

NOTICE

Changes to the Request for Proposal (RFP)/Contract Terms and Conditions are strictly prohibited unless pre-approved by the North Carolina Department of Public Instruction. The Local Education Agencies will have an opportunity to make modifications to the RFP/Contract template to reflect individual goals, priorities, and procedures that are unique to the Local Education Agency. These modifications **MUST** be approved, in advance, by the North Carolina Department of Public Instruction. In compliance with Federal regulations (7 CFR § 210.16(10)), Local Education Agencies that make changes to the RFP/Contract terms that have not been approved by the North Carolina Department of Public Instruction **MAY NOT** use School Nutrition funds to pay the Food Service Management Company. The RFP/Contract includes language which emphasizes recent guidance issued by the United States Department of Agriculture regarding procurement. Section III, subsection F, of this RFP/Contract requires the School Food Authority to ensure the Food Service Management Company complies with **ALL** applicable competitive procurement requirements and ensures free and open competition in the procurement of goods and services. This section also restates the United States Department of Agriculture's requirement that the Contract must be awarded to the most responsive and responsible vendor whose proposal is most advantageous to the School Nutrition Program with price and other factors considered, of which cost must be the primary consideration.

Local Education Agencies may not make changes to the RFP/Contract after the final document has been reviewed and approved by the North Carolina Department of Public Instruction.

Mountain Island Charter School, Inc.

REQUEST FOR PROPOSAL

AND

CONTRACT

**Mountain Island Charter School, Inc.
13440 Lucia Riverbend Hwy.
Mt. Holly, NC 28120
(704) 827-8840**

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, religious creed, disability, age, political beliefs, or reprisal or retaliation for prior civil rights activity in any program or activity conducted or funded by USDA.

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

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

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

This institution is an equal opportunity provider.

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I. INTRODUCTION

This document contains a Request for Proposals and subsequent Contract for a Food Service Management Company (hereinafter referred to as the “FSMC”) to operate the nonprofit School Nutrition Program(s) for Mountain Island Charter School, Inc. Board of Education. The Local Education Agency (hereinafter referred to as the “LEA”) participates in the United States Department of Agriculture’s (hereinafter referred to as the “USDA”) School Nutrition Programs and sets forth the terms and conditions applicable to the proposed procurement and subsequent Contract. The intent of the LEA is specifically to secure FSMC services in the administration, marketing and accounting of the School Nutrition Program. The LEA intends to serve as the employer of the majority of staff involved in the daily operations of the School Nutrition Program and to deliver the program under the direction of the FSMC. Upon acceptance by both parties and approval of the North Carolina Department of Public Instruction (hereinafter referred to as the “NCDPI”), this document shall constitute the Contract between the offeror and the LEA’s Board of Education on behalf of the LEA’s School Food Authority (hereinafter referred to as the “SFA”).

The NCDPI is not and will not be a party to any contract between a local Board of Education, on behalf of its SFA, and a FSMC. The local Board of Education has full responsibility for ensuring the terms and conditions of the Contract are fulfilled. The NCDPI has no involvement with, or enforcement of, the Contract; however, NCDPI may deny payment for meals received or purchased under an invalid Contract.

II. REQUEST FOR PROPOSALS

A. Legal Notice

Notice is hereby given that the Mountain Island Charter School, Inc. Board of Education (hereinafter referred to as the “BOE”), on behalf of its SFA, intends to examine alternatives to the operation of its current School Nutrition Program.

No intent should be construed from this legal notice that the SFA intends to enter into a Contract with any party for alternative School Nutrition operation unless, in the sole opinion of the BOE, out-sourcing the Federally assisted School Nutrition Program(s) is in the SFA’s best interest.

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

All costs involved in preparing and submitting a response to this Request for Proposals (hereinafter referred to as the “RFP”) shall be borne in full by the party incurring said cost.

In accordance with 2 CFR §§ 200.112 and 200.318, SFA’s officers, employees, or agents shall neither solicit nor accept gifts, gratuities, favors, or anything of monetary value from contractors or potential contractors in accordance with all laws, regulations, and policies. To the extent permissible under Federal, State, or local laws, rules, regulations, or policies, such standards shall provide for appropriate penalties, sanctions, or other disciplinary actions to be applied for violations of such standards.

Offerors responding to this RFP will be referred to as the FSMC, and any Contract that may arise from this RFP will be between the FSMC and the BOE on behalf of the SFA.

B. Letter of Intent

Each FSMC must prepare a “Letter of Intent” that describes the offeror’s intent and capacity to provide services. The Letter of Intent must also address each of the areas described in items 1 - 6 below. The Letter of Intent must be submitted and identified as Attachment A as part of the sealed proposal.

Each FSMC must submit for consideration such records of work and further evidence as may be required by the SFA regarding experience, financial standing, and assurance they have suitable resources (financial, personnel managerial experience, etc.) to satisfactorily complete the work as specified and in accordance with the Terms and Conditions. Each FSMC shall submit the following qualification or equivalent documentation with the sealed proposal and shall include the information listed below:

1. Documentation indicating FSMC is incorporated or licensed to do business in the State of North Carolina and in good standing with all Federal, State and local regulatory institutions, including revenue departments;
2. FSMC must submit a bid bond or certified check in the amount of 10% of the current projected annual operating costs to show good faith; the bid bond or certified check must be enclosed with the sealed Proposal. If the RFP indicates the SFA plans to participate in the Summer Food Service Program, the bid bond shall cover the amount as described in Part III, E. Summer Nutrition Programs. The bid bond may be obtained only from surety companies listed in the current Department of the Treasury Circular 570.
3. The successful FSMC, upon award of the Contract, will issue a performance bond in the amount of the Contract. Documentation of this requirement must be included in the letter of intent. Simultaneously, with the delivery of the executed Contract, the successful FSMC must provide to the SFA the executed surety bond as required to be held as security for the SFA for the faithful performance by the FSMC of all terms and conditions of the Contract. The performance bond may be obtained only from surety companies listed in the current Department of the Treasury Circular 570.
4. Documentation indicating FSMC has been doing business with similar SFAs or other similar institutions and is familiar with Federal and State regulations pertaining to the operation of a non-profit School Nutrition Program.
5. Annual reports for financial Statements must be certified by a Certified public Accountant for the past year and must be provided in the sealed Proposal; and
6. A statement indicating an authorized representative of the FSMC must provide written proof of authority and must certify, in writing, the acceptance of the Terms and Conditions prior to the execution of the Contract.

C. Request for Proposals (RFP)

The Mountain Island Charter School, Inc. Board of Education is accepting competitive proposals for a Food Service Management Company to operate the LEA’s Nonprofit School Nutrition Program(s) for a twelve-month period beginning July 1, 2024 and ending June 30, 2025 with options to renew the Contract for four (4) additional terms of one year each.

Additional information required to adequately respond to this **RFP** may be obtained from SFA’s business office (704) 827-8840. [If there is any additional information, it must be provided to all offerors.]

The FSMC shall offer written assurances that all activities addressed in the RFP will be conducted in a manner consistent with the goals of the SFA’s School Nutrition Program(s) and to provide nutritious, high quality, wholesome, student-appealing meals at an economical price and in an attractive, appealing, and positive environment that promotes students’ self-esteem while simultaneously complying with all laws, regulations, statues, and policies that govern the Federally assisted School Nutrition Programs.

In order for a proposal to be deemed a responsive, offerors shall submit a complete response to this RFP, including all required documents, certifications, and other artifacts in the manner in which they are requested in the RFP. Failure to follow the instructions provided in this RFP, or amending any specifications or Terms and Conditions therein, shall deem the offeror unresponsive.

This request should be clearly understood as a “Request for Competitive Proposals” (commonly referred to as a “Request for Proposals” or “RFP” and not an “Invitation for Sealed Bids”). The Competitive Sealed Proposal method differs from the Competitive Sealed Bid in the following ways:

- Competitive sealed proposals allow discussions with competing offerors and adjustments to the initial proposal; and
- Comparative judgmental evaluations may be made when selecting among acceptable proposals for award of the Contract.

The BOE reserves the right to reject any and all proposals and to waive any minor technicalities in order to take the actions it deems to be in the best interest of the SFA.

Contracts entered into on a basis of submitted proposals are revocable if contrary to law.

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

All procurement transactions shall be conducted in a manner that provides maximum full and open competition and transparency in accordance with 2 CFR § 200.319, 7 CFR §§ 210.16 and 210.21, and all USDA clarifying policy memoranda for these regulations.

The solicitation and award of the FSMC Contract will be in strict accordance with 2 CFR § 200.318(c)(1) regarding the standards of conduct that prohibit real or apparent conflicts of interest and disciplinary actions to be applied for violations of such standards. Further, all procurement transactions shall be conducted in a manner that provides full and open competition consistent with the standards set forth in 2 CFR § 200.319. In order to ensure objective contractor performance and eliminate unfair competitive advantage, contractors that develop or draft specifications, requirements, statements of work, or invitations for bids or requests for proposals must be excluded from competing for such procurements.

SFA shall not implement restrictions that unfairly limit competition. Some of the situations considered to be restrictive of competition include but are not limited to: (1) Placing unreasonable requirements on firms in order for them to qualify to do business; (2) Requiring unnecessary experience and excessive bonding; (3) Noncompetitive pricing practices between firms or between affiliated companies; (4) Noncompetitive contracts to consultants that are on retainer contracts; (5) Organizational conflicts of interest; (6) Specifying only a “brand name” product instead of allowing “an equal” product to be offered and describing the performance or other relevant requirements of the procurement; and (7) Any arbitrary action in the procurement process.

D. Pre-Proposal Meeting

A meeting with interested offerors to review the specifications, to clarify any questions, and for a walkthrough of the facilities with school officials will be conducted on Friday, March 1, 2024, at 11:00 AM (EST) at 13440 Lucia Riverbend Hwy., Mt. Holly, NC 28120. While attendance on site is important to examine the facilities in order to prepare a responsive proposal, potential vendors who are unable to travel to the site may attend the pre-proposal meeting virtually. To attend the virtual meeting, please notify Glenn Byrum, Executive Director, (704) 827-8804 x1033, gbyrum@micharter.org to request a link to the virtual event. Potential vendors attending virtually should log on to the meeting at least 10 minutes in advance of the start time of the meeting. Vendor presentations will not be scheduled at this time. The purpose of this meeting is to provide interested and eligible offerors the opportunity to view the School Nutrition Program facilities and ask questions about the solicitation. Any questions not addressed at the pre-proposal meeting must be submitted in writing to the SFA. Written responses will be distributed electronically and in writing to all FSMCs that attended the pre-proposal meeting. Questions submitted after March 27, 2024, will not be answered.

E. Proposal Submission and Award

SFAs must use this prototype FSMC RFP/Contract in order to use Federal School Nutrition Program funds to support the costs associated with the Contract. **In accordance with Federal regulations, a SFA that does not comply with the required procurement procedures cannot be approved for participation in the School Nutrition reimbursement programs.**

Competitive sealed proposals will be received until 4:00pm on Wednesday April 10, 2024 and are subject to all specifications, terms, and conditions attached hereto. Proposals will not be accepted after this time. **Proposals shall be submitted in a sealed envelope** labeled “*Food Service Management Company Proposal for Mountain Island Charter School, Inc.*” and also marked with the respondent’s return address. Collateral documents, including marketing materials, are not considered part of the proposal and must be submitted in a separate envelope or binder.

Ten (10) copies of the Competitive Sealed Proposals are to be submitted to:

Name of Agency: Mountain Island Charter School, Inc.

Mailing Address: 13440 Lucia Riverbend Hwy. Mt. Holly, NC 28120

Physical Address: 13440 Lucia Riverbend Hwy.

City: Mt. Holly

State/Zip: NC 28120

Attention: Glenn Byrum, Executive Director

A copy of the proposal should also be provided to:

Dr. Lynn Harvey, Senior Director, Office of School Nutrition

6515 Ben Bur Road

Raleigh, NC 27612

Proposals will be opened at **4:30 PM (EST) on Thursday, April 11, 2024**

One copy of the Proposal must be provided to the NC Department of Public Instruction at the time proposals are received by the SFA.

To be considered, each offeror must submit a complete response to this solicitation using the forms provided, along with any other documents submitted as a part of the proposal and considered responsive to this RFP. No other documents submitted with the RFP/Contract will affect the Contract provisions. **There shall be no modifications to the RFP/Contract language. Any additions, deletions or other modifications to the RFP/Contract that in any way change or negate the intent of the RFP/Contract as written shall automatically deem the offeror non-responsive to the entire solicitation.**

The FSMC shall submit any and all questions or requests for clarification in writing to the SFA no later than ten (10) days prior to the date the proposal is due. Responses to questions or requests for clarification shall be in the form of a RFP/Contract addendum and shall be distributed to all prospective offerors attending the pre-proposal meeting. Any and all communications with any prospective offeror shall be a matter of public record and transparent to all prospective offerors.

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

The offeror shall be incorporated or licensed to do business in the State of North Carolina. Respondents shall submit annual reports or financial statements for the past fiscal year in the format of an "accountant's review," including notes to the financial Statements provided by a Certified Public Accountant.

Offerors or their authorized representatives are expected to fully inform themselves as to the conditions, requirements, and specifications before submitting proposals and to seek clarification on any items contained in the RFP/Contract prior to preparing and submitting a proposal; failure to do so will be at the offeror's own risk and it cannot secure relief on plea of error. SFA is not liable for any cost incurred by the offeror in submitting a proposal. **Paying the FSMC from School Nutrition Program funds is prohibited until the Contract is fully executed.**

If additional information is requested, please contact

Glenn Byrum, Executive Director, (704) 827-8804 x1033, gbyrum@micharter.org.

Any additional information provided to one offeror will be available to all offerors.

F. Late Proposals

Time is of the essence. Any proposal submitted after the time specified for receipt shall not be considered and will be returned unopened.

G. Altering, Amending, or Withdrawing Proposal

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

H. Calculation of Time

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

I. Evaluation Process

Proposals will be evaluated by a qualified evaluation committee appointed by the BOE. A qualified evaluation committee is one that consists of individuals who are (1) familiar with the administration and operation of the Federally assisted School Nutrition Programs; (2) familiar with the financial and other resources within the LEA and SFA; (3) familiar with the goals and priorities of the BOE; (4) familiar with the community in which the LEA is located; (5) familiar with the needs and interests of students who will ultimately be served by the FSMC; and, (6) other qualified individuals as recommended by the BOE. The evaluation committee shall, based on the offers as set out above and the criteria, categories, and assigned weights as stated herein below (to the extent applicable), make a recommendation to the BOE. Ideally, evaluation committee members shall consist of BOE members, LEA officials, SFA employees, and other individuals who have a vested interest in the success of the nonprofit School Nutrition Program(s). Any agent for, consultant of, employee of, representative of, or anyone who stands to benefit financially or otherwise from the BOE's contract with the FMSC in any manner shall be precluded from participating in the RFP and subsequent Contract. Anyone with a real of perceived conflict of interest shall not be permitted to serve on the Evaluation Committee.

Each area of the award criteria must be addressed in detail in the Proposal. SFA intends to receive presentations from qualified offerors as well as provide an opportunity for members of the evaluation committee to ask questions of the prospective FSMC. Presentations and interviews are tentatively scheduled for Friday, April 26, 2024, 10:00am-2:00pm at 13440 Lucia Riverbend Hwy. Mt. Holly, NC 28120. FSMCs will be notified of their scheduled presentation time, if such is indicated, no later than Wednesday, April 17, 2024

J. Weighted Evaluation Criteria

Proposals shall be evaluated using only the weighted criteria stated in this RFP; no other criterion or documentation shall be considered in evaluating the proposal as long as the offeror has been deemed to be reliable and responsible and the proposal is deemed responsive.

(20) points	Cost and Financial Proposal
(10) points	Plan to ensure the highest food quality available for students
(10) points	Plan to ensure a range of meal and <i>A la Carte</i> selections available for students, including fresh, locally grown products.
(10) points	Plan to continuously increase student participation.
(10) points	Plan for the annual growth of student meal participation
(10) points	Plan for collaboration with school leadership in School Nutrition Program implementation
(10) points	Plan for engaging students and their families in the School Nutrition Program
(10) points	Plan for engaging staff in the School Nutrition Program
(10) points	Plan for exceeding minimum thresholds of Food Safety operations and inspection scores

100 points TOTAL

K. Pre-Award Clarification

SFA reserves the right to conduct final discussions and negotiations with the FSMC recommended by the evaluation committee prior to awarding the Contract. The purpose of these discussions shall be to clarify and assure full understanding of any issue contained in the proposal and to negotiate a best and final offer if indicated. In conducting these discussions, there shall be no disclosure of any information derived from proposals by competing FSMCs.

L. Firm Offer

By submitting a response to this RFP, and if such response is not withdrawn prior to the time for opening proposals, offeror understands and agrees that it is making a firm offer to enter into a Contract, which may be accepted by SFA and which will result in a binding Contract. **Such proposal is irrevocable for a period of ninety (90) days after the time for opening of proposals has passed.**

_____ (Authorized Representative of FSMC shall initial and date here to indicate agreement)

M. Contract Award

In accordance with 2 CFR § 200.320(d)(4), a firm fixed-price contract that yields a maximum allowable cost (based on a fixed-price per meal equivalent and a fixed-price per meal equivalent for management services) will be awarded to the FSMC whose proposal is most advantageous to the SFA, with price and other factors considered in the evaluation process. The Contract will be awarded to the most responsive, responsible contractor whose proposal reflects the priorities, as reflected in the evaluation criterion, established by the BOE herein.

N. Final Contract

The complete Contract includes all documents included by the SFA in the RFP, and all documents submitted by the FSMC that have been mutually agreed upon by both parties (i.e. worksheets, attachments, and operating cost sheets).

O. Protest Procedure

Protests of awards exceeding \$10,000.00 in value shall be submitted to the SFA’s Board Chair within fifteen (15) calendar days from the date of the Contract award. The protest shall be in writing and shall address specific areas of concern or dispute. Documentation shall be provided to support the dispute. Address protests to:

Lisa Gordon Stella, 4711 Hope Valley Road, Suite 4F-429, Durham, NC 27707

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III. STANDARD TERMS AND CONDITIONS

A. Definitions

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

1. “Accounting Periods” means each month throughout the fiscal year from July 1 to June 30.
2. “Addenda” means written documents issued by the SFA prior to the opening of proposals which modifies the RFP documents by addition, clarification, correction or deletion.
3. “Administrative Review (AR)” is a system of Federal/State reviews of SFAs that measures compliance with Federal, State, and local regulations and policies. The AR examines the nutritional, operational, and financial integrity of the School Nutrition Program(s) and the adequacy of the oversight of these programs. When the SFA is non-compliant with Federal and/or State regulations, a written Corrective Action Plan is required and funds may be withheld until such time as compliance is achieved; or in cases of critical violations, meals may be disallowed, funds may be permanently reclaimed, and the SFA may be terminated from the Program(s). The State agency (SA) will conduct an AR in the first year of each Contract between the SFA and FSMC and more frequently based upon risk assessments.
4. “Allowable Cost” means costs that are allowable under 2 CFR Part 200, Subpart E, “Cost Principles.”
5. “Buy American” means the *Buy American* provision as described in Section 12(n) of the *National School Lunch Act* which requires schools participating in the National School Lunch Program (NSLP) to purchase, to the maximum extent practicable, domestic commodities and products. A domestic commodity or product means an agricultural commodity that is processed in the United States, and a food product that is processed in the United States substantially using agricultural commodities that are produced in the United States. Purchases made in accordance with the *Buy American* provision must still follow the applicable procurement rules calling for free and open competition. Any entity that purchases food or food products on behalf of the SFA must follow the same *Buy American* provisions that the SFA is required to follow.
6. “Code of Federal Regulations (CFR)” means the codification of the general and permanent rules published in the *Federal Register* by the Executive departments and agencies of the Federal government.
7. “Competitive Proposals” means a method of procurement whereby a technical proposal is solicited that explains how the prospective offeror will meet the objectives of the solicitation and a cost element that identifies the costs to accomplish the technical proposal. While price alone is not the sole basis for award, price remains the primary consideration when awarding a contract under the competitive proposal method.

8. “Contract” means this RFP and Contract, the exhibits attached to this RFP and Contract, and FSMC’s Proposal, as accepted by SFA in its sole discretion. The RFP/Contract is a formal, legally enforceable agreement between a buyer (client) and a seller (contractor) that establishes a legally binding obligation for the seller to furnish goods and/or services and for the buyer to compensate the seller. A contract must clearly and accurately describe the goods and/or services to be delivered or performed and the terms and conditions of the agreement. In the case of School Nutrition Programs, a contract is executed by the authorized representatives of the BOE and SFA and the contractor that offers to provide services, materials, supplies, equipment, or other resources in accordance with all conditions and specifications in the solicitation documents for a price to be mutually agreed-upon by the FSMC and SFA prior to execution.

9. “Contract Documents” means the procurement specifications, requirements, and the RFP along with the responsive proposal, as applicable, and the resulting Contract.

10. “Cost reimbursable contract” means a contract that provides for payment of incurred costs to the extent prescribed in the contract, with or without a fixed-price. Cost reimbursable contracts are not allowed under the Terms and Conditions of this solicitation.

11. “Direct Cost” means any Allowable Cost that is (i) incurred by FSMC in providing the goods and services that are identified in SFA’s School Nutrition Program Budget and (ii) reasonably necessary in order for FSMC to perform the Services herein. The term “Direct Cost” does not include any cost allocated to SFA as Charges, the General and Administrative Expense Fee, or any Management Fees. Direct costs are only allowed under the Terms and Conditions of this RFP/Contract for the quarterly reimbursement of personnel costs as SFA personnel transition to FSMC personnel should such costs be incurred.

12. “Effective Date” means July 1st annually.

13. “Equipment” means tangible, non-expendable, personal property having a useful life of more than one year and an acquisition cost of \$5,000.00 or more. State law or policy may set stricter capitalization thresholds for equipment than the one set by Federal standards. Any SFA may use its own definition of equipment if its definition would at least include all items of equipment as defined here. State agency prior approval is required for all capital equipment items with an acquisition cost of \$5,000 or more unless the item is identified on the State agency approved list, if applicable.

14. “Execution of Contracts” means to complete and formally sign the legal document. For school meals purposes, it is the official signing of the contract by the SFA and the contractor, which indicates that the contract has begun (or has been renewed). Before any contract or amendment to an existing FSMC contract is executed, NCDPI must first review and approve the contract terms and ensure SFA has incorporated all NCDPI required changes into the contract or contract amendment.

15. “Expendable Equipment” means items utilized in the preparation of food, including, but not limited to, pots and pans, serving trays, dishes, glassware, silverware, linen, mops, brooms, and cleaning

supplies. Expendable equipment also includes any item used in the Nonprofit School Nutrition Program with a useful life of more than one meal service and with a purchase value per unit of \$4,999.99 or less.

16. “Firm, Fixed-Price Contract” means a price that is fixed at the inception of a contract and is guaranteed for a specific period of time. A fixed-price contract may also contain an economic cost adjustment provision tied to a standard index. A firm, fixed-price contract is required between any FSMC and SFA in North Carolina. Under the firm, fixed-price contract, FSMC is required to perform the work described in the RFP/Contract for a firm, fixed-price to be negotiated prior to contract execution between the FSMC and the SFA. The firm, fixed-price will include all costs associated with fulfilling the contract’s Terms and Conditions. No additional costs will be allowed in conjunction with the contract with the exception of personnel costs as SFA personnel transition to FSMC personnel. The fixed-price is not subject to any adjustment on the basis of the contractor’s cost experience in performing the contract. The firm, fixed-price contract includes any management fee and/or administrative allowance for the financial reporting, legal, tax and audit services, and management oversight provided to client locations by FSMC at the regional and corporate levels. Such allowance shall be in an amount mutually agreed upon between the FSMC and the SFA and will be stated as an amount per reimbursable meal equivalent served.

17. “FNS” means the Food and Nutrition Service of the United States Department of Agriculture.

18. “Food Service Management Company” (“FSMC”) means a commercial enterprise or a nonprofit organization that is or may be contracted with by the SFA to manage any aspect of the school food service in accordance with 7 CFR § 210.2. Under the Summer Food Service Program, FSMC means any commercial enterprise or nonprofit organization with which a sponsor may contract for preparing unitized meals, with or without milk, for use in the Program, or for managing a sponsor’s food service operations in accordance with the limitations set forth in § 225.15. Food Service Management Companies may be: (a) public agencies or entities; (b) private, nonprofit organizations; or (c) private, for-profit companies. (*See* 7 CFR § 225.2.) Under the Child and Adult Care Food Program, an FSMC means an organization other than a public or private nonprofit school, with which an institution may contract for preparing and, unless otherwise provided for, delivering meals, with or without milk for use in the Program. (*See* 7 CFR § 226.2.)

19. “FSMC’s Proposal” means the FSMC’s response to the RFP which ultimately becomes part of the Contract.

20. “FSMC’s Responsibility” requires each FSMC to fully acquaint himself with conditions relating to the scope and restrictions attending the execution of this RFP/Contract. The failure or omission of a FSMC to acquaint himself with existing conditions within the LEA, county, or State shall in no way relieve the FSMC of any obligation with respect to the proposal or Contract.

21. “Gross Receipts” means the total of all cash receipts and reimbursements received by the SFA and other revenue under the SFA’s nonprofit School Nutrition Program.

22. “Identified Student Percentage or ISP” means the percentage of students who are eligible for free meals based on direct certification or categorical eligibility. The ISP is used to determine whether a SFA is eligible to participate in the Community Eligibility Provision (“CEP”).

23. “Indirect Cost” means a cost of a general nature which is not readily identifiable with the activities of the School Nutrition Program and incurred for a common or joint purpose benefiting more than one activity or cost objective. In accordance with N.C.G.S. § 115C-450, the LEA may not assess indirect costs to the nonprofit School Nutrition Program if the program does not have a minimum of one-month’s operating balance, based on a rolling three-year average, as authorized by NCDPI.

24. “Indirect Cost Rate” is a device for determining in a reasonable manner the proportion of indirect costs the School Nutrition Program should bear. It is the ratio (expressed as a percentage) of the indirect costs to a direct cost base. Rates are published by NCDPI annually on or before July 1st.

25. “Management Fee” is a component of the firm, fixed-price contract and includes FSMC’s allowance for those services provided at SFA’s School Nutrition Program operational sites, which shall include all of the following: personnel and labor relations services and visitation, legal services, purchasing and quality control, technical research, cost incurred in hiring and/or relocating FSMC management personnel, nutrition and dietetic services (Administrative and Nutritional), test kitchens, accounting and accounting procedures, tax administration, technical supervision, supervisory personnel and regular inspections, audit personnel and/or services, teaching, professional development and training programs, general regional support, general national headquarters support, design services, menu development, information technology and support, payroll documentation and administrative cost, sanitation, and personnel advice. Expenses included in the Management Fee may not be charged in any other manner. Any travel related to these expenses shall be covered by the Management Fee. Such costs shall be calculated on a fixed-price management fee per meal equivalent. The Management Fee is included in the Maximum Allowable Cost of the Contract.

26. “Meal Equivalent” can be derived in two ways to obtain the meal equivalency: 1) dividing the total cost of producing *a la carte* items sold by the unit cost of producing a reimbursable lunch; and 2) absent cost data, dividing the *a la carte* revenue by the per meal sum of the Federal and State free reimbursement plus the value of USDA entitlement and bonus foods. *A la carte* revenue should include all sales to adults and *a la carte* sales to students.

27. “Meal Equivalents” are the common denominator for calculation of the firm fixed-price, the management fee and the per meal guarantee. The meal equivalent formula shall be determined by dividing the total of cash receipts, other than from sales of National School Lunch and Breakfast Program meals of Cash Equivalents, by the Equivalency Factor. For the purpose of computing the foregoing meal counts, the number of National School Lunch Program meals and Summer Nutrition Program lunches served to Students and adults shall be determined by actual count. The number of breakfast meals served to Students under the School Breakfast Programs and Summer Nutrition Program shall be divided by two, and the number of after-school

snacks served to Students through the National School Lunch Program shall be divided by four. *A la carte* meal equivalents shall be computed by dividing *a la carte* revenues by \$4.75. *A la carte* revenue shall include *a la carte* sales to students and adults. Catered meals are not included in meal equivalents. The meal equivalent formula may be calculated as follows:

1. One student or 1 paid adult lunch = 1 meal equivalent
2. Two student or 2 paid adult breakfasts = 1 meal equivalent
3. Four student or 4 paid adult snacks = 1 meal equivalent
4. *A la carte* revenues divided by \$4.75 = 1 meal equivalent

The Meal Equivalent value is subject to increase annually based on the free meal reimbursement as published by the USDA in the prior year.

28. “Meal Equivalency Factor” (“MEF”) is a statistical tool that is used to convert *a la carte* sales into a standard of measure, in this case a “meal.” The MEF is often used to convert *a la carte* sales into meal equivalents for billing purposes in a firm, fixed-price contract.

29. “National School Lunch Program” (“NSLP”) means the Program that offers financial assistance for each lunch served to Students, and additional financial assistance for each lunch served free or at a reduced-price to eligible Students. The maximum amount reduced-price eligible students may be charged is forty (40) cents per each reimbursable lunch served, thirty (30) cents per each reimbursable breakfast served, and fifteen (15) cents per each reimbursable snack served.

30. “NCDPI” means the North Carolina Department of Public Instruction – the State Administering Agency.

31. “NCDA&CS means the North Carolina Department of Agriculture and Consumer Services the State Distributing Agency.

32. “Non-expendable Equipment” is defined as any item with a per unit acquisition cost of \$5,000.00 or more. These items are generally classified as movable property and used directly in preparing, storing or serving school meals, including, but not limited to, ranges, refrigerators, freezers, steam tables, mixers, storage cabinets, tables, chairs, and hot water heaters.

33. “Nonprofit School Nutrition Account” means the restricted account in which all of the revenue from all School Nutrition operations conducted by the SFA principally for the benefit of school children is retained and used only for the operation or improvement of the nonprofit School Nutrition Program; use of School Nutrition funds for non-School Nutrition Program purposes is strictly prohibited and funds used for unallowable purposes are subject to reclaim and reimbursement from the LEA’s general fund.

34. “Nonprofit School Nutrition Program” means all School Nutrition program operations conducted by the SFA principally for the benefit of students within the LEA. All revenues obtained through the Nonprofit School Nutrition Program shall be used solely for the operation or improvements of the School Nutrition Program. Per 7 CFR § 210.16(a)(4) & (5), SFAs shall retain signature authority on the State agency-

school food authority agreement, free and reduced-price policy statement, and claims for reimbursement; in addition, SFAs shall retain control of the quality, extent, and general nature of its School Nutrition Program, and the prices to be charged to students for meals at school.

35. “Nonprogram Foods” are foods and beverages sold outside the NSLP or SBP; in accordance with Federal policy, the SFA must ensure revenues from the sales of all nonprogram foods generate at least the same proportion of SFA revenues as they contribute to SFA food costs.

36. “Nutrition Analyses” provide detailed nutrition information on planned program menus. All menus must be planned to the required meal pattern and dietary specifications. The FSMC proposal will include a nutrition analysis for each menu planned for all programs operated. Nutrition analyses must be available for all program meals planned and served daily during the contract period(s). (The nutrition analysis software program used must be approved by the USDA.)

37. “Nutrition Standards” means the minimum nutrient requirements as prescribed by the USDA (*see generally* 7 CFR § 210.10-11).

38. “Offeror” means a vendor who responds to a solicitation; in this instance, the offeror is the FSMC responding to the RFP.

39. “On-site” is defined as the physical location of the food preparation facilities of the LEA as presented in the RFP.

40. “Paid Lunch Equity” is defined as the requirement of SFAs participating in the NSLP to ensure sufficient funds are provided to the nonprofit School Nutrition Program account for meals served to students not eligible for free or reduced-price meals; there are two ways to meet this requirement: (1) through the prices charged for “paid” meals or (2) through other non-Federal funding sources provided to the Nonprofit school nutrition account. All SFAs are required to complete the annual *Paid Lunch Equity Tool* (PLE Tool) to determine how the SFA will comply with the requirement for paid lunch equity.

41. “Pre-proposal Conference” is a face-to-face meeting between representatives of the SFA and representatives of the FSMC; the meeting helps ensure each FSMC understands and clarifies, if needed, all requirements of the RFP.

42. “Processor” means, as defined in 7 CFR § 250.3, “any commercial facility which processes or repackages USDA Foods. However, commercial enterprises which handle, prepare, and/or serve products or meals containing USDA Foods on-site solely for the individual recipient agency under contract are exempt under this definition.”

43. “Procurement” means the process of obtaining goods and/or services in accordance with applicable rules and regulations and in an environment of optimal free, open, and transparent competition.

44. “Product Identification (ID)” are limited to requirements that can be verified on delivery or information essential for communication between contractor and SFA. Product identifications must be

supplied with the RFP for all items without a *CN label* to insure quantity and quality. Product identifications or descriptions are not specifications.

45. “Program(s)” or “School Nutrition Program(s)” means the USDA Child Nutrition Programs in which SFA participates.

46. “Program Funds” means all funds that are required to be deposited into the nonprofit School Nutrition Program Account.

47. “Proposal” means a FSMC’s response to the RFP/Contract and is a complete and properly signed response to the RFP. The entire RFP will become the legal contract when approved, awarded, and fully executed. A Contract Addendum to clarify any item or to establish

48. “Public Proposal Opening” means the process of opening and reading the content of proposals for the first time at the date, time and location specified in the RFP.

49. “Public Access to Procurement Information” means that no documents relating to this procurement will be presented or made otherwise available to any other person, agency or organization until after the contract is awarded. Once awarded, non-proprietary information contained in the FSMC’s response to the RFP becomes public record. Commercial or financial information obtained in response to this RFP may be considered privileged and confidential. Such privileged and confidential information includes information that, if disclosed, might cause harm to the competitive position of the offeror supplying the information. Therefore, all offerors must visibly mark as “Confidential” or “Proprietary” each part of their proposal they consider containing proprietary information. The documents marked “Confidential” or “Proprietary” will not be disclosed.

50. “Qualified Offeror” means an offeror who is qualified by experience, equipped to perform the work required and furnish the items indicated in the specifications, and who has the necessary financial backing and ability to complete the contract.

51. “Request for Proposals” (“RFP”) means a type of solicitation document used for the formal procurement method of competitive proposals. The RFP identifies the goods and services needed and all significant evaluation factors. The RFP is publicized and is used to solicit proposals from a number of sources. Negotiations are conducted with more than one of the sources submitting proposals, and either a fixed-price or cost-reimbursable type contract is awarded, as appropriate. (**Note: only fixed-price contracts are allowed for FSMC services in North Carolina.**) Competitive proposals may be used if conditions are not appropriate for the use of competitive sealed bids. Prior to issuing a RFP for FSMC services, SFA shall first obtain written approval from NCDPI and shall incorporate all NCDPI required changes.

52. “Responsible Contractors” – BOE shall award contracts only to responsible contractors possessing the ability to perform successfully under the terms and conditions of a proposed procurement. Consideration must be given to matters such as contractor integrity, compliance with laws and regulations, record of past performance and financial, and technical resources.

53. “Responsible Offeror” means an entity capable of performing successfully under the Terms and Conditions of the solicitation and contract.

54. “Responsive Proposal” is one which conforms to all the material Terms and Conditions of the solicitation and is prepared in accordance with the specific instructions prescribed in the solicitation.

55. “Right of Non-Commitment or Rejection” means the LEA or SFA is not committed to award a contract or to pay any costs incurred in the preparation of a proposal. The LEA or SFA reserves the right to accept or reject any or all proposals received as a result of this request, or to reject in part or in its entirety this proposal if it is in the best interest of the LEA or SFA to do so.

56. “School Breakfast Program” (“SBP”) is a Program offering financial assistance for each breakfast served to Students and guidance to establish and operate a Program. The breakfast program can help close the nutrition gap by providing Students with nutritious breakfasts at school. The program is especially important in improving the nutrition and dietary habits of at-risk Students, who may receive breakfast free or at a reduced-price. The maximum amount reduced-price students may be charged for breakfast is thirty (30) cents.

57. “School Food Authority” (“SFA”) means the governing body which is responsible for the administration of one or more schools, and has legal authority to operate the National School Lunch Program or School Breakfast Program therein *or* be otherwise approved by FNS to operate the Program(s). The BOE may authorize the LEA superintendent to sign legal documents on behalf of the SFA.

58. “School Nutrition Program” is the preparation and service of food to the SFA’s students, staff, employees, and authorized visitors. The School Nutrition Program may include but is not necessarily limited to the National School Lunch Program, the School Breakfast Program, the After School Snack program, the Seamless Summer Option, the Summer Food Service Program, catering services, and *a la carte* food and beverage service.

59. “School Nutrition Facilities” are the areas, schools, sites, institutions or other properties made available by the SFA to the FSMC for the provision of the School Nutrition Program services.

60. “Services” means the services and responsibilities of FSMC as described in this Contract.

61. “SFA’s School Nutrition Facilities” means the areas, improvements, personal property, and facilities made available by SFA to FSMC for the provision of the nutrition services as more fully described herein.

62. “SFA’s School Nutrition Location(s)/Sites(s)” means the schools or other locations where Program meals are served to SFA’s enrolled and visiting Students.

63. “SFA’s School Nutrition Program” means the administration and operation of the nonprofit School Nutrition Program(s) on behalf of SFA’s students, staff, employees and authorized visitors, including the following programs: the National School Lunch Program (NSLP), the School Breakfast Program (SBP), the After School Snack Program, and the *a la carte* food and beverage service

64. “SFA’s School Nutrition Program Budget” means the School Nutrition Program Budget for the current school year, which is attached as “Exhibit D” and fully incorporated herein.

65. “Signature Authority” - SFA shall retain signature authority on the School Nutrition Program Agreement, Free and Reduced-Price Policy Statement, and any and all claims made for reimbursement.

“Simplified acquisition threshold” means the dollar amount below which a non-Federal entity may purchase property or services using small purchase methods. Non-Federal entities adopt small purchase procedures in order to expedite the purchase of items costing less than the Simplified Acquisition Threshold. The Simplified Acquisition Threshold is set by the Federal Acquisition Regulation at 48 CFR Subpart 2.1 (Definitions) and in accordance with 41 U.S.C. 1908. As of publication, the Simplified Acquisition Threshold at the Federal level is \$250,000, but this threshold is periodically adjusted for inflation. (*See* 2 CFR § 200.88.) The Simplified Acquisition Threshold established by the State of North Carolina is \$90,000. A BOE may establish a different Simplified Acquisition Threshold as long as the threshold is below the State threshold.

66. “Smallwares” means non-disposable items utilized in the service of food.

67. “Smart Snacks Final Rule” applies to all foods sold at school during the school day. Under the Smart Snacks rule, all foods and beverages sold *a la carte*, in the school store, and in vending machines shall comply with the Smart Snacks nutrition standards. Such snacks shall also be sold in compliance with North Carolina’s Competitive Foods Rule, which is established in Section B.3.q. of the Annual Agreement (renewal) to operate the Federally assisted School Nutrition Program(s) administered by the NCDPI.

68. “Sole Source Procurement” refers to one type of noncompetitive proposal found in 2 CFR § 200.320(f); in the Child Nutrition Programs this occurs only when the goods or services are available from only one manufacturer through only one distributor or supplier. Sole source describes a condition of the procurement environment. In a true sole source situation, conducting a traditional solicitation (sealed bid, competitive negotiation or small purchase) is a meaningless act because the element of competition will not exist. When faced with an actual sole source situation, an SFA must first obtain written approval from the State agency, and then go directly to the one source of supply to negotiate terms, conditions and prices.

69. “Solicitation” or “solicitation documents” means a document used by the SFA to acquire goods and/or services. Solicitations must incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured. Solicitations must also identify all contract provisions required by Federal procurement regulations, requirements, terms, and conditions which the offerors must fulfill and all other factors to be used in evaluating the bids or proposals. Prior to issuing any solicitation documents, SFA shall first obtain written approval from NCDPI and shall incorporate all NCDPI required changes.

70. “Specifications” are written descriptions of what the purchaser requires and, consequently, what an offeror must offer to be considered eligible for a contract award.

71. “Special School Nutrition Functions” requested by the SFA shall be provided at a firm price mutually agreeable to the contractor and SFA. The contractor and the SFA shall agree as to what portion of this cost is to be reimbursed to the contractor and what portion will be paid directly by the SFA. All cost related to special functions shall be submitted in an invoice that is separate from the monthly billing for School Nutrition Program Services and shall not be considered when determining the number of meal equivalents for which the contractor will be paid a management fee or the performance of the contractor as it relates to compliance with the meal equivalent cost guarantee. No USDA Foods may be used for such functions. In addition, no food, labor, and supplies appropriated for the daily School Nutrition Programs may be used for these special functions.

72. “Standards of Conduct” governing conflicts of interest and governing the performance of all personnel engaged in the selection, award and administration shall be enforced throughout the solicitation, evaluation, and contract award. The BOE, LEA, and SFA must also maintain written standards of conduct covering organizational conflicts of interest. Such standards shall be consistent with 2 CFR § 200.318 and 319.

73. “State Agency (SA)” is NCDPI. The National School Lunch Program (NSLP), School Breakfast Program (SBP), After School Snack Program (ASSP), Seamless Summer Option (SSO), and Summer Nutrition Program (SNP) are administered for the State through the School Nutrition Division.

74. “State Distributing Agency” (SDA) is the North Carolina Department of Agriculture and Consumer Services, Food Distribution Division.

75. “Summer Nutrition Program” means either the Summer Food Service Program or the Seamless Summer Option identified herein, and in which SFA participates.

76. “Term of the Contract” or “Term” is one year with four one-year renewal options. A partial school year will be considered as one of the four one-year renewal options.

77. “USDA” means the United States Department of Agriculture.

78. “USDA Foods” means foods purchased by the USDA. USDA Food Programs support domestic nutrition programs and American agricultural producers through purchases of domestic agricultural products for use in schools and institutions. The USDA Foods Program is administered by the North Carolina Department of Agriculture & Consumer Services (“NCDA&CS”). USDA Foods (including both entitlement and bonus foods) shall be credited to the recipient agency for the value of all USDA Foods received for use in the SFA’s meal service in a school year or fiscal year.

79. “USDA Food Processing” refers to items produced on processing contracts from USDA Foods. The FSMC shall credit and/or report to the SFA for the value of actual USDA Foods and for USDA Foods contained in processed end products that the FSMC obtains from a processor on behalf of the SFA, in accordance with SFA’s agreement with the NCDA&CS, and in accordance with 7 CFR § 250.51(a) regardless of the method of procurement. The specific method of crediting utilized, which may be by invoice reductions,

refunds, or another means applied to the monthly invoice (in accordance with 7 CFR § 250.51(b)), shall be indicated in the proposal/contract.

80. “USDA Foods are Considered Received” when the foods arrive at the school site or SFA or FSMC storage facility in either raw form or in processed end products.

81. “Vendor” means a merchandiser of complete meals, meal components, or raw materials.

B. Scope and Purpose

1. This Contract will be in effect for a period of one year commencing on July 1, 2024, and terminating on June 30, 2025 and may be renewed for four (4) additional terms of one year each upon mutual agreement between SFA and FSMC. All renewals shall be documented by a written Contract Amendment, which is subject to the prior review and approval of the NCDPI.

2. During the term of this Contract, FSMC shall operate SFA’s School Nutrition Program in conformance with SFA’s agreement with NCDPI and the State Board of Education (“SBE”), in conformance with SFA’s agreement with the NCDA&CS to receive/utilize USDA Foods, and in compliance with the provisions set forth in 7 CFR §210.16. FSMC shall comply with all applicable Federal, State, and local laws, rules and regulations, policies, instructions of NCDPI, NCDA&CS and USDA, and any additions or amendments thereto, including USDA Regulations at 7 CFR Parts 210, 220, 245, and 250, 2 CFR Part 200, and 2 CFR Part 180, as adopted and modified by USDA Regulation 2 CFR Part 417, 7 CFR Part 215 (SMP), if applicable, 7 CFR Part 225 (SFSP), if applicable, 2 CFR Parts 200.38, 74, & 101(b)(1), and the other laws described in the “Certification and Schedule of Applicable Laws,” which is contained in Section III.R. and is fully incorporated herein by reference.

3. FSMC, as an independent contractor, shall have the exclusive right to operate the Programs checked below at the sites specified by SFA in the Schedule of School Nutrition Program Sites and Services Provided, which is attached as “Exhibit B” and is fully incorporated herein. *[Note: Check only the Program(s) the SFA operates. If SFA anticipates operating any other Program(s) in the foreseeable future, SFA should check the box marked “Other” and identify the Program(s) and years in which SFA reasonably foresees it may operate the Program(s). The Program(s) listed here should match those listed in Exhibit B.]* If a program is added later (i.e., a breakfast program) which is beyond the scope or original intent of this RFP/Contract, or if a material change is made to the RFP/Contract, the appropriate procurement procedures must be followed. A key factor in determining whether a change is material is whether other bidders knowing of the change would have bid differently. *[Note: To assist in determining whether a change is material, the SFA should consult its counsel or contact NCDPI.]* SFA shall confer with NCDPI prior to making any material change in the Terms and Conditions of the base solicitation or RFP. *[Note: SFA must always check the FFVP box if that program is within the scope of this RFP.]* SFA operates the following Program(s):

- National School Lunch Program (NSLP)
- School Breakfast Program (SBP)
- After-School Snack Program (ASSP—NSLP)
- Summer Food Service Program (SFSP)
- *A la Carte Meals* and Beverage Program
- Adult Meals

4. FSMC shall operate the School Nutrition Program(s) listed above in accordance with all applicable Federal regulations, including those regulations pertinent to the governance of the Federally assisted School Nutrition Programs as codified in the US Code of Federal Regulations, USDA-issued Final Rules, and all USDA-issued policy memoranda, guidance, and FNS instructions that govern the nonprofit School Nutrition Programs.

5. FSMC shall be an independent contractor and not an employee of SFA. Employees of FSMC shall not be employees of SFA.

6. FSMC's operation of SFA's School Nutrition Program(s) shall include performance by FSMC of all the services, which are described in this RFP/Contract, for the benefit of SFA's students, faculty, and staff and in accordance with the menu requirements and menu style described in the RFP/Contract.

7. FSMC shall implement an accurate Point of Service/Sale (POS/S) meal count system using the counting system currently in use by the SFA as stated in its application to participate in the School Nutrition Programs, and as approved by NCDPI for the program(s) indication in Section III.B.3 *supra*, as required under USDA regulations. Such meal counting system must eliminate the potential for overt identification of free and reduced-price eligible students pursuant to USDA Regulation 7 CFR § 245.8.

8. FSMC shall maintain all records necessary, in accordance with applicable regulations, for SFA, NCDPI, NCDA&CS and USDA to complete required monitoring activities, and shall further make said records available to SFA, NCDPI, NCDA&CS and USDA upon request for the purpose of auditing, examination, and review in accordance with 7 CFR § 210.16(c)(1).

9. FSMC shall provide additional special food and nutrition services such as banquets, parties, and refreshments for meetings as requested by SFA. A firm fixed-price per meal service type shall be negotiated and confirmed, in writing, with the third party requesting the special food and nutrition service. The third party or requesting organization will be billed for the actual cost of food, supplies, labor, and FSMC's overhead and administrative expenses, if applicable, for providing such service. USDA Foods shall not be used for these special functions unless SFA's students will be the primary beneficiaries. (*See* SP99-4,

Reimbursement for Snacks in After School Care Programs.) **These special services shall be invoiced by the FSMC to the third party requesting such services and shall be invoiced separately from this Contract.**

10. FSMC shall cooperate with SFA in promoting nutrition education, a healthy school environment, adequate time for students to consume their meals, and SFA's local wellness policies while coordinating SFA's School Nutrition Program with classroom instruction.

11. FSMC shall comply with all SFA building rules and regulations.

12. FSMC shall obtain and post all licenses and permits that are required under Federal, State, and/or local law.

13. SFA shall assign an employee of the SFA who has a minimum of three (3) years of experience managing/supervising School Nutrition Programs to serve as the "Contract Manager" to monitor compliance with the Contract on behalf of the local BOE. The Contract Manager shall complete and provide a progress report monthly to the Superintendent and/or BOE. The report shall include at a minimum:

- a. The efficiency and effectiveness of the contractor's performance as required in the Contract;
- b. The general quality of professional personnel utilized in the performance of the Contract;
- c. Conformance with the cost provisions of the Contract;
- d. Progress towards achievement of the local BOE's goals and objectives; and,
- d. Other evaluation information pertinent to the Contract and related factors, such as the accuracy of records to support the claim for Federal reimbursement, the utilization of USDA Foods, significant personnel matters, significant program operation matters, and any other indication pertinent to the successful implementation of the terms and conditions of the Contract and the SFA's ability to comply with the laws, regulations, and policies that govern the Federally assisted School Nutrition Programs and the agreement with NCDPI.

14. SFA shall retain signature authority for the application/annual agreement renewal with NCDPI, Free and Reduced-Price Policy Statement, the monthly claim for reimbursement for the program(s) indicated in Section III.B.3 *supra*, and the agreement with NCDA&CS to receive and utilize USDA Foods. (*See 7 CFR §§ 210.9(a)-(b), 210.16(a)(5).*) and other authoritative documents that assign responsibility and authority.

15. SFA shall be responsible for the development and distribution of the parent letter and Household Application for Free and Reduced-Price Meals and/or Free Milk. SFA shall designate the determining official who shall be responsible for overseeing the processing of household applications and for making determinations of student eligibility for free or reduced-price meals and free milk, if applicable. SFA shall also designate the hearing official to establish and use a fair hearing procedure under which a household may appeal a decision pertaining to the issuance of meal benefits for eligible students. SFA shall be responsible for conducting any hearings related to determinations regarding eligibility for free or reduced-price meals and free milk, if applicable. SFA shall be responsible for all documentation required to Directly Certify students,

including the identification of students who are deemed categorically eligible, for free meals at school. SFA shall be responsible for the Direct Certification of students eligible for free meals based on data provided by State and/or local agencies of jurisdiction; use of Direct Certification data and categorical eligibility data shall be managed by the SFA and shall be governed by Federal regulations and Memoranda of Agreement established by NCDPI. SFA shall be responsible for the collection and determination of data required to prepare the Identified Student Percentage (“ISP”), as needed, for the SFA’s participation in the Community Eligibility Provision (“CEP”).

16. SFA shall be responsible for the establishment and maintenance of the student eligibility roster and shall limit the use of any data for authorized purposes only. FSMC shall provide meals to students in a manner that prevents overt identification of students and prevents “meal shaming.” (*See* 7 CFR §§ 210.7(c), 210.9(b)(18), and 245.6(e).)

17. SFA shall be legally responsible for its School Nutrition Program(s) and shall routinely manage the School Nutrition Program to ensure that both parties (FSMC and SFA) comply with all Terms and Conditions of this Contract. SFA, through its designated Contract Manager, shall be responsible for monitoring the operations of the FSMC through periodic on-site documented visits to ensure all operations are in conformance with the Terms and Conditions of this Contract and are in compliance with USDA program regulations. (*See* 7 CFR §§ 210.16(a)(2)-(3).)

18. SFA shall be responsible for conducting the required on-site reviews of School Nutrition Program operations, for documenting the outcome of the reviews, including required corrective actions, and for ensuring all documented corrective actions are remedied in a timely manner. SFA shall be responsible for maintaining the documentation of on-site reviews for the Federal records-retention period and throughout the term of this Contract.

19. SFA shall at all times retain control of the non-profit School Nutrition Program Account and overall financial responsibility for its School Nutrition Program. These responsibilities cannot be delegated to the FSMC.

20. 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. However, non-pricing programs do not need to establish a selling price for reimbursable meals/milk.

21. SFA shall be responsible for ensuring the resolution of program reviews and audit findings. FSMC shall fully cooperate with SFA in resolving review and audit issues, and FSMC shall indemnify SFA for any fiscal action, claims, losses or damages, fault, fraud, required repayment or restoration of funds, including reasonable attorney’s fees incurred in defending or resolving such issues that result from FSMC’s operational, intentional, or negligent acts.

22. If there is more than one School Nutrition Program location or site, SFA or FSMC, on under the supervision of the SFA, shall conduct an on-site review of the counting and claiming system and other

aspects of program operation at each SFA Location/Site no later than February 1st of each year. If FSMC conducts the on-site review, FSMC will promptly report any findings to SFA. SFA shall at all times retain responsibility for the meal counting and claiming system. (7 CFR § 210.8(a)(1).)

23. Payments on any claim shall not preclude SFA from making a claim for adjustment on any item found not to have been in accordance with the provisions of this RFP and Contract.

24. SFA may request of FSMC additional food-related programs; however, 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 School Nutrition Programs. Any change to the scope of services to be provided by FSMC that is beyond the scope or original intent of this RFP and Contract, or that would constitute a material change to the RFP/Contract must be competitively re-procured. A key factor in determining materiality is whether other potential contractors knowing of the change would have issued their proposal differently. (USDA Guidance Memo SP2-2010, October 9, 2009.)

25. Any changes to the Terms and/or Conditions of this Contract, which are required by Federal or State law or rule, or changes to Federal or State laws or rules, are automatically incorporated herein, effective as of the date specified in such law or rule.

26. Any additional payments to the SFA or any foundations or organizations associated with the SFA that are unrelated to School Nutrition Program(s), such as money or rebates for school improvements and student scholarships, or other non-School Nutrition-related provisions, are not allowable under the Terms and Conditions of this Contract.

27. In the event the RFP requires FSMC to provide management services for SFA's additional School Nutrition Program(s), the parties shall operate the Program according to applicable Federal, State, and local regulations, policies and guidance.

28. In the event FSMC provides management services for the Fresh Fruit and Vegetable Program (FFVP) at any of SFA's School Nutrition Locations/Sites, SFA and FSMC shall operate the FFVP in accordance with the requirements of Section 19 of the National School Lunch Act, all applicable regulations and policies, and the FFVP Handbook for Schools, as well as USDA guidance issued via memorandum and the Administrative Review Manual (ARM). SFA and FSMC further agree that not more than 10% of the total funds awarded to the school and/or schools for operation of the FFVP may be used for administrative expenses.

C. School Nutrition Operations

1. SFA shall retain control of the quality, extent, and general nature of the School Nutrition Program Operations, and the prices to be charged for meals.

2. FSMC shall serve meals on such days, at such times, and according to the menu types and regional food and meal service preferences as requested by SFA.

3. FSMC shall offer free, reduced-price, and full-price reimbursable meals to all eligible children participating in SFA's School Nutrition Program(s) indicated in Section III.B.3 *supra*.

4. In order for FSMC to offer *a la carte* meal or snack service, FSMC shall offer free, reduced-price, and paid reimbursable meals to all eligible children.

5. FSMC shall provide meals that meet the meal pattern and dietary standards required by the USDA and as specified in 7 CFR §§ 210.10-11.

6. FSMC shall promote maximum participation in the School Nutrition Program(s) operated by SFA.

7. FSMC shall provide the specified types of meal service in the schools/sites listed in Exhibit B.

8. FSMC shall sell on the premises only those foods and beverages authorized by SFA and only at the times and places designated by SFA, and only those foods and beverages that meet School Nutrition Program requirements and/or requirements of SFA's Local Wellness Policy.

9. FSMC shall make substitutions in the food components of the meal pattern for students with disabilities when their disability restricts their diet as stated in the students' Individual Educational Plans ("IEPs") or 504 Plans and when the need for the substitution is certified by an appropriately licensed medical practitioner. Substitutions for disability reasons must be made on a case-by-case basis only when supported by a written statement of the need for substitutions that includes recommended alternate foods, unless otherwise exempted by FNS. Such Statement must be signed by an appropriately licensed medical practitioner (*See 7 CFR § 210.10(g)(1); SP59-2016, Policy Memorandum on Modifications to Accommodate Disabilities in the School Meal Programs.*) FSMC may make substitution for those non-disabled students who are unable to consume regular breakfast, lunch or snack because of medical or other special dietary needs. Substitutions for students without disabilities who cannot consume the regular breakfast, lunch or snacks because of non-disabling medical or other special dietary needs must be made on a case-by-case basis only when supported by a statement from a licensed medical authority except in the case of fluid milk substitutions. (*See 7 CFR § 210.10(g)(2).*) There shall be no additional charge to the student for such substitutions. (*See SP40-2017, Accommodating Children with Disabilities in the School Meal Programs.*)

10. FSMC shall make substitutions for fluid milk for non-disabled students who cannot consume fluid milk due to medical or special dietary needs. Substitutions shall be made when a medical authority or student's parent or legal guardian submits a written request for a fluid milk substitute identifying the medical or other special dietary need that restricts the student's diet. Notification of fluid milk substitutions shall remain in effect until the medical authority or the student's parent or legal guardian revokes such request in writing, or SFA changes its substitution policy for non-disabled students. Fluid milk substitutes shall provide nutrients as required by Federal and State regulations. There shall be no additional charge to the student for such substitutions. (*See 7 CFR §§ 210.10(g) & 220.8.*)

11. FSMC shall maintain a record of special diets planned and served daily; such record shall be maintained as required to document compliance with provisions for students with disabilities and special dietary requirements.

D. Meal Requirements and Dietary Standards

1. SFA shall establish, and FSMC shall participate in, an advisory board composed of parents, teachers, students, and other stakeholders to assist in menu planning as required by 7 CFR § 210.16(a)(8). This advisory board should conduct periodic documented meetings.

2. FSMC shall serve meals that follow the twenty-one (21) day menu cycles that meet the food specifications contained in Minimum Food Specifications, which is attached to this Contract as “Exhibit J” and fully incorporated herein, and that meet School Nutrition Program requirements. Additionally, SFA and FSMC shall agree to detailed meal specifications for each meal included in the twenty-one (21) day cycle menus in Menu Cycles, which is attached to this Contract as “Exhibit C” and fully incorporated herein. At a minimum, such meal specifications shall include: (i) a recipe for each menu item that includes the total yield, portion size, ingredients, and all USDA-required nutrient information; (ii) the identity of all branded items that may be used in the meal; and, (iii) whenever possible, the grade, style, and condition of each food item and other information that indicates the acceptable level of quality for each food item. FSMC shall provide a detailed recipe for each Meal Specification identified for the 7th day in the NSLP menu cycle. SFA shall maintain a hard copy record of these recipes.

3. FSMC shall follow: (i) the twenty-one (21) day menu cycle and meal specifications developed by SFA for the NSLP; (ii) the twenty-one (21) day menu cycle and meal specifications developed by SFA for the SBP; (iii) the twenty-one (21) day menu cycle and meal specifications developed by SFA for the ASSP; and, (iv) the twenty-one (21) day menu cycle and meal specifications developed by SFA for the SFSP.

4. FSMC shall serve *a la carte* items that follow the twenty-one (21) day menu cycle contained in Exhibit C and that meet all Federal and State School Nutrition Program requirements. Additionally, SFA and FSMC shall agree to the *a la carte* specifications for each *a la carte* item included in the twenty-one (21) day cycle menu. At a minimum, such specifications shall include: (i) a recipe for each menu item that includes the total yield, portion size, ingredients, and all USDA required nutrient information; (ii) the identity of all branded items that may be used in the meal; and, (iii) whenever possible, the grade, style, and condition of each food item and other information that indicates the acceptable level of quality for each food item. FSMC shall provide a detailed recipe for each Meal Specification identified for the 9th day in the *a la carte* menu cycle. SFA shall maintain a hard copy record of these recipes.

5. FSMC shall not change or vary the menus after the first menu cycle for the NSLP, SBP, ASSP, Summer Nutrition Program(s), or the *a la carte* items without prior written approval of SFA. SFA shall notify NCDPI and NCDA&CS of prior written approval of FSMC’s request to amend the twenty-one (21) day cycle

menu by sending a copy of the approval to both agencies. SFA shall approve the menus no later than two weeks prior to service in accordance with 7 CFR §§ 210.10, 210.11, and 210.16. Any changes or variances requested by FSMC for substitutions to SFA menu of lower quality food items shall be justified and documented in writing by FSMC and SFA's response shall also be documented in writing; SFA shall also send written notification to NCDPI and NCDA&CS of its response related to menu substitutions of lower quality food items. FSMC shall maintain documentation for substitutions and justification of lower quality food items for the records retention period that is applicable to food production records and shall make such documentation available to SFA, NCDPI, NCDA&CS, and USDA for review upon request in accordance with 7 CFR §§ 210.16(c)(1) and 210.23.

6. FSMC shall submit a Fresh Fruit & Vegetable Program cycle menu based on the information contained in the 2004 resource, *Fruits and Vegetables Galore: Helping Kids Eat More* (available from the FNS website, and as described in current guidance from USDA and NCDPI).

7. FSMC shall comply with SFA's Local Wellness Policy.

E. Procurement

1. SFA shall adhere to the procurement standards specified in 7 CFR §210.21 when contracting with FSMC.

2. FSMC shall buy the beginning inventory, exclusive of commodities, from SFA, and shall serve as a purchasing agent on behalf of the SFA and shall assist the SFA in the purchase all foods and food storage, preparation, and service supplies within the fixed-price per meal equivalent.

3. All purchases made by and/or on behalf of SFA shall be used solely in the SFA's nonprofit School Nutrition program. All food and related supplies purchased by and/or on behalf of SFA shall be kept separate and apart and the title thereto shall remain with SFA at all times. All such purchases shall be made in the name of the SFA. SFA and FSMC fully acknowledge and agree with the contractual requirements of 2 CFR Part 200 and 7 CFR § 250.53.

4. FSMC shall follow the procurement regulations as described in 2 CFR §§ 200.317–26. FSMC and SFA shall establish a written Procurement Plan that describes SFA's procedures for the procurement of food, supplies, services, and equipment in accordance with Federal, State, and local laws. The Procurement Plan shall be approved by the local BOE and shall include a system that enables each school site to confirm that the food, supplies, services, and equipment procured are identical to those actually received. FSMC shall not serve as the vendor unless SFA's Contract Manager approves an appropriate process to be followed that assure free and open competition in accordance with 2 CFR § 200.219(b). SFA shall issue its approval for FSMC to serve as the vendor in writing.

5. If FSMC is acting as a purchasing agent on behalf of SFA and purchasing foods or other goods or services for SFA under this Contract, then SFA shall ensure FSMC complies with all applicable competitive purchasing and open competition requirements for such purchases as set forth in 2 CFR Part 200, including, but not limited to, 2 CFR §§ 200.317-26. In addition, SFA shall ensure FSMC complies with all applicable Federal, State and local laws, rules and regulations, policies, instructions of NCDPI, NCDA&CS and USDA, and any additions or amendments thereto, including, but not limited to, USDA Regulations located at: 7 CFR Parts 210, 220, 245, 250; 2 CFR Part 200; 2 CFR Part 180, as adopted and modified by USDA Regulation 2 CFR Part 417; 7 CFR Part 215 (SMP), if applicable; 7 CFR Part 225 (SFSP), if applicable; 7 CFR Part 226 (CACFP), if applicable in administering the At-Risk After School Meal Program of the CACFP; and, 2 CFR §§ 200.38, 200.74 and 200.101(b)(1).

6. Whether the SFA conducts its own procurement or whether FSMC procures products on behalf of SFA, FSMC shall not require any additional liability coverage, regardless of dollar value, beyond that which SFA would require under procurements not involving FSMC.

7. FSMC shall not assign or subcontract in whole or in part its rights or obligations under any contract resulting from its response to this RFP without the prior written consent of SFA. Any attempted assignment without said consent is void and of no effect.

8. SFA and FSMC fully acknowledge and agree that to the extent possible, unless preempted by Federal law or regulations, SFA or FSMC, if box “b” has been checked in paragraph 2 above, will use best efforts to purchase agricultural products produced, processed, or grown in North Carolina if the cost and quality are equal. In accordance with 7 CFR § 210.21(g)(1), SFA may apply geographic preference when procuring unprocessed or minimally processed locally grown or locally raised agricultural products. When exercising the option to utilize geographic preference to procure such products, SFA shall have the discretion to determine the local area to which the geographic preference option will be applied. SFA shall instruct FSMC of the geographic preference option to be used throughout the duration of the Contract. The availability of North Carolina products is expected by SFA. The Farm-to-School relationship should be enhanced, encouraged, and supported by any vendor supplying goods to SFA. Therefore, SFA shall give preference to items that can be delivered within 24 hours of harvest or production. FSMC is encouraged to regularly submit a list of locally grown, processed, and manufactured items available, based on the SFA’s geographic preference option, for consideration. Products shall be clearly labeled. FSMC shall make a good faith effort to purchase local products first when available. In keeping with SFA’s mission of establishing local agricultural partnerships, SFA advocates that a fair price be paid to farmers to help make this important segment of local economy sustainable.

9. FSMC shall document and track all FFVP expenses, if applicable, separately and shall make this documentation easily accessible for review by SFA, NCDPI or NCDA&CS.

F. USDA Foods

1. FSMC shall comply with all provisions established in 7 CFR § 250.53 pertaining to fixed-price contracts. SFA shall retain the title to all USDA Foods at all times, and at no time shall the ownership of USDA Foods be transferred to FSMC or any other entity. No value or benefit of SFA's USDA Foods shall accrue in any manner to FSMC. SFA and FSMC shall ensure all USDA Foods received by SFA and made available to FSMC accrue only to the benefit of SFA's School Nutrition Program and are fully utilized therein. (*See* 7 CFR § 210.16(a)(6).)

2. FSMC shall credit and report to SFA the value of all USDA Foods received for use in SFA's meal service in the school year, whether the USDA Foods are used that year or not, including both entitlement and bonus foods, and include the value of USDA Foods contained in processed end products, in accordance with the contingencies in 7 CFR 250.51(a). (*See* 7 CFR § 250.53(a)(1).)

3. SFA shall ensure FSMC reports and credits the value of all USDA Foods received in the school year in which it was received and used in SFA's meal service in accordance with 7 CFR §250.51(a). FSMC shall record and report the value of USDA Foods used in crediting, or the actual values assigned, using the format and requirements prescribed by NCDA&CS. FSMC shall use the method and frequency of reporting the value of USDA Foods as determined by NCDA&CS. FSMC shall report the value of USDA Foods usage monthly and annually to SFA using Forms FDD 2009 *USDA Foods Delivered to Recipient Agencies* and FDD 2009P *USDA Foods Diverted to Processors*. SFA shall reconcile these reports (FDD 2009 and FDD 2009P) with the *USDA Foods Allocated and Received Report* (209 Report) as located on NCDA&CS's website. SFA shall be responsible for reconciling any discrepancies among the reports. These reports shall be kept on file with SFA. These reports and forms shall be available to NCDA&CS and NCDPI upon request. At the end of each fiscal quarter, SFA shall send copies of these reports to the NCDA&CS at the following address:

North Carolina Department of Agriculture and Consumer Services
Food Distribution Division
P.O. Box 659
Butner, NC 27509-0659

4. FSMC shall be responsible for activities related to USDA Foods in accordance with 7 CFR § 250.50(d), and shall assure that such activities are performed in accordance with the applicable requirements in 7 CFR Part 250. (*See* 7 CFR § 250.53(a)(4).) Records shall be maintained in an accurate and complete manner with respect to the receipt, use/disposition, storage, and inventory of USDA Foods and shall be monitored routinely to ensure FSMC's system of inventory management does not result in SFA being charged for USDA Foods or for the storage of USDA Foods.

5. FSMC shall accept and use all donated ground beef and ground pork products, and all processed end products, without substitution, in SFA's School Nutrition Program. Upon termination of this

Contract, or if this Contract is not extended or renewed, FSMC must return all unused donated ground beef, pork, and processed end products to SFA. (*See* 7 CFR §§ 250.51(d), 250.52(c), 250.53(a)(5).)

6. FSMC shall accept and use all USDA Foods in SFA's School Nutrition Program. FSMC shall use all USDA Foods issued to SFA, or shall use commercially purchased foods of the same or better generic quality and identity, of U.S. origin, and of equal or better quality than the USDA Foods, if approved in writing by SFA. (*See* 7 CFR §§ 250.50(a), 250.53(a)(6).)

7. The procurement of processed end products on behalf of SFA, as applicable, shall comply with Subpart C of 7 CFR Part 250 and with the provisions of NCDA&CS's Food Distribution Division's processing agreements, and will ensure reporting and/or crediting of SFA's School Nutrition Program for the value of USDA Foods contained in such end products at the processing agreement value. (*See* 7 CFR § 250.53(a)(7).)

8. FSMC is prohibited from entering into any processing contracts with a processor utilizing USDA Foods on behalf of SFA; only SFA may enter into USDA Foods processing contracts. *See* 7 CFR § 250.53(a)(8). If FSMC acts as an intermediary between the processor and SFA in receiving processed products from the processor, then FSMC shall report and/or be accountable to SFA for the value of processed products upon receipt; specifically, FSMC shall account for and report the commodity value in end products procured by SFA in accordance with the processing requirements in Subpart C of 7 CFR Part 250. FSMC shall report to SFA the value of USDA Foods contained in the end products at the processing agreement value. All refunds received from processors shall be credited to SFA's School Nutrition Program account in accordance with 7 CFR § 250.51(a).

9. FSMC shall comply with 7 CFR §§ 250.14(b) and 250.52 regarding responsibilities of FSMC in the receipt, safe and efficient storage, control, use reporting, crediting, and, where instructed by SFA, the disposal of USDA Foods. (*See* 7 CFR § 250.53(a)(9).)

10. FSMC shall allow SFA and/or any State or Federal representative or auditor, including the Comptroller General and USDA, or their duly authorized representatives, to perform onsite reviews of FSMC's School Nutrition operation, including the review of records, to ensure compliance with requirements for the management and use of USDA Foods. (*See* 7 CFR § 250.53(a)(10).)

11. FSMC shall maintain all records to document its compliance with any and all requirements relating to USDA Foods, in accordance with 7 CFR § 250.54(b). (*See* 7 CFR § 250.53(a)(11).)

12. FSMC fully acknowledges and agrees that the renewal of this Contract is contingent upon the fulfillment of all Contract provisions relating to USDA Foods. (*See* 7 CFR § 250.53(a)(12).)

13. SFA shall assure the maximum amount of USDA Foods are received and utilized by FSMC in accordance with 7 CFR § 210.9(b)(15).

14. SFA shall consult with FSMC on the selection of USDA Foods; however, SFA shall make the final determination as to the selection and/or acceptance of USDA Foods.

15. FSMC shall conduct all activities relating to USDA Foods for which it is responsible in accordance with 7 CFR Parts 210, 220, 225, 226, and 250, as applicable. FSMC shall respond to USDA Food orders, as necessary, to take full advantage of the USDA Foods offered, and shall ensure all USDA Foods received for use in the School Nutrition Program, for the period specified in the Agreement between the NCDA&CS and the SFA, are used within the period specified by SFA. FSMC shall reimburse SFA for the amount of any unused USDA Foods for which the value of any USDA Foods should revert to NCDA&CS.

16. FSMC shall comply with all terms and conditions included in SFA's agreement(s) with NCDA&CS. FSMC shall be solely liable and responsible for the proper use of USDA Foods. Any negligence on the part of FSMC that results in any loss of, improper use of, or damage to USDA Foods shall be the sole responsibility of FSMC. SFA shall obtain restitution from FSMC for any claim of improper use, loss, or damage to USDA Foods.

17. Failure by FSMC to maintain the records required under this Contract shall be considered prima facie evidence of its improper use, distribution, loss, or inadequate control of USDA Foods.

18. FSMC shall have all records available to substantiate that the full value of all USDA Foods is used solely (i) for the benefit of the School Nutrition Program in accordance with 7 CFR § 250.53(a)(11) and (ii) for the purposes of the program as prescribed in 7 CFR § 250.54(d).

19. FSMC shall provide adequate documentation to SFA to ensure USDA Foods, including entitlement and bonus USDA Foods and USDA Foods contained in processed end products, received for use in the SFA's School Nutrition Program from the period of July 1 – June 30 annually for the term of the Contract, were specifically used in the SFA's School Nutrition Program during this period.

20. FSMC shall use all USDA Foods and processed end products in inventory carried over from any previous contract in the SFA's School Nutrition Program, unless the SFA determines and documents, in writing, to the NCDPI and NCDA&CS that such foods are out-of-condition, in which case they must not be used. The SFA must ensure the FSMC reports and credits the value of any additional USDA Foods not accounted for in the fixed-price per meal contract and any USDA Foods that are not made available until later in the school year. SFA must also ensure the method, and timing, of crediting does not cause its cash resources to exceed the limits established in 7 CFR § 210.9(b)(2).

21. SFA shall maintain responsibility for procuring processing agreements, private storage facilities, inventory management, or any other aspect of financial management relating to USDA Foods. (*See* 7 CFR §250.15.)

22. Upon termination of this Contract, FSMC shall, at SFA's discretion, return unused USDA Foods to SFA. The value of other unused USDA Foods shall be based on the market value of all USDA Foods received for use in SFA's School Nutrition Program. Market value shall be the allocated value NCDA&CS provided to SFA in accordance with 7 CFR § 250.51(c).

23. FSMC shall comply, as applicable, with 7 CFR §§ 250.51-52 concerning payment of processing fees or submittal of refund requests to a processor on behalf of SFA, or remittance of refunds for the value of USDA Foods in processed end products to SFA, in accordance with the requirements in 7 CFR Part 250 Subpart C.

24. FSMC is prohibited from cashing out USDA Foods and providing a credit to SFA for USDA Foods in accordance with the efficient use requirements described in 7 CFR § 250.13.

25. FSMC fully acknowledges and agrees that the proposed fixed-price per meal rate must be calculated as if no USDA Foods were available.

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

1. SFA shall make available, without any cost or charge to FSMC, area(s) of the premises in which FSMC shall render its services under this Contract. Facilities shall be equipped and ready-to-operate, together with any utilities, such as electricity, fuel, and refrigeration, that may be reasonably required for FSMC to efficiently perform its obligations under this Contract. SFA shall have full access to these facilities at all times and for any reason, including, but not limited to, inspection and audit.

2. SFA shall furnish building maintenance services for the School Nutrition facilities and shall promptly make all required equipment repairs and replacements. FSMC shall utilize the SFA-owned equipment and facilities in good and proper manner and shall maintain the same in a state of cleanliness to assure strict compliance with all Federal, State and local laws, regulations and ordinances, including State and local health regulations and requirements. FSMC shall immediately notify SFA when equipment or SFA-owned work tools require repair or replacement. FSMC shall neither initiate nor approve equipment repair or replacement without SFA's prior written authorization.

3. SFA shall maintain records of equipment depreciation and shall record such depreciation in the appropriate reporting system.

4. At the commencement, termination, or expiration of this Contract, FSMC and SFA shall conduct a physical inventory of all non-expendable supplies and capital equipment owned by SFA, including, but not limited to, silverware, trays, chinaware, glassware and kitchen utensils, and all furniture, fixtures, and dining room equipment utilized in SFA's School Nutrition Program. FSMC and SFA shall mutually agree on the usability of such supplies and equipment and, at the expiration or termination of this Contract, FSMC shall surrender to SFA all non-expendable supplies and capital equipment in the condition in which it was received except for ordinary wear and tear, damage by the elements and except to the extent that said premises or equipment may have been lost or damaged by vandalism, fire, flood or other acts of God, or theft by persons other than employees of FSMC except through the negligence of FSMC or its employees, or for any other reason beyond the control of FSMC.

5. At the commencement, termination, or expiration of this Contract, FSMC and SFA shall jointly undertake a beginning and closing inventory of all food and supplies. USDA Foods shall also be inventoried by a separate inventory. FSMC and SFA shall determine whether any portion of the beginning inventory is unsuitable for SFA's continued use. Such inventory, when completed, shall automatically become a part of this Contract by incorporation. FSMC shall be responsible for accounting for any difference between the beginning inventory and the ending inventory; FSMC shall compensate SFA for any shortfall in inventory not arising from: (1) normal wear and tear or (2) theft, fire, or other casualty loss beyond the control of FSMC and not arising from the negligence of FSMC or its agents. The value of the inventories, except for USDA Foods inventories, shall be determined by invoice cost. The value of USDA Foods inventories shall be the market value, which is the value in USDA's Electronic Commodity Ordering System (ECOS) at the time the USDA Foods are received by SFA and as validated by NCDA&CS.

6. FSMC shall not invest in equipment to operate the School Nutrition Program without SFA's prior written authorization. If SFA provides written approval for FSMC to purchase equipment, all equipment purchased pursuant to this provision will be titled to, and remain the property of, SFA. This equipment shall be depreciated on a straight-line basis over five (5) years; such depreciation shall be included in SFA's total operating cost during the term of this Contract and any subsequent renewal terms between the parties until the equipment is fully depreciated.

7. Should the contract expire prior to the full depreciation of the equipment purchased pursuant to the preceding paragraph, SFA may either retain the property and continue to make payments in accordance with the depreciation schedule or return the property to FSMC in full release of the unpaid balance. FSMC shall provide SFA with actual receipts for the purchase of all equipment subject to depreciation and a depreciation table shall be added to this Contract containing the actual price of all equipment at purchase and the date of purchase. SFA shall reimburse FSMC for the undepreciated portion of the equipment within sixty (60) days of the expiration of the contract.

8. All equipment and/or fixtures added by FSMC during the term of this Contract shall become the property of SFA. Fixtures for the purpose of this Contract include goods that have become so related to the real property that an interest in them arises under the law; examples include, but are not limited to, counters, islands, ovens, sinks, service stations, and other items that cannot be removed without damaging the surfaces to which they are mounted.

9. SFA shall retain the right to rent any LEA-owned School Nutrition facility to outside groups during non-school hours or weekends, provided such rental does not interfere with the normal School Nutrition operation. When such activities are agreed upon by FSMC and SFA, SFA may require a member(s) of the School Nutrition Program staff, designated by the on-site School Nutrition Manager, to be on the premises during such activities. FSMC will be reimbursed for related personnel costs from the LEA's general fund; such expenses associated with the rental shall not be incurred by the School Nutrition Program account.

10. FSMC shall maintain the inventory of smallwares, kitchen utensils, and other operating items necessary for the School Nutrition operation and at the inventory level specified by SFA.

11. Except for when damages result from FSMC employees using less than reasonable care, SFA shall replace expendable equipment and replace, repair, and maintain nonexpendable equipment.

12. FSMC shall maintain adequate storage procedures, inventory, and control of USDA Foods in conformance with SFA's agreements with NCDPI and NCDA&CS.

13. SFA shall have full access to the School Nutrition facilities at all times.

14. SFA shall provide FSMC with keys for all School Nutrition areas secured with locks.

15. SFA shall provide FSMC with local telephone service.

16. SFA shall furnish and install any equipment and/or make any structural changes to the facilities needed to comply with Federal, State, or local laws, ordinances, rules, and regulations.

17. SFA shall be responsible for any losses, including USDA Foods, which may arise due to equipment malfunction or loss of electrical power not within the control of FSMC.

18. FSMC shall not remove any food preparation and serving equipment owned by SFA from SFA's premises without SFA's prior written approval.

19. SFA shall neither be responsible nor liable for any loss or damage to equipment owned by FSMC.

20. FSMC shall notify SFA of any equipment belonging to FSMC on SFA premises within ten (10) days of its placement on SFA premises.

21. FSMC shall comply with all SFA building rules and regulations.

22. FSMC shall not use SFA's facilities to produce food, meals or services for third parties without SFA's prior written approval. If such usage is mutually acceptable, there shall be a signed agreement stipulating the fees to be paid by FSMC to SFA for such facility usage. Such usage shall not result in a cost to the School Nutrition Program account.

23. The preparation of food off SFA premises for service to students in the SFA shall be prohibited without SFA's prior written approval.

24. Upon termination or expiration of this Contract, SFA shall conduct a physical inventory of all equipment, food, and supplies owned by SFA.

25. Upon termination or expiration of this Contract, FSMC shall surrender to SFA all of SFA's equipment and furnishings used in SFA's School Nutrition Program in good repair and condition, reasonable wear and tear excepted.

I. Health Certifications/Food Safety/HACCP

1. FSMC shall comply with all State and local environmental health and other laws that in any way affect school meal preparation and/or service in accordance with 7 CFR § 210.16(a)(7).
2. FSMC shall abide by the Food Code as prescribed in 15A NCAC 18A .2600.
3. FSMC shall maintain, in the storage, preparation, distribution, and service of food, proper sanitation and health standards in conformance with all applicable State and local laws and regulations and shall comply with the food safety inspection requirements of 7 CFR § 210.13(b). (*See* 7 CFR § 210.9(b)(14).)
4. FSMC shall maintain all State and local health certifications for any facility outside the school in which it proposes to prepare meals and shall maintain this health certification for the duration of this Contract. (*See* 7 CFR § 210.16(c)(2).)
5. FSMC shall obtain and post all licenses and permits as required by Federal, State, and/or local laws.
6. FSMC shall comply with all local sanitation requirements applicable to the preparation of food.
7. SFA shall maintain applicable health certification and ensure that FSMC complies with all applicable State and local regulations pertaining to sanitation, preparing, serving, or transporting meals at a SFA facility. (*See* 7 CFR § 210.16(a)(7).)
8. SFA shall provide sanitary toilet and hand washing facilities for the employees of FSMC.
9. SFA shall be responsible for cleaning all kitchen floors, hoods, grease filters, and any other commercial and non-commercial equipment used to receive, store, prepare, transport, serve, refrigerate, and/or otherwise hold food and beverages.
10. SFA shall be responsible for the maintenance and expense of insect and pest control in all food storage, preparation, production, and service areas. SFA shall provide extermination services as needed. FSMC shall notify SFA of any problems in these areas.
11. SFA shall be responsible for removal of trash and garbage resulting from the School Nutrition program in compliance with SFA's schedule for waste disposal.
11. SFA shall be responsible for all regular School Nutrition-related building maintenance, with the exception of normal clean up.
12. SFA shall clean the kitchen and dining room areas. (*See* Designation of Program Expenses.)
13. SFA shall provide regular cleaning service for dining area walls, windows, floors, light fixtures, draperies and blinds, and periodic waxing and buffing of floors.
14. SFA shall place garbage and trash in containers in designated areas as specified by SFA.
15. SFA shall operate and care for all equipment and School Nutrition areas in a clean, safe, and healthy condition in accordance with the standards acceptable to SFA and shall comply with all applicable

laws, ordinances, regulations, and rules of Federal, State, and local authorities, including laws related to recycling.

16. SFA shall routinely clean grease traps, ductwork, plenum chambers, and roof fans.

17. Any cleaning or sanitation that is not specifically assigned herein shall be the responsibility of SFA.

18. FSMC shall adhere to the food safety program implemented by SFA for all preparation and service of school meals, using a Hazard Analysis and Critical Control Point (“HACCP”) system as required by 42 U.S.C. § 1758(h)(5)(A) and shall maintain the HACCP documentation as required by NCDPI.

19. FSMC shall ensure at least two (2) health inspections annually to be conducted by the local Department of Health at every site involved in school meal preparation and/or service as required by 42 U.S.C. § 1758(h)(1).

J. Employees

1. FSMC shall provide and pay a staff of qualified management and operational personnel assigned to duty on SFA’s premises for efficient, effective, and compliant operation of the School Nutrition Programs.

2. SFA may, at its sole discretion, retain all School Nutrition Program employees currently on SFA’s payroll and shall pay the salaries, benefits, and all other personnel costs currently applicable to these positions (e.g., FICA, taxes, etc.) for these individuals. SFA employees assigned to the School Nutrition Program will be entitled to all salary and benefits applicable to LEA employees in their respective positions as determined by SFA. SFA shall retain present SFA employees without a reduction in salary, hours worked, or benefits.

3. If such is mutually agreeable by both parties at the time of contract negotiation, as indicated in this RFP, SFA and FSMC may negotiate a transition of SFA’s School Nutrition employees to FSMC’s payroll.

4. SFA shall have final approval over the hiring of a full-time, on-site School Nutrition Director who will be deemed the highest ranking FSMC employee assigned to SFA’s School Nutrition Program; this position shall be designated as the SFA’s “School Nutrition Director” unless this title is preferred for the designated Contract Manager. The School Nutrition Director shall oversee the School Nutrition Program operation, except for staff performing non-delegable duties and the Contract Manager. The School Nutrition Director shall meet the minimum hiring standards prescribed by the USDA for SFAs with 1730 students. The School Nutrition Director must have completed at least eight (8) hours of food safety training within five (5) years prior to the start date or complete eight (8) hours of food safety training within thirty (30) calendar days of their start date. Salary, benefits, and tax allocations for the School Nutrition Director shall be provided in the RFP/Contract as part of the firm, fixed-price per meal equivalent. SFA shall furnish an office for the

School Nutrition Director, for staff who perform non-delegable duties, and for the Contract Manager. SFA shall provide standard office equipment required to support the efficient and effective operation of the School Nutrition Program(s) for these positions. FSMC shall provide standard office equipment for other FSMC staff housed within the LEA.

5. FSMC shall comply with all wage and hour employment requirements of Federal and State laws. Supervisory activities include employee and labor relations, personnel development, hiring, disciplinary action, and termination of FSMC management staff. FSMC shall also be responsible for the hiring and termination of non-management staff who are employees of FSMC.

6. Employees hired by FSMC to replace SFA employees, if such should ever be mutually agreeable and beneficial to both parties, will be subject to such salary and benefits as FSMC provides. SFA shall employ sufficient staff to complete all non-delegable duties and manage the FSMC Contract as an expense for the SFA's School Nutrition Program budget.

7. All FSMC personnel shall be subject to policies and procedures of the local BOE, which are available [HERE](#).

8. FSMC shall provide Workers' Compensation coverage for its employees as required by North Carolina law. Wages, expenses, and insurance payments for FSMC employees shall not be billed to SFA.

9. FSMC shall maintain its own personnel and benefits policies for its employees, subject to review by SFA.

10. FSMC shall provide SFA with a schedule of employees, positions, assigned locations, salaries, and hours to be worked as part of its response to the RFP. FSMC shall provide specific locations and assignments to SFA at least two (2) calendar weeks prior to the commencement of operation, along with assurance that all FSMC employees have undergone required screenings as described in paragraphs 15, 16, and 17 of Section III.J *infra*.

11. SFA and FSMC shall be solely responsible for all personnel actions and all claims arising out of injuries occurring on the job concerning employees on each entity's respective payroll. Each party shall withhold all applicable Federal, State, and local employment taxes and payroll insurance with respect to its employees, insurance premiums, contributions to benefit and deferred compensation plans, licensing fees, and worker's compensation costs and shall file all required documents and forms.

12. FSMC shall assign to duty on SFA's premises only employees acceptable to SFA. Staffing patterns shall be mutually agreed upon.

13. FSMC shall conduct, at its own expense, criminal background checks on all of its employees who will work at any SFA site. These criminal background checks shall include at least the ten (10) prior years. If the potential employee has lived outside North Carolina during the prior ten (10) years, the criminal record check shall extend beyond North Carolina to include each county/State in which the person has lived

during the past ten (10) years. All criminal record checks shall be provided to SFA upon request. The criminal background checks shall also include an annual check of the sex offender registries listed in Attachment W.

14. Jessica Lunsford Act. FSMC fully acknowledges and agrees that N.C. Gen. Stat. § 14-208.18 prohibits anyone required to register as a sex offender under Article 27A of Chapter 14 of the General Statutes from knowingly being on the premises of any school. This prohibition applies to persons required to register under Article 27A who have committed any offense in Article 7A of Chapter 14 or any offense where the victim of the offense was under the age of sixteen (16) years at the time of the offense. FSMC shall conduct criminal background checks on each of its employees who, pursuant to this Contract, engage in any services on SFA property or at SFA events. FSMC shall provide documentation that criminal background checks were conducted in accordance with this Contract on each of its employees prior to hiring, and shall refuse employment on the SFA's premises or within 300 feet of SFA's premises to any person convicted of a felony or any other crime, whether misdemeanor or felony, that indicates the person poses a threat to the physical safety of students, school personnel or others, or demonstrated that he/she does not have the integrity or honesty to fulfill the duties of the position. If FSMC intends to hire a candidate with a criminal record, other than a minor traffic violation, it shall notify the SFA Executive Director in writing prior to hiring and shall provide the basis for hiring the candidate. In addition to the criminal background check, FSMC shall conduct an annual check of the State Sex Offender and Public Protection Registration Program, the State Sexually Violent Predator Registration Program, and the National Sex Offender Registry. FSMC shall not assign any employee or agency to provide services pursuant to this Contract if: (1) said worker appears on any of the listed registries; (2) said worker has been convicted of a felony; (3) said worker has been convicted of any crime, whether misdemeanor or felony, involving sex, violence, or drugs; or (4) said worker has engaged in any crime or conduct indicating that he/she may pose a threat to the safety or well-being of students or school personnel. FSMC shall submit an annual certification to SFA that such registry/sex offender checks have been completed. SFA reserves the right to prohibit any individual employee of FSMC from providing services on SFA property or at SFA events if SFA determines, in its sole discretion, that such employee poses a threat to the safety or well-being of students, school personnel, or others.

15. FSMC shall require all of its employees assigned to duty on the SFA's premises to submit to periodic health examinations as required by law and shall submit satisfactory evidence of compliance with all health regulations to SFA's Human Resources Department upon request. The cost of such examinations shall be incurred solely by FSMC. FSMC shall test its employees for drugs and alcohol. FSMC shall not place in any SFA-owned site any employee of FSMC who has tested positive for controlled substances in violation of the LEA's Drug-Free Workplace policy or any employee that has been convicted of, pled guilty or no contest to, or received a prayer for judgment continued for any felony or misdemeanor involving drugs, crimes of moral turpitude, or violent behavior of any kind.

16. FSMC shall remove any employee who violates health requirements or conducts himself/herself in a manner that is detrimental to the health, safety, or well-being of the students, staff or others provided such removal is not in violation of any Federal, State, or local employment laws. In the event of the removal or suspension of any such employee, FSMC shall immediately restructure the School Nutrition staff to avoid disruption of service.

17. All SFA and FSMC personnel assigned to the School Nutrition Program in each school shall be instructed in the use of all emergency valves, switches, and fire and safety devices in the food preparation, service, storage and dining areas. All SFA and FSMC personnel shall also be instructed in emergency evacuation and “shelter-in-place” requirements of the LEA.

18. SFA may request, in writing, the removal of a FSMC employee who conducts himself/herself in a manner that appears detrimental to the physical, mental, or moral well-being of students or school personnel. In the event of an employee removal, FSMC shall immediately restructure staff to avoid a disruption of services. SFA shall not be liable for the personnel actions of FSMC.

19. FSMC shall not blacklist, require a letter of relinquishment, or publish or cause to be published or blacklisted any employee of FSMC or SFA discharged from or voluntarily leaving the service of FSMC or SFA with the intent of and for the purpose of preventing such employee from engaging in or securing similar or other employment from any other corporation, company, or individual.

20. FSMC shall be responsible for supervising and training personnel, including SFA-employed staff. FSMC shall ensure all School Nutrition Program employees adhere to the professional standards and continuing education training requirements required by Federal regulations, codified at 7 CFR § 210.30, throughout the initial term and all renewals of this Contract. SFAs that operate the National School Lunch Program, or the School Breakfast Program (7 CFR Part 220), must establish and implement professional standards for school nutrition program Directors, Managers, and full-time, part-time and temporary staff, as defined in 7 CFR § 210.2. Both SFA and FSMC shall establish and implement the foregoing standards and requirements under this Contract. FSMC shall compensate employees for time spent in required in-service workshops, professional development workshops, and/or monthly meetings. A minimum of ten (10) hours of professional development shall be provided and documented for all School Nutrition employees on an annual basis.

21. FSMC shall comply with the provisions of the Fair Labor Standards Act, provisions of the Occupational Safety and Health Act, and the standards and regulations issued thereafter. FSMC shall comply with applicable Federal, State, and local laws and regulations pertaining to wages, hours, and conditions of employment. FSMC shall employ a temporary substitute School Nutrition Program employee when an employee is absent to manage the flow of work and prevent violations of existing labor laws.

22. FSMC shall be responsible for providing affordable health care coverage to all of its full-time employees providing services to SFA. The definitions of “affordable coverage” and “full-time employee” are

governed by the Affordable Care Act and accompanying IRS and Treasury Department regulations. In addition, FSMC shall comply with all provisions of any other applicable Federal, State or local law or regulation with respect to its personnel providing services under this Contract.

23. FSMC affirms it is an equal opportunity and affirmative action employer and shall comply with all applicable Federal, State, and local laws.

K. Records and Reporting

1. FSMC shall maintain such records, supported by invoices, receipts, or other evidence, as SFA will need to support its Claim for Reimbursement and meet monthly reporting responsibilities and shall submit monthly operating Statements in a format approved by SFA no later than the 2nd day following the month in which services were rendered. Participation records, including the number of meals served by program and by eligibility category, shall be submitted no later than the 2nd day following the month in which services were rendered. SFA shall perform edit checks on student participation records provided by FSMC prior to the preparation and submission of the claim for reimbursement. Such records shall be made available to SFA, upon request, and shall be retained in accordance with 7 CFR § 210.23(c).

2. FSMC shall maintain revenue records broken down by source, type, and category of all meal service, including, but not limited to, *a la carte* sales, reduced-price and full price meals, snacks and vending machine sales, catered events, and other revenue programs, as required by the NSLP, SBP, ASSP, and SFSP. All records maintained to credit and/or report the value of USDA Foods and processed end products received from, or on behalf of, the SFA for use in the SFA's School Nutrition Program shall be properly maintained; further documentation that the FSMC has accurately and regularly credited the SFA for the value of all USDA Foods received in the fiscal year and the value of USDA Foods contained in processed end products shall also be maintained.

3. FSMC shall report financial performance, participation rates (by meal category), and meals per labor hour to SFA on a monthly basis and shall submit quarterly written reports to the BOE indicating FSMC's progress towards the BOE's goals for the School Nutrition Program.

4. FSMC shall provide SFA a monthly report, by school, showing the ending inventory of purchased food, supplies, and USDA Foods. FSMC shall provide SFA with year-end inventories of purchased food, supplies, and USDA Foods.

5. SFA and FSMC shall provide any and all documents necessary for the independent auditor to conduct SFA's single audit and to determine FSMC's guaranty.

6. SFA shall ensure all revenues from the sale of nonprogram foods accrues to the nonprofit School Nutrition Program account and that revenues available to support the production of reimbursable school meals do not subsidize the sale of nonprogram foods. FSMC shall annually provide SFA information on food

costs and revenues; such information shall include food costs for reimbursable meals, food costs for nonprogram foods, revenues from nonprogram foods, and total revenues. Nonprogram foods may include but are not necessarily limited to: *a la carte* items, catered foods, vending machine foods, student stores operated, and any other sales generated through the nonprofit School Nutrition Program account not already described herein. The foregoing information shall be utilized to determine compliance with revenue from nonprogram foods found at 7 CFR § 210.14(f). FSMC shall also provide to SFA, upon request, historical information on the type and value of nonprogram foods and meals to be offered, such as catered foods. FSMC shall be responsible for providing SFA with, and calculating, nonprogram food costs and program revenues for determining compliance with 7 CFR § 210.14(f), as provided in SP 20-2016, *Nonprofit School Nutrition Account Nonprogram Food Revenue Requirements* (Dec. 23, 2015).

7. FSMC shall make its records, books, electronic and written records, and other documents pertaining to this Contract available, upon demand, in an easily accessible manner for a period of three (3) years after the final claim for reimbursement for the fiscal year to which they pertain. FSMC shall retain records for a longer period if any audit or Administrative Review has not been resolved. If any audit or Administrative Review findings regarding FSMC's records have not been resolved within this three (3) year record retention period, the records shall be retained beyond the three (3) year period for as long as required for the resolution of the issues raised by the audit or Administrative Review. (*See* 7 CFR § 210.9(b)(17); 2 CFR § 200.333.)

8. FSMC shall not remove Federally required records from SFA premises upon the expiration or termination of this Contract.

9. Authorized representatives of SFA, NCDPI, NCDA&CS, USDA, and USDA's Office of the Inspector General ("OIG") shall have the right to conduct on-site audits and/or Administrative or other reviews of the School Nutrition Program.

10. SFA shall monitor the School Nutrition Program to ensure conformance with SFA's Agreement with NCDPI and NCDA&CS. SFA shall also monitor FSMC's compliance through periodic on-site reviews and shall complete written reports detailing the findings of each review and any required corrective actions. SFA shall submit quarterly reports to NCDPI describing the performance of FSMC in the prior quarter and shall submit an annual report assessing the performance of FSMC in the prior year. The annual report shall be due to NCDPI on April 1st each year.

L. Financial Terms and FSMC Guaranty

1. All income accruing as a result of payments by children and adults, Federal and State reimbursements, local payments, and all other income from sources such as donations, special functions, catering, *a la carte* sales, vending, concessions, contract meals, grants, and loans shall be credited to the

nonprofit School Nutrition account and used on a daily basis to support the operation and/or improvement of the School Nutrition Program and for no other program or purpose. Any profit or guaranteed return shall remain in SFA’s nonprofit School Nutrition account.

2. All facilities, equipment, and services to be provided by SFA shall be provided and maintained at SFA’s expense. Please see Exhibit K, Designation of Program Responsibilities and Expenses, regarding other specific responsibilities of the SFA and FSMC.

3. SFA shall determine the computation of meal equivalency. The meal equivalency shall remain fixed for the term of this Contract and for all subsequent renewals or other modifications.

Computation of Meal Equivalents

*Estimates are projected. See Exhibit D School Nutrition Program Budget for more information.

Meal Type	Estimated Meal Counts	Meal Equivalents
Reimbursable Student Lunches	700 daily x 180 = 126,000	126,000
Paid Adult Lunches	20 daily x 180 =3,600	3,600
Reimbursable Student Breakfasts	250 daily x 180 = 45,000	22,500
Paid Adult Breakfasts	20 daily x 180 =3,600	1,800
After School Snacks	40 daily x 180 = 7,200	1,800
<i>A la Carte</i> Sales	\$54,000	\$11,367
Total Meal Equivalents	185,400	155,700

4. Payment to FSMC shall be made on the basis of a Firm, Fixed-price per Meal Equivalent plus a Management Fee per Meal Equivalent. FSMC shall guarantee to SFA a Fixed, Firm-Price per Meal Equivalent plus a Management Fee per Meal Equivalent. Both fees shall constitute the Maximum Allowable Cost of this Contract. No other expenses shall be paid or reimbursed to FSMC from the nonprofit School Nutrition account, except the quarterly adjustment for transition of positions from SFA to FSMC should such transition occur. Failure to adhere to this condition may result in termination of the Contract.

5. The following shall be included in the Management Fee and shall not be charged directly to SFA in any other manner:

- a. Personnel and Labor Relations Services and District and/or Site Visits;
- b. Legal Department Services;
- c. Purchasing and Quality Control;
- d. Technical Research;
- e. Cost Incurred in Hiring and Relocating FSMC Management Personnel;
- f. Dietetic Services (Administrative and Nutritional);
- g. Test Kitchens;

- h. Accounting and Accounting Procedures;
- i. Tax Administration;
- j. Technical Supervision;
- k. Supervisory Personnel and Regular Inspections or Audit Personnel;
- l. Teaching and Training Programs;
- m. General Regional Support;
- n. General National Headquarters Support;
- o. Design Services;
- p. Menu Development;
- q. Uniforms for all School Nutrition Staff (if a specific Uniform is required by FSMC);
- r. Information Technology and Support;
- s. Payroll Documentation and Administrative Cost;
- t. Sanitation;
- u. Personnel Advice;
- v. Travel and per diem pertaining to this Contract; and
- w. Any and all travel for FSMC staff.

6. All program expenses not otherwise defined in this Contract shall be assumed to be covered by FSMC under the Management Fee per Meal Equivalent.

7. FSMC shall promptly repay SFA the full amount of any fiscal action against SFA as a result of an audit, Administrative Review, or for any other reason, including, but not limited to, the amount of the denied reimbursement (e.g., food loss, over-claim, disallowed costs, or other fiscal actions or questioned cost attributable to FSMC's action hereunder). Such repayment shall be subtracted from the funds due to FSMC. In the event the reimbursement is denied after the termination or expiration of this Contract, FSMC shall refund the amount of the denied reimbursement to SFA's nonprofit School Nutrition account. FSMC shall not be responsible for an over-claim as a result of the SFA's determining official's incorrect classification of a household application for meal benefits.

8. FSMC shall maintain all records as required by SFA to support SFA's claim for reimbursement and the monthly invoice based on the agreed-upon firm, fixed-price and management fee per meal equivalent.

9. The method by which FSMC shall use and account for USDA Foods shall be in accordance with Section III.G *supra*.

10. FSMC may petition SFA for an increase in the fixed-price per meal equivalent and/or the management fee per meal equivalent annually at the time of the Contract renewal should the decision to renew be mutually agreeable to both parties. The amount of the increase requested by FSMC shall reflect the costs of goods and services over time as reflected in the Consumer Price Index (as referenced paragraph 12 of Section

III.L *infra*). The increase may also reflect FSMC's actual additional costs associated with the transition of SFA positions to FSMC positions for the prior year. All personnel transition costs shall be documented as prescribed in paragraph 5 of Section III.J.

11. Upon consideration of documentation substantiating FSMC's actual personnel costs over the prior year as a result of transitioning positions from SFA to FSMC, FSMC may propose an increase in the fixed-price per meal and fixed management fee per meal equivalent to reflect increased personnel costs as a direct result of position transition. Such a proposed increase shall be reflected in the annual Maximum Allowable Cost of the Contract should the Contract be renewed in subsequent years based upon the mutual agreement of both parties. At the time of each renewal, and no later than April 1st annually, FSMC shall propose a modified fixed-price fee per meal equivalent and fixed-price fee (per meal equivalent) for management services (based upon meal equivalency) to cover FSMC costs for transitioned personnel/positions. FSMC's proposed fixed-price shall be documented by including the names of all transitioned personnel/position, their job titles, general duties, respective duty stations, hours of employment, effective start date, all payroll costs incurred by FSMC for each position, and any other data required to substantiate the proposed fixed-price proposal for the coming year. SFA shall approve all documentation prior to submitting the fixed-price structure for the Contract renewal. The proposed adjusted fixed-priced structure and the documentation to support the adjusted fixed-prices shall be approved by NCDPI prior to execution of any Contract amendment or renewal.

12. FSMC may also petition SFA for an increase in the fixed-price per meal equivalent and the fixed price for management services (based upon meal equivalency) to reflect the costs in the marketplace. Such petition may not exceed the index to which the Federal reimbursement rates are tied, which is the *Food Away from Home Series of the Consumer Price Index or CPI*. The Yearly Percentage Change in the Consumer Price Index for All Urban Consumers, as published by the U.S. Department of Labor, Bureau of Labor Statistics, Food Eaten Away from Home South-Size Class A (population of metropolitan area over 1.5 million) ("CPI") shall be the basis of the increase. Such increases shall be effective on a prospective basis on each anniversary date of this Contract and will be allowed only if approved in advance by SFA. This proposed increase shall be based on the previously agreed-upon fixed-prices (per meal and management fee) from the base solicitation and initial Contract and any subsequent amended Contracts. The CPI-based increase shall not be applied to FSMC's costs for transitioning positions from SFA to FSMC. Price increases shall be managed in the following order:

- (1) Consideration of the fixed-price per meal equivalent and fixed-price for management services which is based on meal equivalency in the original FSMC proposal and initial Contract or previous Contract amendment if request is considered for Contract renewals/amendments in the second, third, fourth, or fifth years of this Contract.

- (2) Application of the approved CPI percentage to the prior year fixed-price per meal and fixed-price for management services (based on documentation provided by FSMC, written approval of SFA, and final approval by NCDPI).
- (3) Application of FSMC's costs (as approved by SFA) for transitioning positions from SFA to FSMC based on FSMC's documented costs in the prior year.
- (4) Conversion of FSMC's prior year costs of transitioning SFA positions to FSMC positions into an annual fixed-price per meal equivalent and fixed-price for management services (based on meal equivalency).

13. Before price increases may be considered, FSMC shall document, through cost or price analysis, the need for such a price increase. SFA shall forward all documentation, including FSMC's justification for a proposed price increase, to NCDPI for prior review and approval by April 1st of each year. No price increase shall be implemented under this Contract under any circumstances without NCDPI's prior written approval. Any price increase without NCDPI's prior written approval shall be grounds for denial of the use of Federal School Nutrition funds to support the cost of this Contract.

14. For the purpose of payment to FSMC, actual meal counts of meals served to students shall be used; provided, however, that no payment shall be made to FSMC for meals that: (i) are spoiled or unwholesome at the time of delivery; (ii) do not meet detailed specifications as developed by SFA for each food component in the meal pattern; or (iii) do not otherwise meet the requirements of this Contract. (*See 7 CFR § 210.16(c)(3).*)

15. For purposes of payment to FSMC as compensation for personnel costs as SFA transitions positions to FSMC, FSMC may submit an invoice on a quarterly basis which includes the names of all transitioned personnel/position, their job titles, general duties, respective duty stations, hours of employment, effective start date, and all payroll costs incurred by FSMC.

16. Payment Terms/Method: FSMC shall invoice SFA within 7 days after the end of each Accounting Period for the total amount of SFA's financial obligation for that Accounting Period.

17. SFA shall make payment within 14 days; however, no interest, finance charges, or penalties that may accrue under this Contract shall be paid from SFA's nonprofit School Nutrition Program account.

18. FSMC shall be responsible for paying all applicable taxes and fees, including, but not limited to, excise tax, State and local income tax, payroll, and withholding taxes for FSMC employees. FSMC shall indemnify and hold SFA harmless for any and all claims arising from payment of such taxes and fees.

19. FSMC guarantees revenues in excess of all expenditures to SFA in the amount stated in this Contract. Revenues in excess of expenditures shall be determined by the annual independent audit conducted by the audit firm contracted by SFA. Revenues in excess of expenditures shall be based on all revenues and expenses set forth in the School Nutrition Program Budget as reflected in Exhibit D and any other necessary revenues or expenses generated or incurred in the operation of SFA's nonprofit School Nutrition Program. In

the event of an overall net loss in the program, FSMC shall reimburse SFA in the amount of the loss plus any guaranty offered by FSMC. In the event the actual revenues in excess of expenditures is below the guaranteed amount, FSMC shall pay to SFA any shortfall within thirty (30) days of SFA's determination of the shortfall amount. Within thirty (30) days, FSMC shall pay SFA a guaranty payment as provided for in the Schedule of Terms for FSMC Guaranty. In the event FSMC pays a guaranty, FSMC shall not recover the guaranty from SFA in subsequent Contract year(s).

20. All information related to SFA's nonprofit School Nutrition Program budget, revenues, and expenses included in this RFP/Contract is provided for FSMC's planning purposes. The SFA budget revenues and expenses are subject to change for future years based on market and student participation conditions.

21. SFA shall not be responsible for any expenditure incurred by FSMC prior to both execution of this Contract and approval by NCDPI.

22. SFA and FSMC fully acknowledge and agree that this Contract is neither a "cost-plus-a-percentage-of-income" nor a "cost-plus-a-percentage-of-cost" contract as required under USDA Regulations 7 CFR § 210.16(c) and 2 CFR § 200.323(d).

23. SFA desires a self-sustaining operation using the resources available to the program. FSMC will provide a plan to reach solvency over a multi-year period of time in the event that the contract would be renewed. SFA requests a break-even guarantee based upon federal revenue made available in the program. The SFA would like to discuss details of a guarantee through the best and final offer phase of the selection process.

M. Trade Secrets and Proprietary Information

1. During the term of this Contract, FSMC may grant to SFA a nonexclusive right to access certain proprietary materials of FSMC, including menus, recipes, signage, School Nutrition Program surveys and studies, management guidelines and procedures, operating manuals, software (both owned by and licensed by FSMC), and similar compilations regularly used in FSMC business operations and known as "Trade Secrets." SFA shall not disclose any of FSMC's Trade Secrets or other confidential information, directly or indirectly, during or after the term of this Contract. SFA shall not photocopy or otherwise duplicate any such material without FSMC's prior written consent. All Trade Secrets and other confidential information shall remain the exclusive property of FSMC and shall be returned to FSMC immediately upon termination or expiration of this Contract. SFA shall not use any confusingly similar names, marks, systems, insignia, symbols, procedures, and methods. Without limiting the foregoing and except for software provided by SFA, SFA specifically agrees all software associated with the operation of the School Nutrition Program(s), including without limitation, menu systems, food production systems, accounting systems and other software, are owned by or licensed to FSMC and not SFA. Furthermore, SFA's access or use of such software shall not

create any right, title, interest, or copyright in such software and SFA shall not retain such software beyond the termination or expiration of this Contract. In the event of any breach of this provision, FSMC shall be entitled to equitable relief, including an injunction or specific performance, in addition to all other remedies otherwise available. SFA's obligations under this section are subject to SFA's obligations under North Carolina Public Records Law and any other law that may require SFA to use, reproduce, or disclose FSMC confidential information. This provision shall survive termination or expiration of this Contract.

2. Any discovery, invention, software, or program, the development of which is paid for by SFA, shall be the property of SFA and to which NCDPI and USDA shall have unrestricted rights.

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

N. Optional Requirements

Information Technology (IT) Systems

All Fees associated with the IT System Must Be Part of the Maximum Allowable Cost of the Contract. FSMC shall provide, install, deploy into production, operate, and maintain and support an information technology system (the "IT System"), which may include, but not be limited to, hardware, owned and licensed software, and systems support, necessary for the operation of SFA's School Nutrition Programs. SFA shall provide, at its expense, a suitable environment, including such heat, air conditioning, phone, and utility service as may be reasonably required for the installation, implementation, operation, and maintenance of the IT System.

O. Insurance

[SFA must evaluate and determine acceptable insurance limits for this section.]

1. FSMC shall maintain the insurance coverage set forth below for each accident provided by insurance companies authorized to do business in the State of North Carolina. FSMC shall submit a Certificate of Insurance evidencing FSMC's insurance coverage for these amounts at the time of the award.

2. SFA requires the following insurance coverage for the Term of this Contract:

a. Comprehensive General Liability – includes coverage for:

- 1) Premises – Operations
- 2) Products – Completed Operations
- 3) Contractual Insurance
- 4) Broad Form Property Damage
- 5) Independent Contractors
- 6) Personal Injury

\$ 1,000,000 Combined Single Limit.

b. Automobile Liability: \$1,000,000 Combined Single Limit

c. Workers' Compensation: Statutory; Employer's Liability: Statutory

d. Excess Umbrella Liability: \$1,000,000 Combined Single Limit

3. FSMC shall name SFA as an additional insured on its General Liability, Automobile, and Excess Umbrella policies. FSMC shall provide a waiver of subrogation in favor of SFA for General Liability, Automobile, Workers' Compensation, and Excess Umbrella.

4. FSMC shall notify SFA of the cancellation of any insurance policy at least thirty (30) days before such cancellation is to take effect; the Certificate(s) of Insurance shall also provide for such notice to SFA.

3. Notwithstanding any other provision of this Contract, SFA shall not be liable to FSMC for any indemnity.

P. Term and Termination

1. This Contract shall be for a period of one (1) year, with options to renew the Contract for four (4) additional terms of one (1) year each upon mutual agreement of the parties.

2. If SFA shall at any time make a reasonable decision that adequate funding from Federal, State, or local sources will not be available to enable SFA to carry out its financial obligation to FSMC, then SFA shall have the option to terminate this Contract by giving ten (10) days written notice to FSMC. SFA may, at its sole discretion, make arrangements to obtain sufficient substitute performance arrangements as SFA deems necessary and desirable. In the event of a change in funding from Federal and/or State sources, SFA reserves the right to cancel the contract in total or modify the terms and conditions as necessary.

3. Termination without Cause. Either party may terminate this Contract without cause upon ninety (90) days written notice to the other party.

4. Termination with Cause. Either party may cancel this Contract for cause with 60-day written notification to the other party. (*See* 7 CFR § 210.16(d).) Conditions for cause are as follows:

- (i) Nonperformance by FSMC on any term or covenant of this Contract, after being provided written notice thereof, and failure to cure such nonperformance within a reasonable time thereafter, but in no event greater than thirty (30) days;
- (ii) Any act of insolvency by FSMC, or the filing by or against FMSC of any petition under any bankruptcy, reorganization, insolvency or moratorium law, or any law for the relief or relating to debtors, or the appointment of any receiver or trustee to take possession of the property of FSMC;
- (iii) The subjection of any of FSMC's property to any levy, seizure, assignment, application, or sale for or by any creditor or governmental agency;
- (iv) FSMC's purported unauthorized transfer or assignment of the Contract or any rights or obligations under this Contract;
- (v) FSMC or any agent or employee of FSMC's act of omission in the course of performance hereunder that endangers or threatens the health, safety, or well-being of others;
- (vi) FSMC or any agent or employee of FSMC's commission of an act of fraud, defalcation, or dishonesty or any act, omission of series of acts, or omissions which singly or together constitute an unfair or deceptive trade practice;
- (vii) Any discovery that any material representation by FSMC is materially misleading or inaccurate; or
- (viii) FSMC ceases to do business.

5. Notwithstanding the termination provisions listed above, SFA may immediately terminate this Contract with written notice to FSMC for breach/neglect as determined by SFA when considering such items as:

- (i) failure to maintain and enforce required standards of sanitation;
- (ii) failure to maintain proper insurance coverage as required by this Contract;
- (iii) failure to provide required periodic information or statements;
- (iv) failure to maintain quality of service at a level satisfactory to SFA; or
- (v) failure to comply with Federal and/or State regulations.

6. In the event of FSMC's nonperformance under this Contract and/or the violation or breach of the terms of this Contract, SFA shall have the right to pursue any and all available remedies against FSMC, including, but not limited to, administrative, contractual, and legal remedies. (*See* 7 CFR 210.16(b)(2).) SFA shall have the right to seek all sanctions and penalties as may be appropriate. The remedies set forth herein shall be deemed cumulative and not exclusive and may be exercised successively or concurrently, in addition to any other remedies.

7. In the event of FSMC default, FSMC shall pay SFA the amount of any performance or surety bond within thirty (30) days of default.

8. SFA agrees that if upon being advised in writing by FSMC that its services are not returning a fair and equitable profit, SFA and FSMC fail to effectuate new financial arrangements within thirty (30) days rectifying the problem, FSMC may terminate this Contract by giving sixty (60) days written notice to SFA.

9. Upon termination or expiration of this Contract, FSMC shall, as soon as feasible, vacate all parts of the premise(s) occupied by FSMC and return the premise(s) to SFA, together with all the equipment and supplies furnished by SFA, in the same condition as when originally made available to FSMC, excepting reasonable wear and tear and fire and other casualty loss. In the event of expiration or termination, it shall be incumbent upon FSMC to cooperate fully with the replacement FSMC or SFA if SFA is returning to a self-operated School Nutrition Program and with NCDPI to ensure a smooth and timely transition to the replacement FSMC or SFA.

10. Notwithstanding any other provision of this Contract, both parties shall be deemed to have retained any and all administrative, contractual, and legal rights and remedies to which they may be entitled.

11. In no event shall SFA be liable under this Contract or in connection with any other claim, whether in contract, tort, or otherwise arising out of or relating to this Contract, in excess of amounts due under this Contract. In no event shall SFA be liable for any incidental, consequential, or other damages of any kind, including any lost profits, lost savings, lost opportunities, lost data or any other special indirect, exemplary damages.

12. SFA is the responsible authority, without recourse to USDA, NCDPI, or NCDA&CS, for the settlement and satisfaction of all contractual and administrative issues arising in any way from this Contract. Such authority includes, but is not limited to, source evaluation, protests, disputes, claims, or other matters of a contractual nature.

13. In the event either party is prevented from performing its obligations under this Contract by war, acts of public enemies, fire, flood, or acts of God (individually each known as a "Force Majeure Event"), that party shall be excused from performance for the period of such Force Majeure Event exists. In the event of a Force Majeure which interferes with the operation of SFA's School Nutrition Program, upon request, FSMC will take all reasonable steps to continue to provide service in accordance with the terms and conditions of the Contract in a manner that is satisfactory to SFA. SFA shall not be responsible for any costs incurred by FSMC because of the Force Majeure event unless SFA has requested, in writing, that FSMC incur such costs in connection with any delay or work stoppage caused by the Force Majeure event, and SFA has agreed in writing to incur such additional costs. In the event FSMC is not able to perform, SFA may, in its sole discretion, terminate this Contract and assume control of the facilities, equipment, food, supplies, expendables, etc. necessary for the continued operation of SFA's School Nutrition Program.

Q. Additional Conditions

1. All aspects of the relationship between BOE, LEA, SFA, and FSMC shall be governed by a Standard of Conduct that covers any and all Conflicts of Interest. The Standard of Conduct applies to all employees, officers, and agents within BOE, LEA, SFA, and FSMC. The Standard of Conduct is as follows, as prescribed in 2 CFR § 200.318(c)(1).

All parties – BOE, LEA, SFA, FSMC, and any subcontractor or affiliate – are prohibited from real or apparent conflicts of interest governing the actions of its employees, officers, and agents engaged in the selection, award, and administration of contracts. No employee, officer, or agent may participate in the selection, award, or administration of a contract supported by a Federal award if he or she has a real or apparent conflict of interest. Such a conflict of interest would arise when the employee, officer, or agent, any member of his or her immediate family, his or her partner, or an organization which employs or is about to employ any of the parties indicated herein, has a financial or other interest in or a tangible personal benefit from a firm considered for a contract. The officers, employees, and agents may neither solicit nor accept gratuities, favors, or anything of monetary value from contractors or parties to subcontracts. However, standards may be set for situations in which the financial interest is not substantial or the gift is an unsolicited item of nominal value. The standards of conduct must provide for disciplinary actions to be applied for violations of such standards by officers, employees, or agents of the parties. (2 CFR § 200.318(c)(1).) If a party to the Contract has a parent, affiliate, or subsidiary organization that is not a state, local government, or Indian tribe, the party must also maintain written standards of conduct covering organizational conflicts of interest. Organizational conflicts of interest means that because of relationships with a parent company, affiliate, or subsidiary organization, the party is unable or appears to be unable to be impartial in conducting a procurement action involving a related organization. (2 CFR § 200.318(c)(2).) This includes receiving gifts or other items outside of the scope of the solicitation, such as football signs, vacations, and kitchen equipment. Such gifts or items create a conflict of interest and should not be accepted. If an offeror provides these types of items, the offeror would be considered overly responsive and should be disqualified to be awarded the contract.

2. Governing Law. This Contract shall be governed by and construed in accordance with North Carolina and Federal law.

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

4. Incorporation/Amendments. This Request for Proposal and Contract, which includes the attached Exhibits A – L and FSMC’s proposal documents shown in Attachments A – V (collectively the “Contract Documents”), constitutes the entire agreement between the parties with relation to the transaction contemplated herein, and there have been and are no covenants, agreements, representations, warranties, or restrictions between the parties with regard thereto other than those specifically set forth in this Contract. In the event of a conflict between or among any of the terms of the Contract Documents, such conflicts shall be resolved by referring to the Contract Documents in the following order of priority: (i) SFA’s Request for Proposal and Contract then (ii) FSMC proposal documents and then (iii) any future Contract amendment. No

modification or amendment to this Contract shall become valid unless it is made in writing, signed by the parties, and approved, in writing, by NCDPI. Furthermore, SFA shall alone be responsible, in accordance with good administrative practice and sound business judgment, for the settlement of all contractual and administrative issues arising out of procurements.

5. Oral Interpretations. No oral interpretations of the RFP/Contract requirements shall be binding on the SFA. All changes in the RFP/Contract shall be in writing and shall be issued in the form of an addendum to the RFP not less than ten (10) calendar days prior to proposal opening.

6. FSMC Certification. By entering a response to this RFP/Contract, FSMC certifies the corporation, firm, or person is submitting a proposal/bid for the same materials, supplies, equipment, or services as specified in the RFP. FSMC fully acknowledges and certifies that the proposal is in all respects fair and without collusion or fraud. FSMC fully acknowledges and certifies that it understands that collusive bidding is a violation of Federal law and can result in fines, prison sentences, and civil damage awards.

7. Conflicts of Interest. Conflicts of interest, gratuities and kickbacks, personal incentives, or other inducements are strictly prohibited. Any employee, officer, or agent of LEA, BOE, or SFA, elective or appointive, who shall take, receive, or offer to take or receive, either directly or indirectly, any rebate, percentage of contract, money, or other things of value as an inducement or intended inducement in the procurement of business, or the giving of business, for, to, or from, any person, partnership, firm, or corporation offering, bidding for, or in open market seeking to make sales to SFA shall be deemed guilty of a felony and upon conviction, such person or persons shall be subject to punishment in accordance with State and/or Federal laws.

8. Student Information. FSMC agrees that all student records obtained in the course of providing services to SFA under this contract shall be subject to the confidentiality and disclosure provisions of applicable Federal and State statutes and regulations and SFA policies. FSMC shall ensure that all student records in its possession are kept in a secure location to prevent access by unauthorized individuals. Personally identifiable student information shall only be accessible to employees of FSMC to the extent necessary to furnish the services described in this Contract. FSMC shall ensure no employee is afforded access to confidential student records or information pursuant to this Contract without first being instructed regarding his or her confidentiality and non-disclosure obligations. FSMC shall not forward to any person other than the Contract Manager, any student record, including, but not limited to, any student's identity, without the written consent of the parent and SFA. Upon termination or expiration of this Contract, FSMC shall turn over to SFA all student records still in FSMC's possession. The failure to adhere to the confidentiality and non-disclosure requirements specified herein shall be deemed a material breach of this Contract.

9. Accrual to FSMC. Contracts that permit receipts and/or expenses to accrue to FSMC are prohibited.

10. Indemnity. FSMC shall indemnify and hold SFA harmless from and against any and all losses, liabilities, claims, lawsuits, judgements, and demands whatsoever, including costs of investigation (including reimbursement of reasonable legal fees and all costs) which may arise out of or be caused by any negligent act or omission or intentional wrongdoing of FSMC or its agents, employees, invitees, or contractors, or which may arise out of or be caused by the maintenance, presence, use, installation, or removal of any equipment or other property owned or operated by FSMC or its agents, employees, or contractors. FSMC hereby assumes the risk of the inability to operate as a result of any power failure or other equipment or product failure for any reason whatsoever and agrees to indemnify and hold SFA harmless from all damages and costs of defending any claim or suit for damages of any kind including business interruption and attorneys' fees asserted against SFA by reason of such failure. SFA will not be responsible for any damage to FSMC's property, business, agents, or employees resulting from any electrical power failure, fire, lightning, windstorm, or act of God, or any other damage or loss not caused by the gross negligence or intentional wrongdoing of SFA or its employees. SFA's liability to FSMC in the event of any loss or damage to FSMC's property caused by the negligence of SFA or their employees shall be limited to the cost of repairing or replacing such property, plus any reasonable and necessary costs of removing and installing such property. SFA shall not, in any event, be liable in damages for FSMC's business loss, business interruption, or other consequential damages of whatever kind or nature, regardless of the cause of such damages, and FSMC, and anyone claiming by or through it, expressly waives all claims for such damages. This clause shall survive termination of this Contract. The parties expressly agree that this indemnification clause is an "evidence of indebtedness" for purposes of N.C. Gen. Stat. § 6-21.2.

11. Emergency Closing. SFA shall notify FSMC of any interruption in utility service of which it has knowledge. SFA shall also notify FSMC of any delay in the beginning of the school day or the closing of the school(s) due to snow, hurricanes, or other emergency conditions.

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

To SFA: Glenn Byrum, Executive Director, 13440 Lucia Riverbend Hwy. Mt. Holly, NC 28120 t: (704) 827 8840 ext. 1033 f: (704) 842 3828

To FSMC: Food Service Management Company, 13440 Lucia Riverbend Hwy. Mt. Holly, NC 28120 t: (704) 827 8840 ext. 1033 f: (704) 842 3828

Copy to: Kevin Wiley, Board of Directors Chairperson, 13440 Lucia Riverbend Hwy. Mt. Holly, NC 28120 t: (704) 827 8840 ext. 1033 f: (704) 842 3828

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

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

14. Silence, Absence or Omission. Any silence, absence, or omission from the Contract specifications concerning any point shall be regarded as meaning that only the best commercial practices are to prevail and that only materials (e.g., food, supplies, etc.) and workmanship of a quality that would normally be specified by SFA are to be used.

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

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

17. Applicable Policies. FSMC acknowledges that the Mountain Island Charter School, Inc. BOE has adopted policies governing conduct on LEA/SFA property and shall abide by any and all relevant LEA policies while on LEA property. FSMC acknowledges that it has received copies of and will abide by the following Mountain Island Charter School, Inc. BOE policies: MICS Finance Policy, MICS Staff Handbook, MICS Parent/Student Handbook

18. Unannounced Reviews. Authorized representatives of the LEA, SFA, BOE, NCDPI, NCDA&CS, and USDA shall have the right to conduct unannounced, on-site administrative and other reviews of the School Nutrition Program, including the inspection of all records and supporting documentation associated with the Contract.

19. NCDPI Review. This Contract is not effective until it is approved in writing by NCDPI.

20. Nothing herein is intended or shall be construed to confer upon or to give to any person or entity other than the parties hereto and their successors or permitted assigns any rights or remedies under this Agreement.

21. This Contract is made under and shall be governed and construed in accordance with the laws of the State of North Carolina. The place of this Contract, its suits and forum shall be North Carolina, where

all matters, whether sounding in contract or tort relating to its validity, construction, interpretation, and enforcement shall be determined.

R. Certification and Schedule of Applicable Laws

1. SFA shall ensure that NCDPI has reviewed and approved the contract terms and that it has incorporated all NCDPI required changes into the contract or amendment before any contract or amendment is executed. Any changes made by SFA to this prototype contract or any NCDPI approved contract term must be approved in writing by NCDPI before the contract is executed. When requested, SFA must submit all procurement documents, including responses submitted by potential contractors, to NCDPI by the due date established by NCDPI.

2. FSMC shall comply with the mandatory standards and policies relating to energy efficiency that are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (P.L. 94-163, 89 Stat. 871).

3. FSMC shall comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (“EPA”).

4. FSMC shall comply with Sections 103 and 107 of the Contract Work Hours and Safety Standards Act (the “Act”), 40 U.S.C. §§ 327-330, as supplemented by Department of Labor regulation, 29 CFR Part 5. Under Section 103 of the Act, FSMC shall be required to compute the wages of every laborer on the basis of a standard workweek of 40 hours. Work in excess of the standard workweek is permissible provided that the worker is compensated at a rate of not less than 1½ times the basic rate of pay for all hours worked in excess of 40 hours in any workweek. Section 107 of the Act provides that no laborer or mechanic shall be required to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous to his or her health and safety as determined under construction, safety and health standards promulgated by the Secretary of Labor.

5. FSMC shall comply with Executive Order 11246, entitled *Equal Employment Opportunity*, as amended by Executive Order 11375 of October 13, 1967, and as supplemented in Department of Labor regulations, 41 CFR Part 60.

6. In the operation of the Program, no child shall be denied benefits or be otherwise discriminated against because of race, color, national origin, age, sex, or disability. All parties shall comply with the following civil rights laws, as amended: Title VI of the Civil Rights Act of 1964; title IX of the Education Amendments of 1972; Section 504 of the Rehabilitation Act of 1973; the Age Discrimination Act of 1975; Title 7 CFR Parts 15, 15a, and 15b; the Americans with Disabilities Act; and FNS Instruction 113-1, *Civil Rights Compliance and Enforcement – Nutrition Programs and Activities*. (See 7 CFR 210.23(b).)

7. The SFA and FSMC hereby agree they will comply with: Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.); ii. Title IX of the Education Amendments of 1972 (20 U.S.C. 1681 et seq.); iii. Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794); iv. Age Discrimination Act of 1975 (42 U.S.C. 6101 et seq.); v. Title II and Title III of the Americans with Disabilities Act (ADA) of 1990 as amended by the ADA Amendment Act of 2008 (42 U.S.C. 12131-12189); vi. Executive Order 13166, "Improving Access to Services for Persons with Limited English Proficiency." (August 11, 2000); vii. All provisions required by the implementing regulations of the Department of Agriculture (USDA) (7 CFR Part 15 et seq.); viii. Department of Justice Enforcement Guidelines (28 CFR Parts 35, 42 and 50.3); ix. Food and Nutrition Service (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 the benefits of, or otherwise be subject to discrimination under any program or activity for which the Program applicant receives Federal financial assistance from USDA; and hereby gives assurance that it will immediately take measures necessary to effectuate this Agreement. The USDA non-discrimination statement that is 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, religion, sex, gender identity (including gender expression), sexual orientation, disability, age, marital status, family/parental status, income derived from a public assistance program, political beliefs, or reprisal or retaliation for prior civil rights activity, in any program or activity conducted or funded by USDA (not all bases apply to all programs). This assurance is given in consideration of and for the purpose of obtaining any and all Federal financial assistance, grants, and loans of Federal funds, reimbursable expenditures, grant, or donation of Federal property and interest in property, the detail of Federal personnel, the sale and lease of, and the permission to use Federal property or interest in such property or the furnishing of services without consideration or at a nominal consideration, or at a consideration that is reduced for the purpose of assisting the recipient, or in recognition of the public interest to be served by such sale, lease, or furnishing of services to the recipient, or any improvements made with Federal financial assistance extended to the Program applicant by USDA. This includes any Federal agreement, arrangement, or other contract that has as one of its purposes the provision of cash assistance for the purchase of food, and cash assistance for purchase or rental of food service equipment or any other financial assistance extended in reliance on the representations and agreements made in this assurance. By accepting this assurance, the SFA agrees to compile data, maintain records, and submit records and reports as required, to permit effective enforcement of nondiscrimination laws and permit authorized USDA personnel during hours of program operation to review and copy such records, books, and accounts, access such facilities and interview such personnel 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 SFA its successors, transferees and assignees as long as it receives assistance or retains possession of any assistance from USDA.

8. FSMC shall comply with 2 CFR 200, Appendix II to Part 200—Contract Provisions for Non-Federal Entity Contracts Under Federal Awards, subsection F, *Rights to Inventions Made Under a Contract or Agreement*. If the Federal award meets the definition of “funding agreement” under 37 CFR § 401.2(a) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that “funding agreement,” the recipient or subrecipient must comply with the requirements of 37 CFR Part 401, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,” and any implementing regulations issued by the awarding agency.

9. FSMC shall comply with the *Buy American* provision (7 CFR § 210.21(d)) for contracts that involve the purchase of food.

- (i) 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.
- (ii) FSMC shall seek approval of SFA before purchasing foods under an exception to the *Buy American* provision and maintain documentation of any such purchases that must include, at a minimum:
 - i. the non-domestic product that was purchased
 - ii. the date of the purchase
 - iii. the reason for the exception
 - iv. any efforts made to find alternate sources or substitute domestic products
- (iii) SFA may review vendor purchase records to ensure compliance with the *Buy American* provision.

10. FSMC shall comply with 2 CFR 200, Appendix II to Part 200—Contract Provisions for Non-Federal Entity Contracts Under Federal Awards, subsection I, *Byrd Anti-Lobbying Amendment (31 U.S.C. 1352)*—Contractors that apply or bid for an award exceeding \$100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also

disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award.

11. FSMC shall comply with 2 CFR 200, Appendix II to Part 200—Contract Provisions for Non-Federal Entity Contracts Under Federal Awards, subsection H, *Debarment and Suspension* (Executive Orders 12549 and 12689)—A contract award (see 2 CFR 180.220) must not be made to parties listed on the governmentwide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), “Debarment and Suspension.” SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549. FSMC certifies, by submission of this response/proposal, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department or agency.

12. FSMC shall comply with the Copeland “Anti-Kickback” Act (18 U.S.C. 874) as supplemented in Department of Labor regulations (29 CFR Part 3).

13. FSMC shall comply with the Davis-Bacon Act (40 U.S.C. 276a to 276a-7) as supplemented by Department of Labor regulations (29 CFR Part 5).

14. FSMC shall comply with 2 CFR §200.321 Contracting with small and minority businesses, women’s business enterprises, and labor surplus area firms. Compliance with this regulation requires FSMC and SFA to do the following with contracting:

- a. FSMC and SFA must take all necessary affirmative steps to assure that minority businesses, women’s business enterprises, and labor surplus area firms are used when possible.
- b. Affirmative steps must include:
 - 1) Placing qualified small and minority businesses and women's business enterprises on solicitation lists;
 - 2) Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;
 - 3) Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises;
 - 4) Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises;
 - 5) Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce; and

- 6) Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed in paragraphs (1) through (5) of this section.

15. To the maximum extent practicable, FSMC shall comply with 2 CFR § 200.322, Procurement of Recovered Materials, which states the SFA and FSMC must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

16. FSMC has executed and shall comply with the Debarment Certification, which shall be provided:

- a. by SFA providing the page from *The System for Award Management* and maintaining such record with other supporting documentation to demonstrate that SFA had referenced *The System for Award Management*;
- b. by FSMC signing this Contract certifying that neither it nor any principal is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this Contract by any Federal department or agency or by the State of North Carolina; or
- c. by submitting the NCDPI Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion for Covered Contracts form.

17. FSMC has executed and shall comply with the Non-Collusion Affidavit, which is attached to this Contract as “Attachment Q” and fully incorporated herein.

18. FSMC has executed and shall comply with the Certification of Independent Price Determination, which is attached to this Contract as “Attachment R” and fully incorporated herein.

19. FSMC has executed and shall comply with the Lobbying Certification, which is attached to this Contract as “Attachment S” and fully incorporated herein. If applicable, FSMC has also executed and shall comply with Standard Form-LLL, Disclosure of Lobbying Activities, which is attached to this Contract as “Attachment U” and fully incorporated herein.

20. FSMC shall comply with all applicable Health Certifications as required in Section III.I *supra*. Where certifications are required for assurances in Section III.S, FSMC shall provide written certification prior to execution of the final Contract.

21. Iran Divestment Act Certification. FSMC certifies that it is not on the Final Divestment List as created by the State Treasurer pursuant to N.C. Gen. Stat. § 143C-6A-4. In compliance with the

requirements of the Iran Divestment Act and N.C. Gen. Stat. § 143C-6A-5(b), FSMC shall not utilize in the performance of this Contract any subcontractor that is identified on the Final Divestment List.

22. FSMC shall comply with all other pertinent state and federal laws and regulations.

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CONTRACT/AGREEMENT AUTHORIZATION

Offeror certifies that FSMC shall operate in accordance with all applicable Federal and State relations and local policies. Offeror certifies that all terms and conditions within the Proposal shall be considered a part of this Contract as if incorporated herein. This Contract shall be in effect for one year and may be renewed by mutual agreement for four additional one-year periods; any contract amendment shall receive prior written approval from NCDPI prior to execution.

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

ATTEST:

SCHOOL FOOD AUTHORITY:

Name of SFA

Signature of Authorized Representative

Printed Name of Authorized Representative

Title

Date Signed

ATTEST:

FOOD SERVICE MANAGEMENT COMPANY:

Name of FSMC

Signature of Authorized Representative

Printed Name of Authorized Representative

Title

Date Signed

This Agreement has been approved as required by the School Budget and Fiscal Control Act.

Signature of Chief Financial Officer

Print Name

Date

**All SFA Exhibits A – L are to be provided by the SFA
SFA Exhibits**

The following information is provided by the SFA to the FSMC to assist the FSMC in preparing the proposal; these items are part of the RFP/Contract:

Exhibit A	Specific, measurable goals established by the BOE, LEA and/or SFA
Exhibit B	Schedule of School Nutrition Locations/Sites and Services Provided
Exhibit C	Menu Cycles <ul style="list-style-type: none">• National School Lunch Program• School Breakfast Program• <i>A la Carte</i> Program• After School Snack Program• Seamless Summer Nutrition Program or Summer Nutrition Program
Exhibit D	School Nutrition Program Budget
Exhibit E	List of schools and a description of each, including Average Daily Membership, (ADM), Average Daily Participation (ADP). student eligibility by category and current meal prices
Exhibit F	School Calendar, including meal service days, teacher workdays, required professional development
Exhibit G	SFA Employees including aggregate salaries inclusive of benefits
Exhibit H	FSMC Employees (will not apply in a first-year solicitation)
Exhibit I	Copies of Reimbursement Claims for Current and Prior School Years
Exhibit J	Minimum Food Specifications
Exhibit K	Designation of Program Responsibilities and Expenses
Exhibit L	Written Responses to Questions from potential Contractors

Exhibit A

Specific, measurable goals established by the BOE, LEA, and/or SFA

1. The average number of students participating in the School Nutrition Program in 2024-2025 will increase by 25% when compared to 2023-2024. We expect our participation to grow annually in subsequent years should the contract continue.
2. The FSMC will provide on a daily basis a range of high quality food options that provide good flavor, aroma, appearance, and texture and that appeal to SFA students' preferences.
3. The FSMC will establish and consistently maintain a high standard of professionalism in areas such as daily operations, product procurement and service format.
4. The FSMC will develop and implement a marketing program to engage students, staff, families and the community and will implement on an agreed upon timeline throughout the year.
5. FSMC will consistently exceed minimum threshold for Food Safety and Sanitation as reflected in a minimum health inspection score of 98%.
6. The SFA will maintain a high degree of ownership and decision-making capacity within the food service program overall. FSMC Management personnel will report to the Executive Director the status of the operation on a monthly basis. FSMC will provide a presentation in writing or in person to the board of directors on a quarterly basis at the discretion of the board.
7. Critical decisions, particularly in the areas of financial management, student nutrition and operations, will be made collaboratively between FSMC and SFA leadership.
8. FSMC will establish and implement a plan for increasing staff participation in the school nutrition program.
9. FSMC will establish and implement a plan for the acquisition and use of fresh, locally grown agricultural products in the school nutrition program.
10. FSMC will establish and implement a plan for developing and expanding the *a la carte* program to supplement, not compete with, the reimbursable meal.

Exhibit B

Schedule of School Nutrition Locations/Sites and Services Provided

All meals will be served at the main campus of Mountain Island Charter School, Inc.

- Breakfast will be served to grades K-5 in the D Bldg. from 7:30-8:20am.
- Breakfast will be served to grades 6-12 in the B Bldg. from 7:00-7:30am.
- Lunch will be served to grades K-12 in the D Bldg. from 10:40am-11:20am.
- Lunch will be served to grades 3-5 in the B Bldg. from 10:40am-11:20am.
- Lunch will be served to grades 6-8 in the B Bldg. from 11:50am-12:20pm.
- Lunch will be served to grades 9-12 from 12:50pm-1:20pm.

Exhibit C

PROGRAM MENU CYCLES

Menu Cycle for National School Lunch Program

Attach a sample 21-day cycle lunch menu prepared by the SFA.
This menu must be used for the first 21-day cycle of the new school year unless SFA and FSMC collaboratively decide to modify the menu prior to the first day of school, and which time they will collectively make modifications with prior approval of the DPI, Office of School Nutrition.

2024 - 2025 School Year
Campus Level: K-12

Monday	Tuesday	Wednesday	Thursday	Friday
1 Chicken Filet Sandwich on a Whole Wheat Bun Mixed Vegetables Seasoned Broccoli Chilled Mixed Fruit Low fat or skim milk	2 Cheeseburger on a Whole Wheat Bun Baked French Fries Baby Carrots/Dressing Pineapple Tidbits Low fat or skim milk	3 Baked Beefaroni with Cheese & Whole Wheat Dinner Roll Romaine Garden Salad with Diced Tomatoes Normandy Blend Veg Apple Quick Crisp Low fat or skim milk	4 Taco Supreme w/ Lettuce, Tomato, Shredded Cheese Glazed Carrots Mexican Pinto Beans Fresh Apple Low fat or skim milk	5 Tuna Salad on Lettuce & Crackers Seasoned Collard Greens Peas & Carrots Fresh Orange Wedges Low fat or skim milk
8 Meatball Sub Sandwich Golden Corn California Mix Veg Chilled Tropical Fruit Low fat or skim milk	9 Baked Chicken with Wheat Roll Turnip Greens Sweet Potato Souffle Cinnamon Apples Low fat or skim milk	10 Turkey and Cheese Sandwich Seasoned Green Beans Cauliflower/Cheese Sauce Chilled Peaches Low fat or skim milk	11 Hot Dog on a Whole Wheat Bun Bkd Sweet Potato Fries Baked Beans Fresh Banana Low fat or skim milk	12 Baked Chicken Tenders & WW roll Garden Salad w Grape Tomatoes & Dressing Blackeyed Peas/Snaps Chilled Mixed Fruit Low fat or skim milk
15 Cheeseburger on a Whole Wheat Bun Oven Potato Wedges Cucumber/Tomato Salad Applesauce Low fat or skim milk	16 Ham and Cheese Hoagie Seasoned Spinach Golden Corn Chilled Pears Low fat or skim milk	17 Cheese Quesadillas Brown Rice Glazed Carrots Pinto Beans Chilled Pineapple Low fat or skim milk	18 Baked Spaghetti Seasoned Broccoli Lima Beans Peach Quick Crisp Low fat or skim milk	19 Sloppy Joe on a Whole Wheat Bun Garden Salad w/Dressing Seasoned Green Beans Fresh Orange Wedges Low fat or skim milk
22 Chicken Sandwich on a Whole Wheat Bun Baby Carrots/Dressing Mixed Vegetables Chilled Pears Low fat or skim milk				

Exhibit C (continued)

**Menu Cycle for
School Breakfast Program**

Attach a sample 21-day cycle breakfast menu prepared by the SFA.
This menu must be used for the first 21-day cycle of the new school year unless SFA and FSMC collaboratively decide to modify the menu prior to the first day of school, at which time they will make modifications collaboratively and with the prior approval of the DPI Office of School Nutrition.

2024 - 2025 School Year
Campus Level: _K-12

Monday	Tuesday	Wednesday	Thursday	Friday
1 Whole Grain French Toast Sticks w/ Syrup OR Assorted Cereal (WG) w/ String Cheese Raisins 100% Orange Juice Low fat or skim milk	2 Whole Grain Breakfast Pita with Tomato Salsa OR Assorted Cereal (WG) w/ Whole Wheat toast 100% Apple Juice Peach Cup Low fat or skim milk	3 Cinnamon Crunchmania OR Yogurt w/ Graham Crackers (WG) 100% Apple Juice Fresh Orange wedges Low fat or skim milk	4 Whole Grain Breakfast Pizza OR Assorted Cereal w/ WG Bagel/Cream Cheese Banana 100% Orange Juice Low fat or skim milk	5 Whole Grain Pancake Pup OR Assorted Cereal (WG) w/ Cheese Cubes 100% Orange Juice Canned Mixed Fruit Low fat or skim milk
8 Egg Patty with Cheese Whole Grain Biscuit OR Assorted Cereal (WG) w/ Whole Wheat Bagel 100% Apple Juice Grapes	9 Whole Grain Breakfast Pizza OR Oatmeal w/ Raisin Whole Wheat Toast 100% Apple Juice Diced Canned Pears Low fat or skim milk	10 Whole Grain Waffles w/ syrup OR Cereal Bar (WG) w/ String Cheese 100% Orange Juice Banana Low fat or skim milk	11 Whole Grain Breakfast Bagel w/ Cream Cheese OR Assorted Cereal (WG) w/ WW Toast Peach Cup 100% Orange Juice	12 Whole Grain Mini Pancakes OR Assorted Cereal (WG) w/ String Cheese 100% Apple Juice Fresh orange wedges Low fat or skim milk
15 Whole Grain French Toast Sticks w/ Syrup OR Assorted Cereal w/ Graham Crackers Banana 100% Orange Juice Low fat or skim milk	16 Whole Grain Breakfast Pizza OR Grits w/ WG Blueberry muffin 100 % Apple Juice Pineapple Chunks Low fat or skim milk	17 Cinnamon Crunchmania (WG) OR Assorted Cereal (WG) w/ Whole Grain Pop tart 100% Orange Juice Rosy Applesauce Low fat or skim milk	18 Ham Biscuit (WG) OR Assorted Cereal(WG) w/ Whole Wheat Bagel 100% Apple Juice Fresh Orange Low fat or skim milk	19 Whole Grain Pancake Pup OR Assorted Cereal (WG) w/ String Cheese 100% Orange Juice Raisins Low fat or skim milk
22 Whole Grain Pancake on a stick w/ Syrup OR Yogurt w/ Animal Crackers 100% Apple Juice Diced Pears Low fat or skim milk				

Exhibit C (continued)

Menu Cycle for Future *A la Carte* Program

Mountain Island Charter School requests that the FSMC submit a proposed two week *A la Carte* Program Menu and plan to structure and operate an *A la Carte* program to serve all students. This menu could be used for the first 14-day cycle of the new school year but would be reviewed and developed by the SFA in collaboration with the FSMC. This menu should include the following ice cream products or similar:

Strawberry Mango Frozen Cup
Cherry Blue Raspberry Frozen Cup
Polar Blast Fruit Bar
Cookies & Cream Ice cream cone
Vanilla ice cream sandwich
Chocolate Scooter Bar
Strawberry Scooter Bar
Vanilla Chocolate Swirl Cone

Exhibit C (continued)

**Menu Cycle for
Future After School Snack Program**

Mountain Island Charter School requests that the FSMC submit a proposed two week After School Snack Program Menu and plan to structure and operate a program that meets Smart Snacks and Federal Meal Component Requirements to serve all students. This menu could be used for the first 14-day cycle of the new school year but would be reviewed and developed by the SFA in collaboration with the FSMC.

Exhibit D
School Nutrition Program Budget

School Year 2024 - 2025

SFA Employee responsible for submission of this budget data:

Name: Glenn Byrum

Title: Executive Director

Projected participation

Reimbursable Student Lunches	700 daily x 180 = 126,000
Paid Adult Lunches	20 daily x 180 = 3,600
Reimbursable Student Breakfasts	250 daily x 180 = 45,000
Paid Adult Breakfasts	20 daily x 180 = 3,600
After School Snacks	40 daily x 180 = 7,200
<i>A la Carte</i> Sales	\$54,000

SFA recognizes that participation at this level will take time to achieve.

Exhibit E

List of Schools and a Description of Each, including Average Daily Membership (“ADM”), Average Daily Participation (“ADP”), Student Eligibility by Category, and Current Meal Prices

Mountain Island Charter School, Inc.

MICS is a K-12 traditional public charter school. MICS began in 2010-2011 as a K-7 school, and one grade level has been added sequentially each school year, culminating with the addition of the 12th grade in the 2015-2016 school year. The academic year is 36 weeks long. MICS serves the educational needs of students living in North Carolina counties surrounding Mt. Holly, NC. MICS is located in Gaston County, one mile north of Mecklenburg County. The majority of students live in the greater Charlotte area. The student body is 53% White, 28% Black, 8% multiracial, 9% Hispanic, 1.8% Asian, .1% American Indian and .1% Pacific Islander.

ADM: 1743 (August 2023)

ADP: Breakfast ADP 164 (January 2024), Lunch ADP 429 (January 2024)

Student Eligibility by Category (January 2024):

1272 Paid students

410 Free students

49 Reduced students

Current Meal Prices:

For students that are not eligible for free/reduced price meals, the price of breakfast is \$2.70 and lunch is \$4.00 per serving. Each meal includes one milk. Other items available include:

Milk only - \$.50

A la carte Fruit and Juice - \$.50

Ice cream - \$1.00.

Employee meals - \$3.20 for Breakfast and \$4.50 for Lunch

Exhibit F

School Calendar

(including meal service days, holidays, teacher workdays, and required professional development)

MOUNTAIN ISLAND CHARTER SCHOOL | 2024-2025 CALENDAR

5 1ST Day for Staff
8 Back To School Night
12 1ST Day of School for Students

AUGUST '24						
S	M	T	W	Th	F	S
				1	2	3
4	5	6	7	8	9	10
11	12	13	14	15	16	17
18	19	20	21	22	23	24
25	26	27	28	29	30	31

FEBRUARY '25						
S	M	T	W	Th	F	S
						1
2	3	4	5	6	7	8
9	10	11	12	13	14	15
16	17	18	19	20	21	22
23	24	25	26	27	28	

17 No School / Presidents' Day
18 No School / Teacher Workday (Weather Make Up Day #1)

2 No School/Labor Day
23 No School / Teacher Workday (Teacher PD)

SEPTEMBER '24						
S	M	T	W	Th	F	S
1	2	3	4	5	6	7
8	9	10	11	12	13	14
15	16	17	18	19	20	21
22	23	24	25	26	27	28
29	30					

MARCH '25						
S	M	T	W	Th	F	S
						1
2	3	4	5	6	7	8
9	10	11	12	13	14	15
16	17	18	19	20	21	22
23	24	25	26	27	28	29
30	31					

12 End of Quarter 3 (44 days)
14 No School / Teacher Workday (Weather Make Up Day #2)

9 End of Quarter 1(41 days)
11 Raptor Run / ½ Day
31 No School / Teacher Workday (Parent-Teacher Conferences)

OCTOBER '24						
S	M	T	W	Th	F	S
6	7	8	9	10	11	12
13	14	15	16	17	18	19
20	21	22	23	24	25	26
27	28	29	30	31		

APRIL '25						
S	M	T	W	Th	F	S
6	7	8	9	10	11	12
13	14	15	16	17	18	19
20	21	22	23	24	25	26
27	28	29	30			

14-21 No School / Spring Break

1 No School / Teacher Workday (Parent-Teacher Conferences)
25-29 No School / Thanksgiving Break

NOVEMBER '24						
S	M	T	W	Th	F	S
					1	2
3	4	5	6	7	8	9
10	11	12	13	14	15	16
17	18	19	20	21	22	23
24	25	26	27	28	29	30

MAY '25						
S	M	T	W	Th	F	S
				1	2	3
4	5	6	7	8	9	10
11	12	13	14	15	16	17
18	19	20	21	22	23	24
25	26	27	28	29	30	31

26 Memorial Day
29 End of Quarter 4 (48 days)
29 Last Day for Students / Class of 2025 Graduation
30 Teacher Workday

178 School Days Total

20 End of Quarter 2 (45 days)
20 ½ Day
23-31 Winter Break

DECEMBER '24						
S	M	T	W	Th	F	S
1	2	4	4	5	6	7
8	9	10	11	12	13	14
15	16	17	18	19	20	21
22	23	24	25	26	27	28
29	30	31				

JUNE '25						
S	M	T	W	Th	F	S
1	2	3	4	5	6	7
8	9	10	11	12	13	14
15	16	17	18	19	20	21
22	23	24	25	26	27	28
29	30					

2 Optional Teacher Workday

1 No School / New Years Day
1-3 Winter Break
20 No School / M.L. King Day
21 No School / Teacher Workday (Teacher PD)

JANUARY '25						
S	M	T	W	Th	F	S
			1	2	3	4
5	6	7	8	9	10	11
12	13	14	15	16	17	18
19	20	21	22	23	24	25
26	27	28	29	30	31	

JULY '25						
S	M	T	W	Th	F	S
		1	2	3	4	5
6	7	8	9	10	11	12
13	14	15	16	17	18	19
20	21	22	23	24	25	26
27	28	29	30	31		

4 Independence Day

Exhibit G

**SFA's School Nutrition Program Employees will remain under the employment of the SFA.
Only acknowledgement is required for a response.**

Exhibit H

FSMC Employees (will not apply in a first-year solicitation)

Exhibit I

Claims for Reimbursement for Current and Prior School Years

	2020-2021 Breakfast	2020-2021 Lunch	
Free	27,337	37,345	
Reduced	4	34	
Paid	19	346	
	2021-2022 breakfast	2021-2022 Lunch	
Free	29,477	88,581	
Reduced			
Paid			
	2022-2023 Breakfast	2022-2023 Lunch	
Free	12,080	22,970	
Reduced	1,680	3,817	
Paid	10,436	3,817	
	2023-2024 Breakfast	2023-2024 Lunch	Aug-Jan
Free	8,931	14,435	
Reduced	717	1,671	
Paid	7,012	23,119	

*Actual claim data is available in spreadsheet form upon request.

Exhibit J

Minimum Food Specifications

All Food Specifications must meet requirements of the USDA *Food Buying Guide* (“FBG”), 7 CFR Part 210, USDA Guidance Memos, other applicable Federal regulations, and NCDPI’s Administrative Reference Manual (“ARM”).

- All USDA Foods offered to the SFA and made available to FSMC are acceptable and should be utilized in as large a quantity as may be efficiently utilized.

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

- Breads, bread alternates, and grains must be made from whole grain or whole grain-rich flour/meal. All breads and grains must be fresh (or frozen, if applicable) and must meet the minimum weight per serving as listed in the FBG. If applicable, product should be in moisture-proof wrapping and pack code date provided.
- All meat and poultry must have been inspected by the USDA and must be free from off-color or odor.
 - Beef must be at least 70:30 lean to fat, preferably 80:20 lean to fat.
 - Poultry should be U.S. Grade A when applicable and should meet the recommendations outlined in *Specifications for Poultry Products, A Guide for School Nutrition Program Operators* from the USDA.
 - For breaded and battered items, all flours must be whole grain or enriched for breads/grains credit and breading/batter must not exceed 30% of the weight of the finished product.
 - For sausage patties, the maximum fat allowed is 50% by weight; industry standard of 38% to 42% fat preferred.
- All cured processed meats (bologna, frankfurters, luncheon meat, salami, others) shall be made from beef and/or poultry. No variety meats, fillers, extenders, non-fat milk solids, or cereal will be allowed. Meats must not show evidence of greening, streaking, or other discoloration.
- All cheese should be firm, compact and free from gas holes; free of mold; free of undesirable flavor and odors; pasteurized when applicable; and preferably reduced or low-fat. All cheese should also have a bright, uniform, and attractive appearance; and have a pleasing flavor; demonstrate satisfactory meltability; and contain proper moisture and salt content.
- All fish must have been inspected by the United States Department of Commerce (USDC) and meet minimum flesh and batter/breading required for USDC Grade A product or product packed under Federal inspection (PUFI) by the USDC.
- All fresh fruits must be ripe and in good condition when delivered and must be ready for consumption per the USDA FBG. Fruits must at a minimum meet the food distributors’ second quality level. Fruits should have characteristic color and good flavor and be well-shaped and free from scars and bruises. Size must produce a yield equal to or greater than the attached 21-day cycle menu requirements.
- All fresh vegetables must be ripe and in good condition when delivered and must be ready for consumption per the USDA FBG. Vegetables must at a minimum meet the food distributors’ second quality level. Vegetables should have characteristic color and good flavor and be well-shaped and free

from discoloration, blemishes, and decay. Size must produce a yield equal to or greater than the attached 21-day cycle menu requirements.

- All canned vegetables must meet the food distributors' first quality level (extra fancy and fancy) and canned fruits (standard) must meet the second quality level. Vegetables should have characteristic color and good fresh flavor and be free from discoloration, blemishes, and decay.
- Eggs must be inspected and passed by the State or Federal Department of Agriculture and used within thirty (30) days of date on carton. Eggs should be grade A, uniform in size, clean, sound-shelled, and free of foreign odors or flavors.
- Sauces, such as gravy, spaghetti sauce, pizza sauce, etc., must be smooth and uniform in color with no foreign substance, flavor, odor, or off color.
- If applicable, the food production facility, manufacturing plant, and products must meet all sanitary and other requirements of the Food, Drug, and Cosmetic Act and other regulations that support the wholesomeness of products.
- Meals and food items must be stored and prepared under properly controlled temperatures and in accordance with all applicable health and sanitation regulations.
- Fluid milk must be offered in a variety of at least two different fat contents. The selection of milk must be consistent with the types of milk consumed the prior year. The milk must contain vitamins A and D at levels specified by the Food and Drug Administration and must be consistent with State and local standards.

Exhibit K

Designation of Program Responsibilities and Expenses

The SFA has deemed the following Program Responsibilities and Expenses schedule to be a necessary part of this solicitation as an indicator of which party will bear ultimate responsibility for the performance and expense of the function. Costs that are not provided for under the standard contract terms and conditions but are necessary for the effective on-site operation of the School Nutrition Program(s) and are directly incurred for the SFA's operation, must be assigned by the SFA prior to the releases of the RFP/Contract. The column selected by the SFA for each expense represents whether the SFA or FSMC is ULTIMATELY responsible for that cost.

Description	FSMC	SFA	N/A
Food:			
Food Purchases	x		
Commodity Processing Charges	x		
Processing and Payment of Invoices	x		
FSMC Employees:			
Salary/Wages	x		
Fringe Benefits and Insurance	x		
Retirement	x		
Payroll Taxes	x		
Workers Compensation	x		
Unemployment Compensation	x		
Preparation and Processing of Payroll	x		
SFA Employees:			
Wages		x	
Fringe Benefits and Insurance		x	
Retirement		x	
Payroll Taxes		x	
Workers Compensation		x	
Unemployment Compensation		x	
Preparation and Processing of Payroll		x	

Exhibit K (continued)
Designation of Program Responsibilities and Expenses

Additional Items of Responsibility and Cost

The items listed with an * are direct cost items which may or may not apply to each SFA. At local discretion, based upon actual practice and need, the SFA should assign cost responsibility for those items applicable to their operation or designate them as N/A.

Description	FSMC	SFA	N/A
Cleaning/Janitorial Supplies		x	
Paper/Disposal Supplies		x	
Tickets/Tokens			x
School/Silverware/Glassware		x	
Initial Inventory		x	
Replacement During Operation	x		
Telephone ¹		x	
Local		x	
Long Distance		x	
Uniforms			
Linens*			x
Laundry			x
Trash Removal			
From Kitchen		x	
From Dining Area		x	
From Premises		x	
Pest Control		x	
Equipment Replacement and Repair			
Non-Expendable		x	
Expendable		x	
Products and Public Liability			
Insurance*	x	x	
Equipment Rental* (explain)			X
Car/Truck Rental*(explain)			X
Vehicle Maintenance*			x
Storage Costs			
Food*		x	

Non-Food supplies*		X	
Courier Services (Bank Deposits, School Deliveries) ³		X	
Employee Recruitment – Initial Replacement		X	
Sales Tax	X		
Other Taxes and Licenses*	X	X	
Office Materials	X	X	
Printing*	X	X	
Promotional Materials*	X	X	
Other* (cannot include overhead expenses incurred by FSMC)			
Cleaning Responsibilities			
Food Preparation Areas (including Equipment)			
Serving Areas		X	
Kitchen Floors		X	
Dining Room Floors or Periodic Waxing/Buffering		X	
Hoods		X	
Grease Filters		X	
Daily Routine Cleaning of Dining Room Tables and Chairs		X	
Thorough Cleaning of Dining Room Tables and Chairs		X	
Cafeteria walls		X	
Kitchen walls		X	
Light Fixtures		X	
Windows		X	
Window coverings		X	
Grease Traps		X	
Duct Work		X	
Restrooms		X	
Exhaust Fans		X	
Other – List Below (as many lines as needed)			

Exhibit L

Written Responses to Questions from Potential Contractors

All questions must be posed to the SFA no later than ten (10) days prior to the date the RFP is due. Questions from FSMCs will not be answered if submitted after this period. All responses will be provided in the form of an Exhibit K; each question will be identified in a numeric sequence such as L.1 or L.2 or L.3 based on the number of questions and responses to the RFP. All vendors that were represented at the Pre-Proposal Meeting shall receive copies of all Questions/Answers provided in Exhibit L.

VI. FSMC ATTACHMENTS

REQUIRED FORMAT FOR FSMC'S RESPONSE TO THE RFP

IMPORTANT: PLEASE READ THE FOLLOWING STATEMENT BEFORE PREPARING FSMC'S PROPOSAL

The FSMC is required to respond to this RFP in the format as described below. The FSMC may provide collateral documents that further display the company's products and services including notebooks, brochures, pictures and marketing materials, however, the final written proposal presented to the SFA must be presented exactly as stated, outlined and required in this RFP. Any supplemental document of any kind is not considered part of the FSMC proposal and will not be considered when evaluating the proposal. All required documents must be presented in the same order and labeled in the same manner as in the Checklist for FSMC's Proposal – Attachments A - U. Any proposal that fails to follow the format specified in this RFP will be considered non-responsive and will be eliminated for consideration by the SFA.

Should there be questions about any aspect of the solicitation, or should any item require clarification, such needs **MUST** be addressed, in writing, to the LEA official who has been designated to manage the RFP/Contract Process. As soon as these items are received and answered, they will be issued, in writing, to all potential vendors that attended the Pre-proposal meeting. **Do not add statements or alter the Terms and Conditions of the RFP/Contract as a means of providing FSMC's interpretation of an issue** as such modifications of the solicitation will be disregarded and the proposal is subject to being deemed unresponsive. Any item requiring clarification must be addressed, in writing, as quickly as possible. Assumptions and interpretations and solicitation modifications may prove costly to the FSMC.

In preparing the Proposal, the FSMC should follow the format described and should maintain the sequence of Attachments. While each attachment has a specific purpose, the FSMC may include information in the Attachments that enables the Evaluation Committee to understand how the FSMC intends to proceed in its management of the nonprofit School Nutrition Program(s) addressed in the RFP. FSMC should limit its written proposal to items that may be effectively implemented during the first year of the contract; any proposal for implementation beyond the initial year of the contract should be enclosed in a separate "Value Added Feature" that is separate from the sealed Proposal. The Contract award will be based upon the proposed deliverables of the Contract within the first year.

As previously stated, the FSMC's proposal should be provided in the format described above. The order of the proposal shall be listed in the Checklist for FSMC's Proposal - Attachments A - U. FSMC is required to submit a *Letter of Intent* stating the FSMC is qualified to operate a nonprofit School Nutrition Program as described on Page 7 of the RFP; the *Letter of Intent* shall be provided as **Attachment A**. The FSMC shall also submit its calculation of the firm, fixed-price per meal equivalent and the management fee per meal Equivalent based on the Meal Equivalency provided by the SFA; such calculation shall be provided as **Attachment B**. The Maximum Allowable Cost of the Contract (which reflects the firm, fixed-price per meal equivalent and the management fee per meal equivalent shall be provided in **Attachment C**. Both the *Letter of Intent* and the *Maximum Allowable Cost of the Contract* shall be signed by an individual who is authorized to commit the FSMC to a legally-binding Agreement.

The FSMC shall also submit as part of the Proposal an assurance by a surety bond company authorized to do business in the State of North Carolina as **Attachment D**. If selected as the successful vendor and upon award of the Contract, a performance bond will be issued in the amount of 100% of annual projected Contract value. Prior to Contract execution, the FSMC shall deliver to the SFA the executed performance bond payable to the LEA (**please specify in Attachment D**). The performance bond is held by the SFA as security for the faithful performance by the FSMC of all Terms and Conditions of the Contract.

For **Attachment E**, the FSMC must provide a proposed twenty-one (21) day menu for meal, snack and *a la carte* service that meets the Federal meal pattern and dietary standards and also reflects the regional food preferences of students in area in North Carolina that are specific to the geographic region where the SFA is located. The FSMC should reflect innovation and creativity in this portion of the Proposal and identify strategies to promote overall participation in the SFA's school meal programs. Variety in menus, products and serving approaches are encouraged. A nutrient analysis must accompany the menu items to indicate all required dietary specifications have been achieved. Product descriptions and portion sizes for all meals must also be included in **Attachment E**. This portion of the Proposal should also describe a detailed transition plan will be provided implemented in the FSMC's first year of operation.

In addition, the proposal must clearly address the FSMC's plan to achieve the specific goals established by the SFA/LEA's BOE; **Attachment F** provides an opportunity for the FSMC to describe and display innovative and effective approaches to success in the Federally assisted School Nutrition Programs. Specific strategies should be identified that will enable the FSMC to articulate its vision for how it will achieve the measurable goals established by the SFA. The FSMC shall also submit a narrative response that addresses specific strategies to support program efficiency, efficiency and overall program and financial sustainability.

Attachment G should include a detailed description of how and when the FSMC will document, credit and/or report the value of all USDA Foods received for use in the SFA's School Nutrition Program the fiscal (or school) year and the value of donated foods contained in processed end products; this section must also describe, in detail, how any and all rebates or discounts associated with the processing of commodity products will be returned to the SFA. **Attachment H** should reflect the FSMC's plan to market the School Nutrition Program to various stakeholders including, but not limited to, students, parents, teachers, principals, other school personnel, the community at large and various school-related advocacy groups. **Attachment H** should describe the FSMC's marketing plan to be implemented and evaluated to increase student, parent, and community understanding of the benefits of healthful meals at school and the contribution school nutrition programs make to the nutrient needs of Students. The FSMC's plan and timeline for establishing an Advisory Committee to support menu planning should also be addressed in Attachment H.

The FSMC shall include a detailed plan for providing professional development and continuous improvement opportunities for School Nutrition personnel should be provided in **Attachment I**. The plan should describe the frequency of professional development workshops (or other professional development and training activities will be conducted during school year and for whom (managers, operators, cashiers, etc.). The plan should also describe the specific areas to be addressed through professional development and the mechanism through which information and skill building will be delivered. A minimum of ten (10) hours of professional development must be provided and documented for all School Nutrition Program employees (FSMC and SFA employees) on a yearly basis, and the proposal should specify how such will take place within the SFA. Finally, the professional development and training plan should include the following specific requirements:

- All FSMC and SFA employees will be trained to meet food safety, sanitation and HACCP requirements through an American National Standards Institute (ANSI)-approved food safety certification program or other similar program and assessed for comprehension.
- Employee professional development in culinary arts and culinary competency development will be provided to all staff at least quarterly.
- Professional development in Quality Control, Customer Service and Satisfaction will be provided at least annually and assessed for comprehension.
- Employee training in promoting nutrition and healthy eating will be provided at least annually.
- Other areas based on goals as established by the BOE.

Attachment J shall provide the FSMC's Guaranty which is intended to support the financial viability and short and long-term sustainability of the School Nutrition Program(s) for which the SFA is responsible. The

Guaranty should describe specific measures to ensure the short- and long-term financial viability and sustainability of SFA's School Nutrition Program.

The FSMC shall include in **Attachment K** a list of FMSC's proposed on-site personnel and corporate level staff to be assigned to this account. The specific responsibilities or duties of each individual shall be outlined in the response. Experience in (National School Lunch and Breakfast Programs) is mandatory. Specific qualifications for each individual will be required to demonstrate her/his competency in School Nutrition Management. Prior education and/or experiences may be provided in this portion of the Proposal.

Attachment L should include a reference checklist for each individual recommended for on-site and regional oversight of SFA's School Nutrition Program. The experiences that make each employee/candidate highly qualified for each position should be described in **Attachment L**.

The experience of the FSMC in managing School Nutrition Programs (including the NSLP, SBP and SFSP) should be addressed in **Attachment M**. Experiences in managing programs of similar size and scope should be described in this portion of the Proposal. The FSMC shall also include all National School Lunch Programs managed in the past five years. The address, contact person, and phone number of each account shall be provided.

Attachment N should include a balance sheet or Annual Report of the FSMC's last fiscal year of operation. Certification of this report by a Certified Public Accountant is required. The FSMC shall further disclose to the SFA any recent financial events or developments that are not represented in the above report. Any such information submitted shall be evaluated by the SFA to determine if the information could have a material effect on the FSMC's ability to efficiently, effectively, and successfully manage the SFA's School Nutrition Program.

The FSMC shall sign a Debarment/Suspension Certification in **Attachment O**. This certification assures the SFA that the FSMC has not been debarred from entering into contracts with the Federal government or any entity receiving Federal funds or suspended from entering contracts during a time when the vendor is being investigated for a legal action is being taken to debar the vendor from contracting activities. The certification must be attached to the signed contract and kept on file at the office of the school food authority. (A copy of the certification must also be forwarded to the state agency with a copy of the signed contract.)

Attachments P – U must be completed as follows:

The FSMC shall review and sign a "Drug-Free Workplace" policy as provided in **Attachment P**.

The FSMC shall review and sign a "Non-Collusion Affidavit" as provided in **Attachment Q**.

The FSMC shall review submit a Certification of Independent Price Determination as provided in **Attachment R**.

The FSMC shall review and submit a completed "Disclosure Form to Report Lobbying" as provided in **Attachment S**.

The FSMC must complete the Sex Offender Registry Check Certification as shown in **Attachment T** for personnel identified to work on-site at the SFA; a written assurance must be provided indicating the FSMC will complete the Sex Offender Registry Check Certification for all future FSMC employees who will work on-site under the Terms and Conditions of this Contract (if awarded).

Attachment U addresses unallowable SFA/FSMC Contract provisions. FSMC is reminded to ensure these provisions are not included in the content of the proposal.

CHECKLIST FOR FSMC'S RFP ATTACHMENTS

(Use this checklist to indicate all Attachments are completed and signed, if required. Instructions for preparing the attachments are included in the corresponding narrative immediately preceding the checklist.)

- | | |
|---------------------------------------|---|
| <input type="checkbox"/> Attachment A | Letter of Intent |
| <input type="checkbox"/> Attachment B | Calculation of Management Fee based on Meal Equivalents Maximum |
| <input type="checkbox"/> Attachment C | Maximum Allowable Cost of the Contract (Includes Firm, Fixed-price per Meal Equivalent and Management Fee per Meal Equivalent for All Meals and Services - Summary with Original Signature |
| <input type="checkbox"/> Attachment D | Potential Contractor Certification and Surety Bond |
| <input type="checkbox"/> Attachment E | Twenty-one (21) Day Cycle Menu for SBP and NSLP, including nutritional analysis, product descriptions and appropriate serving sizes |
| <input type="checkbox"/> Attachment F | Written Plan to address Specific Goals Established by the SFA's Board of Education and strategies to address innovative approaches to increase Student Meal Participation |
| <input type="checkbox"/> Attachment G | Detailed Plan for Crediting/Reporting the value and use of USDA Foods |
| <input type="checkbox"/> Attachment H | Detailed Marketing Plan |
| <input type="checkbox"/> Attachment I | Detailed Professional Development and Training Plan |
| <input type="checkbox"/> Attachment J | FSMC Guaranty |
| <input type="checkbox"/> Attachment K | FSMC Proposed Employees and Qualifications |
| <input type="checkbox"/> Attachment L | Reference Checklist for FSMC's personnel |
| <input type="checkbox"/> Attachment M | Management Company Experience |
| <input type="checkbox"/> Attachment N | Annual Report of the FSMC's last fiscal year of operation |
| <input type="checkbox"/> Attachment O | Certification Regarding Debarment |
| <input type="checkbox"/> Attachment P | Drug-Free Workplace Policy |
| <input type="checkbox"/> Attachment Q | Non-Collusion Affidavit |
| <input type="checkbox"/> Attachment R | Certificate of Independent Price Determination |
| <input type="checkbox"/> Attachment S | Disclosure Form to Report Lobbying |
| <input type="checkbox"/> Attachment T | Sex Offender Registry Check |
| <input type="checkbox"/> Attachment U | Unallowable SFA/FSMC Contract Provisions |

Attachment A
FSMC Letter of Intent

Attachment B

Calculation of Firm, Fixed-price per Meal Equivalent and Calculation of Management Fee per Meal Equivalent by the FSMC

Meal Type	Estimated Meal Counts	Meal Equivalents
Reimbursable Student Lunches	700 daily x 180 = 126,000	126,000
Paid Adult Lunches	20 daily x 180 = 3,600	3,600
Reimbursable Student Breakfasts	250 daily x 180 = 45,000	22,500
Paid Adult Breakfasts	20 daily x 180 = 3,600	1,800
After School Snacks	40 daily x 180 = 7,200	1,800
<i>A la Carte</i> Sales	\$54,000	\$11,367
Total Meal Equivalents	185,400	155,700
Proposed Fixed-price Per Meal Equivalent	(Proposed fixed-price x Meal Equivalents)	To be completed by the FSMC
Proposed Management Fee Per Meal Equivalent	Proposed Management fee x Meal Equivalents)	To be completed by the FSMC
Total Fixed-price + Management Fee Per Meal Equivalent		To be completed by the FSMC

Attachment C

Maximum Allowable Cost for All Meals and Services Firm, Fixed-Price Contract Summary

Name of Firm Submitting Proposal: _____
Mailing Address: _____

Telephone: _____
Date Submitted: _____

Firm, fixed-price per Meal Equivalent: \$ _____
Management Fee Per Meal Equivalent: \$ _____
*Maximum Allowable Cost for All Meals and Services: \$ _____

***Note: No additional fees, costs or expenses may be charged to the SFA above the Maximum Allowable Cost for All Meals and Services. Any costs or fees outside total firm, fixed-price are strictly prohibited outside of the direct cost that may be applied for the transition of SFA positions to the FSMC payroll. The inclusion of other direct costs to the SFA, outside the firm, fixed-price per meal will constitute grounds for disqualifying the offeror's proposal.**

I certify by my signature below that no additional costs or fees have been included in this proposal that are outside the total firm, fixed-price per meal as described above; I further certify that the inclusion of other direct costs to the SFA included in the proposal constitute grounds for the proposal to be disqualified.

I certify by my signature below that the per meal prices quoted in this proposal are correct and that I have the authority to obligate the company to perform under the conditions outlined in the RFP.

I certify by my signature below that as authorized representative of the FSMC, I certify that FSMC is qualified to submit a proposal as indicated in the RFP and accept the basis for selection of an FSMC.

Print Name

Signature

Title

Address

Address

Date

Attachment D

Potential Contractor Certification and Surety Bond

Date Proposal Submitted: _____

Name of Firm Submitting Proposal: _____

Mailing Address: _____

Telephone: _____ **Fax:** _____

I certify by my signature below that the Management Fee and Per Meal Equivalent Guarantee quoted in this proposal are correct and that I have the authority to obligate the company to perform under the Terms and Conditions of this solicitation and the final Contract.

Signature: _____

Print or Type Name: _____

Title: _____

Telephone: _____ **Date:** _____

SURETY BOND COMPANY

1. Name: _____

Address: _____

2. Authorized in North Carolina **Yes** _____ **No** _____

Please include Surety Bond Document.

Attachment E

Twenty-one (21) Day Cycle Menu for NSLP, SBP, ASSP, *A la Carte*, SSO/SFSP Including nutritional analysis, product descriptions and serving sizes

In addition to the twenty-one (21) day cycle menu, please provide a narrative response that addresses the following:

1. A description of how the FSMC program will provide menus for students and staff offering healthy choices and limiting the availability of high fat and high sugar choices and provide age-appropriate portion sizes.
1. A description of how the FSMC will use high quality (mono and polyunsaturated) fats for cooking and baking, use spices and seasonings to increase flavor profile of recipes in light of the meal pattern sodium restrictions, and keep saturated fats in accordance with federal regulation.
2. A description of how the FSMC will address the growing number of requests for options for students with alternative diets (i.e. gluten-free, vegetarian, vegan) within the LEA.
4. An assurance that food sold, or otherwise offered, at school will be nutritious, appealing, and include fresh fruits and vegetables, low-fat foods and whole grain products.

Attachment F

Written Plan to address Specific Goals Established by the SFA's Board of Education and Strategies to address innovative approaches to increase Student Meal Participation and Support and Sustain Program Financial Viability and Short- and Long-Term Sustainability

Specific Goals of the SFA include:

The average number of students participating in the School Nutrition Program in 2024-2025 will increase by 25% when compared to 2023-2024. We expect our participation to grow annually in subsequent years should the contract continue.

2. The FSMC will provide on a daily basis a range of high quality food options that provide good flavor, aroma, appearance, and texture and that appeal to SFA students' preferences.
3. The FSMC will establish and consistently maintain a high standard of professionalism in areas such as daily operations, product procurement and service format.
4. The FSMC will develop and implement a marketing program to engage students, staff, families and the community and will implement on an agreed upon timeline throughout the year.
5. FSMC will consistently exceed minimum threshold for Food Safety and Sanitation as reflected in a minimum health inspection score of 98%.
6. The SFA will maintain a high degree of ownership and decision-making capacity within the food service program overall. FSMC Management personnel will report to the Executive Director the status of the operation on a monthly basis. FSMC will provide a presentation in writing or in person to the board of directors on a quarterly basis at the discretion of the board.
7. Critical decisions, particularly in the areas of financial management, student nutrition and operations, will be made collaboratively between FSMC and SFA leadership.
8. FSMC will establish and implement a plan for increasing staff participation in the school nutrition program.
9. FSMC will establish and implement a plan for the acquisition and use of fresh, locally grown agricultural products in the school nutrition program.
10. FSMC will establish and implement a plan for developing and expanding the *a la carte* program to supplement, not compete with, the reimbursable meal.

Attachment G

Detailed Plan for Crediting and/or Reporting the value of USDA Foods Received and Used in the SFA's School Nutrition Program(s)

Attachment H

Detailed Marketing Plan

Describe your marketing plan in detail:

1. List and describe any innovations proposed for the SFA's School Nutrition Program(s).
2. Describe FSMC's plans regarding involvement and engagement of Students, Parents, and Staff.
3. Describe FSMC's merchandising/promotions program.
4. Discuss FSMC's plans for maximizing participation among students who qualify to receive Free and Reduced-Price meals.
5. State the projected increase in student participation per year that you are willing and agreeable to use as criteria for evaluating your performance under this agreement.
6. Describe any service programs offered by the FSMC that will complement and enhance the School Nutrition Program.
7. Describe the formal structure you propose to establish to routinely and continuously gather input from School Nutrition employees to ensure the most effective and efficient operation possible.
8. Describe FSMC's programs for personnel advancement, both FSMC employees and SFA employees, management and hourly employees.

Attachment I

Detailed Professional Development and Continuous Improvement Plan

The BOE and LEA officials believe that professional development is an important component to help the LEA/SFA meet its goals. Describe in detail your training program for managers and operators that will occur before and after the beginning of the school year. Indicate program areas it will cover and how they will be evaluated. Outline with dates and activities of your transition plan beginning July 1, 2024 through the end of the first year. The response shall include the FSMC's plan to provide the following components:

1. All FSMC and SFA employees will be trained to meet "Serve Safe" requirements, or those of a similarly recognized food safety certification training program.
2. Employee training in Culinary Arts will be provided to all staff at least twice a year.
3. Employee training in Quality Control, Customer Service, and Satisfaction will be provided at least annually and assessed for comprehension.
4. Employee training in promoting nutrition and healthy eating will be provided at least annually and assessed for comprehension.

Attachment J

FSMC Guaranty

Discuss the FSMC's specific Financial Guaranty to the BOD/LEA/SFA.

Provide detailed steps and strategies to improve the overall School Nutrition Program, reduce the LEA subsidy, increase financial viability and profitability, and ensure long term program stability.

Attachment K

FSMC Proposed Employees and Their Qualifications

Include the names and qualifications of individuals who will serve in leadership capacities on behalf of the FSMC and will coordinate activities of the FSMC's on-site personnel.

Attachment L

Reference Checklist for FSMC's Personnel

Attachment M
Management Company Experience

Attachment N

Annual Report of the FSMC's last fiscal year of operation

Attachment O

Certification Regarding Debarment

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

(1) The prospective primary participant certifies to the best of its knowledge and belief that it and its principals:

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

(2) Where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective primary participant shall attach an explanation to this proposal.

Name of FSMC: _____

Date: _____

By: _____
Name and Title of Authorized Representative

Signature of Authorized Representative

NOTE: SFA must attach a copy of the of the Excluded Parties List System (EPLS) webpage indicating the potential Contractor has neither been debarred nor suspended.

Attachment P

Drug-Free Workplace Policy

Certification Regarding Drug-Free Workplace Requirements (Instructions for Certification)

1. By signing and/or submitting this application or grant agreement, the grantee is providing the certification set out below.
2. The certification set out below is a material representation of fact upon which reliance is placed when the agency awards the grant. If it is later determined that the grantee knowingly rendered a false certification, or otherwise violates the requirements of the Drug-Free Workplace Act, the agency, in addition to any other remedies available to the Federal Government, may take action authorized under the Drug-Free Workplace Act.
3. Workplaces under grants, for grantees other than individuals, need not be identified on the certification. If known, they may be identified in the grant application. If the grantee does not identify the workplaces at the time of application, or upon award, if there is no application, the grantee must keep the identity of the workplace(s) on file in its office and make the information available for Federal inspection. Failure to identify all known workplaces constitutes a violation of the grantee's drug-free workplace requirements.
4. Workplace identifications must include the actual address of buildings (or parts of buildings) or other sites where work under the grant takes place. Categorical descriptions may be used (e.g., all vehicles of a mass transit authority or State highway department while in operation, State employees in each local unemployment office, performers in concert halls or radio studios).
5. If the workplace identified to the agency changes during the performance of the grant, the grantee shall inform the agency of the change(s), if it previously identified the workplaces in question (see paragraph five).
6. Definitions of terms in the Nonprocurement Suspension and Debarment common rule and Drug-Free Workplace common rule apply to this certification. Grantees' attention is called, in particular, to the following definitions from these rules:

Controlled substance means a controlled substance in Schedules I through V of the Controlled Substances Act (21 U.S.C. 812) and as further defined by regulation (21 CFR 1308.11 through 1308.15);

Conviction means a finding of guilt (including a plea of nolo contendere) or imposition of sentence, or both, by any judicial body charged with the responsibility to determine violations of the Federal or State criminal drug statutes;

Criminal drug statute means a Federal or non-Federal criminal statute involving the manufacture, distribution, dispensing, use, or possession of any controlled substance;

Employee means the employee of a grantee directly engaged in the performance of work under a grant, including: (i) All direct charge employees; (ii) All indirect charge employees unless their impact or involvement is insignificant to the performance of the grant; and, (iii) Temporary personnel and consultants who are directly engaged in the performance of work under the grant and who are on the grantee's payroll. This definition does not include workers not on the payroll of the grantee (e.g., volunteers, even if used to meet a matching requirement; consultants or independent contractors not on the grantee's payroll; or employees of subrecipients or subcontractors in covered workplaces).

Certification Regarding Drug-Free Workplace Requirements

The grantee certifies that it will or will continue to provide a drug-free workplace by:

- (a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;
- (b) Establishing an ongoing drug-free awareness program to inform employees about (1) the dangers of drug abuse in the workplace; (2) the grantee's policy of maintaining a drug-free workplace; (3) any available drug counseling, rehabilitation, and employee assistance programs; and (4) the penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;
- (c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);
- (d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will (1) abide by the terms of the statement; and (2) notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;
- (e) Notifying the agency in writing, within ten (10) calendar days after receiving notice under paragraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to every grant officer or other designee on whose grant activity the convicted employee was working, unless the Federal agency has designated a central point for the receipt of such notices. Notice shall include the identification number(s) of each affected grant;
- (f) Taking one of the following actions, within 30 calendar days of receiving notice under paragraph (d)(2), with respect to any employee who is so convicted (1) taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the

Rehabilitation Act of 1973, as amended; or (2) requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e) and (f).

The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant:

Place of Performance (Street address, city, county, state, zip code)

The undersigned certifies compliance with the Drug-Free Workplace Requirements

Name/Address of Organization

Name/Title of Submitting Official

Signature

Date

Attachment Q

Non-Collusion Affidavit

Instruction for Non-collusion Affidavit

1. This non-collusion affidavit is material to any contract awarded pursuant to this proposal.
2. This non-collusion Affidavit must be executed by the member, officer, or employee of the potential vendor who makes the final decision on prices and the amount quoted in the proposal.
3. Proposal rigging and other efforts to restrain competition, and the making of false sworn statements in connection with the submission of proposals are unlawful and may be subject to criminal prosecution. The person who signs the Affidavit should examine it carefully before signing and assure himself or herself that each statement is true and accurate, making diligent inquiry, as necessary, of all other persons employed by or associated with the potential vendor with responsibilities for the preparation, approval or submission of the proposal.
4. In the case of a proposal submitted by a joint venture, each party to the venture must be identified in the proposal documents, and an affidavit must be submitted separately on behalf of each party.
5. The term “complementary proposal” as used in the Affidavit has the meaning commonly associated with that term in the proposal process, and includes the knowing submission of proposals higher than the proposal of another firm, an intentionally high or noncompetitive proposal, and any other form of proposal submitted for the purpose of giving a false appearance of competition.
6. Failure to file an Affidavit in compliance with these instructions will result in disqualification of the proposal

Attachment Q

Non-Collusion Affidavit

STATE OF)

COUNTY OF)

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

Signed

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

Notary Public (or Clerk or Judge) _____

My commission expires _____

Attachment R

Certificate of Independent Price Determination

State of _____:

Contract/Proposal Title: _____:

County of _____:

I state that I am _____ **of** _____
(Title) (Name of Firm)

authorized to make this affidavit on behalf of my firm, and its owners, directors, and officers. I

am the person responsible in my firm for the price(s) and the amount of this proposal.

I state that:

The price(s) and amount of this proposal have been arrived at independently and without consultation, communication or agreement with any other contractor, or potential vendor.

Neither the price(s) nor the amount of this proposal, and neither the approximate price(s) nor approximate amount of this proposal, have been disclosed to any other firm or person who is a potential vendor, and they will not be disclosed before proposal opening.

No attempt has been made or will be made to induce any firm or person to refrain from Submitting a proposal for this this contract, or to submit a proposal higher than this proposal, or to submit any intentionally high or noncompetitive proposal or other form of complementary proposal.

The proposal of my firm has made in good faith and not pursuant to any agreement or discussion with, or inducement from, any firm or person to submit a complementary or other noncompetitive proposal.

_____, its affiliates, subsidiaries, officers, directors,
(Name of FSMC)

employees are not currently under investigation by any governmental agency and have not in the last three years been convicted or found liable for any act prohibited by State or Federal law in any jurisdiction, involving conspiracy or collusion with respect to bidding on any public contract, except as follows:

(Name of FSMC)

states that _____
understands and acknowledges that the above representations are material and important, and will be relied on by Mountain Island Charter Schools in awarding the contract for which this proposal is submitted. I understand and my firm understands that any misstatement in this affidavit is and shall be treated as fraudulent concealment from Mountain Island Charter School of the true facts relating to submission of proposals for this contract.

(Name of FSMC)

(Print Name of Authorized Representative)

(Signature of Authorized Representative)

SWORN TO SUBSCRIBED

BEFORE ME THIS _____ DAY

OF _____, 20__

NOTARY PUBLIC

My commission expires: _____

Attachment S

Certification Regarding Lobbying

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

This disclosure form shall be completed by the reporting entity, whether sub-awardee or prime Federal recipient, at the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U.S.C. section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered Federal action. Use the SF-LLL-A Continuation Sheet for additional information if the space on the form is inadequate. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal Action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal Action.
2. Identify the status of the covered Federal Action.
3. Identify the appropriate classification of this report. If this is a follow-up report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal Action.
4. Enter the full name, address, city, State and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or sub-award recipient. Identify the tier of the sub-awardee, e.g., the first sub-awardee of the prime is the 1st tier. Sub-awards include but are not limited to subcontracts, subgrants, and contract awards under grants.
5. If the organization filing the report in item 4 checks "sub-awardee", then enter the full name, address, city, State and zip code of the prime Federal recipient. Include Congressional District, if known.
6. Enter the name of the Federal Agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.
7. Enter the Federal program name or description for the covered Federal Action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.
8. Enter the most appropriate Federal identifying number available for the Federal Action identified in item 1 (e.g., Request for Proposal (RFP) number; Invitation For Bid (IFB) number; grant announcement number; the contract, grant, or loan award number; the application bid/proposal control number assigned by the Federal agency). Include prefixes, e.g., "RFP-DE-90-001."
9. For a covered Federal Action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.
 - a) Enter the full name, address, city, State and zip code of the lobbying entity engaged by the reporting entity identified in item 4 to influence the covered Federal Action.
 - b) Enter the full names of the individual(s) performing services and include full address if different from 10 (a). Enter last name, first name, and middle initial (MI).

Attachment S (Continued)

10. Enter the amount of compensation paid or reasonably expected to be paid by the reporting entity (item 4) to the lobbying entity (item 10). Indicate whether the payment has been made (actual) or will be made (planned). Check all boxes that apply. If this is a material change report, enter the cumulative amount of payment made or planned to be made.
11. Check the appropriate box (es). Check all boxes that apply. If payment is made through an in-kind contribution, specify the nature and value of the in-kind payment.
12. Check the appropriate box (es). Check all boxes that apply. If other, specify nature.
13. Provide a specific and detailed description of the services that the lobbyist has performed, or will be expected to perform, and the date(s) of any services rendered. Include all preparatory and related activity, not just time spent in actual contact with Federal officials. Identify the Federal official(s) or employee(s) contacted or the officer(s), employee(s), or Member(s) of Congress that were contacted.
14. Check whether or not a SF-LLL-A continuation sheet(s) is attached.
15. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

Public reporting burden for this collection of information is estimated to average 30 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0046), Washington, D.C. 20503.

Attachment S (Continued)

Certification Regarding Lobbying

Applicable to Grants, Sub-grants, Cooperative Agreements, and Contracts Exceeding \$100,000 in Federal funds.

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

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

- (1) No Federal appropriated funds have been paid or will be paid by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, an employee of a Member of Congress, or any Board Member, officer, or employee Mountain Island Charter School in connection with the awarding of a Federal contract, the making of a Federal grant, the making of a Federal loan, the entering into a cooperative agreement, and the extension, continuation, renewal, amendment, or modification of a Federal contract, grant, loan, or cooperative agreement.
- (2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, an employee of a Member of Congress, or any Board Member, officer, or employee of Mountain Island Charter School in connection with this Federal grant or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying", in accordance with its instructions.

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

Name/Address of Organization

Name/Title of Submitting Official

Signature

Date

Attachment S (Continued)

Disclosure Form to Report Lobbying Activities

Disclosure of Lobbying Activities

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

(See next page for public burden disclosure.)

*Approved by OMB
0348-0046*

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

Attachment S (Continued)

<p>16. Information requested through this form is authorized by article 31 U.S.C. section 1352.</p> <p>This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.</p>	<p>Signature: _____</p> <p>Print Name: _____</p> <p>Title: _____</p> <p>Telephone No: _____</p> <p>Date: _____</p>
<p><i>Federal Use Only:</i> <i>Authorized for Local Reproduction of:</i></p> <p>Standard Form – LLL</p>	

Attachment T

Sex Offender Registry Check

Sexual Offender Registry Check Certification Form

Check the appropriate box to indicate the type of check:

- Initial
- Supplemental
- Annual

I, _____ (insert name), _____ (insert title) of _____ (insert company name) hereby certify that I have performed all of the required sexual offender registry checks required under this Agreement for all contractual personnel (employees, agents, ownership personnel, or contractors) who may be used to deliver goods or provide services under this Agreement, including the North Carolina Sex Offender and Public Protection Registration Program, the North Carolina Sexually Violent Predator Registration Program, and the National Sex Offender Registry. I further certify that none of the individuals listed below appears on any of the above-named registries and that I will not assign any individual to deliver goods or perform services under this Agreement if said individual appears on any of the sex offender registries. I agree to maintain all records and documents associated with these registry checks, and that I will provide such records and documents to the school upon request. I specifically acknowledge that the school retains the right to audit these records to ensure compliance with this section at any time in the school’s sole discretion. I acknowledge that I am required to perform these checks and provide this certification form before any work is performed under the Agreement (initial check), any time additional contractual personnel may perform work under the Agreement (supplemental check), and at each anniversary date of the Agreement (annual check).

Contractual Personnel Names

Job Title

- | | | |
|----|-------|-------|
| 1. | _____ | _____ |
| 2. | _____ | _____ |
| 3. | _____ | _____ |
| 4. | _____ | _____ |
| 5. | _____ | _____ |

(attach additional page(s) if needed)

I attest that the forgoing information is true and accurate to the best of my knowledge.

(print name)

(signature)

(title)

(date)

Attachment U

**UNALLOWABLE SFA-FSMC CONTRACT DOCUMENT PROVISIONS
(Must be submitted with Request for Proposal/Contract)**

The following indicate problem areas that have been identified in SFA-FSMC contract documents. The contract documents must be thoroughly checked, regardless of the procurement method used, to ensure these areas have not been included, in any form. Indicate with a check mark (✓) in each block that the review of the document(s) indicates that there are no such provisions in the reviewed document(s), unless specified below.

Check (✓) as described above.

- 1. **Cost Plus a Percentage of Cost/Income**--cost plus a percentage of cost/income to the FSMC, however represented.
- 2. **Duplicate Fees**--fee structures that permit a FSMC to bill management fees and charge the same costs as cost-reimbursable expenses.
- 3. **Purchasing**--if the SFA does the purchasing, clauses that limit the selection of vendors to only 8FSMC-approved vendors; (FSMC may not serve as a vendor).
- 4. **Acceleration Clause**--provisions (multi-year) that require full payment (e.g., program equipment purchases) if the contract is not re-negotiated.
- 5. **Interest Payments**--interest payments to the contractor, however represented, including interest payments for equipment purchases.
- 6. **Guaranteed Return**—"guaranteed return" provisions unless the "return" remains in the nonprofit School Nutrition Program account. "Returns" cannot be contingent upon multi-year contract duration.
- 7. **Delegation of SFA Responsibilities**--FSMC responsibility for any of the functions that must be retained by the SFA.
- 8. **Automatic Renewal**--provisions which automatically renew the contract.
- 9. **Processing Contracts**--contract document language that permits the FSMC to subcontract USDA Foods for further processing.
- 10. **Rebates, prepayment or other procurement bonuses, special promotions**--contract document language that permits rebates, special promotions, other financial purchasing incentives to accrue to the FSMC or any other entity besides the SFA's nonprofit School Nutrition Program

For the item(s) above not checked (✓), indicate item number(s) with corresponding page number(s) of document(s) where provision(s) appears.

Name and Title of SFA Official conducting check of Proposal

Date