sponsor Contact: _____
Mailing Address: _____
Physical Address: _____
City: _____
State/Zip: _____
3. Proposals must be submitted by:
 - a. Time: _____ (*proposals will not be accepted after this time*)
 - b. Date: _____, 2024
 - c. Location: _____
 - d. Proposal submitted marked "**Vended Meals Proposal**, _____".
1. Bonding Requirements (Required for SFSP). The Vendor shall obtain bid or performance bonds in accordance with 7CFR 225.15(m)(7):
 - a. Bid guarantee (required when the entire value of the Contract exceeds \$250,000):
 - i. Offeror shall submit with his or her bid guarantee in the amount of \$ _____ not less than 5 percent or more than 10 percent of total bid price,
 - ii. Shall be in the form of a firm commitment only from surety companies listed in the current Department of the Treasury Circular 570. No sponsor or State agency shall allow vendors to post any "alternative" forms of bid or performance bonds, including but not limited to cash, certified checks, letters of credit, or escrow accounts.
 - iii. 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 (required when the entire value of the Contract exceeds \$250,000):
 - i. Vendor must obtain a performance bond in the amount of \$ _____ (not less than 10 percent nor more than 25 percent of

the value of the Contract) which shall be in the form of a firm commitment only from surety companies listed in the current Department of the Treasury Circular 570. No sponsor or State agency shall allow vendors to post any "alternative" forms of bid or performance bonds, including but not limited to cash, certified checks, letters of credit, or escrow accounts. Performance bonds for the successful Offeror shall be held for the duration of the Contract.

4. To be considered, each offeror must submit a complete response to this solicitation **using the forms provided.**
 - a. No other documents submitted with the RFP and Contract will affect the Contract provisions, and **there may be no modifications to the RFP and Contract language.**
 - b. In the event that Offeror modifies, revises, or changes the RFP and/or Contract in any manner, Sponsor may reject the offer as non-responsive.
5. Awards will be made to the responsible firm whose proposal is most advantageous to the program, with price and other factors considered (2 CFR 200.320)
 - a. A responsible offeror is one who's financial, technical, and other resources indicate an ability to perform the services required.
 - b. Offeror shall submit for consideration such records of work and further evidence as may be required by the Sponsor's Board of Trustees.
 - c. 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.
 - d. The qualification data shall be submitted by each offeror along with the proposal, and shall include the following:
 - i. Offeror must be incorporated or licensed to do business in the State of Colorado and must be registered with the Colorado Department of Education (CDE) Office of School Nutrition (OSN).
 - ii. Annual reports or financial statements for the past fiscal year, certified by a licensed public accountant, must be included in the pre-qualification data.
 - iii. Information that offeror is doing business with like school systems and is familiar with the regulations pertaining to operations in such environments, if applicable.
6. Offerors or their authorized representatives must 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 who cannot secure relief on plea of error.
7. Any person that develops or drafts specifications, requirements, statements of work, invitations for bids, requests for proposals, contract terms and conditions or other documents for use by the Sponsor in conducting a procurement under the USDA entitlement programs specified in 2 CFR 200.319 shall be excluded from competing for such procurements. Such persons are ineligible for contract awards resulting from such procurements regardless of the procurement method used.
8. The Sponsor is not liable for any cost incurred by the offeror in submitting a proposal. **Paying the Vendor from Child Nutrition Program (CNP) funds is prohibited until the Contract is provided to CDE and signed by the Sponsor. Contracts in excess of \$250,000 must be approved in writing by CDE.**
9. If additional information is requested, please contact _____. Any additional information provided to one offeror will be available to all. Optional: **Please submit requests via e-mail only.** In order to facilitate prompt sharing of information, **no phone calls will be accepted.**

10. Award Criteria:

- a. Proposals will be evaluated by the Sponsor committee based on the offer per meal/meal equivalent and the criteria, categories and assigned weights as stated herein below (to the extent applicable).
- b. Committee members must consist of Sponsor employees familiar with the regulations and requirements of the child nutrition programs.
- c. If a committee member is an agent for, employee of or in any manner associated with a Vendor, that Vendor may not participate in the RFP and subsequent contract or comply with the conflict of interest policies of the Sponsor or district.
- d. Each area of the award criteria must be addressed in detail in the Proposal.
- e. Sponsor will maintain records sufficient to detail the significant history of a procurement to include, but are not limited to the following: rationale for the method of procurement, selection of contract type, contractor selection or rejection, and the basis for the contract price.

11. Weight Criteria

- a. Sponsor must determine in advance what percentage (total of 100 points which equals 100%) each category below will be given when comparing proposals.
- b. Sponsor may insert additional categories if needed.
- c. Sponsor may not include as a category: prior experience with Sponsor as it would violate USDA's free and open competition regulation for procurement.

Points	Criteria
	Cost (must be primary consideration) <ul style="list-style-type: none"> <input type="checkbox"/> Vendor provides pricing that aims to develop a cost-neutral program for the school including vendor support and responsibility for waste management.
	Service Capability Plan (describes Vendor's ability to provide services as stated in the RFP) <ul style="list-style-type: none"> <input type="checkbox"/> Vendor is able to provide meals at the locations and times in the RFP <input type="checkbox"/> Vendor is able to provide HACCP trained server(s) to both serve food as well as operate POS systems for Sponsors (if applicable) <input type="checkbox"/> Vendor is responsive to Sponsor needs and remedies problems immediately <input type="checkbox"/> Vendor will provide paperwork that incorporates daily HACCP and production worksheet required information (provide sample) <input type="checkbox"/> Vendor provides necessary paperwork and documents to the SFA, including Sponsor invoices, menus and production worksheets, menu substitutions, in order for Sponsor to properly monitor performance. This includes FFVP and SFSP documentation if necessary
	Experience, References with like Sponsors and familiarity with regulations pertaining to such operations <ul style="list-style-type: none"> <input type="checkbox"/> Vendor is able to provide three references with like Sponsors <input type="checkbox"/> Vendor is able to describe familiarity with program regulations
	Financial Condition/Stability, Business Practices <ul style="list-style-type: none"> <input type="checkbox"/> Vendor is able to finance meal preparation and delivery without prepayments <input type="checkbox"/> Vendor is able to provide documentation of financial stability and sound business practices
	Accounting and Reporting Systems <ul style="list-style-type: none"> <input type="checkbox"/> Vendor is able to provide monthly invoices that show credits for USDA foods

	<input type="checkbox"/> Vendor is able to provide a year-end summary of the total meals invoiced/served by meal type, total amount of USDA foods credited, and total fees charged by site
	Menu and Food Quality <input type="checkbox"/> Vendor is able to provide a cycle menu that meets the specifications of the programs being served <input type="checkbox"/> Vendor involves students, staff, and patrons in menu planning <input type="checkbox"/> Portion and serving sizes are easily identifiable and provided by the Vendor <input type="checkbox"/> Menus offer a variety of food items appropriate for each grade/age group served <input type="checkbox"/> Vendor is able to accommodate special dietary needs as outlined in the RFP <input type="checkbox"/> Food Specifications meet the requirements of the RFP <input type="checkbox"/> Food delivered is prepared fresh, free of spoilage, and minimally processed. Fresh fruit and vegetable options are available daily
	Flexibility in ordering <input type="checkbox"/> Sponsor has flexibility and autonomy to request meals at dates/times of their choosing, despite traditional closed days <input type="checkbox"/> Field trip and shelf-stable meals are available (meet USDA reimbursable meal requirements.)
	Waste Management <input type="checkbox"/> Vendor works with Sponsor to look at trends for more accurate ordering and to help reduce waste
100	TOTAL

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 of time, stated as a number of days, shall be calendar days.

I. Firm Offer

1. By submitting a response to this Request for Proposal, and if such response is not withdrawn prior to the time for opening proposals arrives, offeror understands and agrees that they are making a firm offer to enter into a contract, which may be accepted by Sponsor and which will result in a binding contract.
2. Such proposal is irrevocable for period of ninety (90) days after the time for opening of proposal has passed. _____ **(Vendor must initial and date to show agreement)**

J. Final Contract

A duplicate copy, preferably electronic, of the submitted proposal and all required documents listed below must be provided to the Sponsor for submission to CDE. The complete contract, prior to execution, must be submitted to CDE and includes:

1. All documents included by the Sponsor in the CDE approved RFP template with the Vendor responses .
2. Any additional negotiations that have been completed and terms that are included in additional documents that are not included in the CDE RFP/contract template.

3. All documents submitted by the Vendor that have been mutually agreed upon by both parties (i.e. worksheets, attachments submitted by the Vendor in the proposal, and operating cost sheets) and identified in Section R, paragraph 4 of the Standard Terms and Conditions.
4. All of the above terms need to be added to the original CDE approved RFP/ contract.

III. STANDARD TERMS AND CONDITIONS

A. Definitions

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

1. "Accounting Periods" means _____ (enter accounting period to use (i.e., first day of the month through the last day of the month).
2. "Applicable Credit" " refers to the meaning established in 2 CFR 200.406.
3. "Buy American"—The term '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.
4. "Child Nutrition Program (CNP) " means the USDA Child Nutrition Programs in which Sponsor participates
5. "Colorado Open Records Act (CORA) (C.R.S. 24-72-200.1 Et Seq)": It is declared to be the public policy of this state that all public records shall be open for inspection by any person at reasonable times, or as otherwise specifically provided by law.
6. "Contract" means this RFP and Contract, the exhibits attached to this RFP and Contract and Vendor's Proposal.
7. "CDE" means the Colorado Department of Education.
8. "CDHS" means the Colorado Department of Human Services (Food Distribution).
9. "Effective Date" means _____through _____ (Must not exceed one year in length).
10. "Fixed Fee" Contracts that provide for fixed fees such as those that provide for fees established on a per meal basis are allowed. All services provided are to be incorporated into the fixed fee per meal, and no other fees will be allowed. The offer amount should be based on assumption that no donated USDA Foods will be available for use and includes all expected rebates, discounts and other applicable credits.
11. "Vendor's Proposal" means Vendor's response to the RFP and Contract.
12. "Meal Equivalent" In a fixed fee per meal contract, the Vendor is paid on the basis of the number of meals served. In order for the Vendor to be paid for non-meal food service, non-program meal sales activity and revenues are converted into a specific number of reimbursable lunches. The conversion of non-meal activity into an equitable number of meals is completed by dividing the total of cash receipts, other than from sales of NSLP and SBP meals, ACSP and SFSP meals, by the current equivalency factor. The equivalency factor for the Meal Equivalent shall remain fixed for the term of the Contract and all renewals and is in Section: J Financial Terms.
13. Healthy Hunger Free kids Act of 2010: (HHFKA)The current Child Nutrition Program Reauthorization is due for reauthorization and is pending.
14. "Non-profit Food Service Account" means the restricted account in which all of the revenue from all food service operations conducted by the Sponsor principally for the benefit of school children is retained and used only for the operation or improvement of the nonprofit food service.
15. "Program(s)" or "Child Nutrition Program (CNP) (s)" means the USDA Child Nutrition Programs in which Sponsor participates.
16. "Program Funds" means all funds that are required to be deposited into the Non-profit School Food Service Account.
17. "Proposal" means Vendor's response to the RFP and Contract.

18. "RFP" means Sponsor's Request for Proposal and Contract, and all of its attachments.
19. "Services" means the services and responsibilities of Vendor as described in this Contract, including any additional services described in Section P of this Contract.
20. "Sponsor" or "School Food Authority" as defined in 7CFR § 210.2.
21. "Sponsor'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.
22. "Sponsor's Food Service Facilities" means areas, improvements, personal property, and facilities made available by Sponsor to Vendor for the provision of the food services as described herein.
23. "Sponsor's Food Service Program" means the preparation and service of food to Sponsor's students, staff, employees and authorized visitors, including the following programs: *National School Lunch Program (NSLP), School Breakfast Program (SBP), After School Care Snack Program (ACSP), Summer Food Service Program (SFSP), Fresh Fruit and Vegetable Program (FFVP), and a la carte food service.*
24. "Sponsor's Food Service Location(s)" means the schools or other locations where Program meals are served to Sponsor's schoolchildren.
25. "USDA" means United States Department of Agriculture, Food and Nutrition Service.
26. "Vended Meals": In a fixed fee vended meals contract, the contractor provides the meals only (prepackaged, pre-plated) and does not manage any other aspect of the school food service. However, if the contractor's employees are responsible for final preparation and/or serving of prepackaged, pre-plated school meals, the additional services are included in the fixed fee bid and may not be charged separately.

B. Scope and Purpose

- 1) Duration of Contract. Unless it is terminated in accordance with Section L, this Contract will be in effect for a period of one year for the 20 -20 school year and/or 20 SFSP program. The effective date is _____ through _____ (One year maximum length), and may be renewed for up to four additional terms of one year each upon mutual agreement between Sponsor and Vendor, consistent with Article X, Section 20 of the Colorado Constitution and 7 CFR §210.16.
- 2) During the term of this Contract, Vendor shall operate Sponsor's Food Service Program in conformance with Sponsor's agreement with the CDE School Nutrition Unit (School Nutrition) per 7 CFR 210.16(a)(2).
- 3) Vendor shall have the exclusive right to prepare and provide meals for the programs specified by Sponsor in Exhibit A: Site Information, which is attached to this Contract and fully incorporated herein.
- 4) The Sponsor reserves the right to solicit multiple pricing options as defined in section J, chart 7. During the initial contract year or subsequent renewal years, the Sponsor and Vendor may agree to select any of the options included in the original proposal. No price increases shall be allowed unless approved by CDE. If a program is planned / added later (i.e., a breakfast program) which is beyond the scope or original intent of this RFP/Contract or if a proposed contract modification changes the scope of a contract or increases the contract amount by more than the simplified acquisition threshold the appropriate procurement procedures must be followed, including a new competitive solicitation. Any change to the scope of services to be provided by Vendor that is beyond the scope or original intent of this RFP/Contract or involves a total increase of $\geq 10\%$ of the total contract value must be rebid.
- 5) The Sponsor must perform a cost or price analysis in connection with every procurement action in excess of the simplified acquisition threshold including contract modifications. Results must be reviewed by CDE.
- 6) The Vendor shall

- a) Be an independent contractor and not an employee of the Sponsor. The employees of the Vendor are not employees of the Sponsor.
 - b) Cooperate with and ensure the resolution of Vendor facility reviews conducted by the State Agency (CDE). The State Agency may inspect the Vendor's facilities as part of the Sponsor's administrative review or as part of a meal quality test.
 - c) Maintain such records as the Sponsor will need to support its Claim for Reimbursement under this part, and shall, at minimum, report claim information to the Sponsor promptly at the end of each month. Such records shall be made available to the Sponsor, upon request, and shall be retained in accordance with §210.23(c).
 - d) (If applicable), Implement an accurate point of service count using the counting system provided by Sponsor in its application to participate in the Child Nutrition Programs and approved by CDE for all programs listed in Exhibit A: Site Information, herein, as required under USDA regulations. Counting system must eliminate the potential for the overt identification of free and reduced-price eligible students under USDA Regulation 7 CFR §245.8.
 - e) Maintain all records necessary, in accordance with applicable regulations, for Sponsor, CDE and USDA to complete required monitoring activities and must make said records available to Sponsor, CDE, and USDA upon request for the purpose of auditing, examination and review (7 CFR § 210.16(c)(1)).
 - f) Cooperate with Sponsor in promoting nutrition education, health and wellness policies and coordinating Sponsor's Food Service Program with classroom instruction or other program activities.
 - g) Comply with applicable federal, state and local laws, rules and regulations, policies, and instructions of CDE and USDA and any additions or amendments thereto, including USDA Regulation 7 CFR Parts 210, 215, 220, 225, 226, 245, 250, if applicable; OMB Circulars, 2 CFR 200 and the other laws described in the "Contract Provisions for Sponsor Contracts under CNP Awards," which is attached to this Contract as "Exhibit H" and fully incorporated herein by reference.
 - h) Comply with all Sponsor building rules and regulations.
- 7) Sponsor shall be responsible for:
- a) Signature authority for the application/contract, free and reduced price policy statement, and Programs indicated in Exhibit A: Site Information, herein, and the monthly claim for reimbursement (7 CFR §210.9(a) and (b) and 7 CFR §210.16(a)(5)).
 - b) Operating Sponsor's Food Service Program for the benefit of Sponsor's students, faculty and staff.
 - c) Development and distribution of the parent letter and Application for Free and Reduced-Price Meals and/or Free Milk and participating in Direct Certification. (Does not apply to SFSP)
 - d) Determination of eligibility for free or reduced-price meals and free milk, if applicable. (Does not apply to SFSP)
 - e) Conducting any hearings related to determinations of free and reduced price eligibility. (Does not apply to SFSP)
 - f) Verification of applications for Free and Reduced-Price Meals as required by USDA regulations. (Does not apply to SFSP)
 - g) Establishment and maintenance of the free and reduced-price meals' eligibility roster. (7 CFR § 210.7(c), 7 CFR § 210.9(b) (18) and 7 CFR § 245.6(e)). (Does not apply to SFSP)
 - h) Conduct of Sponsor's Food Program.

- i) Supervision of 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 CDE and USDA regarding the Child Nutrition Programs.
- j) Establishing all selling prices, including price adjustments, for all reimbursable and non-reimbursable meals/milk and a la carte (including vending, adult meals, contract meals, and catering) prices. (Exception: Non-pricing programs need not establish a selling price for reimbursable meals/milk.)
- k) Control of the non-profit food service account and overall financial responsibility for Sponsor's food service program, as well as the quality, extent and general nature of the food service.
- l) Ensuring the resolution of Program administrative reviews, and audit findings. The results of these reviews may affect the amount of reimbursement a sponsor will receive and the payment to the Vendor. Vendor shall fully cooperate with Sponsor in resolving review and audit issues. Vendor shall indemnify Sponsor 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 Vendor's intentional or negligent acts.
- m) Monitoring the food service operation of the Vendor through periodic on-site visits to ensure that the food service is in conformance with USDA program regulations (7 CFR § 210.16(a)(3)).
- n) Conducting an on-site review of the counting and claiming system at each Sponsor Food Service Location no later than February 1 of each year if there is more than one Sponsor Food Service Location. (Does not apply to SFSP)
- o) The counting and claiming system, including compliance with required internal control procedures. (7 CFR § 210.8(a)(1), 7CFR 225.9(d)).
- p) Ensuring that CDE has reviewed and approved the contract terms and that the Sponsor has incorporated all CDE required changes into the contract or amendment before any contract or amendment to an existing Vendor contract is executed.
- q) Ensure that all federally donated foods received by the Sponsor and made available to the Vendor, including processed USDA Foods, accrue only to the benefit of the Sponsor's non-profit food service account and are fully utilized therein. (does not apply to SFSP)
- r) Not directly or indirectly restricting the sale or marketing of fluid milk (§210.10(d)(4)) at any time or in any place on site premises or at any site-sponsored event.
- s) Maintaining a contract administration system which ensures that the Vendor performs in accordance with the terms, conditions, and specifications of their contract.
- t) Be responsible for full compliance with rules and regulations relating to implementation of the SFSP(7CFR 225.15(3)), if applicable, including retaining responsibility for the following non-delegable duties (may not be delegated to a Vendor Employee):
 - 1. Meal orders:
 - a. Inform the Vendor of approved level at each site for which the Vendor will provide meals.
 - b. Plan for and prepare or order meals on the basis of participation trends with the objective of providing only one meal per child at each meal service.
 - 2. Records and claims
 - a. Maintain accurate records which justify all costs and meals claimed.
 - b. Submit claims for reimbursement in accordance with 7 CFR 225.15
 - 3. Training and monitoring
 - c. Hold Program training sessions for its administrative and site personnel and

- d. Not allow a site to operate until personnel attend at least one of the trainings.
 - e. Visit each of their sites at least once during the first week of SFSP operation
 - f. Review food service operations at each site at least once during the first four weeks of Program operations
 - g. Maintain a reasonable level of site monitoring.
 - h. Document required SFSP site visits of all sites
 - 4. Determination / Processing of Free and Reduced Price applications
 - a. Coordination of printing of materials
 - b. Approving Official, Hearing Official, or contact person for questions.
 - c. Development of materials for distribution from prototypes provided by CDE, including Letter to Parents, Application, Public Release, etc.
 - d. Distribution of materials to parents/guardians
 - e. Collection of submitted applications.
 - f. Processing of applications, including approval/denial and follow-up to obtain complete information.
 - g. Inputting data into computer if applications approved manually.
 - h. Inputting data into computer if computer system automatically determines eligibility.
 - i. Final approval and signature of approving official.
 - j. Notification of approval and status to parent/guardian.
 - 5. Submission of Media Release.
 - 6. Completion of Summer Food Service Program Sponsor and Site Application and determining eligibility for all SFSP sites.
 - 7. Make final determination of the opening and closing dates of all SFSP sites.
 - 8. Preparation and submission of claim for reimbursement
 - a. Compiling daily site counts at the school and Sponsor level, and maintaining records.
 - b. Signing the claim for reimbursement
- 8) Sponsor and Vendor agree that this Contract does not permit all income and expenses to accrue to the Vendor and 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.
- 9) Payments on any claim shall not preclude Sponsor from making a claim for adjustment on any item found not to have been in accordance with the provisions of this Contract and bid specifications.
- 10) Sponsor may request of Vendor additional food service programs; however, the Sponsor 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. Any food and beverages sold in addition to the reimbursable meals must meet USDA competitive foods regulation 7 CFR § 210.11 and CO Competitive Food regulations and the CO Healthy Beverages Policy.
- 11) 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.
- 12) Any changes made by the Sponsor or Vendor to a CDE pre-approved prototype contract or CDE approved contract term must be approved in writing by CDE before the contract is executed. When requested, the Sponsor must submit all procurement documents, including responses submitted by potential contractors, to CDE, by the due date established by CDE.
- 13) Gifts from Vendor: The Sponsor'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. (CO. Const. Art. XXIX, Section 3; 2 CFR200.318) 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.

- 14) **Fresh Fruit and Vegetable Program (FFVP):** (if applicable) In the event that Vendor provides management services for the FFVP at any of Sponsor's Food Service Locations, Sponsor and Vendor agree to 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. Sponsor and Vendor further agree that not more than 10% of the total funds awarded to the school and/or schools for operation of the FFVP may be used for administrative expenses. Vendors must submit detailed documentation of actual administrative hours worked to ensure that the actual administrative hours of the FFVP are not billed as part of the NSLP Meal programs or not double-billed (if administrative costs are being claimed by the vendor). These records will be used to support the SFA's Claim for Reimbursement.

C. Food Service

- 1) Vendor shall:
 - a) Deliver and/or Serve meals on such days and at such times as requested by the Sponsor that meet all USDA and Colorado meal pattern requirements <https://www.fns.usda.gov/school-meals/child-nutrition-programs>, <http://www.cde.state.co.us/nutrition/nutrimenuplanning>, https://fns-prod.azureedge.net/sites/default/files/resource-files/USDA_SFSP_NutritionGuide.pdf, and <http://www.cde.state.co.us/nutrition/osnfsfpmealpatternrequirements>.
 - b) Offer free, reduced-price, and full-price reimbursable meals to all eligible children participating in Sponsor's Food Service Programs indicated herein.
 - c) In order to offer a la carte food service, the Vendor must agree to offer free, reduced-price, and full-price reimbursable meals to all eligible children.
 - d) Promote maximum participation in the Programs.
 - e) Provide specified types of meals and services in the sites listed in Exhibit A.
 - f) All food and beverages other than meals reimbursed under programs available for sale to students on the School campus during the School day must be authorized by the Sponsor and only at the times and places designated by the Sponsor. All foods sold must meet the nutrition standards specified in 7 CFR § 210.11 and allowed under Colorado Competitive Rules (2202-R-201) and Healthy Beverages Rules (1 CCR 301-79). These standards apply to items as packaged and served to students. (does not apply to SFSP)
 - g) Support the Sponsor's compliance with the federal Child Nutrition Reauthorization (CNR) which authorizes all of the federal child nutrition programs, including the School Breakfast, National School Lunch, Child and Adult Care Food, Summer Food Service, and the Fresh Fruit and Vegetable Programs and WIC. The current law, the Healthy, Hunger-Free Kids Act of 2010 was due for reauthorization in 2015 but has not been released.
- 2) Sponsor shall retain control of the quality, extent, and general nature of the food service (7 CFR § 210.16(a)(4))
- 3) Special Dietary Needs
 - a) Vendor and Sponsor must follow current federal and state regulations regarding providing for special dietary needs for enrolled students. Additional information is available at <http://www.cde.state.co.us/nutrition/nutriSpecDietaryNeeds> and <https://www.fns.usda.gov/school-meals/faqs>.
 - b) Exceptions for disability reasons: Vendor must make modifications in meals and afterschool snacks for students who are considered to have a disability under 7 CFR 15b.3 and whose disability restricts their diet. Modifications must be made on a case by case basis. Meal modifications that fall outside the required meal pattern can be made when supported by a

written medical statement. Modifications that can be made within the required meal pattern at the discretion of the Vendor and Sponsor.

- c) Exceptions for non-disability reasons: Vendor, with instructions from the Sponsor, may make modifications for students without disabilities who cannot consume the regular lunch or afterschool snack because of ethical, cultural, religious reasons or other preferences. Modifications made for dietary preferences must meet meal pattern requirements established under 7 CFR § 210.10 and 7 CFR § 220.
 - d) Meal modification approval: The approval for meal modifications must remain in effect until the medical authority or the student's parent or legal guardian revokes such request, or until such time as the Vendor and Sponsor changes their meal modifications policy.
 - e) Required Documentation: Information about meal modifications must be included in the following documents: (1) medical statements or preference forms, (2) production records (3) recipes (4) HACCP plans and (5) meal counting and claiming tracking. Production records should indicate the meal substitutions/accommodations and the number of meals served for special diets.
- 4) USDA Fresh Fruit and Vegetable Program (FFVP) (If applicable)
- Vendor:
- a) Documents and tracks FFVP expenses separately and makes this documentation easily accessible for the Sponsor to review and submit an accurate claim.
 - b) Time certification of FFVP Labor time is required.
 - c) Documentation must clearly show allocation of costs charged to the FFVP, i.e. specific labor time charges, actual costs of fresh fruits and vegetables, administrative fees that do not exceed 10% of the overall grant.
 - d) Follows all FFVP policies and rules to guarantee the program is operated in compliance with FNS standards.
 - e) Develops cycle menu for FFVP for participating schools. It is recommended that portion sizes are included in the proposed menu cycle.
- Sponsor:
- a) Will regularly monitor Vendor compliance with FFVP requirements
 - b) Monitor all FFVP expense documentation from Vendor for compliance with the contract and regulations, prior to submitting FFVP claim

D. Use of Advisory Group/Menus

- 1) Sponsor shall establish an advisory board composed of parents, teachers, and students to assist in menu planning (7 CFR 210.16(a)(8)). The final rule, Local School Wellness Policy Implementation under the Healthy, Hunger-Free Kids Act of 2010, is available at <http://www.cde.state.co.us/nutrition/7cfrparts201and220localschoolwellnesspolicyfinalrule>. (Does not apply to SFSP)
- 2) The Sponsors with no capability to prepare a cycle menu may, with CDE approval, require that each Vendor include a cycle menu, developed in accordance with Exhibit B.
- 3) Sponsor shall approve the menus no later than two weeks prior to service.
- 4) Vendor:
 - a) Shall deliver and/or serve meals that follow the menu cycles that meet Child Nutrition Program requirements and food specifications contained in Exhibits B and E, attached to this Contract.
 - b) May not change or vary the menus after the first menu cycle for the NSLP, SBP, After School Care Snack Program, SFSP, FFVP or a la carte items without written approval of Sponsor. 7 CFR §210.16(b)(1)

- c) Shall justify and document in writing all requests for any changes or variances for substitutions to Sponsor menu of lower quality food items.
- d) Maintains documentation for substitutions and justification of lower quality food items for the records retention period applicable to food production records and documentation is available to Sponsor, CDE and USDA for review upon request. (7 CFR § 210.16(b)(1))
- e) Complies with Sponsor's local wellness policy as applicable. (does not apply to SFSP)
- f) Complies with all state and local laws that affect school meal preparation and/or service.

E. Purchases

The following applies to all Vendor contracts:

1. Buy American: Sponsor and Vendor will comply with the Buy American provision for contracts that involve the purchase of food. As required by the Buy American provision, all products must be of domestic origin as required by 7 CFR Part 210.21(d).
 - a. The Sponsor participates in the NSLP and SBP and is required to use the nonprofit food service funds, to the maximum extent practical, to buy domestic commodities or products for Program meals. 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 Part 210.21(d).
 - b. Exceptions to the Buy American provision should be used as a last resort; however, an alternative or exception may be approved upon request.
 - c. To be considered for the alternative or exception, Vendor must submit request in writing to Sponsor and be approved. Approval will be retained with purchase records. The request must include the:
 - i. Alternative substitute (s) that are domestic and meet the required specifications:
 1. Price of the domestic food alternative substitute (s); and
 2. Availability of the domestic alternative substitute (s) in relation to the quantity ordered.
 - ii. Reason for exception: limited/lack of availability or price (include price):
 1. Price of the domestic food product; and
 2. Price of the non-domestic product that meets the required specification of the domestic product.

F. USDA Foods (Does not apply to SFSP)

1. Sponsor shall:
 - a) Retain title to all USDA Foods.
 - b) Maintain records relating to the use of donated foods:
 - i) The donated foods and processed end products received and provided to the Vendor for use in the Sponsor's food service
 - ii) Documentation that Vendor has credited the Sponsor for the value of all USDA Foods received for use in Sponsor's meal service in the school year. (7 CFR § 250.51(a)) including the value of donated foods contained in processed end products (7 CFR § 250.53(a))
 - iii) The actual donated food values used in crediting
 - c) Maintain responsibility for procuring processing agreements, private storage facilities, or any aspect of financial management relating to USDA Foods. 7CFR250.15)
 - d) Assure that the maximum amount of USDA Foods are received and utilized by Vendor. (7 CFR § 210.9(b)(15))
 - e) Consult with the Vendor in the selection of USDA Foods; however, the final determination as to the acceptance of USDA Foods must be made by the Sponsor.

- f) Review requirements for the Sponsor
 - i) The Sponsor must ensure that the Vendor is in compliance with the requirements of this part through its monitoring of the food service operation, as required in 7 CFR parts 210, 225, or 226, as applicable.
 - ii) Conduct a reconciliation at least annually (and upon termination of the contract) to ensure that the Vendor has credited it for the value of all donated foods received for use in the Sponsor's food service in the school or fiscal year, including, in accordance with the requirements in §250.51(a), the value of donated foods contained in processed end products.

2. Vendor:

- a) Will conduct all activities relating to USDA Foods for which it is responsible in accordance with 7 CFR Parts 250, 210, 220, 225 and 226, as applicable. These activities may include: preparing and serving meals; ordering or selection of donated foods, in coordination with the Sponsor, storage and inventory management of donated foods, in accordance with 7 CFR §250.52; and payment of processing fees or submittal of refund requests to a processor on behalf of the Sponsor, or remittance of refunds for the value of donated foods in processed end products to the Sponsor.
 - i) Vendors processing USDA Foods at a commercial facility that is not a part of the contracted SFA are required to follow all rules pertaining to 7 CFR 250 Part C, including but not limited to having an active processing agreement.
- b) Must use all donated foods received for use by the Sponsor for a period specified as either the school year or fiscal year and used in the Sponsor 's food service. USDA Foods are only to be used for the purposes of the program and may not be used for special functions conducted outside the nonprofit food service (e.g. catered meals). (7 CFR §250.50(d))
- c) Must use all donated ground beef, donated ground pork, and all processed end products, in the Sponsor's food service must use all other donated foods, or commercially purchased foods of the same generic identity, of U.S. origin, and of equal or better quality than the donated foods, in the Sponsor 's food service (unless the contract specifically stipulates that the donated foods, and not such commercial substitutes, be used). (7 CFR §250.50(a))
- d) May purchase processed end products for use in Child Nutrition Programs, but may not itself enter into the processing agreement with the processor (7 CFR §250.53(a)(8))
 - i) Shall credit Sponsor for the value of USDA Foods contained in the end products at the processing agreement value or pass the donated food value in processed end products on to the Sponsor.
 - ii) All refunds received from processors must be credited to Sponsor's Nonprofit Food Service Account. (7 CFR § 250.51(a))
- e) Shall accept liability for any negligence on its part that results in any loss of, improper use of, or damage to USDA Foods.
- f) Must credit Sponsor for the value of all USDA Foods received for the use in Sponsor's meal service in the school year, including both entitlement and bonus foods, and including the value of USDA Foods contained in processed end products. In crediting it for the value of donated foods, the Vendor uses the donated food values determined by the distributing agency, in accordance with §250.58(e)
- g) Is prohibited from cashing out USDA Foods and providing a credit to Sponsor for USDA Foods. (7 CFR § 250.13)
- h) Will comply with 7CFR 250 concerning storage and inventory management of USDA Foods:
 - i) Will maintain accurate and complete records with respect to the receipt, use/disposition, storage, and inventory of USDA Foods.

- ii) Shall ensure that its system of inventory management will not result in Sponsor being charged for USDA Foods in cost reimbursable contracts.
 - iii) Failure by Vendor to maintain the required records under this Contract shall be considered prima facie evidence of improper distribution or loss of USDA Foods.
 - iv) May store and inventory donated foods together with foods it has purchased commercially for the Sponsor's use (unless specifically prohibited in the contract). It may store and inventory such foods together with other commercially purchased foods only to the extent that such a system ensures compliance with the requirements for the use of donated foods in §250.51(d)—i.e., use all donated ground beef and ground pork, and all end products in the food service, and use all other donated foods or commercially purchased foods of the same generic identity, of U.S. origin, and of equal or better quality than the donated foods, in the food service
 - v) Must ensure that its system of inventory management does not result in the Sponsor being charged for donated foods.
 - i) Shall allow Sponsor and/or any state or federal representative/auditor, including the Comptroller General and USDA, or their duly authorized representatives, to perform onsite reviews of Vendor's food service operation, including review of records, to ensure compliance with requirements for management and use of USDA Foods. (7 CFR § 250.53(a)(10))
 - j) Must maintain the following records relating to the use of donated foods in its contract with the Sponsor:
 - i) The donated foods and processed end products received from, or on behalf of, the Sponsor, for use in the Sponsor's food service;
 - ii) Documentation that it has credited the Sponsor for the value of all donated foods received for use in the Sponsor's food service in the school or fiscal year, including, in accordance with the requirements in 7 CFR §250.51(a), the value of donated foods contained in processed end products; and
 - iii) Documentation of its compliance with requirements relating to donated foods, in accordance with §250.54(b) (7 CFR §250.53(a)(11))
3. *Method and frequency of crediting* (7 CFR §250.53(a)(2))
- a) The Sponsor may permit crediting for the value of donated foods through invoice reductions, refunds, discounts, or other means. However, all forms of crediting must provide clear documentation of the value received from the donated foods—e.g., by separate line item entries on invoices.
 - b) The method of determining the donated food values to be used in crediting result in the determination of actual values; e.g., the average USDA purchase price for the period of the contract with the food vendor, or the average price per pound listed in market journals over a specified period of time. Negotiation of such values is not permitted. (7 CFR §250.53(a)(3))
 - c) In Fixed Fee Contracts: The Sponsor may permit a Vendor to pre-credit for donated foods. In pre-crediting, a deduction for the value of donated foods is included in the established fixed price per meal. However, the Sponsor must ensure that the Vendor provides an additional credit for any donated foods not accounted for in the fixed price per meal—e.g., for donated foods that are not made available until later in the year.
 - d) In all cases, the Sponsor must require crediting to be performed not less frequently than annually, and must ensure that the specified method of valuation of donated foods permits crediting to be achieved in the required time period.
 - e) The Sponsor must also ensure that the method, and timing, of crediting does not cause its cash resources to exceed the limits established in 7 CFR 210.9(b)(2).

Crediting USDA Donated Foods

Vendor must state here

Method of reporting crediting of USDA Donated Foods : _____

Crediting timeframe beneficial to Sponsor, no less than annually: _____

Method of documentation utilized to verify that the value of all donated foods has been credited

The method of determining the donated food values to be used in crediting, in accordance with §250.51(c), or the actual donated food values _____

4. The method used to determine the donated food values may not be established through a post-award negotiation, or by any other method that may directly or indirectly alter the terms and conditions of the procurement or contract.
5. In Fixed Fee Contracts: The Fixed-meal Fee contract bid Fee per meal must be calculated as if no donated USDA Foods were available.
6. Vendor acknowledges that renewal of this Contract is contingent upon the fulfillment of all contract provisions herein relating to USDA Foods. (7 CFR § 250.53(a)(12))
7. Upon termination of this Contract, must return all unused donated ground beef, donated ground pork, and processed end products, and must, at the Sponsor 's discretion, return other unused donated foods. The Sponsor must ensure that the Vendor has credited it for the value of all donated foods received for use in the Sponsor's meal service in a school year or fiscal year, as applicable (7 CFR § 250.52).

G. Employees

1. Vendor shall provide and pay a staff of qualified employees assigned to duty on Sponsor's premises for efficient operation of the Programs. The Vendor must ensure that the Vendor employees providing services for the school meal programs have training necessary to complete the duties assigned to the Vendor.
2. Sponsor shall provide in Exhibit C: List of Sponsor Charts and Attachments, Chart 1 a list of job duties to be completed by the Sponsor and Vendor. The Sponsor may include multiple options and choose an option at the time of award. The Vendor is responsible for completing all job duties within the fixed price per meal.
3. Vendor shall:
 - a) Comply with all wage and hours of employment requirements of federal and state laws.
 - b) Be responsible for supervising and training Vendor personnel.
 - c) Supervision activities include employee and labor relations, personnel development, and hiring and termination of Vendor staff.
 - d) Provide Workers' Compensation coverage for its employees, as required by law.
 - e) Instruct its employees to abide by the policies, rules, and regulations with respect to use of Sponsor's premises as established by Sponsor and are furnished in writing to Vendor.
 - f) Maintain its own personnel and fringe benefits policies for its employees as applicable.
 - g) Remove any employee who violates health requirements or conducts him/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, Vendor shall immediately restructure the food service staff to avoid disruption of service.

4. Staffing patterns shall be mutually agreed upon.
5. All Vendor 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.
6. To the extent and in the manner required by Sections 22-32-109.7 and 22-32-109.8, Colorado Revised Statutes, Vendor shall perform all required security (background) checks on any potential Vendor employee that will be working at Sponsor. The Vendor and the Sponsor shall not employ any person to perform services under this agreement who been convicted of, has pled guilty or nolo contendere to, or has received a deferred sentence or deferred prosecution for a felony or misdemeanor crime as outlined in the above C.R.S. Sections 22-32-109.7 and 22-32-109.8.

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

1. Sponsor will make available, without any cost or charge to Vendor, area(s) of the premises in which Vendor shall render its services.
2. Sponsor shall have full access to the food service facilities at all times and for any reason, including inspection and audit.
3. Vendor and Sponsor shall:
 - a) Non-expendable supplies and capital equipment: At the commencement, termination or expiration of this Contract,
 - i) Take a physical inventory of all non-expendable supplies and capital equipment owned by Sponsor, including, but not limited to, silverware, trays, chinaware, glassware and kitchen utensils and all furniture, fixtures, and dining room equipment utilized in Sponsor's Food Service Program.
 - ii) Mutually agree on the usability of such supplies and equipment and,
 - iii) At the expiration or termination of this Contract, Vendor shall surrender to Sponsor 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 Vendor except through the negligence of Vendor or its employees, or for any other reason beyond the control of Vendor.
 - iv) Sign a summary of the beginning inventory and ending inventory at the expiration or termination of this Contract and keep a copy of each on file with this Contract.
 - b) Food and supplies: At the commencement, expiration or termination of this Contract,
 - i) Jointly undertake a beginning and closing inventory of all food and supplies.
 - ii) Determine whether any portion of the beginning inventory is not suitable for Sponsor's continued use. Such inventory shall become a part of this Contract by incorporation.
 - iii) Inventory USDA Foods by a separate inventory. The market value is based on the value in USDA's WBSCM (Web Based Supply Chain Management) at the time the USDA Foods are received by Sponsor. Vendor shall be compensated for any increases in such inventory not accounted for by USDA Foods inventory increases for which Vendor had not previously provided Sponsor a credit.
 - iv) Vendor shall be responsible for accounting for any difference between the beginning inventory and the ending inventory and shall compensate Sponsor for any shortfall in inventory not arising from:
 - (1) use of food, USDA Foods and related supplies in Sponsor's Food Service Program for which Sponsor had not previously received a credit;
 - (2) normal wear and tear;

(3) theft, fire or other casualty loss beyond the control of Vendor and not arising from the negligence of Vendor or its agents.

v) Determine the value of the inventories, except for USDA Foods inventories, by invoice cost.

4. Vendor shall:

- a) (If applicable) Maintain the inventory of silverware, serving ware, kitchen utensils and other operating items necessary for the food service operation and at the inventory level specified by Sponsor.
- b) Maintain adequate storage procedures, inventory and control of USDA Foods in conformance with Sponsor's agreement with CDHS.
- c) Not remove any Sponsor owned equipment from Sponsor's premises.
- d) Comply with all Sponsor building rules and regulations.
- e) Surrender to Sponsor all of Sponsor's equipment and furnishings in good repair and condition, reasonable wear and tear excepted upon termination of this Contract
- f) Vendor shall not use Sponsor's facilities to produce food, meals or services for third parties without the approval of Sponsor.
 - i) If such usage is mutually acceptable, there shall be a signed agreement that stipulates the fees to be paid by Vendor to Sponsor for such facility usage.
 - ii) Such usage may not result in a cost to the Non-profit Food Service Account.

5. Sponsor shall:

- a) Replace expendable equipment and replace, repair and maintain nonexpendable equipment except when damages result from careless use by the employees of Vendor.
- b) (If applicable) Provide Vendor with, water, gas and electric service for the food service program.
- c) 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.
- d) Be responsible for any losses, including USDA Foods, which may arise due to equipment malfunction or loss of electrical power not within control of Vendor.
- e) Not be responsible for loss or damage to equipment owned by Vendor and located on Sponsor premises.
- f) Shall retain title to all Sponsor food and supplies in Sponsor during the course of this Contract

I. Health Certifications/Food Safety/Sanitation

1. Vendor shall

- a) 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 requirement of § 210.13(b). (7 CFR § 210.9(b)(14))
- b) Maintain all State of Colorado 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))
- c) Obtain and post all licenses and permits as required by federal, state, and/or local law.
- d) Comply with all State of Colorado and local and sanitation requirements applicable to the preparation of food. (7 CFR 210.16(a)(7))
- e) Adhere to the food safety program implemented by the Sponsor for all preparation and service of school meals, using a Hazard Analysis and Critical Control Point (HACCP) system as required by the Child Nutrition and WIC Reauthorization Act of 2004 (Public Law 108-265).
- f) 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 CNR.

2. Sponsor shall

- a) Maintain applicable health certification for participating sites.

- b) Ensure that Vendor complies with all applicable state and local regulations pertaining to sanitation, preparing or serving meals at a Sponsor facility. (7 CFR § 210.16(a)(7))
 - c) Provide sanitary toilet and hand washing facilities for the employees of Vendor as required by state and local sanitation requirements.
3. Sponsor and Vendor will follow the responsibility for tasks as designated in Exhibit C List of Sponsor Charts and Attachments, Chart 1, Food Service Staffing and Job Duties for all sites.

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, a la carte, vending, concessions, contract meals, grants and loans shall be credited to the Non-profit Food Service Fund on a daily basis.
2. Any profit shall remain in the Sponsor's Non-profit School Food Service Account.
3. All facilities, equipment and services to be provided by Sponsor shall be provided at Sponsor's expense.

4. Payment Terms/Method:

<u>Fixed Fee per Meal Proposal</u>	
(1) The Vendor must bid and will be paid at a Fixed Fee per meal/Snack.	
(2) The Vendor offer amount should be based on assumption that no donated USDA Foods will be available for use and includes all expected rebates, discounts and other applicable credits.	
(3) The method by which Vendor will use and account for USDA Foods shall be in accordance with section F of the Standard Terms and Conditions herein above.	
(4) The Fixed fee 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 (CPI) which will be provided by CDE annually.	
<u>Fixed Per Meal Fee Proposal- To be completed by Vendor</u>	
Fixed Price Per Meal/Meal Equivalent- Delivered meals only, no additional services	Breakfast: \$
	Lunch/Supper: \$
	Snack: \$
	A la Carte: \$
Fixed Price Per Meal/Meal Equivalent- Additional services included, as defined in Appendix D, Chart 1, Option 1	Breakfast: \$
	Lunch/Supper: \$
	Snack: \$
	A la Carte: \$
Fixed Price Per Meal/Meal Equivalent- Additional services included, as defined in Appendix D, Chart 1, Option 2	Breakfast: \$
	Lunch/Supper: \$
	Snack: \$
	A la Carte: \$

6. General Rate Information for all RFP/Contracts:

- a) All fee/rate increases shall be effective on a prospective basis on each anniversary date of this Contract and will be allowed only if approved in advance by Sponsor.
- b) CPI Fee increases for the upcoming Contract renewal year must be submitted to Sponsor by April 1 of each year. CDE will advise on the allowable CPI increase to Sponsors annually.
- c) No other fee increases will be allowed.

- d) For the purpose of computing the foregoing meal counts, the number of National School Lunch Program, School Breakfast Program, Afterschool Care Snack Program, and Summer Program meals served to children shall be determined by actual count.
 - e) No payment will be made to Vendor for meals that: (7 CFR § 210.16(c)(3))
 - i) are spoiled or unwholesome at the time of delivery;
 - ii) do not meet detailed specifications as developed by Sponsor for each food component in the meal pattern specified in §210.10; or
 - iii) Do not otherwise meet the requirements of this Contract.
7. **Payment Terms/Method:** Vendor shall invoice Sponsor within _____ after the end of each Accounting Period for the total amount of Sponsor's financial obligation for that Accounting Period.
 8. No interest or finance charges that may accrue under this Contract may be paid from Sponsor's Nonprofit Food Service Account.
 9. Vendor must:
 - a) 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 Vendor employees.
 - b) Indemnify and hold Sponsor harmless for all claims arising from payment of such taxes and fees.
 10. Sponsor shall not be responsible for any expenditure incurred by Vendor approval by CDE of effective date and execution of this Contract.
 11. No expenditure may be made from the nonprofit food service account for any cost resulting from a procurement failing to meet the requirements.

K. Record Keeping

1. Vendor shall:
 - a) Maintain records (supported by invoices, receipts, or other evidence) Sponsor will need to support its Claim for Reimbursement under this part, and shall, at a minimum, report claim information to the Sponsor promptly at the end of each month.
 - b) Provide Sponsor with a year-end statement, including a breakdown of total number of meals invoiced in each category and total USDA foods credited to the Sponsor.
 - c) Provide all documents necessary for the independent auditor to conduct Sponsor's single audit.
 - d) Make its documents, papers, 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 for the purpose of making audit, examination, excerpts, and transcriptions.
 - e) Retain records beyond the three-year period if audit findings regarding Vendor's records have not been resolved within the three-year record retention period, for as long as required for the resolution of the issues raised by the audit. (Reference 7 CFR §210.9(b)(17), 7 CFR §210.23(c))
 - f) Authorized representatives of Sponsor, CDE, CDHS, USDA and USDA's Office of the Inspector General (OIG) shall have the right to conduct on-site administrative reviews of the food service operation.
2. Vendor shall not remove federally required records from Sponsor premises upon the expiration or termination of this Contract.

L. Term and Termination

1. Contracts for more than the simplified acquisition threshold must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate. (2 CFR Appendix II to Part 200)
1. All contracts in excess of \$10,000 must address termination for cause and for convenience by the Sponsor including the manner by which it will be affected and the basis for settlement. (Appendix II of 2 CFR 200(B))
2. If, at any time, Sponsor shall make a reasonable decision that adequate funding from federal, state or local sources shall not be available to enable Sponsor to carry out its financial obligation to Vendor, then Sponsor shall have the option to terminate this Contract by giving 10 days written notice to Vendor.
3. In the event either party commits 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.
 - A. If the default is not cured within that time, the non-breaching party shall have the right to terminate this Contract for cause by giving 30 days written notice to the breaching party.
 - B. If the breach is remedied prior to the proposed termination date, the non-breaching party may elect to continue this Contract.
 - C. 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 Sponsor, Sponsor may terminate this Contract immediately.
4. Either party may terminate this Contract for cause by providing sixty (60) days prior written notice to the other party. (7 CFR 210.16 (d))
5. 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.
6. In the event of Vendor's nonperformance under this Contract or the violation or breach of the terms of this Contract, Sponsor shall have the right to pursue any and all available administrative, contractual and legal remedies against Vendor. Nonperformance subjects the Vendor to specified sanctions in instances where the Vendor violates or breaches contract terms. The Sponsor shall indicate these sanctions in accordance with the procurement provisions stated in §210.21.
7. Vendor shall promptly pay Sponsor the full amount of any meal over claims, disallowed costs or other or fiscal actions which are attributable to Vendor's actions hereunder, including those over claims based on review or audit findings that occurred during the Effective Dates of original and renewal contracts.
8. Sponsor is the responsible authority without recourse to USDA or CDE 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. Matters concerning violation of law are to be referred to the local, State, or Federal authority that has proper jurisdiction.

M. Insurance

Sponsor MUST evaluate and determine acceptable insurance limits for this section.

1. Vendor shall maintain the insurance coverage set forth below for each accident provided by insurance companies authorized to do business in the state of Colorado. A Certificate of Insurance of Vendor's insurance coverage indicating these amounts must be submitted at the time of award.

2. The information below must be completed by Sponsor:
 - A. Comprehensive General Liability—including coverage for:
 - i) Premises—Operations
 - ii) Products—Completed Operations
 - iii) Contractual Insurance
 - iv) Broad Form Property Damage
 - v) Independent Contractors
 - vi) Personal Injury_____ Combined Single Limit
 - B. Automobile Liability coverage with a \$ _____ Combined Single Limit.
 - C. Workers' Compensation—Statutory; Employer's Liability with a combined single limit of \$ _____
 - D. Excess Umbrella Liability with a combined single limit of \$ _____
3. Sponsor shall be included as additional insured on General Liability, Automobile, and Excess Umbrella policies.
4. The contract of insurance shall provide for notice to Sponsor of cancellation of insurance policies 30 days before such cancellation is to take effect.
5. Notwithstanding any other provision of this Contract, Sponsor shall not be liable to Vendor for any indemnity.

N. Trade Secrets and Proprietary Information

1. All submitted proposals become the property of the Sponsor. The Sponsor is a Political Subdivision of the State of Colorado, and, therefore, it is subject to the Colorado Open Records Act (C.R.S. 24-72-200.1 Et Seq) (CORA). Responders to this RFP are advised that proposals and related materials will generally be treated as "public records" under CORA and be available for inspection and copying. If a responder believes that certain information included in the proposal is subject to exclusion under CORA, the responder should, in the proposal, specifically delineate such information and state the specific exclusion, including citation to CORA. The Sponsor shall consider such statements in its response to CORA requests. The Sponsor will notify the responder if a request is made for such information so that the responder may take any action it deems necessary to defend against the request. The responder, not The Sponsor, shall be the entity responsible for defending against CORA disclosures for any records, including the costs of litigation. Additionally, the Colorado Department of Education may also receive and respond to CORA requests related to proposals submitted to SFAs. CDE will respond with a redacted proposal if one is provided with the original proposal submission, otherwise the unredacted proposal will be shared as the CDE response to a CORA request.
2. PROPRIETARY INFORMATION. It is understood that the Sponsor is a public institution and, as such, is subject to the Colorado Open Records Act, CRS §§ 24-72-101 et. seq. ("CORA"). Except as otherwise agreed prior to the award or finalization of any vendor transaction Sponsor shall provide for inspection upon request by any third party all information pertaining to such transaction which must be disclosed pursuant to CORA. Sponsor's obligations under CORA supersede its obligations under any agreement, contract, purchase order or negotiated transaction.
3. During the term of this Contract, Vendor may grant to Sponsor a nonexclusive right to access certain proprietary materials of Vendor, including menus, recipes, signage, food service surveys and studies, management guidelines and procedures, operating manuals, software (both owned by and licensed by Vendor) and similar compilations regularly used in Vendor business operations ("Trade Secrets").
 - A. Sponsor shall not disclose any of Vendor's Trade Secrets or other confidential information, directly or indirectly, during or after the term of this Contract.
 - B. Sponsor shall not photocopy or otherwise duplicate any such material without the prior written consent of Vendor.

- C. All trade secrets and other confidential information shall remain the exclusive property of Vendor and shall be returned to Vendor immediately upon termination of this Contract.
 - D. Sponsor shall not use any confusingly similar names, marks, systems, insignia, symbols, procedures and methods.
 - E. Without limiting the foregoing and except for software provided by Sponsor, Sponsor 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 Vendor and not Sponsor.
 - F. Furthermore, Sponsor's access or use of such software shall not create any right, title interest or copyright in such software and Sponsor shall not retain such software beyond the termination of this Contract.
 - G. In the event of any breach of this provision, Vendor shall be entitled to equitable relief, including an injunction or specific performance, in addition to all other remedies otherwise available.
 - H. All of Sponsor's obligations under this section are subject to Sponsor's obligations under Colorado Statute and any other law that may require Sponsor to use, reproduce or disclose Vendor confidential information.
 - I. This provision shall survive termination of this Contract.
4. Any discovery, invention, software or program, the development of which is paid for by Sponsor, shall be the property of Sponsor to which CDE and USDA shall have unrestricted rights.
 5. During the term of this Contract, Vendor may have access to Sponsor confidential information ("Sponsor Confidential Information"), including student identifiable confidential information that is protected from disclosure by federal law (42 U.S.C. §1758(b)(6)).
 - A. Vendor agrees to hold any Sponsor Confidential Information in confidence during the term of this Contract and thereafter.
 - B. Vendor further agrees that Vendor has no independent rights to this information and will not make any Sponsor Confidential Information available in any form to any third party or use Confidential Information for any purpose other than the performance of Vendor's obligations under this Contract.
 - C. Vendor will use reasonable security measures to protect Sponsor's Confidential Information from unauthorized access, use or disclosure and ensure that Sponsor's Confidential Information is not disclosed or distributed in violation of the terms of this Contract.
 - D. Immediately upon the termination or expiration of this Contract, Vendor shall return to Sponsor any copies of Sponsor's Confidential Information provided to Vendor by Sponsor, and Vendor will destroy all other copies of Sponsor'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.

Q. Certifications

The Sponsor and Vendor will take all necessary affirmative steps outlined in 2 CFR 200.321 to assure that minority businesses, women's business enterprises, and labor surplus area firms are used when possible.

Student Data Privacy Act C.R.S 22-16-108 to 22-16-110: Sponsors cannot enter into a new contract (or renew an existing contract) with a School Service Contract Provider such as the Vendor that refuse to accept terms of the new law. Sponsor shall ensure that the terms of each contract that the Sponsor enters into or renews with the Vendor will, at a minimum, require the contract provider to comply with the requirements of the act.

Vendor shall execute and comply with the following Certifications which are attached to this Contract as Exhibits and fully incorporated herein.

1. Debarment Certification
2. Anti-collusion Affidavit
3. Certification Regarding Lobbying
4. Standard Form-LLL, Disclosure Form to Report Lobbying, when applicable

R. Miscellaneous

1. Emergency Notifications.

- a. Sponsor shall notify Vendor personnel of any interruption in utility service of which it has knowledge. Notification will be provided to:

Name: _____ Title: _____

Telephone number: _____ Alternate telephone number: _____

- b. Sponsor shall notify Vendor personnel of any delay in the school day start 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 Colorado law.

3. Headings. All headings and formatting 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.

- a. This Contract, which includes the attached Exhibits A – M and Sponsor’s RFP and Contract (collectively the “Contract Documents”), any additional agreements contained in the Vendor proposal 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.
- b. 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. Contract;
 - ii. Vendor proposal documents identified as (a) _____, (b) _____, and (c) _____; and
 - iii. Sponsor’s RFP. No modification or amendment to this Contract shall become valid unless made in writing, signed by the parties, and approved by CDE.

5. Indemnity.

- a. Except as otherwise expressly provided in this Contract, Vendor will defend, indemnify, and hold Sponsor harmless from and against all claims, liability, loss and expense, including reasonable collection expenses, attorneys’ fees and court costs that may rise because of the actions of Vendor, 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 Sponsor, its employees or agents.
- b. Sponsor can require the Vendor to pay the Sponsor for any overclaims assessed by the SA due to Vendor negligence or noncompliance with regulations.
- c. This clause shall survive termination of this Contract.

6. Nondiscrimination / Civil Rights.

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 (including gender identity and sexual orientation), 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: <https://www.usda.gov/sites/default/files/documents/USDA-OASCR%20P-Complaint-Form-0508-0002-508-11-28-17Fax2Mail.pdf>, 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: (833) 256-1665 or (202) 690-7442; or
- (3) email: program.intake@usda.gov .

This institution is an equal opportunity provider.

7. Notices.

- a. 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 Sponsor: _____

To Vendor: _____

Copy to: _____

- b. If such notice is as above, 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 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 Sponsor are to be used.
- 10. Subcontract/Assignment. No provision of this Contract shall be assigned or subcontracted without prior written consent of Sponsor, except that Vendor may, after notice to Sponsor, 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. A vendor entering into a contract with a sponsor under the Program shall not subcontract for the total meal, with or without milk, or for the assembly of the meal (7 CFR 225.6(h)(2)(ii).

11. Waiver. The failure of Vendor or Sponsor 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. CDE review. **If contract exceeds \$250,000: This Contract is not effective until it is approved, in writing, by CDE.**

IV. AGREEMENT

Offeror certifies that the Vendor 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 therein.

Any additional negotiations and terms that are included in additional documents not included in the original CDE approved RFP/contract template must be added to this CDE RFP/ contract and approved by CDE.

This Contract shall be in effect for one year and may be renewed by mutual agreement for up to 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:

Name of Sponsor

Signature of Authorized Representative

Typed Name of Authorized Representative

Title

Date Signed

ATTEST:

VENDOR:

Name of Vendor

Signature of Authorized Representative

Typed Name of Authorized Representative

Title

Date Signed

Exhibit A: SITE INFORMATION [To be completed by Sponsor]

Include the list of all sites with the following information for each site

- 1. Location of all sites with current enrollment and programs**
- 2. Programs/Services provided at each site, including the following:** If the Sponsor plans to add or drop programs during the contract, indicate the program(s) and expected dates of change. Adding or dropping a program may require a re-bid if not indicated in the original proposal.
 - ☐ National School Lunch Program (NSLP)
 - ☐ School Breakfast Program (SBP)- *(Please indicate below any sites that are required to participate in the Colorado State Breakfast after the Bell Program)*
 - ☐ After School Care Snack Program (ACSP)
 - ☐ Summer Food Service Program (SFSP)
 - ☐ A la Carte (Must meet all USDA Smart Snack requirements) or Adult Meals
 - ☐ Catering / Contract Meals
 - ☐ Special Milk Program (SMP)
 - ☐ USDA Fresh Fruit and Vegetable Program (FFVP)
- 3. SFAs opting into **Healthy School Meals for All (HB 22-1414)** may experience an increase in participation. Any forecasted increases in participation that result in an increase to the fee amount and/or financial return to the SFA will need to be agreed upon between both parties. SFA will indicate below any plans to implement this state initiative:**

Complete for all participating sites				Indicate Serving times and days of operation if applicable						Indicate if hot or cold holding available at site
Site name/grades	Address	Enrollment	ADP*	NSLP	SBP	ACSP	FFVP	SMP	SFSP/SSO	

***ADP- Average Daily Participation**

Exhibit B: MENU CYCLES

1. Attach a sample cycle menu .
2. The cycle menu developed in accordance with the provisions of §210.10, §220.8, §225.15 and §225.16 as applicable to the programs served at each site, and must be used as a standard for the purpose of basing bids or estimating average cost per meal.
3. Indicate if prepared by the Vendor, with approval of CDE, as part of the Proposal.
4. Menu will be evaluated based on affordability, nutrition requirements, appeal to students.
5. This menu must be used for the first cycle of the new school year for the following applicable programs.
 - a. National School Lunch Program
 - b. A La Carte Program (Must meet all USDA Smart Snack requirements)
 - c. School Breakfast Program
 - d. After School Care Snack Program
 - e. Summer Food Service Program
 - f. Fresh Fruit And Vegetable Program
 - g. Any other menu is optional based on expanding the program to include fruit and vegetable or farm to school programs.

Exhibit C: LIST OF SPONSOR CHARTS AND ATTACHMENTS**[Sponsor shall provide to all vendors with RFP/Contract]****Chart 1: Food Service Staffing and Job Duties for all sites:**

1. Sponsor must identify whether each position is Sponsor or Vendor personnel
2. Vendor and Sponsor shall agree upon the staffing and schedule needed to accomplish essential job duties. All services and job duties provided by the Vendor shall be included in the fixed fee per meal.

OPTION 1			
Description of Job Duties	Vendor	Sponsor	Notes
Ordering meals based on participation trends			
Final preparation of food, including reheating cooled meals			
Serving breakfast			<i>Example: Breakfast in the classroom delivered to grades K-5</i>
Point-of-sale at breakfast			<i>Example: include point-of-sale system to be provided by the Sponsor</i>
Serving Lunch			<i>Example: Offer vs. serve utilized at all sites and grade levels</i>
Point-of-sale at Lunch			
Cleaning of kitchen area after meal service			
Cleaning of dining area after meal service (wiping down tables, sweeping/mopping floors)			
Trash removal from Kitchen			
Trash removal from dining area			
OPTION 2			
Description of Job Duties	Vendor	Sponsor	Notes
Ordering meals based on participation trends			
Final preparation of food, including reheating cooled meals			
Serving breakfast			
Point-of-sale at breakfast			
Serving Lunch			
Point-of-sale at Lunch			

Cleaning of kitchen area after meal service			
Cleaning of dining area after meal service (wiping down tables, sweeping/mopping floors)			
Trash removal from Kitchen			
Trash removal from dining area			

- Chart 2:** Participation Data for free, reduced-price and paid meals for current year. Include count of adult breakfasts and lunches and indicate daily number, if any, of “no-cost” food service staff meals which are not charged. (Required for NSLP, encouraged for SFSP)
- Chart 3** Prices for student and adult meals (Include projected meal price increases). Attach or describe the Sponsor’s charge policy for student meals if a child does not have the cost of their meal with them at the POS. Information on the USDA required unpaid meal charges policy is at: <http://www.cde.state.co.us/nutrition/financialunpaidmealcharges> . Note: Children 18 years and under receive free meals under the Summer Food Service Program. (Required for NSLP, encouraged for SFSP)
- Chart 4:** Chart/copies of Reimbursement Claims for Current and Prior School Year and/or SFSP Program Year.
- Chart 5:** School/Summer Calendar for 2023-2024. If Sponsor does not have an approved school calendar, submit projected school/summer program year calendar.

Exhibit D: FOOD SPECIFICATIONS

1. All Food Specifications must meet requirements of the 7 CFR 210.16, 7 CFR 210.10, 7 CFR 225.16, *Food Buying Guide* ("FBG"), and Colorado State Board of Education Rules.
2. All USDA-donated USDA Foods offered to the Sponsor and made available to Vendor are acceptable and should be utilized in as large a quantity as may be efficiently utilized.
3. No payment is to be made for meals that do not meet detailed specifications as developed by the Sponsor for each food component specified in §210.10, or do not otherwise meet the requirements of the contract. Specification must cover items such a grade, purchase units, style, condition, weight, ingredients, formulations, and delivery time.

Exhibit E: PLAN FOR UNANTICIPATED SCHOOL CLOSURES

Vendor must describe its plans to provide meals in the event of an unanticipated school closure. At a minimum, please address the following:

- ☐ Capacity to provide school meals to students in the event of a school closure or remote learning
- ☐ Staffing plan
- ☐ Methodology for fee changes (if applicable)

For information on serving meals during an unanticipated school closure, visit the CDE School Nutrition Unit's Emergency Feeding web page at: <https://www.cde.state.co.us/nutrition/nutriemergencyfeeding>.

Exhibit F: CONTRACT PROVISIONS FOR SPONSOR CONTRACTS UNDER CNP AWARDS

The Sponsor's contracts must contain all applicable provisions described in 2 CFR 200 Appendix II, which may include the following:

1. 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).
 - a) All applicable standards, orders, or requirements issued under Section 306 of the Clean Air Act (42 U.S.C. 1857[h]), Section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, Environmental Protection Agency (EPA) regulations (40 CFR 15)
 - b) Sections 103 and 107 of the Contract Work Hours and Safety Standards Act (the "Act"), 40 U.S.C. § 327-330, as supplemented by Department of Labor regulations, 29 CFR 5.
 - c) Davis Bacon Act (all prime construction contracts in excess of \$2,000)
 - d) Rights to Inventions Made Under a Contract or Agreement
 - e) Equal Employment Opportunity. all contracts that meet the definition of "federally assisted construction contract" in 41 CFR Part 60-1.3 must include the equal opportunity clause provided under 41 CFR 60-1.4(b), in accordance with Executive Order 11246
 - f) Procurement of recovered materials 2 CFR 200.322; Appendix II (J)
 - g) The following civil rights laws, as amended:
 - i) Title VI of the Education Amendments of 1972;
 - ii) Section 504 of the Rehabilitation Act of 1973;
 - iii) the Age Discrimination Act of 1975;
 - iv) Title 7 CFR Parts 15, 15a, and 15b; the Americans with Disabilities Act; and
 - v) FNS Instruction 113-1, Civil Rights Compliance and Enforcement – Nutrition Programs and Activities.
 - h) The Buy American provision for contracts that involve the purchase of food, as required by the Buy American provision, all products must be of domestic origin as required by 7 CFR Part 210.21(d).
 - i) The Sponsor participates in the NSLP and SBP and is required to use the nonprofit food service funds, to the maximum extent practical, to buy domestic commodities or products for Program meals. 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 Part 210.21(d).
 - ii) Exceptions to the Buy American provision should be used as a last resort; however, an alternative or exception may be approved upon request. To be considered for the alternative or exception, the request must be submitted in writing to Sponsor and approved and will be retained with purchase records. The request must include the:
 - (1) Alternative substitute (s) that are domestic and meet the required specifications:
 - (a) Price of the domestic food alternative substitute (s); and
 - (b) Availability of the domestic alternative substitute (s) in relation to the quantity ordered.
 - (2) Reason for exception: limited/lack of availability or price (include price):
 - (a) Price of the domestic food product; and
 - (b) Price of the non-domestic product that meets the required specification of the domestic product.
2. Vendor has signed the
 - a. Anti-Collusion Affidavit, Exhibit J, which is attached herein and is incorporated by reference and made a part of this Contract.
 - b. Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion, Exhibit I, which is attached herein and incorporated by reference and made a part of this Contract. (7 CFR § 3017.) or Sponsor includes documentation that Vendor is not listed on governmentwide exclusions in System for Award Management (SAM), which contains the names of parties debarred, suspended, or otherwise excluded by agencies, or declared ineligible under statutory
 - c. Lobbying Certification, Exhibit K, which is attached herein and is incorporated and made a part of this Contract. If applicable, Vendor completed and submitted Standard Form-LLL, Disclosure Form to Report Lobbying, Exhibit M herein, or will complete and submit as required in accordance with its instructions included in Exhibit L.

EXHIBIT G: DEBARMENT AND SUSPENSION FORM

Debarment and Suspension and Other Responsibility Matters Primary Covered Transactions

School Food Authorities are subject to the non-procurement debarment and suspension regulations implementing Executive Orders 12549 and 12689, 2 CFR part 180. These regulations restrict awards, subawards, and contracts with certain parties that are debarred, suspended, or otherwise excluded from or ineligible for participation in Federal assistance programs or activities.

1. The prospective primary participant certifies to the best of its knowledge and belief that it and its principals:
 - a. Are not presently debarred, suspended, proposed for disbarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;
 - b. Have not within a three-year period preceding this application been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
 - c. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and
 - d. Have not within a three-year period preceding this application had one or more public transactions (Federal, State, or local) terminated for cause or default.
2. Where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective primary participant shall attach an explanation to this proposal.

Business Name _____ Date _____

Name and Title of Authorized Representative _____

Signature of Authorized Representative _____

EXHIBIT H: CERTIFICATION REGARDING LOBBYING

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

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

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 [School] Independent School District 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.

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, an employee of a Member of Congress, or any Board Member, officer, or employee of [School] Independent School District 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 be 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/Address of Vendor _____

Name/Title of Submitting Official _____ Signature _____ Date _____

Exhibit I: ANTI-COLLUSION AFFIDAVIT

ANTI-COLLUSION AFFIDAVIT

STATE OF _____)

COUNTY OF _____)

_____, of lawful age, being first sworn on oath say, I 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 or employee 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 J: Civil Rights

The vendor 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.

Name of Vendor _____

Name/Title of Submitting Official _____ Signature _____ Date _____