

Notice of Request for Proposals

Food Service Management Company RFP 2019-20

Notice is hereby given that the Governing Board of the Rocketship Education, California, Inc. (hereinafter referred to as **SFA**) is requesting proposals for a food service management company (hereinafter referred to as **Respondent[s]**) to assist with the SFA's food service program.

Respondents should not construe from this legal notice that the SFA intends to enter into a fixed-price contract with the Respondent unless, in the opinion of the SFA, it is in the best interest of the SFA to do so. The SFA reserves the right to negotiate final contractual terms with the successful Respondent.

The Request for Proposal (RFP) documents are available by
Rocketship Education, California Web site at <https://www.rocketshipschools.org/>

To request the RFP documents by e-mail, please contact
Rocketship Education, California
e-mail: cknight@rsed.org

The SFA will record and provide answers to any questions or requests for clarifying information about the RFP during the question and answer period. Respondents must submit written proposals in a sealed package labeled
"Proposal - Food Service Management Company 2019-20"

Addressed to the SFA at:
350 Twin Dolphin Drive, Suite 109
Redwood City, CA 94065
Attn: Cola Knight-Salicka

The SFA will accept all proposals received on or before March 29, 2019 at 4:00 pm. The SFA will not accept proposals that are received after the deadline. The SFA will open proposals at April 1, 2018 at 4:00 pm.

The SFA reserves the right to reject any or all proposals, and to waive any errors or corrections in a proposal or in the proposal process. The SFA will award the contract based on a review and analysis of the proposals that determines which proposal best meets the needs of the SFA. Following the review and analysis of all responsive proposals, the SFA will make a recommendation to their Board of Education at its regularly scheduled meeting.



**REQUEST FOR PROPOSAL
FOOD SERVICE MANAGEMENT COMPANY**

CONTACT INFORMATION

RFP 2019-20

by

Rocketship Education, California, Inc.
FOOD SERVICE PROGRAM

ADDRESS ALL PROPOSALS TO:

Cola Knight-Salicka
Senior Public Grants Administrator

350 Twin Dolphin Drive, Suite 109
Redwood City, CA 94065

530-828-8379

cknight@rsed.org

Request for Proposal

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Introduction/Purpose of Solicitation

The purpose of this Request for Proposal (RFP) is to enter into a fixed-price contract with a food service management company (FSMC) that will provide Rocketship Education, California, Inc. (hereinafter referred to as the school food authority [SFA]) with food service management assistance for their food service operation. The FSMC will provide services to the SFA as described in the Scope of Work in the Model Fixed-price Contract.

The SFA's food service goals are to provide nutritious, high-quality meals to students and participants in National School Lunch Program, School Breakfast Program, and the Fresh Fruit and Vegetable Program, to accommodate special diets where medically necessary, improve the nutritional quality of meals, and maintain a financially viable food service program. General food service goals are to:

- Provide an appealing and nutritionally sound program for students as economically as possible
- Stimulate both student and adult participation in the program through improved relations with students, staff, and the community by creating awareness of the direct correlation between adequate nutrition for students and their ability to learn
- Increase participation at all levels of the food service program by improving meal quality, seeking student and parent input, offering menu variations, and improving planning
- Maintain reasonable prices for students and adults participating in the food service program
- Maintain student and staff morale at a high level

SFAs shall conduct all procurement transactions in a manner that provides maximum open and free competition consistent with Title 2, *Code of Federal Regulations (2 CFR)*, Part 200.319(a)(1-7). The SFA must share with every Respondent all information necessary for submitting a competitive proposal. The release of this RFP, evaluation of Respondents, and award of a contract will use competitive bidding standards established in all applicable California state and federal statutes and regulations.

Outlined below are competitive bidding basic standards:

- The purpose of soliciting competitive proposals is to secure public objectives in the most effective manner and avoid the possibilities of graft, fraud, collusion, etc.
- The SFA released this RFP to benefit the SFA and not the Respondents.
- Fulfillment of RFP specifications is based on full and fair competition and acceptance by the SFA of the most responsive and responsible Respondent to the SFA's requirements, as determined by the SFA when evaluating proposals based on the criteria contained in the RFP.

- The RFP must provide a basis for full and fair competition among Respondents to a common standard, free of restrictions that tend to stifle competition.

The above four points are for illustrative purposes only, and do not include all California state and federal requirements to achieve competitive bidding.

To respond to this RFP, interested FSMCs must present evidence of experience, ability, and financial standing necessary to meet the requirements stated in this RFP. The SFA will measure this evidence by scoring the proposals, using a point system that will rank each proposal from highest to lowest, to determine which proposals they will consider for the award of a contract.

To be competitive in this solicitation, the Respondent must:

- Carefully read the entire RFP, attachments, exhibits, addenda, and SFA responses to questions before submitting a proposal
- Ask appropriate questions or request clarification before the deadline in the RFP
- Submit all required responses by the required deadlines
- Follow all instructions and requirements of the RFP thoroughly and appropriately

If a Respondent discovers any ambiguity, conflict, discrepancy, omission, or other errors in this RFP, the Respondent shall immediately notify the SFA of the error in writing and request clarification or a modification of the RFP. If the Respondent fails to notify the SFA of the error prior to the date for submission of proposals, and is awarded the contract, the Respondent shall not be entitled to additional compensation or time by reason of the error or its later correction.

**Schedule of Events
for
RFP #2019-20**

- Board Meeting – RFP Approval February 28, 2019
- Release of RFP March 1, 2019
- First Public Notice March 1, 2019
- Second Public Notice March 8, 2019
- Respondent Question Submission Deadline March 15, 2019 @ 4:00 pm
- SFA Provides Answers March 22, 2019 @ 4:00 pm
- Deadline for Submission of Sealed Proposal March 29, 2019 @ 4:00 pm
- Proposals Opened April 1, 2019 @ 4:00 pm
- Proposals Evaluated Week of May 1, 2019
- Board Meeting – Proposal Approval May 16, 2019
- Anticipated Contract Award Date May 17, 2019

The SFA will make every effort to adhere to the schedule. However, the SFA reserves the right to amend the schedule, as necessary, and will post a notice of said amendment at <https://www.rocketshipschools.org/>.

Respondents shall submit all questions via email to Cola Knight-Salicka at cknight@rsed.org.

General Instructions for Respondents

1. Prepare proposals simply and economically. Provide a straightforward concise description of the Respondent's capability to satisfy the SFA's requirements. Emphasis should be placed on completeness and clarity of content.
2. Submit proposals for the performance of all the services described within this RFP. The SFA will not consider any deviation from these specifications and will reject such proposals.
3. The SFA may reject a proposal if the proposal is conditional or incomplete, deemed nonresponsive, or if it contains any alterations of form or other irregularities of any kind. The SFA may reject any or all proposals or waive any immaterial deviation in a proposal. The SFA's waiver of an immaterial deviation shall in no way modify the RFP document or excuse the Respondent from full compliance with all other requirements if awarded the contract.
4. Respondents are responsible for the costs of developing proposals, and shall not charge the SFA for any preparation costs.
5. The SFA asks Respondents that do not intend to submit a proposal to notify the SFA in writing.
6. Respondents may modify their proposal after submission by withdrawing the original proposal and resubmitting a new proposal prior to the submission deadline. The SFA will not consider proposal modifications offered in any other manner, either oral or written.
7. The Respondent shall provide payment terms within their proposal.
8. The Respondent shall maintain records to support the SFA's Claim for Reimbursement and report claim information to the SFA promptly at the end of each month. Such records shall be made available to the SFA upon request and shall be retained in accordance with 7 CFR, Section 210.16(c)(1).
9. The Respondent shall secure State or local health certification for any facility outside the school in which it prepares meals. The Respondent shall maintain this certification for the duration of the contract. [7 CFR Section 210.16(a)][7]
10. The SFA participates in meal programs that require the use the nonprofit food service funds, to the maximum extent practicable, to buy domestic commodities or products for Program meals. A 'domestic commodity or product' is defined as one that is either produced in the U.S. or is processed in the U.S. substantially (51% or more by weight or volume) using agricultural commodities that are produced in the U.S. as provided in 7 CFR, Sections 210.21(d), 220.16(d), and SP 38-2017.
11. The Respondent will document why a non-domestic food is being substituted for domestic foods. The documentation is intended to indicate if the alternative food is due to the cost of domestic being significantly higher than non-domestic foods and/or the domestic foods are not produced or manufactured in sufficient and reasonable available quantities of a satisfactory quality. The Respondent will provide documentation justifying their use of exceptions to the Buy American Provision.

12. The Respondent will provide documentation about the percentage of domestic product in any processed end product. If the percentage is less than 51% then the respondent will notify the SFA of the non-domesticity of the processed end product.
13. The Respondent will provide certification of domestic origin for products which do not have country of origin labels.
14. The Respondent will not, directly or indirectly restrict the sale or marketing of fluid milk at any time or in any place on school premises or at any school-sponsored event. [7 CFR, Section 210.21(e)]
15. The Respondent shall include a 21 Day Cycle menu. (7 CFR, Section 210.10)
16. The Respondent shall include meal pattern requirements for breakfast, as per 7 CFR, Section 220.8.
17. The Respondent must credit the recipient agency for the value of all donated foods received for use in the recipient agency's meal service in the school year or fiscal year (including both entitlement and bonus foods), and including the value of donated foods contained in processed end products. [7 CFR, Section 250.51(a)]
18. The Respondent will provide the method and frequency by which the crediting will occur and document that the value of all donated foods will be credited. [7 CFR, Section 250.51(b)]
19. The Respondent will provide the method of determining the donated food values to be used in crediting. [7 CFR, Section 250.51(c)]
20. The Respondent shall agree to penalties for nonperformance. [7 CFR, Section 210.16(b)(2)]
21. Small Businesses and Minority Business - (a) The non-Federal entity 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. (Title 2, Code of Federal Regulations, Section 200.321(a)(b)(1-6))
22. Respondents may withdraw their proposal by submitting a written withdrawal request to the SFA, signed by the Respondent or their authorized agent, through the contact person

named in the "Contact Information" provided on page iv of this RFP. Thereafter, a Respondent may submit a new proposal prior to the proposal submission deadline. Respondents may not withdraw their proposal without cause after the proposal submission deadline.

23. The SFA may modify the RFP prior to the date given for submission of proposals by posting an addendum on <https://www.rocketshipschools.org/>. The SFA will notify Respondents so they can obtain any addenda from the SFA's Web site, or request it by e-mail.
24. The SFA reserves the right to reject all proposals for reasonable cause. If the costs of all proposals are excessive, the SFA is not required to award a contract.
25. The SFA will not consider more than one proposal from an individual, firm, partnership, corporation, or association under the same or different names. Reasonable grounds for believing that any Respondent has submitted more than one proposal for work contemplated herein will cause the SFA to reject all proposals submitted by the Respondent. If there is reason to believe that collusion exists among the Respondents, the SFA will not consider any of the participants of such collusion in this or future solicitations.
26. The SFA will not consider a joint proposal submitted by two or more entities.
27. Additional charges for regular or express delivery, drayage, parcel post, packing, cartage, insurance, license fees, permits, or for any other purpose shall be included (and separately identified) in the proposal.
28. All proposals shall include the forms provided as attachments to this RFP. Respondents may copy these forms. A proposal is considered responsive if it follows the required format, includes all attachments, and meets all deadlines and other requirements outlined in this RFP.
29. The SFA shall not accept proposals after the submission deadline specified in the RFP and shall return the unopened proposals to the respective Respondents. The SFA will not consider late proposals under any circumstances.
30. Respondents are responsible for examining the entire RFP package, seeking clarification for any item or requirement that may not be clear to them, and checking all responses in their proposal for accuracy before submitting it.
31. Respondents may submit their questions regarding the information presented in this RFP to Cola Knight-Salicka in writing by e-mail at cknight@rsed.org, no later than May 13, 2019 at 4:00 pm. The SFA will answer all questions received by the deadline in writing without exposing the query source. This will be the sole process for asking and answering questions regarding this RFP. Respondents may not contact SFA employees directly to ask questions.
32. SFA representatives reserve the right to inspect a Respondent's other food service operations prior to any award of a contract.

33. The SFA reserves the right to negotiate the final terms and conditions of the contract, which may differ from those contained in the proposal, provided the SFA considers such negotiation to be in its best interest. Any change in the terms and conditions must not create a material change, which is any alteration or modification to the original terms stated in the RFP that would have resulted in different proposals from all respondents. A material change will require the SFA to rebid the contract.
34. Interested Respondents are required to inspect the SFA's premises prior to submitting a proposal in order to determine all requirements associated with the proposed contract. The inspection of premises will occur during the Mandatory Tour.
35. Respondents shall submit two paper copies and one copy in digital format (e.g., CD, DVD, flash drive, etc.).
 - a. The paper copy must contain the original signature of the individual(s) authorized to bind the Respondent contractually and be labeled "Master Copy."
 - b. The Respondent must ensure the digital copy is complete and inclusive of all materials contained in the paper copy, including any required signatures. If there is an inconsistency between the paper and digital copies, the paper copy will take precedence.
 - c. The sealed proposal envelopes must be marked legibly with the SFA's RFP number and title, and the SFA name and address, as shown in the following example:

[FSMC Name Submitting RFP]

RFP 2019-20

Proposal - Food Service Management Company
for

Rocketship California
350 Twin Dolphin Drive, Suite 109
Redwood City, CA 94065

Attn: Cola Knight-Salicka

Proposal Requirements

To be eligible for evaluation, a proposal must adhere strictly to the format set forth below; failure to do so may result in disqualification. Respondents must complete, label, and separate each section, and number all pages. The content and sequence of the proposal will be as follows:

Section 1 - Administrative Requirements

A. Cover Letter

Only the individual(s) authorized to bind the Respondent contractually may sign the cover letter, which shall be a part of the proposal package. If the cover letter is unsigned, the SFA will reject the proposal. The SFA may reject the proposal if the Respondent fails to include the following required information:

- Name and address of responding company
- Organizational structure of the responding company (e.g., corporation, partnership, etc.)
- Respondent's Federal Employee Identification Number and Corporate Identification Number, if applicable
- Name, title phone number, fax number, and e-mail address of the representative who will be designated as the primary liaison to the SFA
- Name, title, phone number, and e-mail address of the representative(s) authorized to bind the Respondent in a contract if different from the primary liaison
- A statement expressing the Respondent's willingness to perform the services described in this RFP
- A statement expressing the Respondent's ability to perform the services required in the Scope of Work, including availability of staff and other required resources to meet all deliverables as described in this RFP
- A statement regarding the Respondent's proprietary information; if applicable, the Respondent must clearly mark in the upper right hand corner those pages to be considered proprietary (**Note:** the Respondent cannot consider the entire proposal to be proprietary)
- The following certification:

By signing this cover letter, I (we) certify that the information contained in this proposal is accurate and that all attachments required to be submitted as part of the proposal are certified to be true and binding upon our company.

B. Table of Contents

Immediately following the cover letter, include a comprehensive Table of Contents that lists all submitted proposal sections, subsections, attachments, and materials.

Section 2 – Required Attachments

A. Attachment Checklist

The Respondent shall include all documents identified in the Attachments Checklist (Attachment A). The SFA may reject proposals that do not include the proper required attachments.

B. Minimum Qualifications

The SFA will only consider Respondents that **meet all minimum qualifications** (as listed on Attachment B).

C. FSMC Professional Standards

Establishes minimum professional standards for school nutrition personnel who manage and operate the National School Lunch and School Breakfast Programs (as listed on Attachment C).

D. Proposal Questionnaire

The Proposal Questionnaire (Attachment D) is intended to provide the SFA with specific information concerning the Respondent's capability to provide services as described in this RFP. Respondents should limit their responses to the number of pages noted in the questionnaire and answer each question in the same order.

E. Respondent References

Respondents must provide three references on the Respondent References form (Attachment E). The SFA reserves the right to contact any of the references listed, and retains the right to conduct reference checks with individuals and entities beyond those listed.

F. Authorization Agreement

The Respondent or their authorized representative must sign the Authorization Agreement (Attachment F) and return it with the proposal package.

G. Fee Proposal

The Respondent must complete the Fee Proposal (Attachment G) and return it with the proposal package.

H. Certifications

The Respondent must complete the certifications (Attachments H) and return them with the proposal package.

I. Certificate of Price Determination

The Respondent must complete the certifications (Attachments I) and return them with the proposal package.

J. 21 Day Cycle Menu

The Respondent must submit a 21 Day Cycle menu with the proposal package in accordance with the specifications in Attachment J.

Evaluation of Proposals

Proposals will be opened on or after the date and time specified in the Schedule of Events. During the evaluation process, the SFA may ask Respondents to clarify information in the proposals, but Respondents may not change their proposals.

An error in the proposal may cause the SFA to reject that proposal; however, the SFA may, at its sole discretion, retain the proposal and make certain corrections. When determining if a correction will be made, the SFA will consider the conformance of the proposal to the format and content required by the RFP and that the Respondent's intent is clearly established based on review of the whole proposal. Based on that established intent, the SFA may choose to correct errors such as obvious grammatical or punctuation errors and arithmetic errors. The Master Copy of the proposal shall have priority over additional proposal copies.

The SFA will open proposals to determine if they contain all the required information in accordance with this RFP. The SFA will evaluate qualifying proposals using the following criteria:

Criteria	Minimum Standard	Evidence/Document Requirement	Points
Healthy Food Standards	FSMC must be able to meet all healthy food standards outline in Attachment J with fresh meals delivered daily.	Demonstration of ability to meet minimum requirements	25
Meal Order Management System	FSMC shall place orders on behalf of Rocketship, and minimize waste at school sites.	Sample menu ordering included in response. Narrative around meal ordering process.	25
Vended Meal Capabilities	FSMC demonstrates experience providing vended meals, has appropriate transportation in working order for meal deliveries.	Transportation plan, equipment inventory	10
K-12 Experience in the National School Lunch Program	A minimum of five (5) years in K-12 food service management, specifically National School Lunch and Breakfast Program	Documentation of experience as outlined in company history	10
References	FSMC must provide at least three customer references, 66% contract renewal rate	Documentation of all K-12 organizations vendor has had contracts with in the past five years with contact information. Identify contracts lost over the past five years.	5
Financial Stability	Three years of operating financial performance	Provide copies of company financial statements for past three years	10
Taste Test	FSMC demonstrates experience in physical meal preparation producing nutritious, good-tasting food.	Qualified vendors will be invited to prepare examples of breakfast and lunch offerings to be evaluated by the Rocketship scoring committee	10
Cost		Price per meal (breakfast, lunch) clearly articulated in Attachment G	30
Total			125

The SFA will score and rank selected proposals by assigning a score between zero and the maximum score to each proposal criterion. The SFA will recommend awarding the contract to the most responsive and responsible Respondent with the highest total proposal score.

Attachment A: Attachments Checklist

Respondent Company Name

Please complete this checklist to confirm that the items listed below have been included in your proposal. Place a checkmark or "x" next to each item submitted to the SFA. For your proposal to be considered, all required attachments must be returned, including this checklist. Submit one copy of your proposal in a sealed package.

Attachment	Attachment Name
<input type="checkbox"/> A	Attachments Checklist
<input type="checkbox"/> B	Minimum Qualifications
<input type="checkbox"/> C	FSMC Professional Standards
<input type="checkbox"/> D	Proposal Questionnaire
<input type="checkbox"/> E	Respondent References
<input type="checkbox"/> F	Authorization Agreement
<input type="checkbox"/> G	Fee Proposal
<input type="checkbox"/> H	Certifications Regarding Lobbying Activities, Debarment, Suspension and Other Responsibility Matters
<input type="checkbox"/> I	Certificate of Independent Price Determination
<input type="checkbox"/> J	21 Day Cycle Menu (Include)

Attachment B: Minimum Qualifications

A Respondent must meet all of the following minimum qualifications to the SFA's satisfaction to be given further consideration. Failure to satisfy any of the minimum qualifications may result in the immediate rejection of the proposal.

As of March 29, 2019 both the Respondent's company and its key personnel meet all of the following minimum qualifications:

1. The Respondent has at least five years of experience with food service programs.

Yes _____ No _____

2. The Respondent has the resources and ability to provide 2,500,000 breakfast and lunch meals per fiscal year.

Yes _____ No _____

3. The Respondent has knowledge and experience with the School Breakfast Program, National School Lunch Program, Child and Adult Food Care Program, Summer Food Service Program, and the Fresh Fruit and Vegetable Program.

Yes _____ No _____

4. The Respondent has professional references that demonstrate and evidence the ability to perform the required services.

Yes _____ No _____

5. The Respondent is licensed to do business in the state of California.

Yes _____ No _____

Attachment C: FSMC Professional Standards

FSMC Employees Professional Standards

Federal Register Vol. 80, No. 40, dated March 2, 2015, referred to as the “Final Rule,” establishes minimum professional standards for school nutrition personnel who manage and operate the National School Lunch and School Breakfast Programs. In the Final Rule, the following definitions are established:

6. **School Nutrition Program Director.** The school nutrition program director is any individual directly responsible for the management of the day-to-day operation of school food service for all participating schools under the jurisdiction of the school food authority.
7. **School Nutrition Program Manager.** The school nutrition manager is any individual directly responsible for the management of the day-to-day operation of school food service for a participating school(s).
8. **School Nutrition Program Staff.** School nutrition program staff are those individuals, without managerial responsibilities, involved in day-to-day operations of school food service for a participating school(s).

The Final Rule establishes that these definitions apply to the function/role rather than the specific title within the school food service structure, and that the definitions apply whether or not the school food service is operated by an FSMC. Therefore, as of the effective date of this contract, the minimum professional standards established by the Final Rule, and described therein, shall apply to FSMC staff performing any of the duties described above.

The FSMC shall only place staff for work in the school district that meet the minimum professional standards outlined in 7 *CFR*, Section 210.30, which can be viewed at the following Web page:

http://www.fns.usda.gov/sites/default/files/cn/profstandards_flyer.pdf.

1. The SFA shall ensure that all staff the FSMC proposes for placement meet the minimum professional standards.
2. The FSMC shall ensure their employees take the required annual training as outlined in the professional standards and provide certification of such training to the SFA. The FSMC shall remove from the SFA premises any staff who fail to take the required annual training.
3. The FSMC shall provide the SFA with a list of proposed employees and evidence that they meet the professional standards.

Attachment D: Proposal Questionnaire

This proposal questionnaire is intended to provide the SFA with specific information concerning the Respondent's capability to provide services as described in the RFP.

1. Provide a general description of your company's qualifications and experience relevant to the minimum qualifications in Attachment B, along with any necessary substantiating information. Limit your responses to information about your company's capabilities.
2. Provide a statement indicating the year your company was founded; what the primary business of the company is; the length of time the company has been providing food service management services and related services as described in this RFP. In addition, provide the duration and extent of experience the company has with similar SFA food management services.
3. Provide a general description of how your company will be able to provide the experience, ability, and financial standing necessary to meet the requirements set forth in this RFP.
5. Provide an organization chart for your company, a description of the lines of communication, and the responsibilities at each corporate level.
7. Provide a complete balance sheet or annual report (verified by a certified public accountant) for the last three years of operation.
8. Provide a description of promotional and marketing materials you will use to attract students to the program.
9. Provide a recommended transition plan that describes the steps the Respondent will take to begin providing the services described in this RFP.

Attachment E: Respondent References

List three references to which the Respondent has provided food service management services.

Failure to complete and return this Attachment will cause your proposal to be rejected.

Reference 1		
Name of Reference		
Street Address		
City	State	Zip Code
Contact Person	Contact Title	Contact Phone Number
Brief Description of Services Provided		
Dates of Service		
Reference 2		
Name of Reference		
Street Address		
City	State	Zip Code
Contact Person	Contact Title	Contact Phone Number
Brief Description of Services Provided		
Dates of Service		
Reference 3		
Name of Reference		
Street Address		
City	State	Zip Code
Contact Person	Contact Title	Contact Phone Number
Brief Description of Services Provided		
Dates of Service		

Attachment F: Authorization Agreement

Request for Proposal for Food Service Management Company
RFP Number: 2019-20

We, [Enter FSMC Name], by our signature on this document certify the following:

2. That we will operate in accordance with all applicable California state and federal laws, regulations, and statutes.
3. That the terms, conditions, warranties, and representations made within this RFP and our proposal shall be binding upon us and shall be considered a part of the contract as if incorporated therein.
4. That the proposal submitted is a firm and irrevocable offer good for one year.
4. That we have carefully examined all terms and conditions set forth in the Model Fixed-price Contract issued by Rocketship Education, California, Inc.
5. That we have made examinations and verifications, and are fully conversant with all conditions under which services are to be performed for Rocketship Education, California, Inc.
6. That negligence in the preparation or presentation of, errors in, or omissions from proposals shall not relieve us from fulfillment of any and all obligations and requirements in the resulting contract.

FSMC Name: _____

Address: _____

E-mail Address: _____

Website Address: _____

Name of Authorized Representative: _____

Title of Authorized Representative: _____

Signature of Authorized Representative

Date Signed: _____

Attachment G: Fee Proposal

Respondent Instructions:

⇒ Provide the cost per meal; base all food costs **on the attached 21-day cycle menu**.

⇒ Prices must not include values for USDA Foods and must include all meal programs applicable.

Meal	# Full Serving Days	# Meals per Day	Price per Meal
Breakfast	180	5,500	
Lunch	180	6,000	

Attachment H: Certifications Regarding Lobbying, Debarment, Suspension, and Other Responsibility Matters

Applicants should refer to the regulations cited below to determine the certification to which they are required to attest. Applicants should also review the instructions for certification included in the regulations before completing this form. Signature of this form provides for compliance with certification requirements under 7 *CFR*, Part 3018, "New Restrictions on Lobbying," 7 *CFR*, Part 3017, "Government-wide Debarment and Suspension (Nonprocurement)," and 7 *CFR*, Part 3021, "Government-wide Requirements for Drug-Free Workplace (Grants)." The certification shall be treated as a material representation of fact upon which reliance will be placed when the SFA determines to award the covered transaction, grant, or cooperative agreement.

LOBBYING

As required by Title 31, *U.S. Code* (31 *U.S.C.*) Section 1352, and implemented at 7 *CFR*, Part 3018, for a person entering into a grant or cooperative agreement over \$100,000, as defined at 7 *CFR*, Section 3018.105, the applicant certifies that:

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

Disclosure of Lobbying Activities and Instructions

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352
(See next page for public burden disclosure)

Approved by
OMB

<p>1. Type of Federal Action:</p> <p>a. Contract</p> <p>b. Grant</p> <p>c. Cooperative agreement</p> <p>d. Loan</p> <p>e. Loan guarantee</p> <p>f. Loan insurance</p>	<p>2. Status of Federal Action:</p> <p>a. Bid/Offer/Application</p> <p>b. Initial Award</p> <p>c. Post-Award</p>	<p>3. Report Type:</p> <p>a. Initial filing</p> <p>b. Material change</p> <p>For Material Change Only:</p> <p>Year _____ Quarter _____</p> <p>Date of last report _____</p>	
<p>4. Name and Address of Reporting Entity:</p> <p><input type="checkbox"/> Prime <input type="checkbox"/> Subawardee</p> <p><input type="checkbox"/> Tier, if known</p> <p>Congressional District, if known:</p>		<p>5. If Reporting Entity in No. 4 is Subawardee, Enter Name and Address of Prime:</p> <p>Congressional District, if known:</p>	
<p>6. Federal Department/Agency:</p>	<p>7. Federal Program Name/Description:</p> <p>CFDA Number, if applicable:</p>		
<p>8. Federal Action Number, if known:</p>	<p>9. Award Amount, if known:</p> <p>\$</p>		
<p>10. a. Name and Address of Lobbying Registrant (if individual, last name, first name, MI):</p>	<p>b. Individuals Performing Services (including address if different from No. 10a) (last name, first name, MI)</p>		
<p>11. Information requested through this form is authorized by Title 31 U.S.C. Section 1352. 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 a 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>FEDERAL USE ONLY:</p>		<p><i>Authorized for Local Reproduction</i> Standard Form (SF—LLL (Rev. 7-97)</p>	

INSTRUCTIONS

Disclosure of Lobbying Activities (SF-LLL)

This disclosure form shall be completed by the reporting entity, whether subawardee or prime federal recipient, at the initiation or receipt of a covered federal action, or a material change to a previous filing, pursuant to 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. 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 (OMB) 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 subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the first tier. Subawards include but are not limited to subcontracts, subgrants, and contract awards under grants.
5. If the organization filing the report in item 4 checks "Subawardee," 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, U.S. Department of Agriculture, Food and Nutrition Service.
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., RFP number; Invitation for Bid (IFB) number; grant announcement number; the contract, grant, or loan award number; the application/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.
10. (a) Enter the full name, address, city, state, and zip code of the lobbying registrant under the Lobbying Disclosure Act of 1995 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).
11. The certifying official shall sign and date the form, print his/her name, title, and phone number.

According to the Paperwork Reduction Act, as amended, no persons are required to respond to a collection of information unless it displays a valid OMB Control Number. The valid OMB control number for this information collection is OMB No. 0348-0046. Public reporting burden for this collection of information is estimated to average 10 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, DC 20503.

Debarment, Suspension, and Other Responsibility Matters

As required by Executive Order 12549, Debarment and Suspension, and implemented at 7 *CFR*, Section 3017.510, for prospective participants in primary covered transactions, as defined at 7 *CFR* Section 3017.200:

- A. The contractor certifies that it and its principals:
- (a) Are not presently debarred, suspended, proposed for debarment, 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.
- B. Where the applicant is unable to certify to any of the statements in this certification, he or she shall attach an explanation to this application.

Contractor/Company Name

Award Number, Contract Number, or Project Name

Name(s) and Title(s) of Authorized Representatives

Signature(s)

Date

Attachment I: Certificate of Independent Price Determination

Both the SFA and FSMC shall execute this Certificate of Independent Price Determination.

	ROCKETSHIP EDUCATION, CALIFORNIA
Name of FSMC	Name of SFA

- A. By submission of this offer, the offeror (FSMC) certifies and, in the case of a joint offer, each party thereto certifies as to its own organization that in connection with this procurement:
1. The prices in this offer have been arrived at independently—without consultation, communication, or agreement—for the purpose of restricting competition, as to any matter relating to such prices with any other offeror or with any competitor;
 2. Unless otherwise required by law, the prices which have been quoted in this offer have not been knowingly disclosed by the offeror and will not knowingly be disclosed by the offeror prior to opening the case of an advertised procurement, directly or indirectly to any other offeror or to any competitor; and
 3. No attempt has been made or will be made by the offeror to induce any person or firm to submit, or not to submit, an offer for the purpose of restricting competition.
- B. Each person signing this offer on behalf of the offeror certifies that:
1. He or she is the person in the offeror’s organization responsible within the organization for the decision as to the prices being offered herein and has not participated, and will not participate, in any action contrary to (A)(1) through (A)(3) above; or
 2. He or she is not the person in the offeror’s organization responsible within the organization for the decision as to the prices being offered herein, but that he or she has been authorized in writing to act as agent for the persons responsible for such decision in certifying that such persons have not participated, and will not participate, in any action contrary to (A)(1) through (A)(3) above and as their agent does hereby so certify; and he or she has not participated, and will not participate, in any action contrary to (A)(1) through (A)(3) above.

To the best of my knowledge, this vendor and its affiliates, subsidiaries, officers, directors, and 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 (provide detail):

Signature of FSMC’s Authorized Representative	Title	Date
--	-------	------

In accepting this offer, the SFA certifies that no representative of the SFA has taken any action that may have jeopardized the independence of the offer referred to above.

Signature of SFA’s Authorized Representative	Title	Date
---	-------	------

Note: Accepting a Respondent’s offer does not constitute award of the contract.

Attachment J: 21 Day Cycle Menu

INSTRUCTIONS: All Respondents shall attach a 21-Day Menu Cycle with their proposal submission.

SFA Healthy Food Standards

In our commitment to providing students with the nutritious and healthy meals, we have set higher meal standards and expect the selected FSMC to meet these standards listed below. FSMC must be able to document compliance for these standards.

USDA (min per day) Cups/oz/grams per week	USDA K-5 Standards July 2012	SFA Standards
Fruits 2.5 (0.5)	<ol style="list-style-type: none"> 1) Fresh, frozen without added sugar, canned in juice/light syrup, or dried fruit options 2) No more than half the offerings may be in the form of juice 3) 100% juice only 4) 1/4 cup dried fruit = 1/2 cup fruit 5) Fruit/vegetable separated into two components 	<ol style="list-style-type: none"> 1) Fruits must be served at every lunch 2) Fresh or frozen (no additives) 3) No canned fruits allowed 4) No juice can be served at lunch 5) Daily serving reflects variety over the week
Vegetables 3.75 (0.75)	<ol style="list-style-type: none"> 6) Daily serving that reflects variety over the week 7) Fresh, frozen, and canned products <ul style="list-style-type: none"> — Dark green 0.5 — Red/Orange 0.75 — Starch 0.5 — Other 0.5 — Additional Vegetable 1.0 — Legumes 0.5 (can also be credited as meat alternative) 	<ol style="list-style-type: none"> 6) Vegetables must be served at every lunch 7) Fresh or frozen (no additives) 8) No canned vegetables allowed 9) A daily vegetarian entrée option must be provided if the entrée is not vegetarian
Grain 8-9 oz (1)	<ol style="list-style-type: none"> 8) Schools must offer the daily and weekly serving ranges of grains (min and Max) 9) All grains offered must be whole grain- rich (SY2014-15) "Whole grain-rich" must be at least 50 percent whole grains 10) Only 2 creditable grain-based desserts allowed a week. 11) Grains should meet at least one of the following: <ul style="list-style-type: none"> — Whole grains pre-serving must be ≥ 8g (IOM) — Must have FDA's whole grain health claim on packaging — Whole grain must be first in product ingredient list 	<ol style="list-style-type: none"> 10) All grains served must meet both of the following: <ul style="list-style-type: none"> — Whole grains per serving must be ≥ 8gm (IOM) — Whole grain must be first in product ingredient list
Meats/Meat Alternates 8-10 oz (1)	<ol style="list-style-type: none"> 12) A variety of meat/meat alternates is encouraged 13) Tofu and soy yogurt will be allowable as meat alternate 	<ol style="list-style-type: none"> 11) No mechanically separated meat 12) No animal by-products 13) Serving of processed meats with additives and fillers (e.g. sausage, meat patties) must be limited to 2 times per week

USDA (min per day) Cups/oz/grams per week	USDA K-5 Standards July 2012	SFA Standards
Fluid Milk 5 (1)	14) Allowable options — Fat free (unflavored/flavored) — Low-fat (unflavored) — Fat-free or low-fat (lactose-reduced/lactose-free) 15) Must offer at least two choices	14) All milk served must be rBST and rBGH free (artificial growth hormone free) as declared by manufacturer
Saturated Fat	16) < 10 percent of total calories 17) No total fat standard	
Trans Fat 0g	18) 0 grams = less than 0.5g serving 19) Naturally occurring trans fat excluded (e.g. beef, lamb, dairy products)	15) No artificial trans fats or hydrogenated oils in ingredient lists
Calories	20) 550-650 (min-max kcal)	
Sodium	21) Current standard: ≤ 1230 mg 22) 2022-23 standard: ≤ 640 mg	
Sugar	No standard	16) Only products with natural sugar are allowed 17) No foods with High Fructose Corn Syrup in the ingredient list are allowed
Cooking Method	No standard	18) No deep frying 19) Fresh, less processed food preparation methods are encouraged
Water	No standard	20) Provision of water is not required
Competitive Foods	No standard	21) No competitive foods can be sold in the cafeteria or on school premises
Food Procurement	No standard	22) 5 percent of the food cost will be used for local food products (within 100 miles if possible)



Exhibit 1:

Model Fixed-Price Contract
For
FOOD SERVICE MANAGEMENT COMPANY

Rocketship Education, California, Inc.
FOOD SERVICE PROGRAM

350 Twin Dolphin Drive, Suite 109
Redwood City, CA 94065

877-806-0920



Model Fixed-Price Contract

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Contract Summary

FOOD SERVICES CONTRACT	CONTRACT NUMBER
	REGISTRATION NUMBER

1 This contract is entered into between the school food authority and the food service management company named below:

SCHOOL FOOD AUTHORITY NAME

ROCKETSHIP EDUCATION, CALIFORNIA, INC.

FOOD SERVICE MANAGEMENT COMPANY NAME

2 The term of this Contract is for one year, commencing on **07/01/2019** and ending on **06/30/2020**



3 The maximum dollar amount of this Contract is equal to the fixed price per meal multiplied by the number of meals served

\$

4 The parties herein agree to comply with the terms and conditions of the following exhibits, which are by this reference made a part of the Contract.

Request for Proposal Released	<i>Enter page(s)</i>
Contractor Proposal Received	<i>Enter page(s)</i>
Attached Terms and Conditions	<i>Enter page(s)</i>
Exhibit A: Scope of Work	<i>Enter page(s)</i>
Exhibit B: Schedule of Fees	<i>Enter page(s)</i>

IN WITNESS WHEREOF, the parties hereto have executed this Contract.

FOOD SERVICE MANAGEMENT COMPANY		<i>California Department of Education Use Only</i>
NAME of FSMC (if other than an individual, state whether a corporation, partnership, etc.)		
BY (Authorized Signature)	DATE SIGNED (do not type)	
		
PRINTED NAME AND TITLE OF PERSON SIGNING		
ADDRESS		
SCHOOL FOOD AUTHORITY		
NAME of SFA		
ROCKETSHIP EDUCATION, CALIFORNIA, INC.		
BY (Authorized Signature)	DATE SIGNED (do not type)	
		
PRINTED NAME AND TITLE OF PERSON SIGNING		
		<input type="checkbox"/> Exempt per:

Model Fixed-Price Contract

I. Introduction

The Rocketship Education, California, Inc., hereinafter referred to as the school food authority (SFA), enters into this Contract with [food service management company name], hereinafter referred to as the food service management company (FSMC) to provide food service management assistance for the SFA’s food service program, hereinafter referred to as “Services.” The SFA and the FSMC may be referred to as “Party” or “Parties.” **During the term of this Contract, the FSMC will provide services to the SFA as described in the Scope of Work (Exhibit A) of this Contract.**

II. General Terms and Conditions

A. Term

The term of this contract is one year. The FSMC shall commence providing Services under the Contract on July 1, 2019, and continue through June 30, 2020. After careful consideration, the SFA may annually renew this Contract for four additional one year periods upon agreement between both parties. Execution of all contracts and amendments is contingent on approval by the California Department of Education (CDE). The SFA may cancel this Contract upon notification from the CDE that it or any part of the bidding process has been determined noncompliant with state and federal laws and regulations (Title 7, *Code of Federal Regulations* [7 CFR], Section 210.16[d]).

B. Designated Contract Liaisons

SFA Liaison for Services		FSMC Liaison for Services	
Name:		Name:	
Title:		Title:	
Phone:	Cell Phone:	Phone:	Cell Phone:
Fax:	E-mail:	Fax:	E-mail:

FSMC shall serve or deliver by postal mail all legal notices to:

SFA	FSMC
Name:	Name:
Title:	Title:
Address:	Address:

C. Fees

1. Fixed-price Contracts

The SFA will pay the FSMC at a fixed rate per meal. The fixed rate per meal includes all fees and charges indicated in the Schedule of Fees (Exhibit B) of this Contract. The SFA must determine, and the FSMC shall credit the SFA for, the full value of U.S. Department of Agriculture (USDA) Foods. The FSMC's fixed-price invoice will be fully compliant with procurement requirements for the National School Lunch Program, the School Breakfast Program, and the Fresh Fruit and Vegetable Program set forth in Title 7, *Code of Federal Regulations (7 CFR)*, parts 210, 215, and 220, and the USDA Food and Nutrition Service (FNS) Final Rule issued Wednesday, October 31, 2007. The FSMC shall take discounts, rebates, and other credits into account when formulating their prices for this fixed-price contract (Title 2, *Code of Federal Regulations [2 CFR]*, sections 200 & 400).

2. Payment Terms

The FSMC shall submit monthly invoices by the 10th day of the following month that reflect all activity for the previous calendar month. The FSMC will invoice the SFA by school for the number of meals served. The FSMC must submit detailed cost documentation monthly to support all charges to the SFA. Charges and expenses are included in the Schedule of Fees (Exhibit B). All costs, charges, and expenses must be mutually agreeable to the SFA and the FSMC, and must be allowable costs consistent with the cost principles in 2 *CFR*, parts 200 or 400, as applicable. The SFA will pay invoices submitted by the FSMC within 30 calendar days of the invoice date. The SFA will notify the FSMC of invoices that do not pass audit within seven (7) days of receipt of invoice, with no penalty accruing to the SFA (7 *CFR*, sections 210.19[a][1], 210.14[a], 210.21[f]).

For avoidance of doubt, failure to pay an invoice is considered a material breach of this Contract.

3. Interest, Fines, Penalties, and Finance Charges

Interest, fines, penalties, and finance charges that may accrue under this contract are not allowable expenses to the nonprofit school food service (cafeteria fund). The SFA will not pay unallowable expenses from the SFA's cafeteria fund (2 *CFR*, Section 200.449).

The FSMC reserves the right to charge up to a seven percent interest rate (compounded monthly) on any balance left unpaid on an invoice. The FSMC will notify the SFA prior to charging any interest. Both Parties will work in good faith to resolve any payment issue(s). Should payment issue(s) persist, both Parties will mutually agree to charging of interest. No

food service account funds shall be used for payment of interest or late fees.

4. Spoiled or Unwholesome Food

The SFA shall make no payment to the FSMC for meals that, in the SFA's determination, are spoiled or unwholesome at the time of delivery, do not meet detailed food component specifications as developed by the SFA for the meal pattern, or do not otherwise meet the requirements of this Contract (7 *CFR*, Section 210.16[c][3]).

However, no deduction will be made unless SFA provides to FSMC in writing of the meal service for which the deduction is to be made, specifying the number of meals for which SFA intends to deduct payment and setting forth the reasons for the deduction. SFA shall provide such notice no later than twenty-four hours after the date the meal was served. SFA shall keep evidence of food items for inspection by FSMC. Credit may be withheld without proper evidence.

D. Contract Cost Adjustment

The renegotiation of price terms under this Contract is permitted only upon the occurrence of unpredictable, unexpected conditions beyond the control of both parties. If those conditions create a significant and material change in the financial assumptions upon which the price terms of this contract were based, then those price terms so affected may be renegotiated by both parties. Renegotiation of price terms under such conditions must be mutual and both parties must agree on any changes in price terms. Any adjustments so negotiated and agreed upon must accurately reflect the change in conditions. The occurrence of contingencies that are foreseeable and predictable, but not certain, should be calculated into the defined price terms, to the extent possible, with the goal of minimizing the need for renegotiation of price terms during the term of the Contract. Substantive changes of the Contract will require the SFA to rebid the Contract.

The contract price (which can include General and Administrative Expense and Management Fees) may be increased on an annual basis by the Yearly Percentage Change in the Consumer Price Index for All Urban Consumers, as published by the U.S. Department of Labor, Bureau of Labor Statistics, Food Eaten Away from Home Los Angeles (CPI). 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 the SFA. CPI Fee increases for the upcoming Contract renewal year must be submitted to the SFA.

E. Availability of Funds

Every payment obligation of the SFA under this Contract is conditioned upon the availability of funds appropriated or allocated for the payment of such obligation.

The SFA may terminate this Contract at the end of the period for which funds are available if funds are not allocated and available for the continuance of this Contract. In the event the SFA exercises this provision, no liability shall accrue to the SFA and the SFA shall not be obligated or liable for any future payments or for any damages resulting from termination under this provision.

F. Timeliness

Time is of the essence in this Contract.

G. Approval

This Contract has no force or effect until it is signed by both parties and is approved by the CDE (7 *CFR*, Section 210.19 [a][5]).

H. Amendment

No amendment or variation of the terms of this Contract shall be valid unless made in writing, signed by both parties, and approved by the CDE. Any oral understanding or agreement not incorporated into the Contract in writing and approved by the CDE is not binding on either party (7 *CFR*, Section 210.19[a][5]).

I. Substantive Changes to Contract

Any change to this Contract that results in a material change or any proposed renewals of this Contract may, at the determination of the CDE, either void this Contract or require the SFA to rebid the Contract. Following are examples of substantive changes that could require the SFA to rebid the Contract (2 *CFR*, Section 200.324 [b][5]):

- The addition of a program
- A major shift in responsibilities for FSMC/SFA staff
- A modification that changes the scope of the Contract or increases the price of the Contract by more than the applicable federal, state, or local small purchase threshold (2 *CFR*, Section 200.324 [b][4])

J. Subcontract/Assignment

No provision of this Contract shall be assigned or subcontracted without prior written approval of the SFA. In the event all or substantially all of the FSMC's assets are acquired by another company, the FSMC shall notify the SFA in writing. Within 30 days, the SFA has the right to continue service under the guidance of the acquirer, or terminate this Contract, effective immediately.

K. Written Commitments

Any written commitment by the FSMC relative to the services herein shall be binding upon the FSMC. Failure of the FSMC to fulfill any such commitment shall render the FSMC liable for damages due to the SFA. Such written commitments include, but are not limited to:

- Any warranty or representation made by the FSMC in any publication, drawing, or specifications accompanying or referred to in the proposal pertaining to the responsiveness of the proposal
- Any written notifications, affirmations, or representations made by the FSMC in, or during the course of, negotiations that are incorporated into a formal amendment to the proposal

L. Trade Secrets/Copyrights

The FSMC and SFA shall designate any information they consider confidential or proprietary—including recipes, surveys and studies, management guidelines, operational manuals, and similar documents—that the SFA and FSMC regularly use in the operation of their business or that they develop independently during the course of this Contract. Information so designated and identified shall be treated as confidential by the FSMC and the SFA, and the FSMC and the SFA shall exercise the same level of care in maintaining the confidences of the other party as they would employ in maintaining their own confidences, unless disclosure is otherwise required under the law. All such materials shall remain the exclusive property of the party that developed them and shall be returned to that party immediately upon termination of this Contract. Notwithstanding, the federal awarding agency reserves a royalty-free, nonexclusive, and irrevocable license to reproduce, publish, or otherwise use, and authorize others to use, the following for federal government purposes:

- The copyright in any work developed under a federal grant, subgrant, or contract under a grant or subgrant (7 CFR, Section 200.315)
- Any rights of copyright to which a grantee, subgrantee, or a contractor purchases ownership with federal grant support (2 CFR, Section 200.315[B])

M. Severability

Should any provision(s) of this Contract be declared or found to be illegal, unenforceable, ineffective, and/or void, then each party shall be relieved of any obligations arising from such provision(s). The balance of this Contract, if capable of performance, shall remain and continue in full force and effect.

N. Counterparts

This Contract may be executed in counterparts, each of which shall be deemed an original, but all of which together will constitute one and the same instrument.

O. Silence/Absence/Omission

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

P. Indemnification, Limitation of Liability

The FSMC agrees to defend, indemnify and hold harmless the SFA and its board of directors, officers and employees for claims for death, bodily injury and damage to tangible property caused by the sole negligence or a wrongful act of the FSMC in the performance of this Contract, and to pay all claims, damages, judgments, legal costs, adjuster fees and attorney fees related thereto.

The SFA agrees to defend, indemnify and hold harmless the FSMC and its directors, officers and employees for claims for death, bodily injury and damage to tangible property caused by the sole negligence or a wrongful act of the SFA in the performance of this Contract , and to pay all claims, damages, judgments, legal costs, adjuster fees and attorney fees related thereto.

Excluding either Party's obligations above, in the event either Party incurs any expenses, damages or other liabilities in connection with the performance or non-performance of any term or provision hereof or otherwise incurs indemnification obligations under this section, such Party's liability to the other Party shall not exceed the payments actually paid to the FSMC over the previous twelve months. In no event will either Party be liable for any special, incidental, consequential or indirect damages or damages for lost profits arising in any way out of this Contract, however caused and on any theory of liability. The foregoing limitation of liability and exclusion of certain damages shall apply regardless of the failure of essential purpose of any remedies available to either Party.

Q. Penalties

For the breach of the Contract and associated benefits:

If the FSMC causes the breach, the FSMC assumes liability for any and all damages, including excess cost to the SFA in procuring similar services, and is liable for administrative, contractual, and legal remedies, as applicable.

If the SFA causes the breach, the SFA assumes liability for any and all damages, and is liable for administrative, contractual, and legal remedies, as applicable.

R. Small and Minority Businesses - Prime Contractors and Subcontractors

(a) The non-Federal entity 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. (2 *CFR*, Part 200.321[a][b][1-6])

S. The FSMC shall comply with the provisions referenced in Appendix II to 2 CFR Part 200, which include but are not limited to:

- a) Equal Employment Opportunity (for contracts in excess of \$10,000)
- b) Davis Bacon Act (for construction contracts in excess of \$2,000)
- c) Rights to Inventions Made Under a Contract or Agreement (if applicable)
- d) Byrd Anti-Lobbying Amendment [31 U.S.C. 1352] (Appendix II to 2 *CFR*, Part 200 (for contracts worth \$100,000 or more])

T. Force Majeure

Neither party shall be liable to the other for delay in, or failure of, performance nor shall any such delay in, or failure of, performance constitute default if such delay or failure is caused by force majeure. Force majeure means an occurrence that is beyond the control of the party affected and occurs without its fault or negligence. Force majeure may include, but is not restricted to, acts of God, the public enemy, acts of the state in its sovereign capacity, fires, floods, power failure, disabling strikes, epidemics, quarantine restrictions, and freight embargoes.

Force majeure does not include any of the following occurrences:

- Late delivery of equipment or materials caused by congestion at a manufacturer's plant or elsewhere, or an oversold condition of the market
- Late performance by a subcontractor, unless the delay arises out of a force majeure occurrence
- Inability of either the FSMC or any of its subcontractors to acquire or maintain any required insurance, bonds, licenses, or permits

If either party is delayed at any time in the progress of work by force majeure, the delayed party shall notify the other party in writing of such delay, as soon as practicable and no later than the following work day or the commencement thereof, and shall specify the causes of such delay. Such notice shall be delivered by hand

or sent by postal mail with a certified return receipt requested and shall make a specific reference to this article, thereby invoking its provisions. The delayed party shall cause such delay to cease as soon as practicable and shall notify the other party in writing when it has done so. The time for completion shall be extended by contract amendment, as long as the amended period does not violate 7 CFR Section 210.16(d).

Any delay or failure in performance by either party caused by force majeure shall not constitute default.

U. Nondiscrimination

Both the SFA and FSMC agree that no child who participates in the National School Lunch Program (NSLP) and the School Breakfast Program (SBP) will be discriminated against on the bases of race, color, national origin, age, disability, sex, gender identity, religion, reprisal, and where applicable, political beliefs, marital status, familial or parental status, sexual orientation, or all or part of an individual's income derived from any public assistance program or protected genetic information in employment or in any program or activity conducted or funded by the USDA. (Not all prohibited bases will apply to all programs and/or employment activities (2 *CFR*, Section 210.23[b])

V. Compliance with the Law

The FSMC shall comply with all laws, ordinances, rules, and regulations of all applicable federal, state, county, and city governments, bureaus, and agencies regarding purchasing, sanitation, health, and safety for the food service operations and shall procure and maintain all necessary licenses and permits. The SFA shall cooperate, as necessary, in the FSMC's compliance efforts.

The FSMC shall comply with 2 *CFR*, Part 200, 7 *CFR*, parts 210 (NSLP), 220 (SBP), 245 (Determining Eligibility for Free and Reduced Price Meals and Free Milk in Schools) as applicable, 250 (Donation of Foods for Use in the United States, its Territories and Possessions and Areas Under its Jurisdiction, USDA FNS Instructions and policy, federal laws and regulations, California *Education Code (EC)*, and California laws and regulations, where applicable.

W. Choice of Law

This Contract shall be construed under the laws of the state of California, where applicable, without giving effect to the principles of conflict of laws. Any action or proceeding arising out of this Contract shall be heard in the appropriate courts in California.

X. Advice of Counsel

Each party acknowledges that, in executing this Contract, such party has had the opportunity to seek the advice of independent legal counsel and has read and understood all of the terms and provisions of this Contract (California *Education Code [EC]*, Section 45103.5[b]).

III. Relationship of the Parties

- A.** The FSMC's relationship with the SFA will be that of an independent contractor and not that of an employee of or supervisor for the SFA. The FSMC will not be eligible for any employee benefits, nor will the SFA make deductions from payments made to the FSMC for taxes; all of which will be the FSMC's responsibility. The FSMC agrees to indemnify and hold the SFA harmless from any liability for, or assessment of, any such taxes imposed on the SFA by relevant taxing authorities. The FSMC will have no authority to enter into contracts that bind the SFA or create obligations on the part of the SFA (*EC Section 45103.5*).
- B.** Where the SFA is a public school, the FSMC, as an independent contractor, shall have no authority to supervise food service classified personnel operating the NSLP, or SBP (*EC Section 45103.5*).
- C.** All services to be performed by the FSMC will be as agreed between the FSMC and the SFA. The FSMC will be required to report to the SFA concerning the services performed under this Contract. The SFA shall determine the nature and frequency of these reports.
- D.** The SFA is the responsible authority, without recourse to USDA or CDE, for the settlement and satisfaction of all contractual and administrative issues arising in any way from this Contract. Such authority includes, but is not limited to, source evaluation, protests, disputes, claims, or other matters of a contractual nature.

IV. Food Service Program

A. School Food Authority Responsibilities

- 1. The SFA shall ensure that the food service operation is in conformance with the SFA's Permanent Single Agreement with the CDE and will monitor the food service operation through periodic on-site visits (*7 CFR*, sections 210.16[a][2] and 210.16[a][3]).
- 2. The SFA shall retain control of the quality, extent, and general nature of the food service program and establish all program and nonprogram meal and a la carte prices (*7 CFR*, sections 210.09(b)(1) and 210.16[a][4]).

3. SFAs with more than one school shall perform no less than one on-site review of the lunch counting and claiming system employed by each school under its jurisdiction. The on-site review shall take place prior to February 1 of each school year. Further, if the review discloses problems with a school's meal counting or claiming procedures, the SFA shall ensure that the school implements corrective action and, within 45 days of the review, conduct a follow-up on-site review to determine that the corrective action resolved the problem. Each on-site review shall ensure that the school's claim is based on the counting system authorized by the CDE under 7 CFR, Section 210.7(c) and that the counting system, as implemented, yields the actual number of reimbursable free, reduced-price, and paid lunches respectively, served for each day of operation (7 CFR, Section 210.8[a][1]).
4. The SFA shall retain control of the nonprofit school service account and overall financial responsibility for the nonprofit food service operation; the quality, extent, and the general nature of its food service; and the prices children are charged for meals (7 CFR, Section 210.16[a][4]).
5. The SFA shall retain responsibility for developing the meal pattern for students with disabilities, when their disability restricts their diet, and for those students without disabilities who are unable to consume the regular lunch because of medical or other special dietary needs (7 CFR, Section 210.10[m]).
6. The SFA shall retain signature authority for the food services application, agreements, Free and Reduced-Price Policy Statement, monthly Claim for Reimbursement, reports, program renewal, the verification of applications, letters to households, and all correspondence to the CDE relating to the food service program (7 CFR, Section 210.16[a][5]).
7. The SFA shall retain signature authority and be responsible for all contractual agreements entered into in connection with the food service program (7 CFR Section 210.21).
8. The SFA shall be responsible for the establishment and maintenance of the free and reduced-price meals eligibility roster (EC Section 49558).
9. The SFA shall be responsible for the development, distribution, and collection of the letter to households and Application for Free and Reduced-Price Meals and/or Free Milk. (EC Section 49558 and 7 CFR, Section 245.6).
10. If the SFA uses direct certification of eligibility, the SFA shall be responsible for obtaining the direct certification list at least annually (EC Section 49558).

11. The SFA shall be responsible for the determination of eligibility for free and reduced-price meals and shall disclose the eligibility status of individual students or confidential information provided on the application for free or reduced-price meals to the FSMC, to the extent that such information is necessary for the FSMC to fulfill its obligations under this Contract. The FSMC will not disclose the eligibility status of individual students or confidential information provided.
12. The SFA shall be responsible for conducting any hearings related to determinations regarding free and reduced-price meal eligibility (EC Section 49558 and 7 CFR, Section 245.7).
13. The SFA shall be responsible for verifying applications for free and reduced-price meals as required by federal regulations (7 CFR, sections 245.6 and 245.6a).
14. The SFA shall establish and maintain an advisory board composed of parents, teachers, and students to assist with menu planning (7 CFR, Section 210.16[a][8]).
15. The SFA shall maintain applicable health certification and ensure that all state and local regulations are being met by the SFA in serving meals at an SFA facility (7 CFR, Section 210.16[a][7]). The SFA shall ensure that all state and local regulations are being met by FSMC in preparing meals by FSMC off-site.

V. Buy American Requirements

A. Food Service Management Company Responsibilities

1. The FSMC must submit statements for all processed agricultural products to the SFA at the time of delivery for each processed agricultural product certifying that the food product was processed 100 percent domestically and that the percentage of domestic content in the food component of the processed food product is over 51 percent, by weight or volume (USDA Policy Memo SP 38-2017).
2. The FSMC must notify the SFA in writing at least 10 days prior to delivering a nondomestic agricultural commodity or product and request prior approval for delivery of a nondomestic agricultural commodity or product. This written notification must list alternative domestic substitutes for the SFA to consider and provide an explanation for the following:
 - a. Why the domestic product is not produced or manufactured in sufficient and reasonably available quantities of a satisfactory quality; and/or

- b. Why competitive bids reveal the cost of domestic product are significantly higher than the nondomestic product.

B. School Food Authority Responsibilities

1. The SFA shall maintain documentation outlining the justification for supporting their use of an exception to the Buy American requirement prior to accepting nondomestic agricultural commodities or products. This documentation will be kept on file for the term of the contract plus any extensions and three additional school years thereafter. This will be made available during an onsite administrative review and an offsite procurement review.
2. The SFA shall monitor the contract to ensure that the correct domestic food components contracted for are delivered as required by 2 CFR, Section 200.318(b) unless the FSMC has received prior approval from the SFA for nondomestic agricultural commodity or product.
3. The SFA must ensure FSMC compliance with the Buy American Provision in accordance with their procurement procedures. These procedures, at a minimum, must include the requirement to include Buy American Provision language in solicitations and contracts as well as the process for requiring FSMCs to certify the domestic percentage of the agricultural food component of products.
4. The SFA shall make no payment to the FSMC for nondomestic food delivered without prior approval from the SFA.

VI. U.S. Department of Agriculture Foods

A. Food Service Management Company Responsibilities

1. The FSMC shall fully use, to the maximum extent possible, USDA Foods made available by the SFA solely for the purpose of providing benefits for the SFA's nonprofit school food program (7 *CFR*, Section 210.16[a][6]).
2. In accordance with 7 *CFR* Section 250.53, the FSMC shall comply with the following provisions relating to the use of USDA Foods, as applicable:
 - a. The FSMC must credit the SFA for the value of all USDA Foods (including both entitlement and bonus foods) received for use in the SFA's meal service in the school year or fiscal year. The credit must include the value of USDA Foods contained in processed end products if the FSMC procures processed end products on behalf of

the SFA, or acts as an intermediary in passing on the USDA Food value of processed end products to the SFA (7 CFR, Section 250.51[a])

- b. The FSMC shall account for the full value of USDA Foods (7 CFR, Section 250.51) by:
 - i) Subtracting the value of all USDA Foods received for use in the SFA's food service from the SFA's (monthly/quarterly) invoice
 - ii) Using the Average Price File for the school year that the USDA Foods are received by the SFA. This listing is available from the USDA Food Distribution Web page at <http://www.fns.usda.gov/fdd/processor-pricing-reports>
 - iii) Provide the SFA with an accounting of credits with each invoice, which accounting shall be subject to the SFA's review and approval.
3. The FSMC will be responsible for any activities relating to USDA Foods in accordance with 7 CFR, Section 250.50(d)(2), (3), and (4), and will ensure that such activities are performed in accordance with the applicable requirements in 7 CFR, Part 250.
4. The FSMC shall accept liability for any negligence on its part that results in any loss of, improper use of, or damage to USDA Foods.
5. The FSMC must use all donated ground beef and ground pork products, and all processed end products, in the SFA's food service (7 CFR, Section 250.51[d]).
6. In accordance with 7 CFR Section 250.51(d), the FSMC may, in most cases, use commercially purchased foods of the same generic identity, of U.S. origin and of equal or better quality, in place of donated foods. Exceptions are donated ground beef, donated ground pork, and all processed end products, which contain donated foods that may not be replaced with commercial substitutes. The SFA must ensure that such substitution has been made and that it has received credit for the value of all donated foods received, in accordance with review requirements in 7 CFR, Section 250.54(c).
7. According to 7 CFR, Section 250.53(a)(7), the FSMC shall ensure that the processing agreement's value will be used in crediting the SFA for the value of USDA Foods contained in end products.

8. The FSMC will provide assurance that it will not itself enter into the processing agreement with the processor required in subpart C of 7 CFR Part 250.
9. The FSMC will provide assurance that it will comply with the storage and inventory requirements for USDA Foods (7 CFR, Section 250.53[a][9]).
10. The distributing agency, subdistributing agency, the CDE, SFA, the Comptroller General, the USDA, or their duly authorized representatives, may perform on-site reviews of the FSMC's food service operation, including the review of records, to ensure compliance with requirements for the management and use of USDA Foods (7 CFR, Section 250.53[a][10]).
11. The FSMC will maintain records to document its compliance with requirements relating to USDA Foods, in accordance with 7 CFR, Section 250.54(b).
12. Any extensions or renewals of the Contract, if applicable, are contingent upon the fulfillment of all Contract provisions relating to USDA Foods (7 CFR, Section 250.53[a][12]).

B. School Food Authority Responsibilities

1. The SFA shall retain title to all USDA Foods and ensure that all USDA Foods received by the SFA and made available to the FSMC accrue only for the benefit of the SFA's nonprofit school food service and are fully used therein (7 CFR, Section 210.16[a][6]).
2. The SFA shall accept and use, in as large quantities as may be efficiently used in its nonprofit food service program, such foods as may be offered as a donation by USDA (7 CFR, Section 210.9[b][15]).
3. The SFA will maintain records to document its compliance with requirements relating to USDA Foods and conduct reconciliation (at least annually and upon termination of the Contract) to ensure that the FSMC has credited the value of all USDA Foods in accordance with 7 CFR, sections 250.54(a) and (c).

VII. Meal Responsibilities

A. The FSMC shall (7 CFR, Section 250.54[a] and [c]):

1. Place meal orders and manage meal orders on behalf of SFA such that SFA is only invoiced for meals served.

2. Prepare meals for the SFA's food service program that meet the requirements as established in 7 *CFR*, Part 210.
3. Deliver meals to SFA school sites on such days and at such times as required.

B. The SFA shall:

1. Serve meals to students on such days and at such times as required.
1. Offer free, reduced-price, and paid reimbursable meals to all eligible children through the SFA's food service program (7 *CFR*, Section 210.16[a]).
2. Provide meals through the SFA's food service program that meet the requirements as established in 7 *CFR*, Part 210.

VIII. Food Service Management Company Employees

- A. The SFA will provide all personnel to serve meals to students.
- B. The FSMC will provide off-site personnel to manage meal ordering. The FSMC will provide personnel to deliver meals to SFA school sites, and periodic consultation as requested by SFA.
- C. The FSMC shall comply with all wage and hours of employment requirements of federal and state laws. The FSMC will be responsible for supervising and training their personnel.
- D. The FSMC agrees to assume full responsibility for the payment of all contributions and assessments, both state and federal, for all of its employees engaged in the performance of this Contract.
- E. The FSMC agrees to furnish the SFA, upon request, a certificate or other evidence of compliance with state and federal laws regarding contributions, taxes, and assessments on payroll.
- F. The FSMC will be solely responsible for all personnel actions regarding employees on its respective payroll. The FSMC shall withhold and/or pay 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 workers' compensation costs, and shall file all required documents and forms. The FSMC shall indemnify, defend, and hold the SFA harmless from and against any and all claims, liabilities, and expenses related to, or arising out of, the indemnifying party's responsibilities set forth herein.

IX. Books and Records

- A.** The SFA and the FSMC must provide all documents as necessary for an independent auditor to conduct the SFA's single audit. The FSMC shall maintain such records as the SFA will need to support its Claims for Reimbursement. Such records shall be made available to the SFA upon request and shall be retained in accordance with 7 *CFR*, Section 210.16(c)(1).
- B.** The SFA and the FSMC shall, upon request, make all accounts and records pertaining to the nonprofit food service program available to the CDE and USDA FNS for audit or review at a reasonable time and place. Each party to this Contract shall retain such records for a period of three (3) years after the date of the final Claim for Reimbursement for the fiscal year in which this Contract is terminated, unless any audit findings have not been resolved. If audit findings have not been resolved, then records shall be retained beyond the three-year period as long as required for resolution of issues raised by the audit (7 *CFR*, Section 210.9(b)(17) and 2 *CFR*, Section 200.336[a]).
- C.** The FSMC shall not remove state or federally required records from the SFA premises upon contract termination.
- D.** The SFA and the FSMC shall allow the CDE, USDA, the Comptroller General of the United States, or any of their duly authorized representatives access to any books, documents, papers, and records of the FSMC that are directly pertinent to the Contract for the purpose of making any audit, examination, excerpts, and transcriptions (2 *CFR*, Section 200.336[a]).

X. Monitoring and Compliance

- A.** The SFA shall monitor the food service operation through periodic on-site visits in order to develop recommendations for improvement of the food service program
- B.** The FSMC warrants and certifies that in the performance of this Contract it will comply with all applicable statutes, rules, regulations, and orders of the United States and the state of California.
- C.** The SFA shall establish internal controls that ensure the accuracy of lunch counts prior to the submission of the monthly Claim for Reimbursement in accordance with 7 *CFR*, Section 210.8(a). At a minimum, these internal controls shall include all of the following:

- An on-site review of the lunch counting and claiming system employed by each school within the jurisdiction of the SFA (7 *CFR*, Section 210.8[a][1])
- Comparisons of daily free, reduced-price, and paid lunch counts against data that will assist with the identification of lunch counts in excess of the number of free, reduced-price, and paid lunches served each day to children eligible for such lunches
- A system for following up on lunch counts that suggest the likelihood of lunch counting problems.

XI. Equipment, Facilities, Inventory, and Storage

- A.** The SFA will make available to the FSMC, without any cost or charge, area(s) of the premises agreeable to both parties in which the FSMC shall deliver meals. The SFA shall be responsible for loss or damage to equipment owned by the FSMC and located on the SFA's premises. Meals are prepared by the FSMC off-site.
- B.** The FSMC shall notify the SFA of any equipment belonging to the FSMC on the SFA's premises within 10 days of its placement on the SFA's premises.
- C.** The premises and equipment provided by the SFA for use in its nonprofit food service program shall be in good condition and maintained by the SFA to ensure compliance with applicable laws concerning building conditions, sanitation, safety, and health including, without limitation, Occupational Safety and Health Administration regulations. The SFA further agrees that any structural or nonstructural modifications or alterations to the workplace or the premises necessary to comply with any statute or governmental regulation shall be the responsibility of the SFA and shall be at the SFA's expense. This provision shall survive termination of this Contract.
- D.** The SFA shall have access, with or without notice, to all of the SFA's facilities used by the FSMC for purposes of inspection and audit.
- E.** Ownership of the beginning inventory of food and supplies shall remain with the SFA.
- F.** All USDA Foods shall remain with the SFA (7 *CFR*, Section 210.16[a][6]).
- G.** Ownership of all nonexpendable supplies and capital equipment shall remain with the SFA.

XII. Certifications

- A.** The FSMC warrants and certifies that in the performance of this Contract, it will comply with the rules and regulations of the CDE and the USDA, and any additions or amendments thereto, including but not limited to 2 *CFR*, Part 200 and 7 *CFR*, parts 210, 215, 220, 225, 245, 250, and USDA FNS Instruction and policy, as applicable. The FSMC agrees to indemnify the SFA and the CDE against any loss, cost, damage, or liability by reason of the FSMC's violation of this provision.
- B.** The FSMC shall comply with Title VI of the Civil Rights Act of 1964, as amended; USDA regulations implementing Title IX of the Education Amendments; Section 504 of the Rehabilitation Act of 1973; and any additions or amendments to any of these regulations.
- C.** The SFA and FSMC shall comply with all applicable standards, orders, or regulations issued, including:
- A. Section 306 of Clean Air Act (42 *U.S.C.* 1847[h]):
<http://www.gpo.gov/fdsys/pkg/USCODE-2013-title42/pdf/USCODE-2013-title42-chap85-subchapIII-sec7602.pdf>
 - B. Section 508 of the Clean Water Act (33 *U.S.C.* 1368):
<http://www.gpo.gov/fdsys/pkg/USCODE-2013-title33/pdf/USCODE-2013-title33-chap26.pdf>
 - C. Executive Order 11738: <http://www.epa.gov/isdc/eo11738.htm>
 - D. Environmental Protection Agency (EPA) regulations at Title 40, *Code of Federal Regulations*, Part 15, et seq. (http://www.ecfr.gov/cgi-bin/text-idx?SID=9ed90ed6fc9c89c5c8465c743584c79a&tpl=/ecfrbrowse/Title40/40tab_02.tpl). Environmental violations shall be reported to the USDA and the U.S. EPA Assistant Administrator for Enforcement, and the FSMC agrees not to use a facility listed on the EPA's List of Violating Facilities
- D.** Debarment Certification
- The USDA Certification Regarding Debarment must accompany each subsequent four (4) additional one-year renewals (2 *CFR*, sections 180 and 417). Contract renewals that do not include this certification will not be accepted for consideration.
- E.** Lobbying
- The Certification Regarding Lobbying and a Disclosure of Lobbying Activities form (2 *CFR*, Section 418) must accompany each subsequent four (4) additional one-year renewals (2 *CFR*, sections 180 and 417). Contract

renewals that do not include this certification will not be accepted for consideration.

- F.** Energy Policy and Conservation Act:
<http://legcounsel.house.gov/Comps/EPCA.pdf>.

The SFA and the FSMC shall recognize mandatory standards and policies relating to energy efficiency which are contained in the state conservation plan issued in compliance with the Energy Policy and Conservation Act.

- G.** Contract Work Hours and Safety Standards Act Compliance:
<http://www.dol.gov/compliance/laws/comp-cwhssa.htm> .
FSMC will comply with Sections 103 and 107 of the Contract Work Hours and Safety Standard Act.

XIII. Insurance

The SFA will keep and maintain commercial general liability insurance in an amount no less than one million dollars (\$1,000,000) for each occurrence and two million dollars (\$2,000,000) in the aggregate. If requested, SFA will provide FSMC with proof evidencing insurance in the amount, and specifying that the coverage will not be canceled or materially modified without thirty (30) days prior written notice to Revolution Foods.

The FSMC will keep and maintain commercial general liability insurance in an amount no less than one million dollars (\$1,000,000) for each occurrence and two million dollars (\$2,000,000) in the aggregate for any liability resulting from incidents of improper product preparation, contamination or transport and will provide SFA with a certificate, prior to executing this Contract, evidencing insurance in the amount, naming SFA as an additional insured and specifying that the coverage will not be canceled or modified without thirty (30) days prior written notice to SFA.

XIV. Termination

Either party may terminate this Contract at any time upon 60-days' written notice (7 *CFR*, Section 210.16[d]).

Either party may cancel for cause with a 60-day notification if either party breaches a provision of this Contract (7 *CFR*, Section 210.16[d]) The nonbreaching party shall give the other party notice of such cause. If the cause is not remedied within 15 days, the nonbreaching party shall give a 60-day notice to the breaching party of their intent to terminate this Contract upon expiration of the 60-day period (2 *CFR*, Section 200.339[a][3]).

This Contract may be terminated, in whole or in part, for convenience by the SFA with the consent of the FSMC, in which case the two parties shall agree upon the termination

conditions, including the effective date and, in the case of partial termination, the portion to be terminated (2 *CFR*, Part 200).

The Contract may also be terminated, in whole or in part, by the FSMC upon written notification to the SFA, setting forth the reasons for such termination, the effective date, and, in the case of partial termination, the portion to be terminated. However, in the case of a partial termination, if the SFA determines that the remaining portion of the Contract will not accomplish the purposes for which the Contract was made, the SFA may terminate the Contract in its entirety under 2 *CFR*, Part 200, Appendix II(B).

The rights of termination referred to in this Contract are not intended to be exclusive and are in addition to any other rights or remedies available to either party at law or in equity.

Exhibit A: Scope of Work

1. Order/Waste Management

- a. FSMC will place orders for SFA on a daily basis ensuring accurate budgeting and no unforeseen costs. Both FSMC and SFA will follow the procedures as mutually agreed upon.
- b. FSMC will invoice SFA for meals served on weekly or monthly basis as agreed upon. FSMC will collect and provide information necessary for school food service claims for reimbursement from state and federal agencies and maintain records of past information. FSMC will provide the number of meals to be claimed to the SFA contact on or before the tenth day of each month (7 CFR, 210.16[c][1])

2. Offer vs. Serve (OVS)

- a. FSMC will provide meals following guidelines for OVS for lunch.
- b. FSMC will provide meals following guidelines for OVS for breakfast.

3. Field Trips

- a. FSMC will provide SFA with sack lunches for field trips when requested. FSMC will invoice SFA for all field trips ordered.

4. Fresh Fruit and Vegetable Program (FFVP)

- a. SFA is participating in the Fresh fruit and Vegetable Program. As received, SFA will provide the FFVP award letter received from the state agency to FSMC. FSMC will then provide fruits and vegetables and necessary supplies equivalent to 100% of the grant.

5. Delivery and Service of Meals

- a. FSMC will transport meals from the preparation site to the SFA school site. The delivery time will be agreed upon by both Parties.
- b. FSMC will provide all of the equipment necessary to transport the meals to SFA. SFA will make available for next day pickup any and all property owned by FSMC.
- c. SFA will provide all personnel necessary to accept delivery, serve, and supervise the consumption of meals.

6. Equipment and Care of Meals

- a. FSMC will be responsible for the condition and care of meals until SFA accepts delivery and, thereafter, SFA will be responsible for maintaining the proper temperature of the meal components until they are consumed.

- b. FSMC will provide cambros for sites receiving delivery of hot food.
- c. SFA will be responsible for providing all equipment at SFA locations needed service of meals.

7. School Support

FSMC will provide the following in good faith in order to provide nutrition/compliance and food safety support to SFA.

- a. FSMC will provide training prior to the beginning of service.
- b. FSMC will provide personal site visits to each school site during the first week of service to support real-time questions.
- c. **Food Handler Certification:** FSMC will provide Food Handler training and certification cards for SFA serving staff.
- d. **ServSafe Certification:** FSMC will provide ServSafe training for SFA Business Operations Managers (BOMs) and lead servers. There will be no additional charge for this training.
- e. FSMC will recommend or establish a structure or process to routinely and continuously gather input from food service employees to ensure the most effective and efficient operation possible.
- f. FSMC will recommend or establish a formal structure to routinely and continuously gather input from students, staff, and parents about food services.
- g. FSMC will recommend management staff and structure that will enhance the SFA's food service programs and ensure that the SFA's food service programs are of consistent top quality and held in positive regard by students, staff, and the public.

8. Monthly Menu Planning

- a. No later than one (1) week prior to the end of each month, FSMC will provide to SFA a monthly menu covering the meals to be served for the following month.
- b. Any unforeseen menu changes or substitutions must be immediately communicated to SFA. SFA shall provide response within 24 hours. In the event of an emergency, FSMC will make changes and communicate the need to SFA without awaiting a response.
- c. Students with special dietary needs must have on file a signed statement by a medical doctor or a recognized medical authority.

Exhibit B: Schedule of Fees

The costs included in the Cost per Meal table comprise the fixed price per meal. The fees are agreed upon by both parties and represent allowable food service costs in accordance with 2 CFR, Part 200.

Cost per Meal

Note: Prices must **not** include values for USDA Foods, and must include all meal programs.

Meal	# Full Serving Days	# Meals per Day	Price per Meal
Breakfast	180	5,500	
Lunch	180	6,000	

Exhibit C: Sites Where Program Will Operate

School Name	School Address	Enrollment
Rocketship Alma Academy	198 W. Alma Avenue San Jose, CA 95110	519
Rocketship Brilliant Minds	2962 Story Road San Jose, CA 95127	567
Rocketship Delta	1700 Cavallo Road Antioch, CA 94509	250
Rocketship Discovery Prep	370 Wooster Avenue San Jose, CA 95116	499
Rocketship Fuerza	90 S. Jackson Avenue San Jose, CA 95116	610
Rocketship Futuro Academy	5120 Myrtle Drive Concord, CA 94521	314
Rocketship Los Sueños	331 South 34th Street San Jose, CA, 95116	476
Rocketship Mateo Sheedy	788 Locust Street San Jose, CA, 95110	558
Rocketship Mosaic	950 Owsley Avenue San Jose, CA 95122	572
Rocketship Redwood City Prep	1440 Connecticut Drive Redwood City, CA 94061	276
Rocketship Rising Stars	3173 Senter Road San Jose, CA 95111	563
Rocketship Si Se Puede	2249 Dobern Avenue San Jose, CA 95116	433
Rocketship Spark	653 Sylvandale Avenue San Jose, 95111	597