

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

Any School Food Authority (SFA) selecting to use an FSMC must prepare an RFP utilizing this document which **may not be re-typed or altered in any way**. Any changes to this RFP document in the form of additional requirements or specifications must be submitted to the State Agency for approval on a Cost Reimbursable RFP Modification Request Form (Form #47CR) and submitted electronically by April 30th to SNPSpecialProjects@ag.nj.gov.

Modifications and/or amendments to the contract must receive State Agency approval. Should the SFA and FSMC enter into any amendment without State Agency approval, it will be null and void and the original contract will constitute the entire understanding of the parties and prevails as binding.

The purpose of this solicitation is to obtain an FSMC to manage of the SFA's school food service program.

SCHOOL FOOD AUTHORITY NAME: _____

AGREEMENT NUMBER: _____

CONTRACT STARTING DATE: _____

CONTRACT ENDING DATE: JUNE 30, _____

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

In accordance with Federal civil rights law and U.S. Department of Agriculture (USDA) civil rights regulations and policies, the USDA, its Agencies, offices, and employees, and institutions participating in or administering USDA programs are prohibited from discriminating based on race, color, national origin, sex, disability, age, or reprisal or retaliation for prior civil rights activity in any program or activity conducted or funded by USDA.

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

To file a program complaint of discrimination, complete the [USDA Program Discrimination Complaint Form](#), (AD-3027) found online at: [How to File a Complaint](#), and at any USDA office, or write a letter addressed to USDA and provide in the letter all of the information requested in the form. To request a copy of the complaint form, call (866) 632-9992. Submit your completed form or letter to USDA by:

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

This institution is an equal opportunity provider.

ATTENTION: Food Service Management Companies

The _____ is requesting proposals for school food service management services. The Food Service Management Company will provide management services according to United States Department of Agriculture (USDA) regulations and guidelines, as well as New Jersey Public School Contract Law.

The Food Service Management Company must currently be registered with the NJDA Division of Food and Nutrition.

Food Service Management Companies and/or their representatives may submit proposals to:

The _____ Board of Education reserves the right to accept or reject any and/or all proposals.

A pre-proposal meeting and tour of the schools is scheduled for:

_____ at _____

All proposals must be submitted no later than _____ on _____.

All proposals should be delivered in a sealed envelope and addressed to the _____ and be clearly marked: FOOD SERVICE MANAGEMENT COMPANY PROPOSAL.

Upon release of this RFP, all Proposer communications concerning this document must be directed in writing no later than 4:00 PM on _____ to the person listed below:

The above-named SCHOOL FOOD AUTHORITY invites written proposals from qualified companies for management of the school district's food service program, which includes the programs checked below: **Proposals must be inclusive of all the SFA's current programs.**

- National School Lunch Program (NSLP)
- School Breakfast Program (SBP)
- Afterschool Snack Program (ASSP)
- Special Milk Program (SMP)
- Provision 1, 2, 3 or Community Eligibility (CEP)
- Fresh Fruit and Vegetable Program (FFVP)
- Child and Adult Care Food Program (CACFP) "DINNER"
- Summer Food Service Program (SFSP)
- Extended School Year (ESY)
- A la Carte items (Smart Snack compliant) and meals
- Vending
- Catering

Indicate below any programs or changes to programs the SFA is considering within the length of this contract inclusive of the 4 allowable renewal years:

- School Breakfast Program (SBP)
- Afterschool Snack Program (ASSP)
- Special Milk Program (SMP)
- Provision 1, 2, 3 or Community Eligibility (CEP)
- Fresh Fruit and Vegetable Program (FFVP)
- Child and Adult Care Food Program (CACFP) "DINNER"
- Summer Food Service Program (SFSP)
- A la Carte items (Smart Snack compliant) and meals
- Vending
- Catering
- Block Scheduling
- Breakfast in the Classroom
- Preschool Programs through SFA's NSLP Program
- SFA to SFA Vended Meal Contracts
- Consolidation Agreements
- Extended School Year (ESY) (if meals not included in SFSP)

Indicate if the SFA has an SFA to SFA Vended Meal Contract(s) with other sponsors and, if so, list the name of the Recipient SFAs to which meals are provided. The SFA must also provide information for existing Consolidation Agreement(s) with other SFAs.

Choose One: Yes No the SFA provides/sells meals to other SFAs. *

Details provided on page 51, Confirmation of SFA to SFA Vended Meal Contract(s) or Consolidation Agreement(s), listing SFA/sites with Vended Meals Contract(s) and/or Consolidation Agreement(s). **

***No FSMC employees are allowed to be onsite at the Recipient SFAs.**

****Completed and fully executed SFA to SFA Vended Meal Contracts and Consolidation Agreements must be in place each year and submitted to the State Agency. This process is completed yearly through electronic submission in SNEARS-ECAS system by June 30th.**

Definitions

“Allowable Direct Costs”: Costs that are allowable in the Cost Reimbursable:

- a. **Food:** limited to those items purchased for use in the preparation and service of student, adult, and a la carte meals in the SFA’s food service program.
- b. **Labor:** limited to on-site employees responsible for the management, preparation, service, and clean-up of student, adult, and a la carte meals in the SFA’s food service program.
- c. **Miscellaneous Expenses:** paper supplies, equipment rental, cleaning materials, commodity handling, and warehousing charges. All miscellaneous expenses must be allowable and directly allocable to the food service operation. Refer to pages 45, 46, and 47 of this RFP for further clarification.

“Contract”: The RFP and Contract inclusive of all forms and the FSMC’s proposal, as accepted by the SFA.

“Cost Reimbursable Contract”: A contract that provides for the payment of a fixed administrative/management fee in addition to all allowable direct costs of food, supplies, and labor to manage the food service program.

“Current Year”: The period of the term of this Contract or the most current Addendum.

“DFN”: Division of Food and Nutrition

“Financial Obligation”: The total of all direct, allowable costs and the allowance for the FSMC’s Administrative/Management Fee provided in the monthly invoice and operating statement. These costs include food, labor, paper and supplies, and “other expenses” (other direct costs as identified in the Cost Reimbursable Cost and Responsibility Summary) identified on pages 46 and 47.

“Food Service Budget”: The proposed cost of food, supplies, and labor (all allowable direct expenses).

“Food Service Program”: The preparation and service of food to SFA’s students, staff, employees, and authorized visitors in all of the SFA’s Child Nutrition Programs listed on page 4 of this RFP.

“Gross Receipts”: The total of all cash receipts, reimbursements and other revenue in the food service program (a la carte sales, vending, vended meal contracts (SFA/SFA) adult sales, and catering) received by the SFA. Gross receipts must be deposited into the Non-Profit School Food Service Account.

“Guarantee”: The amount of money the FSMC agrees to guarantee as a return or loss to the SFA. The guarantee cannot be capped and is unlimited. A guaranteed return cannot exceed the proposed bottom line with commodity credits.

“Locally Grown”: Food grown and/or produced in New Jersey.

“Meal Equivalent Conversion Factor”: The numerical factor used to convert all a la carte revenue inclusive of adult meals, a la carte sales to students and adults, and vending into meal counts. (In a Cost Reimbursable Contract, catering does not get converted and is billed separately). The Meal Equivalency Conversion Factor is established annually by the State Agency using the per meal sum of the Federal and State free meal reimbursement plus the per meal value of USDA entitlement and bonus donated foods. This factor remains fixed for the term of the contract and all renewals.

“Non-Profit School Food Service Account”: The restricted account in which all the revenue from all food service operations conducted by the SFA principally for the benefit of school children is retained and used only for the operation or improvement of the non-profit school food service. The SFA must limit its net cash resources to an amount that does not exceed 3 months average expenditures for its non-profit food service or such other amount as may be approved by the State Agency in accordance with federal regulations.

“Proposal”: Food Service Management Company’s response to the RFP.

“Regionally Grown”: Food grown and/or produced in Pennsylvania, New York, and Delaware.

“SA”: State Agency

“Smallwares/Small Equipment”: Items utilized in the preparation of food, including, but not limited to, items such as pots, pans, and serving and cooking utensils.

“SNEARS”: NJDA Child Nutrition Program’s web-based School Nutrition Electronic Application and Reimbursement System.

“Vending”: Vending machine sales for machines that are maintained by the FSMC, excluding commission vending sales.

I GENERAL INFORMATION

A. Procurement

1. All procurement transactions shall be conducted in a manner that provides maximum full and open competition and in accordance with all applicable State and Federal law including, but not limited to, Uniform Administrative Requirements, Cost Principles and Audit Requirements, 2 CFR 200.318-200.326, formerly in 7 CFR 3016.36 and 3019.48, as applicable and the SFA Code of Conduct.
2. This contract will be a **Cost Reimbursable Contract**.
3. The SFA will not conduct the procurement process in a manner that uses statutorily or administratively imposed in-state or local geographic preferences in the evaluation of proposals in accordance with 2 CFR 200.319(b).
4. **An FSMC that has provided recommendations, developed or drafted specifications, requirements, statements of work, or any other information for this RFP shall be excluded from competing to provide the services sought in this solicitation.**
5. The SFA reserves the right to reject any or all RFPs if deemed in the best interest of the SFA.
6. The SFA will award the contract to the most responsible FSMC whose proposal is most advantageous to the program, with price and other factors considered. A responsible FSMC is one whose financial, technical and other resources indicate an ability to perform the services required by this solicitation.
7. FSMCs or their authorized representatives are expected to fully inform themselves as to the conditions, requirements, and specifications before submitting proposals; failure to do so will be at the FSMC's own risk and FSMC cannot secure relief on the plea of error. The SFA is not liable for any cost incurred by the proposer prior to the New Jersey Department of Agriculture (NJDA) Division of Food and Nutrition's (DFN) final approval of the contract, and the signing of the contract by all parties. Paying the FSMC from Child Nutrition (CN) program funds (school food service account) is prohibited until the contract is signed by both parties and final approval is provided by DFN.
8. If additional information is required, refer to page 3.
9. A Pre-Proposal Meeting with interested proposers to review specifications, to clarify any questions, and to tour the facilities with school officials is **not** mandatory. However, it is strongly recommended and encouraged. Refer to page 3, of the RFP to determine if the SFA has planned a meeting and scheduled a time and location.

B. Award Criteria/Methodology

1. The contract will be awarded to the responsible proposer whose proposal is the most advantageous to the program with price and other factors considered. An evaluation committee should be comprised of at **least three people**. Each committee member should evaluate proposals independently (team scoring is not allowed). Scoring criteria must be established and assigned points as part of the RFP preparation and prior to the RFP being advertised, using the Scoring Criteria and Evaluation Form on page 44.
2. **Scoring Methodology:** The relative value assigned to each criterion must be specified by the SFA. Price must be the primary factor (assigned the greatest number of points compared to other criteria). Each criterion must receive a score which shall not exceed the value of its assigned points. The final score is the total of each individual evaluator's score divided by the number of evaluators to provide an **average score** for each FSMC. The proposal with the highest average score shall be selected.

C. RFP Protests

1. Any action which diminishes full and open competition seriously undermines the integrity of the procurement process and may subject the SFA to RFP protests. SFAs are responsible for properly responding to protests and concerns raised by potential contractors. SFAs **must** insert their RFP protest procedures below. SFAs must in all instances disclose all information regarding a protest to DFN.

Insert RFP Protest Procedure here:

D. Bonding Requirement

1. Bid Guarantee: The FSMC shall submit with its proposal, a bid guarantee in the amount of 10% of the bid, but not in excess of \$20,000, and may be given, at the option of the FSMC, by certified check, cashier's check or bid bond. Bid Guarantees will be returned (a) to unsuccessful FSMCs as soon as practicable after the opening of bids; and (b) to the successful FSMC upon final approval and execution of all contractual documents, proof of insurance coverage and bonds as may be required.

E. Captions

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

F. Contract Terms

1. The contract shall be for a period of one year as listed on page 1 of the RFP with up to four optional one-year renewals with mutual agreement between the SFA and the FSMC. Any price change included as part of a renewal shall be based upon the price of the original contract as cumulatively adjusted pursuant to any previous adjustment or renewal, and shall not exceed the change in the Index Rate (as defined in Public Schools Contract Law, N.J.S.A. 18A:18A-1 *et seq.*) for the 12 months preceding the most recent quarterly calculation available at the time the contract is renewed; and the terms and conditions of the contract shall remain substantially the same. N.J.S.A. 18A:18A-42.

This contract cannot be effective prior to the date of final approval by DFN.

G. Errors or Omissions

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

H. Final Contract

1. The final contract shall consist of the terms and conditions on pages 12 through 43 herein as well as all documents included by the SFA in the RFP and the proposal submitted by the FSMC. No additional modifications or amendments may be made without prior State Agency approval.

I. Gifts from FSMC

1. The SFA's officers, employees, or agents shall neither solicit nor accept gratuities, favors, nor anything of monetary value from FSMCs nor potential FSMCs. The appropriate penalties, sanctions, or disciplinary actions to be applied for violations will be determined by the SFA Code of Conduct and applicable Federal, State and local laws and regulations.

J. Late Proposals

1. The SFA will not consider any proposals received after the exact time specified for receipt.

K. Meal Equivalents

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

L. Payment and Fees

1. Payment in the Cost Reimbursable Contract shall be based on the FSMC monthly invoice and operating statement of allowable costs to operate the food service program. The FSMC shall also provide vendor invoices for all charges and expenses, and documentation of its certified payroll. The State Agency provides samples of these documents in SNEARS Resources (FSMC Samples and References).
2. The FSMC shall provide the SFA with a year-end operating statement detailing the school year breakeven, return or loss.
3. The SFA will perform a year-end reconciliation to verify the accuracy of the FSMC's invoices and operating statements.

M. Additional Information

1. The SFA may add any additional requirements to the RFP by submitting a Cost Reimbursable RFP Modification Request Form electronically to the State Agency by April 30th. The Cost Reimbursable RFP Modification Request Form (Form #47CR) should be emailed to SNPSpecialProjects@ag.nj.gov. The SFA may not add additional requirements to the Renewal Year Addendums unless the requirements are addressed in the RFP. If a requirement constitutes a material change, the SFA must issue a new RFP for its food service management. SFAs should consult with legal counsel in making those determinations.
2. Any FSMC that submits a proposal for items or activities not requested by the SFA and specified in the RFP may be considered overly responsive and the proposal will not be considered.
3. If the services of the FSMC are to begin after the start of the school year and the beginning contract term date is later than July 1 (i.e. January 1), include that date in the advertisement and solicitation. It must also be addressed at the walk-through. The ending contract term date will always be June 30th.
4. This proposal and contract are based on the SFA's 21-day menu. The FSMC must adhere to the cycle for the first 21 days of meal service. Thereafter, an alternate menu may be submitted by the FSMC, but it must be approved by the SFA prior to implementation.

N. Minimum Food Specifications

The following are the minimum food specifications all FSMCs must adhere to and provide. **The SFA may customize these food specifications using a Cost Reimbursable RFP Modification Request Form (Form #47CR):**

PRODUCT	LEVEL OF INSPECTION/QUALITY
Meat/Seafood	All meats, meat products, poultry, poultry products, and fish must be government inspected.
Beef, Lamb, and Veal	USDA Grade Choice or better
Pork	U.S. No. 1 or U.S. No. 2
Poultry	USDA Grade A
Seafood	Top grade, frozen fish must be a nationally distributed brand, packed under continuous inspection of USDA

Dairy Products	All dairy products must be USDA inspected.
Fresh Eggs	USDA Grade A or equivalent, 100% candled
Frozen Eggs	USDA inspected
Milk	Pasteurized Grade A
Fruits and Vegetables	
Fresh Fruits & Vegetables	Selected according to written specifications for freshness, quality, and color – U.S Grade A Fancy
Canned Fruits & Vegetables	U.S Grade A Choice or Fancy (fruit to be packed in light syrup or natural juices)
Frozen Fruits & Vegetables	U.S Grade A Choice or better
Staple Groceries	To be a quality commensurate with previously listed standards.
Baked Products	
Bread, rolls, cookies, pies, cakes and pudding either prepared or baked on premises or purchased	Must have a quality level commensurate with meeting USDA breakfast and lunch requirements as applicable

P.L. 110-246, Section 4302 of the Richard B. Russell National School Lunch Act (NSLA), allows SFAs to apply a geographic preference when procuring unprocessed locally grown or locally raised agricultural products. Although, the SFA may apply a preference, it will not be a mandatory requirement.

Geographical Preference Option 7 CFR 210.21(g)

CHECK THIS BOX ONLY IF CHOOSING THIS OPTION (Letters A through E):

- a. The SFA seeks to increase its purchase of seasonal, minimally processed fresh fruits and raw vegetables as part of the Farm to School Program. Reasons for purchasing local products include the potential cost savings, nutrition education for students, and quality of product.
Minimally Processed: includes, but is not limited to, refrigerating, adjusting size (peeling, slicing, dicing, cutting, chopping), washing, packaging and adding ascorbic acid or other preservatives to prevent oxidation of produce.
- b. The SFA is interested in the following locally and/or regionally grown products listed in the table below:

- c. The FSMC will make every effort to provide the SFA with locally grown and/or regionally grown products in the following order:
 - i. Locally Grown
 - ii. Regionally Grown

- d. All products provided pursuant to this geographic preference shall be labeled with their place of origin, including grower name and address/state or area of production on each case and/or invoice delivered.
- e. Locally and/or regionally grown products should be generally free from insect damage and decay. Flexibility on grading for produce shall comply with USDA guidance. Produce items are to be rinsed, cleaned, and packed in appropriate commercial produce packaging such as waxed cardboard boxes or sanitary/reusable bins.

II Standard Terms and Conditions

A. Scope and Purpose

1. The FSMC shall operate in conformance with the SFA's Policy Statement and Program Agreement with NJDA.
2. The FSMC shall be an independent contractor and not an employee of the SFA. The employees of the FSMC are not employees of the SFA.
3. The food service provided by the FSMC shall be operated and maintained as a resource to the SFA's students, faculty, and staff and not as a source of profit to the FSMC.
4. The FSMC shall comply with the rules, regulations, policies, and instructions of NJDA and the USDA, and any additions or amendments thereto, including but not limited to, 7 CFR Parts 210, 215, 220, 245, 250, 3017, and 3018; 2 CFR Part 200; and 7 CFR Parts 225 (SFSP) and 226 (CACFP), as applicable.
5. All income accruing to the food service program as a result of payments by children and adults, federal and state reimbursements, and all other income from sources such as donations, catering, grants, loans, etc., shall be deposited into the SFA's food service account. Any profit or guaranteed return shall remain in the SFA's non-profit food service account. This is a non-profit program and, as such, the SFA's food service account should retain a maximum balance of three (3) months average operating expenses as is required in 7 CFR 210.9(b)(2).
6. **Guarantee:** The SFA may require any FSMC submitting a proposal to guarantee a minimum surplus dollar amount. **Note: This request is optional. Complete this section and provide an amount only if the SFA seeks to have a required minimum guarantee in this contract/RFP**

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The documentation (budget) supporting the Guarantee is to be submitted on the Response and Projected Operating Statement (Form #23CR). The FSMC's guarantee (breakeven, return or loss) dollar amount is documented on page 1 of the Response and Projected

Operating Statement (Form #23CR). If the FSMC proposes a guaranteed return or loss, it must be **unlimited**. Guarantee **options** are listed below:

- a. **Guaranteed Loss:** FSMC guarantees that the SFA's invoiced Financial Obligation as stated on the monthly operating statement for the current year shall exceed gross receipts for the current year by no more than stated and documented in the Response and Projected Operating Statement (Form #23CR). The FSMC agrees to reimburse the SFA for the amount, by which the SFA's actual deficit for the current year is greater than the Guaranteed Deficit for the current year.
 - b. **Guaranteed Breakeven:** FSMC guarantees that the SFA's invoiced Financial Obligation as stated on the monthly operating statement for the current year shall, at a minimum, equal the SFA's documented gross receipts for the current year.
 - c. **Guaranteed Return:** FSMC guarantees that the documented gross receipts for the current year shall exceed the SFA's invoiced Financial Obligation as stated on the monthly operating statement for the current year by at least the amount stated and documented in the Response and Projected Operating Statement (Form #23CR). The FSMC agrees to reimburse the SFA for the amount, by which the SFA's actual return for the current year is less than the Guaranteed Return for the current year.
 - d. **No Guarantee**
7. **Guarantee Conditions and Assumptions:** FSMC's obligation to reimburse SFA shall remain in effect only during the Current Year and is contingent upon the following conditions and assumptions remaining in effect for the current year. In the event one or more of the following conditions and assumptions does not remain in effect for the current year, the FSMC shall reduce its reimbursement to the SFA:
- a. Reimbursement rates for food service program meals shall not be less than those stated in the RFP.
 - b. The per meal commodity value of USDA donated foods **offered** shall not be less than the per meal commodity value of USDA donated foods received during the prior year.
 - c. The number of full service days where breakfast, lunch, and snack are served for the Current Year shall be at least the estimated minimum number listed in the table in letter (h).
 - d. The average daily student enrollment for the Current Year shall be at least the number stated in the RFP on Form #372.
 - e. The ratio of students eligible to receive free and reduced-price meals as compared to total student enrollment shall not decrease from those provided in the SFA's RFP.
 - f. The SFA shall continue to receive the additional six cents (\$.06) per meal reimbursement for each lunch meal served authorized by the Healthy Hunger-Free Kids Act of 2010 and shall include such reimbursement in the calculation of Gross Receipts.
 - g. Should the District require in writing that the FSMC take action which causes the cost of wages, salary, and/or fringe benefits for FSMC's food service employees to exceed the levels set forth in the attached Response and Projected Operating

Statement (Form #23CR), the FSMC's obligation may be adjusted, by mutual consent of the SFA and FSMC, to cover the net increased labor costs resulting directly from such action.

- h. The selling prices of school breakfast, lunch and after school snacks will be no less than the current meal prices listed in the table below:

	Minimum Breakfast Price	Estimated Minimum # Serving Days	Minimum Lunch Price	Estimated Minimum # Serving Days	Minimum After School Snack Price	Estimated Minimum # Serving Days
Elementary						
Middle/Jr. High						
High						

- i. Catering will be billed to the SFA at mutually agreed upon rates (which **cannot** be in the form of a percentage of food cost) plus food cost.
- j. The SFA shall not allow students to leave campus for meal periods or receive delivery of commercial foods on campus during meal periods except as already allowed at the time of the submission of the FSMC's proposal.
- k. The SFA shall not block schedule during lunch periods not already so scheduled at the time of the submission of FSMC's proposal, unless the possibility of block scheduling is noted in the RFP.
- l. There shall be no changes in the Federal or State regulations which cause financial impact to the Food Service Program.

In the event any of the foregoing conditions or assumptions are not met during the Current Year, the FSMC's obligation shall be reduced by the amount of any documented increase in the SFA's total food service costs or reduction in gross receipts which is attributable to the charges in such conditions or assumptions.

- 8. The SFA and the FSMC agree that this contract is neither a "cost-plus-a-percentage-of-income" nor a "cost-plus-a- percentage-of-cost" contract pursuant to 7 CFR 210.16(c) and 2 CFR 200.323(d).
- 9. The SFA shall be legally responsible for the conduct of the food service program and shall supervise the food service operations in such manner as will ensure compliance with the rules and regulations of NJDA and the USDA regarding each of the CN programs covered by this contract. **The SFA shall not relinquish this, or any accompanying responsibility to the FSMC.**
- 10. The SFA shall retain control of the CN program's food service account and overall financial responsibility for the CN programs.

11. The SFA shall establish all selling prices, including price adjustments, for all reimbursable and non-reimbursable meals/milk and a la carte (including vending, adult meals, contract meals, and catering) prices. (Exception: Non-pricing programs need not establish a selling price for reimbursable meals/milk.) **These prices shall not be established by the FSMC.** However, the FSMC may provide recommendations.
12. The FSMC shall provide additional school-related food service, such as banquets, parties, and refreshments for meetings, as requested by the SFA. The SFA or requesting organizations will be billed for the actual cost of food, supplies and labor, and the FSMC's and SFA's service fees, if applicable, for providing such service. USDA commodities shall not be used for these catering functions.
13. The SFA reserves the right, at its sole discretion, to sell or dispense any food or beverage before or after the SFA's regularly scheduled lunch or breakfast periods, provided such is not prohibited by Local Wellness Policies and state or federal program regulations.
14. The FSMC shall cooperate with the SFA in promoting nutrition education and coordinating the SFA's food service with classroom instruction. The FSMC shall comply with the Local Wellness Policy including the nutrition guidelines as required.
15. The SFA may make reasonable requests of the FSMC with respect to the improvement of the operation of the food service program.
16. The SFA reserves the right to add or delete locations of food service from the list of schools included in the program as conditions may change. If the SFA does add or delete locations, it is duly noted by the SFA that such action may result in a material change to the agreement, which would require rebidding of the initial contract. SFAs should consult with their legal counsel in making these determinations.
17. The FSMC shall make substitutions in the food components of the meal pattern for students with disabilities when their disability restricts their diet and non-disabled students who are unable to consume regular lunch because of medical or other special dietary needs. Substitutions shall be made on a case-by-case basis when supported by a Medical Statement with the required information. There will be no additional charge to the student for such substitutions.
18. The FSMC shall invoice the SFA at the end of **each** month for amounts due based on on-site records. The SFA shall make payments within 30 business days of the invoiced date. Invoicing and/or payments may be made more frequently if allowed by the SFA School Board policy. The payment of interest and late fees from the non-profit school food service account is prohibited. All invoice and payment documentation must be retained on-site by the SFA. Costs, charges, and expenses must be mutually agreeable to the SFA and the FSMC and be allowed by state and federal regulations. Upon termination of the Agreement, all allowable outstanding amounts shall immediately become due and payable.
19. The SFA is solely responsible for all contractual agreements the SFA enters into in connection with the CN programs.

20. This contract shall be construed under the laws of the State of New Jersey. Any action or proceeding arising out of this contract shall be heard in the appropriate courts of the State of New Jersey.
21. The FSMC shall comply with the provisions of the RFP specifications, which are hereby incorporated into this contract.
22. No provision of this contract shall be assigned or subcontracted without prior written consent of the SFA and DFN.
23. No waiver of any default shall be construed to be or constitute a waiver of any subsequent claim.
24. Any silence, absence, or omission from the contract specifications concerning any point shall be regarded as meaning that only the best commercial practices are to prevail, and that only materials (e.g., food, supplies, etc.) and workmanship of a quality that would normally be specified by the SFA are to be used.
25. Payment on an invoice shall not preclude the SFA from making a request for an adjustment for any cost found not to have been in compliance with the provisions of this contract, the RFP specifications, and applicable Federal and State laws.
26. The SFA shall be responsible for ensuring the resolution of program review and audit findings.
27. This contract must be reviewed and approved by NJDA prior to execution.

B. Signature Authority

1. The SFA shall retain signature authority for all documents necessary to participate in the CN programs, including but not limited to the Policy Statement and Program Agreements, the Application Packet, the School Food Distribution Agreement, the Verification Report, as well as the on-line submission of contracts and other reports and any requests to NJDA to amend these documents.
2. The SFA shall retain signature authority for the Monthly Claim for Reimbursement in the School Nutrition Electronic Application and Reimbursement System (SNEARS).
3. The SFA is responsible for reviewing the data on the Edit Check Worksheet(s) prior to the submission of the monthly Claim for Reimbursement.

C. Free and Reduced-Price Meals Policy

1. The SFA shall be responsible for the establishment and maintenance of the free and reduced-price meals' eligibility roster. **This may not be delegated to the FSMC.**
2. The FSMC shall implement an accurate point of service meal/milk count using the meal counting system submitted by the SFA in their application to participate in the CN

programs and approved by DFN, as required in 7 CFR 210.8. Such meal/milk counting system must eliminate the potential for the overt identification of free and reduced price eligible students in accordance with 7 CFR 245.8 and must prevent erroneous meal counts. **The FSMC is responsible for ensuring students are not being claimed for meals when they were not in attendance at the time of the meal or did not receive a reimbursable meal. The SFA must have a system in place to monitor this.**

3. The SFA shall be responsible for the completion, distribution, and collection of the parent letter and household application for free and reduced-price meals and/or free milk. **This may not be delegated to the FSMC.**
4. The SFA shall be responsible for completing Direct Certification matches in SNEARS within the State Agency's mandated timeframes, as required throughout the school year, for use to determine eligibility for free meals without obtaining a household application for free and reduced-price meals and/or free milk from parent/guardian. **This may not be delegated to the FSMC.**
5. The SFA shall be responsible for the determination of eligibility for free and reduced-price meals and free milk and will not disclose confidential information to the FSMC, in accordance with 7 CFR 210.16(a). The SFA will provide the FSMC with a list of children. This list must be updated by the SFA when changes occur in a student's eligibility status. **These activities may not be delegated to the FSMC.**
6. The SFA shall be responsible for conducting any hearings related to determinations regarding eligibility for free and reduced-price meals and free milk. **This may not be delegated to the FSMC.**
7. The SFA shall be responsible for verifying household applications for free and reduced-price meals and follow-up activities as required by federal regulations. **This may not be delegated to the FSMC.**

D. USDA Donated Foods

1. The SFA shall retain title to all USDA federally donated foods. USDA donated foods will accrue only to the benefit of the SFA's non-profit food service and be fully utilized therein. 7 CFR 210.16 (a)(6).
2. All USDA donated foods received for use by the SFA for the school year and made available to the FSMC shall be used in the SFA's food service. 7 CFR 250.50(a).
3. The SFA must determine the existence of the value of the donated commodities; e.g., credits or reductions on the invoice in the month of receipt. The values are to be based on the values at the point the SFA receives the commodities from the New Jersey Department of Agriculture (NJDA), and on USDA commodity prices pertinent to the time period.
4. The FSMC shall perform the following activities related to USDA donated foods and shall perform such activities in accordance with the applicable requirements in 7 CFR Part 250.50(d):

- a. Preparing and serving meals;
 - b. Ordering or selection of donated foods in coordination with the SFA;
 - c. Storage and inventory management of donated foods;
 - d. Payment of processing fees or submittal of refund requests to a processor on behalf of the SFA, or remittance of refunds for the value of donated foods in processed end products to the SFA; and
 - e. Procurement of processed end products on behalf of the SFA.
5. The FSMC must credit the SFA for the value of all USDA donated foods **received** for use in the SFA's meal service in the school year or fiscal year (including both entitlement and bonus foods.) Such requirement includes crediting the value of donated foods contained in processed end products. 7 CFR 250.51(a).

The FSMC shall perform by disclosure such crediting monthly and maintain backup documentation to substantiate the credit by deducting the value of the donated foods on the monthly invoice using a separate line item for:

- a. Warehouse Donated Foods
- b. Processed Donated Foods

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

6. In crediting the SFA for the value of USDA donated foods, the FSMC shall use the market value of donated foods as identified on the Monthly Warehouse Market Value Report from the New Jersey Department of Agriculture Food Distribution Program (the "Distributing Agency"). In crediting for the value of donated foods contained in processed end products, the FSMC shall use the annual pass thru value listed on the processor's approved SEPDS (State End Product Data Schedule) for the appropriate school year. 7 CFR 250.53(c).
7. The FSMC will use all donated ground beef and ground pork products, and all processed end products, in the SFA's food service. 7 CFR 250.53(a)(5). The FSMC will use all other donated foods or will use commercially purchased foods of the same generic identity, of U.S. origin, and of equal or better quality than the donated foods, in the SFA's food service. 7 CFR 250.53(a)(6).
8. In the procurement of processed end products on behalf of the SFA, the FSMC will comply with the requirements of Subpart C of 7 CFR Part 250 and with the provisions of the Distributing Agency or SFA processing agreements and will credit the SFA for the value of donated foods contained in such end products at the processing agreement value. The FSMC will not itself enter into the processing agreement with the processor. 7 CFR 250.53(a)(7), (8).
9. The FSMC will comply with the storage and inventory requirements for USDA donated foods as set forth in 7 CFR 250.14(b) and 7 CFR 250.52. The FSMC shall ensure that its system of inventory management does not result in the SFA being charged for USDA donated foods. 7 CFR 250.53(b).

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

E. Crediting for and Use of Donated Foods

1. The FSMC must credit by disclosure the SFA for the value of all donated foods received for use in the SFA's meal service in the school year (including both entitlement and bonus foods).
2. The FSMC must credit the SFA for the value of donated foods contained in processed end products if the FSMC is required to:
 - a. Procure processed end products on behalf of the SFA, or
 - b. Act as an intermediary in passing donated food value in processed end products to the SFA.
3. In accordance with 7 CFR 250.51(a) and (b), the FSMC is required to credit by disclosure the SFA for the full value of all USDA foods received for use in the SFA's meal service in the school year and shall identify these USDA foods received on the billing invoice submitted to the SFA for payment. The SFA must determine the method by which crediting will occur and the means of documentation to be utilized to verify that the value of all donated foods has been credited. All crediting must be done on no less than a monthly basis. The FSMC shall have records available to substantiate that the full value of all USDA donated foods is used solely for the benefit of the SFA.

4. In accordance with 7 CFR 210.21(f)(iv), invoices must clearly display all applicable credits to the SFA.

F. Inventory, Storage and Record Retention of USDA Donated Foods

1. The FSMC will comply with the storage and inventory requirements for donated foods in 7 CFR 250.14(b).
2. The FSMC will maintain records to document its compliance with requirements relating to donated foods, in accordance with 7 CFR 250.54(b).
3. The SFA and FSMC must maintain the following records relating to the use of donated foods with the exception of (d), which applies to the FSMC only:
 - a. The donated foods and processed end products received and provided to the FSMC for use in the SFA's food service.
 - b. Documentation that the FSMC has credited the SFA for the value of all donated foods received for use in the SFA's food service in the school year, including the value of donated foods contained in processed end products.
 - c. The actual value of all donated food received and credited.
 - d. The FSMC must maintain documentation of its procurement of processed end products on behalf of the SFA, as applicable.
4. The SFA must ensure that the FSMC is in compliance with the requirements of 7 CFR Part 250 through its monitoring of the food service operation, as required in 7 CFR Parts 210, 225, or 226, as applicable.
5. The SFA must conduct a reconciliation at least annually (and upon termination of the contract) to ensure that the FSMC has credited it for the value of all donated foods received for use in the SFA's food service in the school year.

G. Renewal Assumptions

1. The financial terms of this contract are based upon existing conditions and the following assumptions. If there is a material change in existing conditions, including, without limitations, changes to the following assumptions, this contract (1) may be terminated at the end of the current term or (2) continue under the same terms as written and specified in the RFP and proposal.

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

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

2. The SFA reserves the right to expand its federal CN programs in order to provide food resources to eligible children and students with the mutual agreement of the parties and approval by DFN.
3. The SFA's policies, practices, and food service requirements shall remain materially consistent throughout the contract term and any subsequent contract renewals. The term materially consistent shall mean that a change does not (1) materially increase FSMC's cost of providing management service or (2) materially decrease the net revenue derived from the food service operation.
4. Legislation, regulations, and reimbursement rates that create changes in the school lunch program shall be enforced on their effective date.
5. Usable commodities of adequate quality and variety required for the menu cycle, valued at an amount set forth by USDA per meal pattern for the contract term will continue to be available.
6. The federal meal reimbursement rates in effect shall remain materially consistent throughout the contract term.
7. Meal components and quantities required by any of the CN programs selected on page 4 of this document will remain consistent with prior years.
8. Service hours, service requirements and type and number of facilities selling food and/or beverages on SFA's premises shall remain materially consistent throughout the contract term and any subsequent contract renewal years.
9. The state or federal minimum wage rate and taxes in effect shall remain materially consistent throughout the year.
10. The average daily student enrollment for the Current Year shall be within two percent of what is stated on NJ Workbook for FSMC RFP (Form #372).
11. The projected estimated minimum number of full feeding days noted on page 14 shall remain materially consistent in renewal years.
12. The SFA revenue credited to the food service program shall include all State and Federal monies received specifically for CN program operations.
13. The SFA and FSMC may negotiate at the end of each one-year contract period for a cost increase. Any price change included as part of a renewal shall be based upon the price of the original contract as cumulatively adjusted pursuant to any previous adjustment or renewal, and shall not exceed the change in the Index Rate (as defined in Public Schools Contract Law, N.J.S.A. 18A:18:A—1 *et seq.*) for the 12 months preceding the most recent quarterly calculation available at the time the contract is renewed which is the date of the Board Meeting approving the FSMC contract renewal for Public and Charter Schools and/or the date when the renewal is signed by the SFA for Non-Public Schools; and the terms and conditions of the contract shall remain substantially the same. N.J.S.A. 18A:18A-42.

14. All contract renewals shall be for a period of one year beginning July 1st and ending June 30th, with mutual agreement between the SFA and the FSMC. **Renewal contracts cannot be effective prior to the date of final approval by DFN and execution by both parties.**
15. Renewal year contracts are contingent upon fulfillment of all contract provisions. If DFN determines during an Administrative Review, Procurement Review, audit, etc., that the FSMC is not meeting contractual obligations and is responsible for non-compliance of program regulations, DFN may decline to approve a renewal contract until it can be demonstrated that the FSMC is capable of meeting contractual obligations and being in compliance with program regulations.

H. Health Certifications

1. The SFA shall maintain all applicable health certifications on its facilities and shall ensure that all state and local regulations are being met by the FSMC preparing or serving meals at any SFA facility. All certifications shall be posted in a prominent place within the Food Service Facilities as required.
2. The FSMC shall maintain state and/or local health certifications for any facility outside the SFA in which it proposes to prepare meals and shall maintain this health certification for the duration of the contract as required by 7 CFR 210.16(c).
3. The FSMC shall adhere to the Food Safety Plan implemented by the SFA for all preparation and service of school meals, using a Hazard Analysis and Critical Control Point (HACCP) system.
4. The FSMC agrees to allow at least two health inspections to be conducted by the New Jersey Health Department at every site involved in school meal preparation and/or service.
5. The SFA shall immediately correct any problems found as a result of a health inspection. The FSMC must support the SFA and cooperate with all required corrections.

I. Meals

1. The FSMC shall serve meals on such days and at such times as requested by the SFA.
2. The SFA reserves the right to cancel or shorten any school day. A twenty-four (24) notice will be given to the FSMC in non-emergency situations.
3. The SFA shall retain control of the quality, extent, and general nature of the food service.
4. The SFA reserves the right to change all but the senior high school lunch program from an "offer" program to a "serve" program at any time it deems to do so.

5. The SFA reserves the right to make any grade level changes it deems necessary.
6. The FSMC shall offer free, reduced price and paid reimbursable meals to all eligible children participating in the CN programs.
7. In order for the FSMC to offer a la carte food service, the FSMC must offer free, reduced price and paid reimbursable meals to all eligible children.
8. The FSMC shall provide meals in the CN programs that meet the requirements as established in 7 CFR Parts 210,215,220 and if applicable, 7 CFR Parts 225 and 226.
9. The FSMC shall provide the specified types of service in the schools/sites listed on the completed NJ Workbook for FSMC RFP Form #372.
10. The FSMC shall provide maximum participation in the CN programs.
11. The FSMC shall sell on the premises only those foods and beverages compliant with the Smart Snack Rule and authorized by the SFA, and only at times and places designated by the SFA.
12. No payment will be made to the FSMC for meals that are spoiled or unwholesome at the time of delivery, do not meet detailed specifications as developed by the SFA for each food component in the meal pattern, or do not otherwise meet the requirements of this contract.

J. Books, Records, Reports, and Audits

1. The FSMC shall maintain and provide to the SFA, upon request, detailed (itemized) documented cost records (supported by invoices, receipts, etc.). The FSMC shall provide to the SFA a detailed accounting of meals supported by POS meal records, edit check worksheets and POS sales records to document meal equivalents no later than the tenth (10th) calendar day succeeding the month in which services were rendered. Participation records shall be submitted no later than the fifth (5th) working day succeeding the month in which services were rendered. The SFA shall perform edit checks on the participation records provided by the FSMC prior to the preparation and submission on-line of the Claim for Reimbursement. The SFA shall reconcile Edit Check Worksheets and daily/monthly meal counts against student attendance records and daily transaction worksheets/logs.
2. The FSMC shall maintain such records as the SFA will need to support its Claim for Reimbursement in accordance with 7 CFR 210.16 (c)(1). Records available for review must include: daily sales records (using the calendar month from 1st day of the month through the last day of the month), Edit Check Worksheets and any documents used by the FSMC to prepare the monthly reimbursement claim. Such records shall be made available to the SFA upon request.
3. The FSMC shall provide to the SFA detailed (itemized) documented cost records (supported by vendor invoices, receipts, certified payroll, etc.) and a monthly operating statement.

4. Should the SFA have any concern as to the FSMC's compliance with Federal and State laws and regulations as a result of internal audits, monitoring, an Administrative Review, or a Procurement Review conducted by NJDA, the SFA shall have the right to request an audit of the FSMC and to select the auditor(s) to perform the audit. The FSMC will be responsible for the payment of all costs that occur as a result of this audit.
5. The SFA and FSMC must provide all documents required for the independent auditor to conduct the SFA's single, program or financial audit.
6. All records must be made available to the SFA upon request; and all records must be retained for a period of three (3) years after the SFA submits the final Claim for Reimbursement for the fiscal year for inspection and audit by representatives of the SFA, State Agency, USDA and Comptroller General. In instances where audit findings have not been resolved, the records must be retained beyond the three-year period until resolution of the issues raised by the audit. 2 CFR 200.333, formerly in 7 CFR 3016.42, 3019.53.
7. The FSMC shall not remove federally required records from the SFA premises. Upon contract termination, the FSMC must leave copies of the records at the SFA premises.
8. The SFA is responsible for ensuring resolution of program review and audit findings.

K. Employees/Personnel: (Check the option which applies to the SFA's staffing needs)

Option I

Check this box IF FSMC provides Management and Hourly Employees as stated in (1. a, b and c):

1. FSMC Personnel:

- a. FSMC shall provide and pay a staff of its management and operational employees assigned to duty on SFA's premises for efficient management of the Food Service Program. FSMC's employees will be subject to the rules and regulations of the SFA while on SFA's premises.
- b. FSMC shall include all costs incurred by FSMC in connection with its employees assigned to duty on SFA's premises, including wages and benefits as a Direct Cost of operations included as part of the Financial Obligation

SFA **agrees** **does not agree** to bonuses and incentives paid to FSMC employees included as part of its cost of operating included in the Response and Projected Operating Statement (Form #23CR).

- c. Responsibilities: refer to Cost Reimbursable Cost and Responsibility Summary on pages 46 and 47.

Option II

Check this box **IF FSMC Provides Management and SFA provides Hourly Employees as stated in (2. a, b and c and 3. a, b, c and d):**

2. FSMC Personnel:

- a. FSMC shall provide and pay a staff of its management employees assigned to duty on SFA's premises for efficient management of the Food Service Program. FSMC's management employees will be subject to the rules and regulations of the SFA while on SFA's premises.
- b. FSMC shall include all costs incurred by FSMC in connection with its employees assigned to duty on SFA's premises, including wages and benefits as a Direct Cost of operations included as part of the Financial Obligation

SFA agrees does not agree to bonuses and incentives paid to FSMC employees included as part of its cost of operating included in the Response and Projected Operating Statement (Form #23CR).

- d. Responsibilities: refer to Cost Reimbursable Cost and Responsibility Summary on pages 46 and 47.

3. SFA Personnel:

- a. All other supervisory and non-supervisory food service staff shall be SFA employees. Such employees shall be supervised on SFA's behalf by FSMC's management employees; provided, however, SFA shall retain the exclusive right to control the terms and conditions of the employment of such supervisory and non-supervisory employees, including, but not limited to, control over their hiring, firing, promotion, discipline, levels of compensation and work duties.
- b. SFA shall maintain accurate, timely, and detailed records of personnel and other payroll costs for employees assigned to the Food Service Program, and may grant FSMC access during regular business hours, to such books and records
- c. SFA shall approve the timely hiring of all SFA employees to fill vacant positions in order to minimize overtime wages.
- d. Responsibilities: refer to Cost Reimbursable Cost and Responsibility Summary on pages 46 and 47.

Option III

Check this box **IF FSMC provides Management and both FSMC and SFA provide Hourly Employees as stated in (4. a, b and c and 5. a, b, c and d):**

4. FSMC Personnel:

- a. FSMC shall provide and pay a staff of its management employees assigned to duty on SFA's premises for efficient management of the Food Service Program. FSMC's management employees will be subject to the rules and regulations of the SFA while on SFA's premises.

- b. FSMC shall include all costs incurred by FSMC in connection with its employees assigned to duty on SFA's premises, including wages and benefits as a Direct Cost of operations included as part of the Financial Obligation

SFA **agrees** **does not agree** to bonuses and incentives paid to FSMC employees included as part of its cost of operating included in the Response and Projected Operating Statement (Form #23CR).

- c. Responsibilities: refer to Cost Reimbursable Cost and Responsibility Summary on pages 46 and 47.

5. SFA Personnel:

- a. All other supervisory and non-supervisory food service staff shall be SFA employees. Such employees shall be supervised on SFA's behalf by FSMC's management employees; provided, however, SFA shall retain the exclusive right to control the terms and conditions of the employment of such supervisory and non-supervisory employees, including, but not limited to, control over their hiring, firing, promotion, discipline, levels of compensation and work duties.
- b. SFA shall maintain accurate, timely, and detailed records of personnel and other payroll costs for employees assigned to the Food Service Program, and may grant FSMC access during regular business hours, to such books and records.
- c. SFA shall approve the timely hiring of all SFA employees to fill vacant positions in order to minimize overtime wages.
- d. Responsibilities: refer to Cost Reimbursable Cost and Responsibility Summary on pages 46 and 47.

Staff Conversion:

Check one of the boxes below regarding conversion of SFA staff to FSMC:

- SFA **WILL NOT** be converting SFA staff to FSMC through attrition
- SFA **WILL** be converting SFA staff to FSMC through attrition

- 1. As SFA staff leaves, at the SFA discretion, the SFA may request that replacement employee/s be placed on FSMC payroll. Should that occur the FSMC will calculate the actual payroll cost based upon the employee's compensation and payroll costs. The FSMC shall provide the SFA with a detailed monthly billing of all such costs/charges, which the SFA shall review, approve, and if in order, pay.

2. If applicable, SFA Personnel: SFA's present food service employees shall be considered for continued employment on a fair trial basis; however, those employees who do not meet FSMC's standards and those in excess of the number required for efficient operation shall not be retained.
3. The SFA reserves the right to interview and approve the on-site food service manager/director.
4. The SFA must designate if the current SFA employees, including site and area managers as well as any other staff, will be retained by the SFA or be subject to employment by the FSMC.
5. The SFA must have a written code of conduct for all employees, which the FSMC must uphold for all employees working with the food program. 2 CFR 200.318(c).
6. If the SFA wants the SFA employees to be subject to employment by the FSMC, the SFA will complete the SFA Labor and Benefits section of the NJ Workbook for FSMC RFP, (Form #372) and included as part of the RFP. The FSMC will complete the FSMC Labor and Benefits Form located in Form #23CR and submit it in their proposal.
7. The FSMC shall provide the SFA with a schedule of employees, positions, assigned locations, salaries, and hours to be worked as part of the proposal. Specific locations and assignments will be provided to the SFA two full calendar weeks prior to the commencement of operation.
8. The FSMC shall comply with all wage and hours of employment requirements of Federal and State laws. The FSMC shall be responsible for supervising and training personnel, including SFA employed staff. Supervision activities include employee and labor relations, personnel development, and hiring and termination of FSMC management staff except for the site manager. The FSMC shall also be responsible for the hiring and termination of non-management staff who are employees of the FSMC.
9. The SFA and FSMC must ensure that all food service employees meet and continue to meet all the Professional Standards Requirements. All trainings must be documented. The FSMC shall provide to the SFA upon request documentation showing the annual training hours and topics completed by each of its employees in order to comply with the School Nutrition Program continuing education and training standards requirements. At a minimum:
 - a. All program directors shall complete twelve (12) hours of continuing education and training each year;
 - b. All managers shall complete ten (10) hours of continuing education and training each year;
 - c. All staff that works an average of at least twenty (20) hours per week shall complete six (6) hours of continuing education and training each year; and
 - d. All staff that works less than twenty (20) hours per week shall complete four (4) hours of continuing education and training each year (7 CFR 210.30)
 - e. The FSMC shall also ensure that all new School Nutrition Program Directors hired on or after July 1, 2015, have met the minimum education requirements based upon the size of the student enrollment as follows:
2,499 students or less; 2,500-9,999 students; and 10,000 or more students.

10. The FSMC shall maintain its own personnel and fringe benefits policies for its employees. A copy of these policies must be submitted with all proposal documents. These policies are subject to review by the SFA.
11. The SFA may complete the SFA Minimum Staffing Requirements on page 48-49, including positions, number of employees, and labor hours by location. All staffing patterns shall be mutually agreed upon.
12. The FSMC shall not hire employees in excess of the number required for efficient operation.
13. The SFA shall provide sanitary toilet and hand washing facilities for the employees of the FSMC.
14. The SFA shall have the right to require the immediate removal of any FSMC employee/s, by the FSMC for unsatisfactory performance or conduct considered by the SFA to be detrimental to the physical, mental or moral well-being of students, staff and faculty, provided the demand to do so is submitted in writing to the FSMC. The removal will be in compliance with all applicable State and Federal laws and regulations. In the event of the absence, termination, removal or suspension of any employee, the FSMC shall immediately restructure the food service staff without disruption of service.
15. All SFA and/or FSMC personnel assigned to the food service operation in each school shall be instructed in the use of all emergency valves, switches, and fire and safety devices in the kitchen and cafeteria areas.
16. The use of student workers or students enrolled in vocational classes in the food service shall be mutually agreed upon by the SFA and FSMC.
17. To the extent required by law, FSMC shall apply to its employees and prospective employees assigned to work on SFA premises (the "FSMC Applicants") the standards of employability set forth under N.J.S.A. 18A:6-7.1 (the "New Jersey law") relating to background checks of prospective employees and the prohibition of employment of individuals with a record of conviction of certain enumerated offenses. In order to comply with the New Jersey law, all FSMC applicants will be required to submit fingerprints to the authorities delineated under New Jersey law in order for the requisite state and national background checks to be conducted. All costs associated with the background checks shall be the responsibility of the FSMC and/or the FSMC applicant.
18. All FSMCs whose employees have regular contact with students, shall comply with the Employment Requirements of school employees mandated in N.J.S.A. 18A:6-7.6 to 18A:6-7.10.

19. Prohibition on Cross-Hiring:

- a. FSMC agrees that no food service supervisory employees of SFA shall be hired by FSMC for the term of this Agreement and six (6) months thereafter.
- b. SFA agrees that no food service supervisory employees of FSMC shall be hired by SFA for the term of this Agreement and six (6) months thereafter.

L. Monitoring

1. The SFA shall monitor the food service operation of the FSMC through periodic on-site visits to ensure that the food service is in conformance with USDA program regulations. If there is more than one site, there is an additional requirement that the SFA conduct on-site reviews of the counting and claiming system no later than February 1st of each year as required by 7 CFR 210.8. On-Site Accountability Review Forms for Lunch, Breakfast, and Snack Programs can be found at www.nj.gov/agriculture/applic/forms listed under Food and Nutrition, On-Site Accountability.
2. The records necessary for the SFA to complete the required monitoring activities must be maintained on-site by the FSMC under this contract, and must be made available to the Auditor General, USDA, NJDA, and the SFA upon request for the purpose of auditing, examination, and review.
3. The SFA must complete the SFA/FSMC Monitoring Form (Form #330) at least twice during the school year. Form #330 is located in SNEARS Resources (Procurement Documents).

M. Menus/Advisory Boards

1. The FSMC must comply with the 21-day menu developed by the SFA for the programs checked on page 4 of this RFP/contract and included in the RFP (the exception to this would be the SFSP which only requires an 11-day menu). Minor changes made by the FSMC after the first 21-day cycle must be approved by the SFA. The SFA shall approve menus no later than two weeks prior to service. Major changes to the menu are not allowable unless included as part of the RFP process and acceptable to the SFA. FSMC proposals must identify if they plan to change the 21-day menu included in the RFP.
2. The SFA is responsible for the formation and establishment of an advisory board composed of students, teachers, and parents to periodically meet and assist in menu planning and other activities related to food service. The FSMC shall participate in these periodic meetings as deemed appropriate by the SFA.

N. Inventory, Equipment, FSMC Investment, Storage and Use of Facilities

1. The FSMC owns the inventory of food and supplies. The SFA will pay for food and supplies as it is used.
2. The SFA will make available, without any cost or charge to the FSMC area(s) of the premises agreeable to both parties in which the FSMC shall render its services.

3. The SFA reserves the right, at its sole discretion, to sell or dispense food or beverages, provided such use does not interfere with the operation of the CN programs.
4. The FSMC and the SFA shall inventory the equipment and commodities owned by the SFA at the beginning of the school year, including but not limited to, silverware, trays, chinaware, glassware, and/or kitchen utensils.
5. The FSMC shall maintain the inventory and other operating items necessary for the food service operation at the inventory level as specified by the SFA.
6. The SFA will repair and maintain non-expendable equipment except when damages result from the use of less than reasonable care by the employees of the FSMC.
7. The FSMC shall maintain adequate storage procedures, inventory, and control of USDA donated foods in conformance with the SFA's agreement with NJDA.
8. The FSMC shall provide the SFA with one set of keys for all food service areas secured with locks.
9. The SFA shall provide the FSMC with local telephone service.
10. The SFA shall furnish and install any equipment and/or make any structural changes needed to comply with federal, state, or local laws, ordinances, rules and regulations.
11. Check one of the following regarding equipment investment required of the FSMC by the SFA:
 - SFA **is not requesting** FSMC to propose the purchase of equipment. The FSMC **may not** propose the purchase of equipment in their proposal and equipment **may not** be charged, directly or indirectly, to the SFA throughout the duration of the contract.
 - SFA **is requesting** the FSMC to propose and purchase equipment necessary for implementation or enhancement of the food service operation based upon the equipment/investment detailed in FSMC Proposed Equipment and included in the Response and Projected Operating Statement (Form #23CR).
 - SFA **is requesting** the FSMC to purchase the equipment listed on page 50 of this proposal SFA Requested Equipment and also to propose and purchase equipment necessary for implementation or enhancement of the food service operation based upon the equipment/investment as detailed in FSMC Proposed Equipment and included in the Response and Projected Operating Statement (Form #23CR).

Any equipment not included in FSMC proposal may not be charged, directly or indirectly, to the SFA throughout the duration of the contract. The SFA must seek pre-approval from DFN for each item of equipment costing \$5,000 or greater prior to purchase through the Capital Expenditure Request process if school food service funds are going to be used regardless if the SFA or FSMC is purchasing the equipment. Refer to the USDA Equipment List (Form #286) and the Equipment Request Form (Form #106) for further guidance.

The FSMC shall make a financial commitment/investment to SFA in an amount not to exceed the total amount listed on FSMC Proposed Equipment, included in the Response and Projected Operating Statement (Form #23CR), and, if requested, the SFA Requested Equipment on page 50 for equipment and upgrades for certain schools (the “financial commitment/investment”). Any equipment purchased by FSMC shall be purchased as a “sale-for resale” to the SFA. Title to equipment shall vest in SFA upon such resale when the equipment is placed in service. SFA acknowledges that it is a tax-exempt entity and will provide the FSMC with a copy of the appropriate tax-exempt certificate. The financial commitment/investment shall be amortized on a straight-line basis over a period of five (5) years, commencing upon the date the equipment is placed in service. The amortization will be charged to SFA as a direct cost and will be billed to the SFA **in addition** to the Meal Rate on a monthly basis.

Upon expiration or termination of this contract by either party for any reason whatsoever prior to the complete amortization of the financial commitment/investment, SFA shall, at the SFA’s election, either (a) reimburse the FSMC for the total unamortized balance of the financial commitment/investment as of the date of expiration or termination; or (b) continue to make payments under the monthly **amortization schedule until the financial commitment/investment is fully amortized**; or (c) deliver the equipment funded by the investment to the FSMC in full release of unpaid balance.

12. The SFA shall be responsible for any losses, including USDA donated foods, which may arise due to equipment malfunction or loss of electrical power not within the control of the FSMC.
13. All food preparation and serving equipment owned by the SFA shall remain on the premises of the SFA.
14. The SFA shall not be responsible for loss or damage to equipment owned by the FSMC and located on the SFA premises.
15. The FSMC shall notify the SFA of any equipment belonging to the FSMC on SFA premises within 10 days of its placement on SFA premises.
16. The SFA shall have access, with or without notice, to all the SFA’s facilities used by the FSMC for purposes of inspection and audit.
17. The FSMC shall not use the SFA’s facilities to produce food, meals, or services for other organizations without the approval of the SFA. If such usage is mutually acceptable, there shall be a signed agreement, which stipulates the fees to be paid by the FSMC to the SFA for such facility usage.
18. If the SFA uses the facilities for extracurricular activities before or after the SFA’s regularly scheduled meal service periods, the SFA shall return the facilities and equipment to the FSMC in the same condition as received, normal wear and tear expected. FSMC may require employee to be present and reimbursed by the SFA.

19. The SFA, on termination or expiration of the contract, shall conduct a physical inventory of all equipment and commodities owned by the SFA.
20. The FSMC shall surrender to the SFA upon termination of the contract, all equipment and furnishings in good repair and condition.

O. Purchases, Rebates, Discounts and Credits

1. The FSMC will serve as the procurement agent for the SFA.
2. The FSMC must comply with Federal procurement regulations to ensure full and open competition and may not serve as a vendor and procure from itself. 2 CFR 200.318-320.
3. This contract shall not prevent the SFA from participating in food co-ops or purchasing food from vendors with whom the FSMC normally does not do business.
4. The FSMC shall ensure that its allowable costs are in compliance with Federal and State laws and regulations.
5. The SFA shall ensure that the FSMC fully discloses all discounts, rebates, applicable credits, allowances, and incentives received by the FSMC. Allowable costs will be paid to the FSMC net of these discounts, rebates and other applicable credits.
6. The FSMC will exclude all unallowable costs from its billing documents and certify that only allowable costs are submitted for payment and that records have been established that maintain visibility of unallowable costs, including directly associated costs in a manner suitable for contract cost determination and verification. 7 CFR 210.21(f)(1)(ii)(B)
7. The FSMC shall identify the amount of each discount, rebate, and other applicable credits on bills and invoices presented to the SFA for payment and individually identify and certify the amount as a discount, rebate, or in the case of other applicable credits, the nature of the credit. The FSMC shall report this information on the monthly invoice and operating statement in accordance with 7 CFR 210.21(f)(1)(iv).
8. The FSMC must provide documentation of rebates, discounts, and other applicable credits and/or alternate net pricing for individual items it procured from its commercial vendors upon request from the SFA, State Agency or USDA.
9. To the extent that discounts, rebates and/or applicable credits are not previously credited to the SFA, the FSMC shall refund the amount of such discounts, rebates and/or applicable credits to the SFA subject to any necessary supplemental reconciliation between the FSMC and the SFA on the final operating statement provided by the FSMC to the SFA.
10. The FSMC shall maintain documentation of costs, discounts, rebates, and other applicable credits, and shall furnish such documentation upon request to the SFA, State Agency or USDA. 7 CFR 210.21(f)(1)(vi)

11. No expenditure shall be made from the non-profit school food service account that permits or results in the FSMC's receiving payments in excess of its actual, net allowable costs 7 CFR 210.21(f)(2). The SFA is responsible for reviewing and verifying the monthly invoice and operating statement to ensure accuracy.

P. Invoices

1. The FSMC must submit an itemized monthly invoice documenting the SFA's Financial Obligation including food purchases, labor and benefits costs, supplies and paper goods, and Administrative/Management Fee as included in the definition of Financial Obligation.
2. The FSMC must submit a monthly operating statement to the SFA itemizing income based on meal counts and cash sales. The operating statement shall also itemize the monthly allowable expenses and the Administrative/Management Fee (SFA's Financial Obligation).
3. The SFA is responsible for monitoring the monthly invoice, monthly operating statement and meal counts to ensure accuracy. The State Agency recommends periodic and year-end review and comparison of the monthly operating statement to the FSMC's submitted budget (as detailed in the Response and Projected Operating Statement, Form #23CR).
4. The payment of interest and late fees from the school food service account fund is prohibited.
5. Sample FSMC operating statement, monthly invoice and catering invoice can be found at www.nj.gov/agriculture/applic/forms listed under Food and Nutrition, Food Service Management Company Documents.

Q. Catering

1. The FSMC may provide catering services for the SFA or outside functions when requested. No such special services may be provided to any outside group without prior approval from the SFA.
2. As a **non-program expense**, all catering invoices shall not be included in the monthly Financial Obligation. All catering billing will be in addition to the allowable costs on the monthly invoice and billed to the SFA or sponsoring organization separately. Catering will be billed to the SFA at mutually agreed upon rates (which cannot be in the form of a percentage of food cost plus food cost). The pricing/billing must be in four components by the costs per person or total catering charge: (1) the actual Cost of Food and Supplies, (2) the actual Cost of Labor, (3) the FSMC Service Fee (FSMC profit), and (4) the SFA Service Fee (SFA profit). The sum of these four components equals the Total Catering Fee. All catering should be documented in a separate invoice.
3. Should the SFA request a complete catering brochure outlining menu/prices, it will be available to the SFA for review and approval prior to August 1st of each contract year. These prices will remain in effect for one year unless modified by mutual agreement.

R. Buy American

1. The FSMC shall purchase, to the maximum extent practicable, domestic commodities or products which are either an agricultural commodity produced in the United States (U.S.) or a food product processed in the U.S. substantially using agricultural commodities produced in the U.S. 7 CFR 210.21(d).
2. The FSMC shall certify the percentage of U.S. content in the products supplied to the SFA.
3. The SFA reserves the right to review vendor purchase records to ensure compliance with the Buy American provision.

S. Sanitation

1. The FSMC shall place garbage and trash in the containers in the designated areas as specified by the SFA.
2. The SFA shall remove all garbage and trash from the designated areas.
3. The FSMC shall clean the kitchen and dining room areas as indicated in the Cost Reimbursable Cost and Responsibility Summary on pages 46 and 47 of this RFP.
4. The FSMC shall operate and care for all equipment and food service areas in a clean, safe, and healthy condition in accordance with the standards acceptable to the SFA and comply with all applicable laws, ordinances, regulations, and rules of federal, state, and local authorities, including laws related to recycling.
5. The FSMC shall comply with all local and state sanitation requirements in the preparation of food.

T. Non-Discrimination

1. Both the SFA and FSMC agree that no child who participates in any of the CN programs will be discriminated against on the basis of race, color, national origin, sex, disability, age, or reprisal or retaliation for prior civil rights activity in any program or activity conducted or funded by USDA.

U. Emergency Closing

1. The SFA shall notify the FSMC of any interruption of utility service of which it has knowledge.
2. The SFA shall notify the FSMC of any delay in the beginning of the school day or the closing of school(s) due to snow or other emergency situations. In the event of such an emergency, the SFA shall provide the FSMC with as much advanced notice of the closure or delay as possible.

V. Non-Performance by the FSMC

1. In the event of the FSMC's non-performance under this contract and/or the violation or breach of the contract terms, the SFA shall have the right to pursue all administrative, contractual, and legal remedies against the FSMC and shall have the right to seek all sanctions and penalties as may be appropriate.
2. The FSMC shall reimburse the SFA the full amount of any meal over-claims and penalties which are attributable to the FSMC's negligence, including those over-claims based on review or audit findings that occurred during the effective dates of the original and renewal contracts.

W. Term and Termination

1. The SFA or the FSMC may cancel this contract for cause by giving sixty (60) days' written notification. 7 CFR 210.16(d)
2. The SFA may terminate this contract at any time by giving 60 days' written notification to the FSMC setting forth the reason for and the effective date of termination. Upon such termination, the SFA and the FSMC shall make settlement of all amounts due hereunder within 60 days of the invoice date. 2 CFR Part 200, Appendix II section (B)

X. Certification

1. The FSMC shall comply with the mandatory standards and policies relating to energy efficiency that are contained in the State energy conservation plan issued in compliance with the Energy Policy and Conservation Act. P.L. 94-163.
2. The FSMC shall comply with the Contract Work Hours and Safety Standards Act (40 U.S.C. Chapter 37) as supplemented by U.S Department of Labor regulations 29 CFR Part 5.
3. The FSMC shall comply with Executive Order 11246, entitled "Equal Employment Opportunity," as amended by Executive Order 11375, and as supplemented in Department of Labor regulations, 41 CFR Part 60.

Y. Insurance

1. The FSMC is required to be insured adequately to support the terms of the contract. The FSMC shall maintain the insurance coverage set forth below for each accident provided by insurance companies authorized to do business in the state of New Jersey. A Certificate of Insurance of the FSMC's insurance coverage indicating these amounts must be submitted at the time of award.
2. The FSMC shall have in effect during all times under this agreement, comprehensive general liability insurance, including products and completed operations liability, contractual liability, and independent contractor's liability coverage and personal injury. Minimum coverage shall be \$1,000,000 per incident/per person.
 - a. Commercial General Liability – The Contractor shall provide a Commercial General Liability policy for general liability coverage for limits of not less than of \$1,000,000 per occurrence. Coverage shall be maintained without interruption from date of commencement of work until date of final payment. **Enter the amount of coverage \$**

- b. Workman's Compensation - The FSMC shall secure and maintain for the life of this agreement, valid Worker's Compensation Insurance as required by law. **Enter the amount of coverage \$ _____**
 - c. Vehicle Insurance - The FSMC shall secure and maintain during the life of this agreement, automobile liability insurance on all vehicles against bodily injury and property damage in the amount of at least \$100,000 per person, \$300,000 per occurrence. **Enter the amount of the coverage \$ _____**
3. The SFA shall be named as additional insured on the General Liability and Automobile insurance policy. The FSMC must provide a waiver of subrogation in favor of the SFA for General Liability, Automobile, and Worker's Compensation.
 4. In addition, the FSMC shall provide fire and theft insurance at its own expense to cover any risk created by fire and/or theft to its property located on the premises of the SFA. The FSMC further agrees to provide all necessary fire and/or theft insurance to cover clothes, garments and other articles owned by their employees.
 5. The contract of insurance shall provide for notice to the SFA of cancellation of insurance policies 30 days before such cancellation is to take effect.

Z. SFSP: **Applicable** **Not Applicable**

SFA must use the additional RFP documents for this program available in SNEARS Resources (FSMC, CACFP, SFSP Documents). SFA's participation in this program is indicated on page 4 of this document.

1. The SFA shall offer free meals to all eligible children participating in the SFSP. If the FSMC will operate the SFSP (including the preparation, record keeping, and delivery of meals), a **flat price per meal cost** must be submitted as part of this RFP for the SFSP (New Jersey Workbook for FSMC Form #372). The FSMC will comply with all bonding requirements mandated in 7 CFR 225.15 (m)(5-7). In accordance with 7 CFR 225.15 (a)(3), the SFA cannot contract out the management responsibilities of the SFSP. The SFA shall be responsible for ensuring that the food service operation conforms to all program requirements outlined in 7 CFR Part 225. The SFA shall be responsible for determining eligibility for all SFSP sites. The SFA as a SFSP sponsor is responsible for conducting and documenting the required site visits of all sites for pre-approval and during operation of the program.

AA. CACFP: **Applicable** **Not Applicable**

SFA must use the additional RFP documents for this program available in SNEARS Resources (FSMC, CACFP, SFSP Documents). SFA's participation in this program is indicated on page 4 of this document.

1. The SFA shall offer meals to all eligible children and adults participating in the CACFP. If the FSMC will operate the CACFP (including the preparation, record keeping, and delivery of meals), a **flat price per meal cost** must be submitted as part of this RFP for the CACFP (New Jersey Workbook for FSMC Form #372). In accordance with 7 CFR 226.21(e), the SFA cannot contract out the management responsibilities of the CACFP. The SFA shall be responsible for ensuring that the food service operation conforms to all program requirements outlined in 7 CFR Part 226.

BB. Trade Secrets and Proprietary Information

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

CC. Purchase of Fresh Milk

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

DD. Environmental Protection/Energy Conservation/Clean Air/Federal Water Pollution Control

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

EE. Equal Employment/Affirmative Action

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

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

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

FF. Drug Free Workplace

1. The FSMC agrees to provide a drug-free workplace for its employees and to comply with the provisions and regulations of the Drug Free Workplace Act of 1988 (41 U.S.C. 701 et seq., as amended) and applicable state laws and regulations. Failure to abide by these requirements may subject the SFA and/or FSMC to the penalties described in 7 CFR 3021.510.

GG. SOC 1 Report

1. The FSMC shall have an annual service audit of the FSMC's internal controls performed by an independent audit firm engaged by the FSMC. The service audit shall be as prescribed in A.I.C.P.A. Statement on Standards for Attestation Engagements (SSAE) No. 16. The FSMC shall provide the SFA with a Service Organization Control (SOC) 1 Type 2 Report in conformity with SSAE No. 16 to enable the SFA to meet its annual audit obligation under New Jersey Department of the Treasury Circular No. 15-08-OMB. 2 CFR 200.400-200.521; 7 CFR 3052.210(f); N.J.S.A. 18A:23-1.

HH. New Jersey Business Registration Requirements

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

II. Political Contributions

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

JJ. Debarment/Suspension Certificate

1. Prior to entering into this contract and included in its response to the SFA's or Request for Proposal, the FSMC signed and submitted a Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion.
2. The FSMC shall provide immediate written notice to the SFA if it learns that its certification was erroneous when submitted or has become erroneous due to changed circumstances. A false certification can be grounds for suspension of payments, suspension or termination of the award or suspension or debarment 2 CFR Part 200, Appendix II section (H).

KK. Certificate of Independent Price Determination/FSMC Warranty

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

LL. Certification Regarding Lobbying

1. Prior to entering into this contract and included in its response to the SFA's Request for Proposal, the FSMC signed and submitted a Certification Regarding Lobbying and, if applicable, a Standard Form LLL – Disclosure of Lobbying Activities.
2. During the term of this contract the FSMC, shall file with the SFA a Standard Form LLL– Disclosure of Lobbying Activities at the end of each calendar quarter in which any event occurs that requires disclosure or that materially affects the accuracy of the information contained in any disclosure form previously filed by the FSMC. 2 CFR Part 200, Appendix II section (I).

MM. Statement of Ownership Disclosure

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

NN. Disclosure of Investment Activities in Iran

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

OO. Civil Rights Assurance

1. The FSMC hereby agrees that it will comply with Title VI of the Civil Rights Act of 1964 (42 U.S.C. §2000d et seq.), Title IX of the Education Amendments of 1972 (20 U.S.C. §1681 et seq.), Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. §794), the Age Discrimination Act of 1975 (42 U.S.C. §6101 et seq.); all provisions required by the implementing regulations of the Department of Agriculture; Department of Justice Enforcement Guidelines, 28 CFR Part 50.3 and 42; and FNS directives and guidelines, to the effect that, no person shall, on the grounds of race, color, national origin, sex, age, or disability, be excluded from participation in, be denied benefits of, or otherwise be subject to discrimination under any program or activity for which the FSMC receives Federal financial assistance from FNS; and hereby gives assurance that it will immediately take measures necessary to effectuate this agreement.

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

PP. Non-Discrimination Statement

1. The institution (SFA) is an equal opportunity provider. In accordance with Federal civil rights law and USDA civil rights regulations and policies, the USDA, its Agencies, offices, and employees, and institutions participating in or administering USDA programs are prohibited from discriminating based on race, color, national origin, sex, religious creed, disability, age, political beliefs, or reprisal or retaliation for prior civil rights activity in any program or activity conducted or funded by USDA.

Persons with disabilities who require alternative means of communication for program information (e.g. Braille, large print, audiotope, 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 on-line at: http://www.ascr.usda.gov/complaint_filing_cust.html and at any USDA Office, or write a letter addressed to USDA and provide in the letter all of the information requested in the form. To request a copy of the complaint form, call (866) 632-9992. Submit your completed form or letter to USDA by: (1) mail: U.S. Department of Agriculture, Office of the Assistant Secretary for Civil Rights, 1400 Independence Avenue, SW, Washington, D.C. 20250-9410; (2) fax: (202) 690-7442; or (3) email: program.intake@usda.gov.

QQ. Licenses, Permits and Taxes

1. FMSC shall obtain all federal, state, and local licenses and permits required for SFA's Food Service Program and shall be responsible for all sales, use, excise taxes, and all other state and local taxes attributable to SFA's Food Service Program. The cost of all such licenses, permits, and, if permitted by law, taxes shall be charged as Direct Costs; FSMC shall estimate any taxes for which a tax invoice has not been received by the close of the school year and reconcile taxes incurred after the final invoice is received.

RR. Indemnification

1. FSMC shall indemnify and hold harmless the SFA from all claims, suits or actions, and damages or costs of every name and description to which the SFA may be subjected or put by reason of injury to the person or property of another, or the property of the SFA, resulting from negligent acts or omissions on the part of the FSMC, the FSMC's agents, servants or sub FSMCs in the delivery of goods and services, or in the performance of the work under the contract.

RFP Scoring Criteria and Evaluation Form

USDA requires that an evaluation and scoring plan be included in the RFP prior to the receipt of any proposals. SFAs must not change or by-pass the published evaluation and scoring criteria to circumvent full and open competition. SFA must complete the table below to evaluate all responsive proposals submitted by the Food Service Management Companies. SFA can select from the sample criteria provided by the State Agency Sample RFP Scoring Criteria (Form #320) or develop their own. However, **price/cost must be the primary consideration and must have the most weight of all the scores, criteria #1 therefore, must remain on the scoring form.** At least 6 scoring criteria must be provided. SFAs may not include a FSMC's prior experience with the SFA as a category during any competitive procurement procedure.

The Criteria Used in Evaluating Proposals <small>The points awarded range from 1 to 5, with 5 being the highest score and 1 being the lowest</small>	Weighting Factor	Points	Total Score
1. Total Cost: points awarded to the cost of the contract will be based on the lowest total cost receiving the most points with decreasing points for each FSMC's higher cost.			
2.			
3.			
4.			
5.			
6.			
7.			
8.			
9.			
10.			

Each evaluator should provide scores in the points section above based on their evaluation of the criteria listed and the way in which the individual criteria were addressed in each FSMC proposal. **When evaluating the proposals, scoring must be done individually and not as a group. To average the scores for FSMC Proposal Comparison Form (Form #24CR), add all scores and divide by the number of evaluators.**

Print Name of Evaluator & Title: _____

Signature: _____

TOTAL SCORE _____

Costs Included in the COST REIMBURSABLE CONTRACT

Administrative/Management Fee means FSMC's fee for those services provided for the SFA's food service locations, which should include **all** the following but does not include any costs billed to the SFA as charges for Direct Costs. The SFA may de-select any of the following, but the State Agency recommends that each expense listed below be included to ensure that they are incorporated as part of the Administrative/Management Fee, so they **may not** be charged in any other expenses. Only actual, net, documented costs may be charged to the SFA for any charges outside the Administrative/Management Fee.

Personnel and Labor Relations Services	
Legal Department Services	
Purchasing Services and Quality Control	
Technical Research and Supervision	
Cost Incurred in Hiring and Relocating FSMC Management Personnel	
Dietetic Services (Administrative and Nutritional)	
Test Kitchens	
Accounting/Bookkeeping and Accounting Procedures	
Tax Administration	
Supervisory Personnel and Regular Inspections or Audit Personnel	
Teaching and Training Programs	
General Regional Support	
General National Headquarters Support	
Design Services	
Menu Development (Specific to operation)	
Information Technology (Software and Support)	
Payroll Documentation and Administrative Cost (Reporting, recording and issuance of payroll checks for FSMC employees)	
Sanitation Advice	
Administrative/Personnel Advice	
Travel Costs for Visitation and Coverage on Behalf of the FSMC (Principal of the FSMC, Corporate Chef, Regional Manager)	
Cost of Developing the Following: Training Manuals, Procedure Manuals, Food Service Control Forms and Supplies, Materials for School Nutrition Promotions	
Nutrition Education Materials and Program Expense	
Management Meetings, and/or Management Development Program Specific to the Operation	
Education Programs via Schoolroom Programs, Parent/Teacher Meetings and School Food Service Advisory Committee Meetings	
Facilities Layout and Design Services (Specific to operation)	

Cost Reimbursable Cost and Responsibility Summary

The SFA has deemed the following cost responsibility schedule to be part of this contract. Costs that are not provided for under the standard contract terms and conditions but are necessary for the effective operations of the food service program and are directly incurred for the SFA's operation, must be assigned by the SFA prior to the RFP solicitation request and designated below. If selected as "Included," the cost must be documented as an allowable direct cost as part of the Financial Obligation on the monthly operating statement and invoice. Responsibilities should be assigned to either the FSMC or SFA.

The following table must be completed by the SFA.

Cost Responsibility Summary	Included	Not Included
FOOD		
Food Purchasing	XX	
USDA Administrative Charges	XX	
USDA Processing Charges	XX	
USDA Delivery Charges	XX	
FSMC LABOR		
Payment of Management and Hourly Wages	XX	
Payroll Taxes of Management and Hourly Employees	XX	
Fringe Benefits and Insurance of Management and Hourly Employees	XX	
Workers' Compensation for Management and Hourly Employees	XX	
Background Checks	XX	
TB Testing	XX	
SFA LABOR Complete only if SFA provides hourly or management employees		
Payment of Management and Hourly Wages		
Payroll Taxes of Management and Hourly Employees		
Fringe Benefits and Insurance of Management and Hourly Employees		
Workers' Compensation for Management and Hourly Employees		
Preparation/Processing of Management and Hourly Employee Payroll		
Cost of Administering Payroll and Benefits for SFA Employees		
TB Testing		
OTHER DIRECT COSTS		
Paper Supplies (trays, foil, plastic wrap, etc.), Disposables and Cleaning Supplies	XX	
Laundry		
Menu Printing and Paper		
Telephone-Local & Long Distance		
Telephone-Mobile/Cell		
Internet Connectivity (Will be provided, modification will be FSMC's responsibility and must comply with SFA network standards)	XX	
Insurance (general, product, liability, etc.)	XX	
Uniforms for all Employees, Both FSMC and SFA (if applicable)		
Computers for Food Service Operation		
POS System Annual Software Fees (licensing, maintenance, rollover, etc.)		
POS Computers and Software		
Office Supplies		

Cost Responsibility Summary	Included	Not Included
Postage		
Sales Tax		
Utilities		
Pest Control		
Mileage (within SFA's buildings)		
VEHICLES		
Maintain SFA's Vehicles (operating expenses, repairs, gas, licenses, etc.)		
Provide and Maintain a Vehicle/s (operating expenses, repairs, gas, licenses, etc.)		
RESPONSIBILITY SUMMARY	FSMC	SFA
Daily Cash Pick-Up and Bank Deposit		
Provide, Service and Manage All Vending Machines as Noted in the RFP		
Building Maintenance		
Inventory of Food and Supplies		
Training of SFA Food Service Employees		
Selling Pre-Paid Meals (if needed)		
Meal Ticket Printing (if needed)		
Distribution of Meal Tickets (if needed)		
SAS 70 Compliance		
CLEANING		
Cafeteria/Dining Area Walls		
Cafeteria/ Dining Area Floors		
Cafeteria/Dining Area Tables, Chairs and or Benches		
Buffing and Waxing of Floors		
Kitchen Floors		
Kitchen/Serving Areas (excluding floors)		
Serving Area Floors		
Kitchen Walls		
Kitchen/Serving Area Equipment		
Grease Traps		
Grease Filters		
Ceiling, Light Fixtures and Fans		
Dishwashing		
Hoods (exterior of the hood inside kitchen only)		
Vent from Hood to Outside		
Kitchen Facility Restrooms		
Removal of Trash from Kitchen		
Removal of Trash from Cafeteria/Dining Areas		
Removal of Trash from Premises		
Recycling		

SFA Additional Documents

*In addition to the **completed** Form #17CR, the SFA's finished RFP/Contract for release must include the following and be kept in this order, check boxes as document is assembled:*

- A **completed** NJ Workbook for FSMC RFP (Form #372)
- Menus, 21 Day for All Programs
- Meal and A la Carte Price List
- Fund 60 Audit for the Last Fiscal Year
- Blank Required Federal Forms, Form #39, #130, #131, #132, and #133 for FSMC to complete and include in their proposal/response
- Blank Response and Projected Operating Statement (Form #23CR) for FSMC to complete and include in their proposal/response

Food Service Management Company Proposal/Response

FSMC should organize their proposal/response as follows:

1. A **File of Documents** that **must be returned to the State Agency** for contract approval. File must contain the following:

- Food Service Management Company (FSMC) Request for Proposal (RFP) and Cost Reimbursable Contract (Form #17CR)
- Completed FP RFP Modification Request Form (Form #47CR) submitted to and approved by the State Agency, ***only if applicable***
- Completed Response and Projected Operating Statement (Form #23FPCR)
- Completed State Agency SFSP and/or CACFP documents, ***only if applicable***

2. Remaining RFP Response documents that must be returned to the SFA but **are not submitted to the State Agency** containing the following:

- Letter of Transmittal
- References
- Mandatory Federal Documents: Certificate Regarding Debarment (Form #130), Certificates of Independent Price Determination (Form #131), Disclosure or Lobbying Activities (Form #132), Certification Regarding Lobbying (Form #133), and Disclosure of Investment Activities in Iran (Form #39)
- Start-Up/Transition Plan
- FSMC Menus/Alternate Menus
- Business Registration Certificate
- Certificate of Employee Information Report
- Ownership Disclosure Form
- Bid Security
- Stockholder Disclosure Certificate

- Political Disclosure Form
- FSMC Personnel and Fringe Benefit Policy
- FSMC Executive Summary containing the following:
 1. Demonstrated ability of the FSMC to successfully manage food service programs within the rules, regulations and policies established by the NJDA and USDA
 2. Complete list of all New Jersey public school clients, including the student populations, grade levels and years of service by the FSMC
 3. FSMC must outline their involvement and experience in the school food services field in the areas of:
 - a. Designing facilities
 - b. Selecting and procuring food service equipment
 - c. Food and supply procurement
 - d. Nutrition standards and education
 - e. Menu planning
 - f. On-site production
 - g. Quality control
 - h. Employee supervision
 - i. Employee hourly and management training
 - j. Employee motivation
 - k. Marketing
 - l. Public relations
- Company Profile and District Support containing the following:
 1. Location of the office from which the FSMC will supervise the account
 2. Organizational Chart
 3. Visitation and coverage by field supervisors and other support personnel
 4. Description of FSMC's support personnel including summary of their backgrounds
- FSMC Standards and Procedures containing the following:
 1. Description of comprehensive food handling, equipment, sanitation and safety programs
 2. Brief description of HACCP and bio-security programs